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Federal Register

Wednesday
February 10, 1999

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 761

RIN 0560–AF70

Small Hog Operation Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule sets forth the regulations for the Small Hog Operation Payment Program as authorized by clause (3) of section 32 of the Act of August 24, 1935 (7 USC 612c). Producers of hogs may receive a direct payment of up to $5 for each eligible hog to help offset producers' financial losses on hogs sold during the 6-month period from July 1, 1998, through December 31, 1998. This action is designed to provide immediate financial assistance to hog producers who recently experienced the lowest market prices in over five decades.

DATES: Effective February 5, 1999. Comments on this rule must be received by March 12, 1999, in order to be assured of consideration. Comments on the information collections in this rule must be received by April 12, 1999, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512; telephone: (202) 720–7901; e-mail: candy__thompson@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, D.C., between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available on the PSD home page at http://www.fsa.usda.gov/dafp/psd/.

FOR FURTHER INFORMATION CONTACT: Candace Thompson, (202) 720–4584.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA submitted an emergency information collection request (ICR) to OMB which was approved and assigned OMB Control Number 0560–0193.

Title: Small Hog Operation Payment Program.

OMB Control Number: 0560-0193.

Type of Request: Request for Extension of a Currently Approved Information Collection Package.

Abstract: Hog operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payment. These operations must certify: (1) the number of hogs marketed; (2) that the hogs were marketed during the last 6 months of 1998; (3) that the hogs were not marketed under a fixed-price or cost-plus contract; and (4) that the operation was still in the business of farming at the time of the Small Hog Operation Payment Program request. The information collection will be used by FSA to approve Form FSA–1042 or to determine the program eligibility of the hog operation in accordance with this subpart. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. The eligibility requirements have been established to target the direct payments towards smaller operations. Additionally, without accurate information on slaughter hog and feeder pig operations, the national payment rate would be inaccurate resulting in payments being made to ineligible recipients, and compromising the integrity and accuracy of the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Hog Operations.

Estimated number of Respondents: 100,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 26,250.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including

the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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. Comments should be sent to the Desk Officer for Agriculture, Office of Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue. S.W., Washington, D.C. 20250–0512, telephone (202) 720–7901.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) authorizes the Secretary of Agriculture to: ''Reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.''

During the past 18 months, a number of factors have produced a serious economic crisis which threatens the existence of small hog producers throughout the United States. The estimated 114,000 hog operations in the United States account for about $10 billion in hog production annually or about 5 percent of the total U.S. farm production. Hog prices declined steadily since June 1997, falling below $20 per hundredweight in late 1998. At these disastrously low prices many producers have lost $50–$75 per head because sale prices are below actual cost of production.

Payments to hog operations will offset a portion of the per-head losses small producers incurred marketing their hogs. These payments will provide those eligible with an immediate infusion of cash to help pay operating expenses and meet other financial obligations. Payments will be limited to hog operations which produced in the United States and sold less than 1,000 head of hogs during the specified marketing period. Eligible hog operations can receive up to $5 per slaughter-weight hog, or the equivalent for feeder pigs, which were owned and marketed from July 1, 1998, through December 31, 1998. Maximum payments to these operations will be limited to $2,500. If the hog operation is owned by one or more individuals or entities who have an annual gross revenue of $2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata share based upon the ownership interest of such entity or individual.

Two classes of hogs will be eligible, slaughter hogs or feeder pigs. Slaughter hogs include barrows, gilts, sows, and boars that are sold for immediate slaughter. Feeder pigs are young pigs that are sold to another person for further feeding for a period of more than 1 month. The per-head payment is established at $5 for slaughter hogs and $1.80 for feeder pigs, but will be less if a national factor is required to be applied so that total outlays would not exceed the amount of funds available under this program. Hog operations making application for the benefits under this part shall self-certify the number of hogs in each class marketed during the specified marketing period.

Eligible hog operations must also: (1) have sold the hogs on a negotiated cash basis or on an eligible contract basis as provided by the program regulations during the marketing period; (2) be engaged in the business of producing and marketing agricultural products at the time of application; and (3) apply for cash payments during the application period. Hog producers shall self-certify that they meet all eligibility requirements.

Hog operations may apply in person at county FSA offices during regular business hours and at that time complete the Small Hog Operation Payment Program application on Form FSA–1042. Alternatively, hog operations may request the Small Hog Operations Payment Program application by mail, telephone, facsimile from their designated county FSA office or obtain the application via the Internet. The Internet website is located at www.fsa.usda.gov/dafp/psd/. The completed application, Form FSA–1042, must be received by the hog operations' local county FSA office by the due date as specified in the program regulations and can be returned in person, by mail, or by facsimile.

At payment rates of $5 for slaughter hogs and $1.80 for feeder pigs, the total number of eligible applications may result in potential outlays that exceed the $50 million authorized for the program. Accordingly, if necessary, a national payment factor will be established per head so that the total outlays will not exceed the $50 million in funds made available under this program.

This rule is being made effective immediately. Because of the poor market conditions that have recently faced hog operations, particularly small hog operations, a delay in making this assistance available would be contrary to the public interest and the purpose of the authorizing statute.

List of Subjects in 7 CFR Part 761

Direct payments to small hog operations, Reporting and record keeping requirements.

Accordingly, 7 CFR chapter VII is amended by adding Part 761 to read as follows:

PART 761—SMALL HOG OPERATION PAYMENT PROGRAM

Sec.

761.1 Applicability.
761.2 Administration.
761.3 Definitions.
761.4 Time and Method for Application.
761.5 Eligibility.
761.6 Rate of Payment and Limitations on Funding.
761.7 Appeals.
761.8 Misrepresentation and scheme or device.
761.9 Estates, trusts, and minors.
761.10 Death, incompetency, or disappearance.
761.11 Maintaining records.
761.12 Refunds; joint and several liability.

Authority: 7 U.S.C. 612c

§ 761.1 Applicability.

This part establishes the Small Hog Operations Program. The purpose of this program is to provide benefits to hog operations under clause (3) of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) in order to reestablish their purchasing power in connection with the normal production of hogs for domestic consumption.

§ 761.2 Administration.

(a) This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the

regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 761.3 Definitions

The definitions set forth in this section shall be applicable for all purposes of administering the Small Hog Operation Payment Program established by this part.

Application means the Small Hog Operation Payment Program Application, FSA-1042.

Cost-plus contract means an agreement between a hog operation and a purchaser which bases payment to the hog operation on the estimated cost of production of a hog plus a profit margin.

Department means the United States Department of Agriculture.

Eligible hogs means feeder pigs and slaughter hogs.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Feeder pigs means young pigs that are sold to another person for further feeding for a period of more than 1 month.

Fixed-price contract means an agreement between a hog operation and a purchaser which bases payment at a negotiated fixed price and includes contracts that may specify the duration and minimum and/or maximum number of hogs to be delivered during the contract period.

Hog operation means any person or group of persons who as a single unit raises hogs and whose production and facilities are located in the United States.

Marketing period means the period beginning on July 1, 1998, and ending on December 31, 1998.

Negotiated cash sales means a sale in which the price is determined by interactions between the hog operation and the purchaser during the current day, for delivery within the next 7 slaughter days, and does not include hogs which are sold under contract.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

Slaughter hogs means barrows, gilts, sows, and boars that are sold for immediate slaughter.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 761.4 Time and Method for Application.

(a) Hog operations may obtain an application, Form FSA–1042 (Small Hog Operation Payment Program Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the FSA–1042 at http://www.fsa.usda.gov/dafp/psd/.

(b) A request for benefits under this part must be submitted on a completed Form FSA–1042. The Form FSA–1042 should be submitted to the FSA county office serving the county where the hog operation is located but, in any case, must be received by the FSA County Office by the close of business on February 12, 1999. Applications not received by the close of business on February 12, 1999, will be returned as not having been timely filed and the hog operation will not be eligible for benefits under this program.

(c) The hog operation requesting benefits under this part must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 761.5 Eligibility.

(a) If a hog operation is owned by one or more individuals or entities who have an annual gross revenue of $2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata share based upon the ownership interest of such entity or individual.

(b) To be eligible to receive cash payments under this part, a hog operation must:

(1) Have sold fewer than 1,000 hogs (produced in the United States) during the period of July 1, 1998, through December 31, 1998;

(2) Have sold hogs on a negotiated cash basis or under a contract other than a fixed-price or cost-plus contract during the marketing period;

(3) Be engaged in the business of producing and marketing agricultural products at the time of filing the application; and

(4) Apply for payments during the application period.

(c) Hogs marketed during the marketing period under fixed-price contracts, cost-plus contracts, or under any circumstance not equivalent to be eligible for benefits under this part with respect to hogs subject to such sales.

(d) A hog operation must submit a timely application and comply with all other terms and conditions of this part and those that are otherwise contained in the application to be eligible for benefits under this part.

§ 761.6 Rate of payment and limitations on funding.

(a) Benefits under this part may be made to hog operations for the quantity of eligible slaughter hogs and feeder pigs actually marketed during the marketing period in accordance with the limitations set forth in this section. Payments will be calculated after the conclusion of the sign-up period, and shall be made in an amount determined by:

(1) Multiplying $1.80 by the number of eligible feeder pigs marketed during the marketing period; plus

(2) Multiplying $5 by the number of eligible slaughter hogs marketed during the marketing period;

(3) Limiting the payment per hog operation to $2,500; and

(4) Reducing the amount paid to a hog operation because of limitations in

funding as provided under paragraph (b) of this section.

(b) In the event that approval of all eligible applications would result in expenditures in excess of the $50 million, FSA shall reduce the payment for each slaughter hog and feeder pig in such manner as FSA, in its sole discretion, finds fair and reasonable.

§ 761.7 Appeals.

Any hog operation which is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 11 of this title and part 780 of this title.

§ 761.8 Misrepresentation and scheme or device.

(a) A hog operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a hog operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the hog operation's actions, shall be refunded with interest together with such other sums as may become due. Any hog operation or person engaged in acts prohibited by this section and any hog operation or person receiving payment under this part shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 761.9 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible operator of a hog operation shall be eligible for assistance under this part only if such operation meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 761.10 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a hog operation that is eligible to receive benefits in accordance with this part, such hog operation may receive such benefits.

§ 761.11 Maintaining records.

Hog operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein and the number of head of slaughter hogs and feeder pigs sold during the marketing period. Such records and accounts must be retained for at least 3 years after the date of the cash payment to hog operations under this program.

§ 761.12 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all payments made under this part to any hog operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a hog operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part.

(c) Interest shall be applicable to refunds required of the hog operation if FSA determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date FSA made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the hog operation.

(d) Interest determined in accordance with paragraph (c) of this section shall not be applicable to refunds required of the hog operation because of unintentional misaction on the part of the hog operation, as determined by FSA.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(f) Hog operations must refund to FSA any excess payments made by FSA with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed at Washington, DC, on February 4, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–3260 Filed 2–5–99; 3:11 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

Telecommunications Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, engineering services, or architectural services financed through loans made or guaranteed by RUS. The required contract forms are currently published in the text format in the Code of Federal Regulations (CFR). This direct final rule will eliminate this unnecessary and burdensome publication in the CFR.

DATES: This rule will become effective March 29, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 12, 1999. If we receive such comments or notice, we will publish a timely notice in the **Federal Register** stating that the rule will not become effective. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to Orren E. Cameron, III,

Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1598, Washington, DC 20250–1598. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Norberto Esteves, Chairman, Technical Standards Committee A (Telecommunications), Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1598, Washington, DC 20250–1598, telephone number 202–720–0699, fax number 202–720–4099, E-mail nesteves@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the, rule, and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 USC § 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) exempted RUS loans and loan guarantees from coverage under this order determined that RUS loans and loan guarantees, and RTB bank loans, were not covered by Executive Order 12372.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this 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.

Background

RUS is changing the manner in which it publishes the standard contract forms borrowers are required to use when contracting for construction, procurement, architectural, or engineering services financed through loans made or guaranteed by RUS or RTB.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard contract forms promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. Currently, RUS implements these provisions of its loan agreement through parts 1753 and 1755. Part 1753 generally prescribes when and how borrowers are required to use RUS standard contract forms and part 1755 lists RUS standard contract forms. All of the contract forms are available, in a format suitable for use as a contract, from RUS or the Government Printing Office (GPO). An RUS borrower required by part 1753 to use a contract form must use the contract form in that format available from RUS or GPO. RUS believes that the current system of publishing the complete text of the contract forms in the CFR is unnecessary and that, consistent with the agency's objective to streamline regulatory text and to provide borrowers with a user-friendly regulatory system, the complete text of the required contract forms should no longer be published in the CFR.

Rather than published the complete text in the CFR, RUS will identify in § 1755.30(c) all required contract forms. To the extent the RUS may be required to publish its contract forms pursuant to section 552(a) of the Administrative Procedure Act (APA) (5 U.S.C. 552(a)) or otherwise, such requirement is met by identification of the standard contract forms in part 1755. Moreover, RUS provides all borrowers actual notice of the contract forms they are required to use in contracting. As this rule states in part 1755, upon initially entering a loan agreement with RUS, borrowers are provided with copies of contract forms. Thereafter, should RUS promulgate new or revised standard contract form(s), following the procedures discussed below, RUS will revise the list of standard forms as set forth in part 1755 and send the new or revised standard forms to all affected borrowers by regular or electronic mail. Borrowers, as well as the public, can obtain copies of all standard contract forms from RUS or GPO.

In addition to identifying standard forms and eliminating full text publication of each standard contract form in the CFR, RUS is clarifying the procedures that will be followed when RUS promulgates a new or revised standard contract form. To the extent that RUS is required by section 553 of the APA (5 U.S.C. § 553) or otherwise to provide notice in the **Federal Register** (FR) and an opportunity for public comment in promulgating standard contract forms, RUS will publish a FR notice of rulemaking announcing, as appropriate, a revision in, or a proposal to revise the list of standard contract

forms set forth in § 1755.30(c). The revision may change the existing list by, for example, identifying a new required contract form or changing the issuance date of the form listed. The supplementary information section of the FR notice will describe the substantive change in the identified standard contract form and may append the standard contract form or relevant portions thereof. As appropriate, the notice will provide an opportunity for interested persons to provide comments. RUS will send a copy of such FR notice by regular or electronic mail to all borrowers.

Finally, the final rule clarifies certain aspects of the requirement that borrowers use RUS standard contract forms. Absent an RUS waiver, borrowers are required to use those standard forms in effect as of the date the borrower issues the bid package to the bidders. Borrowers can determine the appropriate standard form based on the issuance date of the form as identified by the most recent published list set forth in § 1755.30(c). RUS may waive for good cause, on a case-by-case basis, the requirement to use RUS standard contract forms pursuant to procedures set forth in the regulation. A failure on the part of the borrower to use standard contract forms as prescribed in part 1753 or 1755 is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the loan agreement or otherwise. Consistent with the changes discussed above, RUS is amending those sections of existing regulations that currently set forth the full text of contracts for the purpose of deleting such text. Deletion of the full text from the CFR will not affect the requirement that borrowers use the prescribed contract forms.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, part 1755 of chapter XVII of title 7 of the Code of Federal Regulations, is amended as follows:

PART 1755—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1755 continues to read:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; 7 U.S.C. 6941 *et seq.*

2. Sections 1755.26 through 1755.30 are added to read as follows:

§ 1755.26 RUS standard contract forms.

(a) The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, borrowers shall use standard contract forms promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan or guaranteed by RUS. This part implements these provisions of the RUS loan agreement and prescribes the procedures that RUS follows in promulgating standard contract forms that borrowers are required to use. Part 1753 prescribes when and how borrowers are required to use these standard forms of contracts.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in § 1755.30(c), List of Standard Contract Forms, that borrowers are required to use.

§ 1755.27 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guaranteed under the RE Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrowers agree to use RUS standard contract forms for construction, procurement, engineering services, and architectural services financed in whole or in part by the RUS loan. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those contract forms identified in the list of telecommunications standard contract forms, set forth in § 1755.30(c) of this part.

(b) *Compliance.* (1) If a borrower is required by part 1753 to use a listed contract form, the borrower shall use the listed contract form in the format available from RUS. The forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so as to indicate the difference from the listed contract form.

(2) The borrower may use electronic reproductions of a contract form if the contract documents submitted for RUS approval are exact reproductions of the RUS form and include the following certification by the borrower: I (Insert name of the person.), certify that the attached (Insert name of the contract form.), between (Insert name of the parties.), dated (Insert contract date.) is an exact reproduction of RUS Form (Insert form number), dated (Insert date of RUS form).

_____

(Signature)

_____

(Title)

_____

(Employer's Address)

(c) *Amendment.* Where a borrower has entered into a contract in the form required by 7 CFR part 1753, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case-by-case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking an RUS waiver must provide RUS with a written request explaining the need for the waiver.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in 7 CFR part 1753 is a violation of the terms of the loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

§ 1755.28 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the borrower's address as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are published by RUS. Interested parties may obtain the forms from the Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, Washington DC 20250–1522, telephone number (202) 720–8674. The list of contract forms can be found in § 1755.30(c).

§ 1755.29 Promulgation of new or revised contract forms.

RUS may, from time to time, promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish a notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1755.30(c), List of telecommunications standard contract forms. The amendment may change the existing identification of a listed contract form by, for example, changing the issuance date of the listed contract form or identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or substantive change in the listed contract form, as the

case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. RUS shall send, by regular or electronic mail, a copy of each such **Federal Register** document to all borrowers.

§ 1755.30 List of telecommunications standard contract forms.

(a) *General.* The following is a list of RUS telecommunications program standard contract forms for procurement, construction, engineering services, and architectural services. Borrowers are required to use these contract forms by the terms of their RUS loan agreements implemented by part 1753 and this part.

(b) *Issuance Date.* Where part 1753 requires the use of a standard contract form in connection with RUS financing, the borrower shall use the appropriate form identified in § 1755.30(c), List of Telecommunications Standard Contract Forms, published as of the date the borrower releases the plans and specifications to solicit bids or price quotes.

(c) *List of telecommunications standard contract forms.*

(1) RUS Form 157, issued 10–77, Construction Work Plan and cost Distribution—Telephone.

(2) RUS Form 158, issued 10–77, Certification of Contract or Force Account Approval.

(3) RUS Form 159, issued 10–77, Summary of Completed Construction.

(4) RUS Form 168b, issued 3–62, Contractor's Bond.

(5) RUS Form 168c, issued 4–79, Contractor's Bond.

(6) RUS Form 181, issued 4–72, Certificate of Completion, Contract Construction Buildings.

(7) RUS Form 181a, issued 3–66, Certificate of Completion (Force Account Construction).

(8) RUS Form 213, issued 8–52, Certificate (Buy American).

(9) RUS Form 216, issued 7–67, Construction Change Order.

(10) RUS Form 217, issued 3–97, Postloan Engineering Services Contract—Telecommunications Systems.

(11) RUS Form 220, issued 6–98, Architectural Services Contract.

(12) RUS Form 224, issued 3–55, Waiver and Release of Lien.

(13) RUS Form 231, issued 4–72, Certificate of Contractor.

(14) RUS Form 238, issued 4–72, Construction or Equipment Contract Amendment.

(15) RUS Form 242, issued 11–58, Assignment of Engineering Service Contract.

(16) RUS Form 245, issued 11–75, Engineering Services Contract, Special Services—Telephone.

(17) RUS Form 257, issued 3–73, Contract to Construct Buildings.

(18) RUS Form 257a, issued 10–69, Contractor's Bond.

(19) RUS Form 274, issued 6–81, Bidder's Qualifications.

(20) RUS Form 276, issued 5–59, Bidder's Qualifications for Buried Plant Construction.

(21) RUS Form 281 issued 5–61, Tabulation of Materials Furnished by Borrower.

(22) RUS Form 282, issued 11–53, Subcontract (Under Construction or Equipment Contracts).

(23) RUS Form 284, issued 4–72, Final Statement of Cost for Architectural Service and Certificate of Architect.

(24) RUS Form 307, issued 4–60, Bid Bond.

(25) RUS Form 396, issued 3–64, Certificate of Completion—Special Equipment Contract (Including Installation).

(26) RUS Form 396a, issued 3–64, Certificate of Completion—Special Equipment Contract (Not Including Installation).

(27) RUS Form 397, issued 12–67, Special Equipment Contract (Including Installation).

(28) RUS Form 397f, issued 2–63, Contractor's Bond (Special Telephone Equipment).

(29) Addendum No. 1 to RUS Form 397, issued 7–78, Special Equipment Contract (Including Installation).

(30) RUS Form 398, issued 11–62, Special Equipment Contract (Not Including Installation).

(31) RUS Form 399, issued 8–82, Supplemental Agreement to Equipment Contract for Field Trial.

(32) RUS Form 399a, issued 8–82, Supplemental Agreement to Equipment Contract for Field Trial (Secondary-Delivery, Installation, Operation).

(33) RUS Form 506, issued 3–97, Statement of Engineering Fee—Telecommunications.

(34) RUS Form 515, issued 1–90, Telephone System Construction Contract (Labor and Materials).

(35) RUS Form 517, issued 9–64, Results of Acceptance Tests

(36) RUS Form 525, issued 7–94, Central Office Equipment Contract (Including Installation).

(37) Addendum to RUS Form 525, issued 7–94, Central Office Equipment Contract (Including Installation) and RUS Form 545 Central Office Equipment Contract (Not Including Installation).

(38) RUS Form 525a, issued 10–62, Contractor's Bond (Central Office Equipment).

(39) RUS Form 526, issued 8–66, Construction Contract Amendment.

(40) RUS Form 527, issued 3–71, Statement of Construction, Telephone System '' Outside Plant.

(41) RUS Form 545, issued 9–66, Central Office Equipment Contract (Not including Installation).

(42) RUS Form 553, issued 5–67, Check List for Review of Plans and Specifications.

(43) RUS Form 724 issued 10–63, Final Inventory, Telephone Construction Contract.

(44) RUS Form 724a issued 4–61, Final Inventory, Telephone Construction—Telephone Construction Contract (Labor and Materials), columns 1–8.

(45) RUS Form 724b issued 3–61, Final Inventory, Telephone Construction Contract (Labor and Materials), columns 9–14.

(46) RUS Form 744, issued 2–62, Certificate of Contractor and Indemnity Agreement.

(47) RUS Form 752a, issued 5–66, Certificate of Completion Central Office Equipment-Not Including Installation.

(48) RUS Form 754, issued 6–66, Certificate of Completion and Certificate of Contractor and Indemnity Agreement.

(49) RUS Form 771, Issued 10–75, Summary of Work Orders (Inspected by RUS Field Engineer).

(50) RUS Form 771a, issued 10–75, Summary of Work Orders (Inspected by Licensed Engineer or Borrower's Staff Engineer).

(51) RUS Form 773, issued 12–90, Miscellaneous Construction Work and Maintenance Services Contract.

(52) RUS Form 787, issued 8–63, Supplement A to Construction Contract.

(53) RUS Form 817, issued 6–60, Final Inventory, Telephone Force Account Construction.

(54) RUS Form 817a, issued 6–60, Final Inventory, Telephone Force Account Construction, columns 1–8.

(55) RUS Form 817b, issued 6–60, Final Inventory, Telephone Force Account Construction, Columns 9–14.

(56) RUS Form 835, issued 3–66, Preloan Engineering Service Contract, Telephone System Design.

§§ 1755.93, 1755.217, and 1755.525 [Removed and Reserved]

3. Sections 1755.93, 1755.217, and 1755.525 are removed and reserved.

Dated: January 24, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–3163 Filed 2–9–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 561

[No. 98–124]

RIN 1550–AB28

Consumer Credit Classified as a Loss, Slow Consumer Credit and Slow Loans

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is removing its regulatory definitions of ''consumer credit classified as a loss,'' ''slow consumer credit,'' and ''slow loans.'' These definitions are not necessary for the interpretation of any OTS regulation.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: William Magrini, Senior Project Manager, Supervision Policy, (202/906–5744), or Vern McKinley, Senior Attorney, Regulations and Legislation Division, Office of Chief Counsel, (202/906–6241), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1998, OTS proposed to delete its regulatory definitions of ''consumer credit classified as a loss,'' ''slow consumer credit,'' and ''slow loans.'' [1]

Consumer Credit Classified as a Loss—§ 561.13

Slow Consumer Credit—§ 561.47

Consumer credit is credit extended to individuals for personal, family or household purposes.[2] ''Consumer credit classified as a loss'' is defined at 12 CFR 561.13 as closed-end consumer credit that is delinquent 120 days or more (five monthly payments or more) and open-end consumer credit that is delinquent 180 days or more (seven zero billing cycles or more). ''Slow consumer credit'' is defined at 12 CFR 561.47 as closed-end consumer credit that is delinquent for 90 to 119 days (four monthly payments) and open-end consumer credit that is delinquent for 90 to 179 days (four to six zero billing cycles). Both definitions provide that a payment of 90 percent or more of the contractual payment is considered a full payment, and state that a loan is not considered slow or a loss if an association can clearly demonstrate that repayment will occur regardless of delinquency status.

Neither of these terms is used in any other OTS regulation. The OTS, however, has issued guidance instructing examiners to follow these definitions when classifying closed-end and open-end consumer credit. Slow loans are presumed Substandard and consumer credit classified as a loss is presumed a Loss, subject to management providing documentation that such an adverse classification is not warranted.[3]

In July 1998, the Federal Financial Institutions Examination Council (FFIEC) sought public comment on a proposed Uniform Retail Credit Classification Policy (''Classification Policy''), a supervisory policy used by the federal banking agencies for the classification of retail credit loans of financial institutions.[4] The OTS definitions of consumer credit classified as a loss and slow consumer credit conflicted with one of the options under consideration in the proposed Classification Policy.

Because the terms ''consumer credit classified as a loss'' and ''slow consumer credit'' are not used in OTS regulations and could conflict with the final FFIEC Classification Policy, OTS proposed to delete these two regulatory definitions.

Slow Loans—§ 561.48

The term ''slow loans'' is defined at 12 CFR 561.48 with respect to loans that are issued on the security of a home. [5] The classification of a loan as a slow loan is based on a variety of factors, including how long the loan is contractually delinquent, how seasoned the loan is, whether taxes are due and unpaid, and whether its terms have been modified or the loan has been refinanced due to delinquency.

Because the term ''slow loan'' is not used elsewhere in OTS regulations, the OTS also proposed to delete this term. [6]

Summary of Comment and Description of the Final Rule

OTS received one comment in response to the proposed rule from a thrift trade group. The commenter supported the proposal, noting that the FFIEC proposal to amend the Uniform Classification Policy would set out consistent, constructive guidance to identify and classify consumer loans. They agreed that retaining the cited regulatory definitions may cause confusion and is not necessary to meet any regulatory requirements.

Elsewhere in today's **Federal Register**, FFIEC has published its final Uniform Retail Credit Classification Policy. While the final policy adopted by FFIEC does not conflict with the cited OTS definitions, the cited definitions remain unnecessary, as they are not used elsewhere in OTS's regulations. Accordingly, OTS is deleting §§ 561.13, 561.47, and 561.48 as proposed.

Executive Order 12866

OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS has determined that this final rule does not have a significant economic impact on a substantial number of small entities. The rule merely deletes unnecessary definitions from OTS regulations. This change should, therefore, reduce the burden of complying with regulations for all institutions, including small institutions.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed above, this final rule reduces regulatory burden by eliminating unnecessary regulations. OTS has, therefore, determined that the effect of the rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 561

Savings associations.

[1] 63 FR 51305 (September 25, 1998).

[2] *See* 12 CFR 561.12.

[3] Thrift Activities Handbook, Section 260, Classification of Assets.

[4] 63 FR 36406 (July 6, 1998).

[5] 12 CFR 541.14 (''Home'' means real estate comprising a single-family dwelling or dwelling unit for four or fewer families in the aggregate.)

[6] Like the two other definitions, OTS has issued guidance to its examiners indicating that all slow mortgage loans are presumed to be Substandard. Thrift Activities Handbook, Section 260, Classification of Assets.

Accordingly, the Office of Thrift Supervision amends part 561, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 561—DEFINITIONS

1. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§§ 561.13, 561.47, 561.48 [Removed]

2. Sections 561.13, 561.47 and 561.48 are removed.

Dated: December 18, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 99–2865 Filed 2–9–99; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is promulgating a final rule to allow all participating Lenders to securitize the unguaranteed portion of, sell, sell a participating interest in, or pledge 7(a) loans. The rule has two components: securitizations; and pledges, sales of participations, and sales other than for the purpose of securitizing. In the first component, SBA establishes a three level unified approach to regulating securitizations. In the second component, SBA sets out rules to govern all pledges of, sales of a participating interest in, and sales of, other than for the purpose of securitizing, 7(a) loans. The components apply equally to all depository and nondepository Lenders, leveling the playing field for all SBA Lenders. Both components were drafted to protect the safety and soundness of SBA's 7(a) loan program.

DATES: Effective Date: This rule is effective April 12, 1999.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Secondary Market Sales, (202) 205–6490.

SUPPLEMENTARY INFORMATION:

Background

SBA is promulgating a final rule to govern the securitization of the unguaranteed portion of and the sale, sale of a participating interest in, or pledge of 7(a) loans. The rule has two components. The first component governs securitizations (''securitization component''). For purposes of this regulation, a securitization is the pooling and sale of the unguaranteed portion of 7(a) loans, usually to a trust or special purpose vehicle, and the issuance of securities backed by those loans to investors in either a private placement or a public offering (''securitization''). In the securitizations of 7(a) loans to date, each investor has received an undivided ownership interest in the right to receive the principal of the unguaranteed portion of the pooled 7(a) loans, together with interest.

The second component of this final rule governs pledges of, sales of participating interests in, and sales of, other than for the purpose of securitizing, 7(a) loans (''other conveyances'').

I. Securitization Component

Regulatory History

Congress and SBA have examined extensively whether and under what conditions SBA should permit Lenders to securitize the unguaranteed portion of 7(a) loans. Because Small Business Lending Companies (''SBLCs''), Business and Industrial Development Companies (''BIDCOs'') and other nondepository institutions (collectively the ''nondepository Lenders'') do not have customer deposits to fund 7(a) lending, SBA, in 1992, permitted nondepository Lenders to securitize. Recognizing that securitization may benefit all Lenders, in 1996, SBA and Congress considered extending the securitization option to depository Lenders. On September 29, 1996, Congress enacted legislation requiring SBA to either promulgate regulations allowing both depository and nondepository Lenders to securitize or cease approving any securitizations.

Because securitization and, more particularly, securitization of the unguaranteed portion of 7(a) loans is relatively new and involves significant risk, SBA officials went to great lengths to fashion this final rule responsibly. On November 29, 1996, SBA published the first of a series of **Federal Register** notices designed to elicit public participation in SBA's development of the securitization regulation (61 FR 60649). SBA hoped to receive comments to assist SBA to craft a regulation allowing all Lenders to reap securitizations' benefits without compromising the safety and soundness of the 7(a) program.

On February 26, 1997, SBA published its first proposed securitization regulation (62 FR 8640). The proposed regulation required all securitizations to include a 5 percent retention. SBA received approximately 25 comments. The commenters were divided almost equally on the proposal. Mindful of Congress' mandate to promulgate a regulation or cease approving all securitizations, on April 2, 1997, SBA promulgated an interim final rule (62 FR 15601) to govern securitizations. The regulation allowed all SBA Lenders to securitize while SBA continued its thorough review of securitization issues. Under the interim final rule, SBA would review each proposed securitization on a case-by-case basis for safety and soundness concerns.

Following SBA's promulgation of the proposed regulation, SBA held a public hearing, met with banking experts, and consulted with bank regulators from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Department of Treasury, the Federal Reserve Board, the Office of Federal Housing Enterprise Oversight, and the Office of Thrift Supervision (''bank regulators''). SBA carefully considered the comments provided by the experts, the bank regulators, and the industry before drafting another proposed regulation. SBA tested the economics of the current proposal. A Big Six accounting firm then validated all calculations.

On May 18, 1998, SBA published the current proposed securitization regulation (63 FR 27219). It linked SBA securitization approval to a securitizer's credit quality and incorporated incentives for securitizers to safely securitize and service loans effectively. It provided a three level unified regulatory approach to securitizations. The three levels included: (1) a minimum capital requirement consistent with that imposed by bank regulators; (2) a retention requirement in the form of a subordinated tranche; and (3) a monitoring component whereby a decline in a securitizer's Currency Rate (as defined in the rule) would trigger PLP loan approval and securitization approval suspension. The multi-faceted rule: (1) conditioned a securitizer's ability to securitize on the securitizer's financial strength; (2) set the required retention based on the individual securitizer's credit quality history; and (3) invoked PLP benefits as an incentive for a securitizer to continue underwriting and servicing loans properly. The rule rewarded securitizers responsibly for past performance, current performance, and future performance, measuring current performance against past and that of the industry.

SBA encouraged feedback from experts, the industry, and the bank regulators. On June 15, 1998, SBA held a public hearing to discuss the current proposed regulation. SBA also received and reviewed approximately 16 written comments. SBA has carefully considered the oral and written comments, incorporating many recommendations into this final rule.

Comments

Commenters generally applauded the current proposed securitization rule (the ''proposed regulation''). Some stated that it ''encouraged prudent credit quality management by Lenders'' and ''achiev[ed] the Congressionally-mandated requirement of parity between depository and nondepository Lenders.'' Commenters declared the proposed regulation a substantial improvement over the February 1997 proposal, expressing appreciation to SBA for carefully and deliberately rethinking its earlier approach. The positive comments were accompanied by suggestions to refine SBA's three level unified regulatory approach to securitizations.

Capital Requirement

As stated in the proposed rule preamble, a capital requirement is a basic component in regulating any financial institution. It is a common method for measuring a Lender's financial strength. Requiring a securitizer to maintain a minimum level of capital encourages prudent underwriting and servicing practices. Credit quality is fundamental to the maintenance of capital. Loan losses erode capital. Eroding capital is a measure of reduced financial strength and may signal weakening credit quality.

SBA's proposed securitization regulation required ''all securitizers * * * [to] maintain minimum capital consistent with the requirements imposed on depository Lenders by the bank regulatory agencies.'' For depository institutions, SBA would consider compliance with the capital requirements of the bank regulatory agencies as compliance with the regulation. The proposal also required that nondepository institutions meet the capital requirements of the bank regulatory agencies and, in addition, maintain minimum unencumbered paid in capital and paid in surplus of at least $1 million.

SBA received some comments recommending that SBA clarify its proposed capital requirement. Commenters pointed out that bank capital requirements were complex and varied among regulators. In addition, they noted that nondepository Lenders were not familiar with the capital requirements of bank regulatory agencies. The commenters suggested that SBA simplify its capital requirement for nondepository institutions in the final rule. SBA agrees.

SBA also received comments recommending that SBA increase its proposed capital level to 10 percent of a securitizer's unguaranteed loan assets consistent with SBA's policy of reducing risk discussed in the proposed rule. By requiring the slightly higher minimum capital requirement, SBA limits securitization to financially strong Lenders. It is these Lenders that will best be able to weather a downturn in the economy, lessening SBA's exposure to risk. Finally, commenters requested that SBA clarify that the capital charge applies not only to the unguaranteed portion of the securitizer's 7(a) loans in the portfolio but also to the remaining balance outstanding in the securitization pools. SBA also agrees with both of these recommendations and has incorporated them into the final rule.

The final rule provides that all securitizers must be considered to be ''well capitalized'' by their regulator. SBA will consider a depository institution to be in compliance with this section if it meets the definition of ''well-capitalized'' used by its bank regulator. SBA will consider a nondepository institution to be ''well capitalized'' and have met this requirement if it maintains a minimum unencumbered paid in capital and paid in surplus equal to at least 10 percent of its assets, excluding the guaranteed portion of its 7(a) loans. SBA eliminated the $1 million minimum capital requirement for nondepository institutions contained in the proposed regulation to make the final rule more consistent between nondepository and depository institutions.

The Subordinated Tranche

The second level of SBA's unified approach to regulating securitizations is risk retention in the form of a subordinated tranche. In the final rule, a securitizer must retain a tranche of the securities in the securitization (''subordinated tranche'') equal to the greater of two times the securitizer's loss rate on the securitizer's 7(a) loans disbursed for the preceding 10-year period or 2 percent of the principal balance outstanding at the time of securitization of the unguaranteed portion of the loans in the securitization. The Securitization Committee may modify the formula for determining the tranche size for a securitizer creating a securitization from a pool of loans located in a region affected by a severe economic downturn if the Securitization Committee concludes that enforcing this section might exacerbate the adverse economic conditions in the region. SBA will monitor the initial retention level contained in the final rule and, should economic conditions and policy considerations warrant, SBA may modify the multiplier or minimum level to protect the safety and soundness of the 7(a) program. SBA will publish notice of any modification in the **Federal Register** and provide an opportunity to comment.

Tying the required retention to a securitizer's historical performance is fair and a common industry practice. It gives securitizers a greater incentive to originate and service high quality loans. The subordinated tranche would be subordinate to all other tranches issued. SBA believes the minimum subordinated tranche is necessary to counter the potential risks of securitizing elaborated in the proposed rule's preamble.

Generally, commenters praised SBA's proposed tranche noting ''it has great merit'' in that it: 1) ''ties benefits directly to performance;'' and 2) is ''a credit enhancement tool.'' Commenters recognized the importance of requiring an ''originating lender to maintain an economic interest in [its] loan.'' Some praised the subordinated tranche for offering flexibility to securitizers in their ''asset/liability management'' and as a ''fail safe'' to ''ensure that even the top quality securitizers retain some measure of principal at risk until the securitization matures.''

The comments SBA received addressing the details of the tranche varied greatly. Many commenters supported the use of a loss-based formula. Some suggested that SBA should decrease the loss multiple. Others recommended that SBA increase required retention. SBA determined to keep the proposed rule retention level, allowing for changes as economic conditions and policy considerations warrant. Empirical evidence supports the proposed rule retention level. Historical data reveals that most securitizers' retention levels would fall between 12 and 2 percent. The average is expected to be approximately 5.4 percent. SBA believes that this retention level is reasonable at this time. The 2 percent minimum also is reasonable at this time because it approximates twice the cumulative loss rate of the best performing 7(a) loan originators.

A few commenters suggested that SBA set retention at 2 percent of the securitization plus any part of the securitization that does not receive an investment grade rating. In addition, some commenters suggested that SBA only approve a securitization if it contains no non-investment grade securities. SBA believes that these requirements might be too restrictive, as some securitizers have chosen to structure their securitizations to include non-investment grade rated securities which they may sell. As stated in the proposed rule preamble, SBA will not rely solely on rating agencies to set retention levels.

Some commenters suggested that SBA shorten the 10-year ''look back'' period. SBA has decided to retain the 10-year ''look back'' period because it considers the securitizer's loan performance over several economic cycles. The 10-year ''look back'' period provides a securitizer ample opportunity to demonstrate quality lending and servicing without unduly penalizing the securitizer for cyclical economic downturns.

At least one commenter recommended that SBA shorten the 6-year holding period proposed in the rule. Conversely, other commenters supported the 6-year holding period. The final rule includes the 6-year holding period. SBA's historical loss data indicates that SBA Lenders incur most losses between years three and five of a loan. If the loans do not perform as expected, not only may the securitizer suffer losses, but the tranche will have significantly less value if the securitizer tries to sell it after the holding period ends. The holding period reinforces the incentive to originate and service high quality loans.

PLP Loan Approval Suspension

In response to many comments, SBA has revised the formula triggering PLP unilateral loan approval privilege suspension. The proposed rule provided that ''[i]f a PLP securitizer's currency rate declines, SBA may suspend the securitizer's PLP unilateral loan approval privileges (PLP approval privileges) under either of the following circumstances: 1) If the decline is more than 110 percent of the rate of the decline of the currency rate of all loans approved under the PLP program (PLP Program Loans) as calculated from quarter to quarter; or 2) If the decline is more than five percentage points and the currency rate for the PLP Program remains stable or increases. In the event of a severe downturn in a regional economy, a securitizer's currency rate is adversely affected, SBA may waive privilege suspension for all securitizers in the region, if it concludes that enforcing this section might exacerbate the adverse economic conditions in the region.''

Many commenters stated that the 110 percent benchmark was too sensitive and that the five-percentage point benchmark was too large. SBA agrees. Several commenters noted that the proposed rule failed to consider cumulative deterioration in a securitizer's Currency Rate. Others requested that securitizers that perform better than the SBA portfolio should not be unduly penalized. To accommodate these concerns, SBA modified the benchmark to provide greater flexibility to securitizers.

The final rule provides that SBA will calculate an Initial Currency Rate (''ICR'')—the securitizer's benchmark Currency Rate as of the end of the calendar quarter immediately prior to the first securitization completed after SBA promulgates these regulations, and an Initial Currency Rate Percentage (''ICRP'')—the securitizer's Initial Currency Rate compared to that of the SBA portfolio as of the end of the calendar quarter immediately prior to the first securitization completed after SBA promulgates these regulations. Each quarter, SBA will compare each securitizer's Currency Rate to its ICR. If a securitizer's Currency Rate on all of its 7(a) loans declines, SBA may suspend the securitizer's PLP unilateral loan approval privileges (PLP approval privileges) if: 1) the decline from the ICR is more than the Benchmark Number as published in the **Federal Register** from time to time; and 2) the securitizer's Currency Rate Percentage is less than its ICRP.

The Benchmark Number referred to in the rule is the maximum number of percentage points that a securitizer's Currency Rate can decrease without triggering the PLP suspension provision contained in 13 CFR 120.425. The flexibility contained in the final rule is consistent with the concept proposed in 13 CFR 120.425(c)(2). SBA will publish the Benchmark Number in the **Federal Register** from time to time. SBA will monitor the Benchmark Number and, if economic conditions or policy considerations warrant, SBA may modify it to protect the safety and soundness of the 7(a) program.

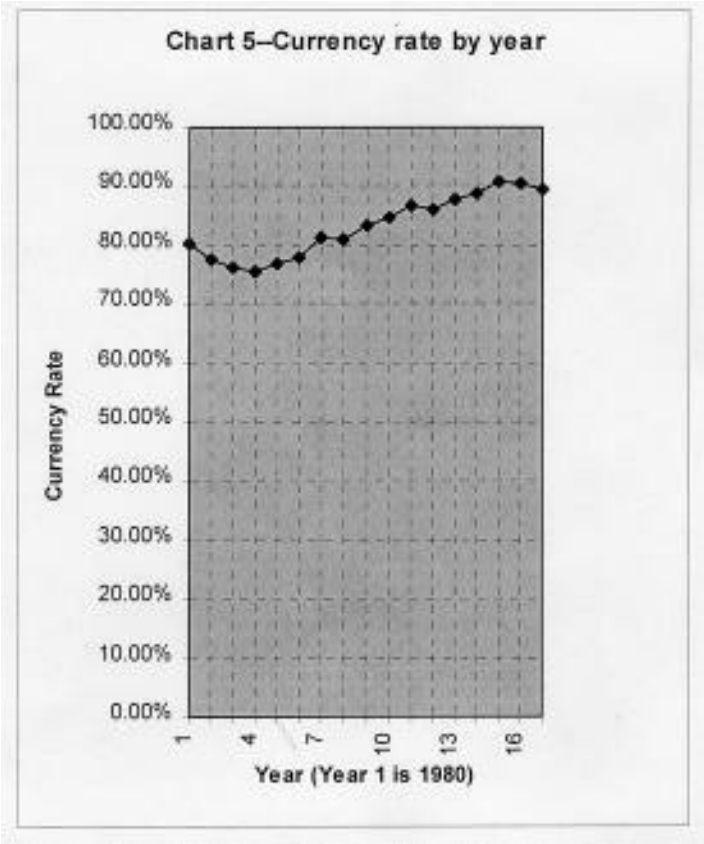
SBA will establish a Benchmark Number of 2.5 percentage points initially. The 2.5 percentage points Benchmark Number was proposed by some commenters. SBA considers a 2.5 percentage point decline in Currency Rate a significant event warranting action. Some commenters requested that SBA clarify the ''due process'' procedures in the PLP suspension provision. Other commenters suggested that SBA incorporate an intermediate step before suspending PLP approval privileges. SBA agrees with both suggestions.

The final rule provides that a securitizer will first be placed on probation for one quarter. At the end of the probationary quarter, if: 1) the securitizer has improved its Currency Rate to above its ICR less the Benchmark Number; or 2) its Currency Rate Percentage is either the same or greater than its ICRP, the probation will end. If at the end of the probationary quarter, the securitizer has not met either condition 1 or 2, SBA will suspend the securitizer's PLP approval privileges and will not approve additional securitization requests from that securitizer. SBA will provide written notice at least 10 days prior to the effective date of the suspension. The suspension will last a minimum of three months. During the suspension period, the securitizer must use Certified Lender or Regular Procedures to process 7(a) loan applications.

The suspension will remain in effect until the securitizer meets either condition 1 or 2 as discussed above. If the securitizer meets either condition by the end of the 3-month period, notifies SBA with acceptable documentation, and SBA agrees, SBA will reinstate the securitizer. If the securitizer cannot meet either condition, the suspension will remain in effect and the securitizer may then petition the SBA Securitization Committee (to be formed after SBA publishes this rule) for reinstatement. The Securitization Committee may consider the economic conditions in the securitizer's market area, the securitizer's efforts to improve its Currency Rate and the quality of the securitizer's 7(a) loan packages and servicing. This language is intended to replace the economic waiver provision in the proposed rule. This provision was broadened in response to comments to allow the Securitization Committee to consider additional factors warranting waiver. The Securitization Committee will consider only one petition by a securitizer per quarter. SBA will calculate Currency Rate and Currency Rate Percentages quarterly from financial information securitizers provide using SBA Form 1502.

By incorporating an ICR into the PLP formula, the formula takes cumulative decline into account. SBA incorporated the ICRP ''safe-harbor'' in response to the requests that securitizers who perform better than the SBA portfolio should not be unduly penalized. SBA

believes the ICRP safe-harbor is fair and consistent with the proposed rule's provision to monitor Currency Rate in relation to the SBA portfolio. SBA does not want to preclude a securitizer's use of PLP approval privileges if the securitizer's and the industry's portfolios are both declining due to general economic conditions.



	Percent [1]	Change [2]
Year ending:		
1980	80.20	
1981	77.70	2.50
1982	76.20	1.50
1983	75.50	0.70
1984	76.80	−1.30
1985	78.00	−1.20
1986	81.30	−3.30
1987	80.90	0.40
1988	83.50	−2.60
1989	84.70	−1.20
1990	86.90	−2.20
1991	86.20	0.70
1992	87.60	−1.40
1993	88.80	−1.20
1994	90.90	−2.10
1995	90.60	0.30
1996	89.40	1.20
Average Change	.....	1.59

[1] SBA portfolio currency rate.
[2] Value of year to year change.

Some commenters suggested that SBA adopt a numeric ''safe-harbor,'' such as a 95 percent Currency Rate. If the securitizer's Currency Rate remained above the numeric safe harbor, the PLP suspension provision would not be triggered. SBA chose not to select a numeric safe harbor. Doing so might encourage good securitizers with a Currency Rate above the safe harbor level to accept lower quality credits.

A few commenters suggested that SBA's quarterly review of Currency Rates may be too short. After reviewing the matter, SBA reaffirmed its decision to review Currency Rates quarterly. This third level of the unified regulatory approach is intended to be an early warning trigger to alert SBA and a securitizer of the securitizer's declining performance. Ideally, SBA will be able to identify declining loan performance before it can threaten a securitizer's entire portfolio and financial condition. This monitoring may assist the securitizer to improve credit practices while protecting the safety and soundness of the 7(a) program.

Several commenters conveyed concern over SBA's ability to calculate Currency Rates accurately. SBA, with the assistance of private sector contractors, has overhauled its financial data management system. This system will perform the Currency Rate calculations. Securitizers will forward loan status data to SBA monthly. SBA will use this data to calculate securitizers' Currency Rates. SBA will give securitizers the opportunity to verify the calculations.

A few commenters suggested that the third level was unnecessary—that SBA's PLP Reviews would uncover a securitizer's decline in credit quality. PLP review and securitization Currency Rate tracking are two separate, though complementary components, of SBA's overall Lender oversight program. The PLP suspension provision is designed as an early warning trigger to notify SBA and the securitizer of declining Currency Rates and possible declining credit quality. SBA reviews all PLP Lenders (approximately 500) annually. The PLP review is an in-depth review geared to assess the long-term policy compliance and credit quality of our PLP Lenders.

Finally, SBA received some requests to extend the securitization regulation's PLP suspension provision to all PLP Lenders. At this time, SBA declines to extend the provision. As elaborated in the proposed rule preamble, SBA has imposed this level of protection in the securitization regulation because securitization, in conjunction with PLP approval privileges, magnifies risk to SBA. The PLP suspension provision is

designed to serve as an incentive to securitizers to maintain or improve their lending and sends a timely warning signal to SBA that a securitizer's credit quality may be declining. If SBA were to extend this to all PLP Lenders, it would require a separate rulemaking.

Additional Level

In the current proposed regulation, SBA requested comments and suggestions for adding a fourth level to SBA's securitization regulation. SBA envisioned that under a fourth level, SBA would monitor a securitizer's loss rate after the securitization and assess a supplemental payment against securitizers who experience long-term performance declines. The fourth level would have provided securitizers an additional incentive to maintain credit quality.

Many commenters rejected SBA's proposal for a fourth level reasoning that the level, as discussed, could impair the securitizer, force a compromise in servicing ability, and perhaps prevent the securitization from receiving true sale treatment. Commenters further opined that the market will exact sufficient penalties for deficient portfolios. For these reasons, SBA has not added a fourth level to this securitization regulation.

Additional Clarifications

One commenter recommended that SBA clarify its Currency Rate definition. SBA has done so, clarifying that a securitizer's Currency Rate is that of its entire 7(a) loan portfolio, not just PLP loans. Using a securitizer's 7(a) loan portfolio as its Currency Rate baseline measurement is a fair approach to monitoring a securitizer's performance.

Two commenters suggested that SBA compute a securitizer's Loss Rate and Currency Rate using the static curve rather than the pooling method. SBA disagrees. SBA believes that the static curve method introduces unnecessary complexity. SBA believes that any marginal improvement to accuracy the static curve method may provide does not justify the added complexity.

A few commenters requested that SBA reconsider its earlier position to disallow securitized loan prefunding. SBA has reconsidered this issue and will allow loans to be included in a securitization that are closed within 90 days of the securitization.

Finally, SBA has always retained sole discretion to approve securitizations within its regulatory framework. SBA does not intend the regulatory framework in the final regulation to include every point that SBA may consider in the future when evaluating a securitization request. SBA recognizes that securitization methodologies and financial markets are fluid. As securitization structures and financial markets change, SBA may establish certain policies from time to time as part of its securitization review which reflect the changes. For example, SBA may establish a minimum Currency Rate that a securitizer must maintain in order to securitize, SBA may require securitizers to maintain additional capital for loans purchased from other lenders, and SBA may establish requirements with respect to excess interest. SBA's intent in allowing such policies to be established is to encourage securitization for those Lenders that are financially strong and to protect the safety and soundness of the 7(a) program.

II. Other Conveyances Component

The Other Conveyances component governs pledges and sales other than sales for the purpose of securitizing.

Sales

This final rule requires that Lenders obtain SBA's prior written consent for the sale of a Lender's entire interest in a loan to another participating Lender. The final rule clarifies that SBA does not permit sales to nonparticipating Lenders. The rule also requires that Lenders obtain SBA's prior written consent to sales if the Lender will retain less than 10 percent of the principal outstanding on the loan. However, the rule requires only that Lenders provide written notice to SBA prior to a sale after which the SBA Lender would continue to own a portion of the unguaranteed interest equal to at least 10 percent of the outstanding principal amount of the loan. The rules for sales of participating interests mirror those for sales.

Pledges

This final rule also requires a Lender to obtain SBA's prior written consent to all pledges of 7(a) loans except for certain types of pledges enumerated in SBA's Loan Guaranty Agreement (SBA Form 750) as amended from time to time and in 13 CFR 120.435. Except for such enumerated pledges, the SBA Lender must use proceeds of the loan secured by the 7(a) loans solely for the purpose of financing 7(a) loans.

The final rule requires that a Lender be in good standing as determined by SBA. All documentation, including the multi-party agreement, must be satisfactory to SBA. Finally, the final rule also requires that a Lender or a third party acceptable to SBA hold the original promissory notes.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule replaces SBA's Interim Final Rule published on April 2, 1997. Like the Interim Final Rule, it allows depository Lenders to securitize loans (as nondepository Lenders have done for the last six years). Since the publication of SBA's Interim Final Rule, only a very small number of depository Lenders have securitized. Moreover, those Lenders do not qualify as small under SBA's size standards. 13 CFR 121.201.

SBA certifies that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this final rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this final rule has been drafted, to the extent practicable, to accord with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business.

For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

PART 120—[AMENDED]

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Revise the undesignated center heading immediately preceding § 120.420 to read as follows:

Participating Lender Financings

3. Revise § 120.420 to read as follows:

§ 120.420 Definitions.

(a) *7(a) Loans*—All references to 7(a) loans under this subpart include loans

made under section 7(a) of the Small Business Act (15 U.S.C. 631 *et seq.*) and loans made under section 502 of the Small Business Investment Act (15 U.S.C. 661 *et seq.*), both of which may be securitized under this subpart.

(b) *Bank Regulatory Agencies*—The bank regulatory agencies are the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

(c) *Benchmark Number*—The maximum number of percentage points that a securitizer's Currency Rate can decrease without triggering the PLP suspension provision set forth in § 120.425. SBA will publish the Benchmark Number in the **Federal Register**.

(d) *Currency Rate*—A securitizer's ''Currency Rate'' is the dollar balance of its 7(a) guaranteed loans that are less than 30 days past due divided by the dollar balance of its portfolio of 7(a) guaranteed loans outstanding, as calculated quarterly by SBA, excluding loans approved in SBA's current fiscal year.

(e) *Currency Rate Percentage*—The relationship between the securitizer's Currency Rate and the SBA 7(a) loan portfolio Currency Rate as calculated by dividing the securitizer's Currency Rate by the SBA 7(a) loan portfolio Currency Rate.

(f) *Good Standing*—A Lender is in ''good standing'' with SBA if it:

(1) Is in compliance with all applicable:

(i) Laws and regulations;

(ii) Policies; and

(iii) Procedures;

(2) Is in good financial condition as determined by SBA;

(3) Is not under investigation or indictment for, or has not been convicted of, or had a judgment entered against it for a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships; and

(4) Does not have any officer or employee who has been under investigation or indictment for, or has been convicted of, or had a judgment entered against him for a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships unless, the Securitization Committee has determined that good standing exists despite the existence of such person.

(g) *Initial Currency Rate*—The Initial Currency Rate (ICR) is the securitizer's benchmark Currency Rate. SBA will calculate the securitizer's ICR as of the end of the calendar quarter immediately prior to the first securitization completed after April 12, 1999. This calculation will include all 7(a) loans which are outstanding and were approved in any fiscal year prior to SBA's current fiscal year. Each quarter, SBA will compare each securitizer's Currency Rate to its ICR.

(h) *Initial Currency Rate Percentage*—The Initial Currency Rate Percentage (ICRP) measures the relationship between a securitizer's Initial Currency Rate and the SBA 7(a) loan portfolio Currency Rate at the time of the first securitization after April 12, 1999. The ICRP is calculated by dividing the securitizer's Currency Rate by the SBA 7(a) loan portfolio Currency Rate. SBA will calculate the securitizer's ICRP as of the end of the calendar quarter immediately prior to the first securitization completed after April 12, 1999.

(i) *Loss Rate*—A securitizer's ''loss rate,'' as calculated by SBA, is the aggregate principal amount of the securitizer's 7(a) loans determined uncollectable by SBA for the most recent 10-year period, excluding SBA's current fiscal year activity, divided by the aggregate original principal amount of 7(a) loans disbursed by the securitizer during that period.

(j) *Nondepository Institution*—A ''nondepository institution'' is a Small Business Lending Company (''SBLC'') regulated by SBA or a Business and Industrial Development Company (''BIDCO'') or other nondepository institution participating in SBA's 7(a) program.

(k) *Securitization*—A ''securitization'' is the pooling and sale of the unguaranteed portion of SBA guaranteed loans to a trust, special purpose vehicle, or other mechanism, and the issuance of securities backed by those loans to investors in either a private placement or public offering.

4. Add §§ 120.421 through 120.428 to read as follows:

§ 120.421 Which Lenders may securitize?

All SBA participating Lenders may securitize subject to SBA's approval.

§ 120.422 Are all securitizations subject to this subpart?

All securitizations are subject to this subpart. Until additional regulations are promulgated, SBA will consider securitizations involving multiple Lenders on a case by case basis, using the conditions in § 120.425 as a starting point. SBA will consider securitizations by affiliates as single Lender securitizations for purposes of this subpart.

§ 120.423 Which 7(a) loans may a Lender securitize?

A Lender may only securitize 7(a) loans that will be fully disbursed within 90 days of the securitization's closing date. If the amount of a fully disbursed loan increases after a securitization settles, the Lender must retain the increased amount.

§ 120.424 What are the basic conditions a Lender must meet to securitize?

To securitize, a Lender must:

(a) Be in good standing as determined by the Associate Administrator for Financial Assistance (AA/FA);

(b) Use a securitization structure which is satisfactory to SBA;

(c) Use documents acceptable to SBA, including SBA's model multi-party agreement, as amended from time to time;

(d) Obtain SBA's written consent, which it may withhold in its sole discretion, prior to executing a commitment to securitize; and

(e) Cause the original notes to be stored at the FTA, as defined in § 120.600, and other loan documents to be stored with a party approved by SBA.

§ 120.425 What are the minimum elements that SBA will require before consenting to a securitization?

A securitizer must comply with the following three conditions:

(a) Capital Requirement—All securitizers must be considered to be ''well capitalized'' by their regulator. SBA will consider a depository institution to be in compliance with this section if it meets the definition of ''well capitalized'' used by its bank regulator. SBA's capital requirement does not change the requirements that banks already meet. For nondepository institutions, SBA, as the regulator, will consider a non-depository institution to be ''well capitalized'' if it maintains a minimum unencumbered paid in capital and paid in surplus equal to at least 10 percent of its assets, excluding the guaranteed portion of 7(a) loans. Each nondepository institution must submit annual audited financial statements demonstrating that it has met SBA's capital requirement.

(b) Subordinated Tranche—A securitizer or its wholly owned subsidiary must retain a tranche of the securities issued in the securitization (subordinated tranche) equal to the greater of two times the securitizer's Loss Rate or 2 percent of the principal balance outstanding at the time of securitization of the unguaranteed portion of the loans in the securitization. This tranche must be subordinate to all other securities issued

in the securitization including other subordinated tranches. The securitizer or its wholly owned subsidiary may not sell, pledge, transfer, assign, sell participations in, or otherwise convey the subordinated tranche during the first 6 years after the closing date of the securitization. The securities evidencing the subordinated tranche must bear a legend stating that the securities may not be sold until 6 years after the issue date. SBA's Securitization Committee may modify the formula for determining the tranche size for a securitizer creating a securitization from a pool of loans located in a region affected by a severe economic downturn if the Securitization Committee concludes that enforcing this section might exacerbate the adverse economic conditions in the region. SBA will work with the securitizer to verify the accuracy of the data used to make the Loss Rate calculation.

(c) PLP Privilege Suspension.

(1) *Suspension:* If a securitizer's Currency Rate declines, SBA may suspend the securitizer's PLP unilateral loan approval privileges (PLP approval privileges) if the decline from the securitizer's ICR is more than the Benchmark Number as published in the **Federal Register** from time to time and the securitizer's Currency Rate Percentage is less than its ICRP. The securitizer will first be placed on probation for one quarter. If, at the end of the probationary quarter the securitizer has not met either of the following conditions in paragraph (c)(1)(i) or (c)(1)(ii) of this section, SBA will suspend the securitizer's PLP approval privileges and will not approve additional securitization requests from that securitizer. SBA will provide written notice at least 10 days prior to the effective date of suspension. The suspension will last a minimum of 3 months. During the suspension period, the securitizer must use Certified Lender or Regular Procedures to process 7(a) loan applications. The prohibition will end if, at the end of the probationary quarter: (i) the securitizer has improved its Currency Rate to above its ICR less the Benchmark Number; or (ii) its Currency Rate Percentage is either the same or greater than its ICRP.

(2) *Reinstatement:* The suspension will remain in effect until the securitizer meets either the condition in paragraph (c)(1)(i) or (c)(1)(ii) of this section. If the securitizer meets either condition by the end of the 3-month period, notifies SBA with acceptable documentation, and SBA agrees, SBA will reinstate the securitizer. If the securitizer cannot meet either condition, the suspension will remain in effect. The securitizer may then petition the SBA Securitization Committee (Committee) for reinstatement. The Committee will review the reinstatement petition and determine if the securitizer's PLP approval privilege and securitization status should be reinstated. The Committee may consider the economic conditions in the securitizer's market area, the securitizer's efforts to improve its Currency Rate, and the quality of the securitizer's 7(a) loan packages and servicing. The Committee will consider only one petition by a securitizer per quarter.

(3) *The Benchmark Number.* SBA will monitor the Benchmark Number. If economic conditions or policy considerations warrant, SBA may modify the Benchmark Number to protect the safety and soundness of the 7(a) program.

(4) *Data.* SBA will calculate Currency Rate and Currency Rate Percentages quarterly from financial information that securitizers provide. SBA will work with a securitizer to verify the accuracy of the data used to make the Currency Rate calculation.

§ 120.426 What action will SBA take if a securitizer transfers the subordinated tranche prior to the termination of the holding period?

If a securitizer transfers the subordinated tranche prior to the termination of the holding period, SBA will suspend immediately the securitizer's ability to make new 7(a) loans. The securitizer will have 30 calendar days to submit an explanation to SBA's Securitization Committee (''Committee''). The Committee will have 30 calendar days to review the explanation and determine whether to lift the suspension. If an explanation is not received within 30 calendar days or the explanation is not satisfactory to the Committee, SBA may transfer the servicing of the applicable securitized loans, including the securitizers' servicing fee on the guaranteed and unguaranteed portions and the premium protection fee on the guaranteed portion, to another SBA participating Lender.

§ 120.427 Will SBA approve a securitization application from a capital impaired Securitizer?

If a securitizer does not maintain the level of capital required by this subpart, SBA will not approve a securitization application from that securitizer.

§ 120.428 What happens to a securitizer's other PLP responsibilities if SBA suspends its PLP approval privilege?

The securitizer must continue to service and liquidate loans according to its PLP Supplemental Agreement.

5. Redesignate current section 120.430 as section 120.414.

6. Revise the undesignated center heading immediately preceding newly designated § 120.414 to read MISCELLANEOUS PROVISIONS.

7. Redesignate current section 120.431 as section 120.415.

8. Add a new undesignated center heading and §§ 120.430 through 120.435 to read as follows:

Other Conveyances

§ 120.430 What conveyances are covered by §§ 120.430 through 120.435?

Sections 120.430 through 120.435 cover all other transactions in which a Lender sells, sells a participating interest in, or pledges an SBA guaranteed loan other than for the purpose of securitizing and other than conveyances covered under Subpart F, Secondary Market, of this part.

§ 120.431 Which Lenders may sell, sell participations in, or pledge 7(a) loans?

All Lenders may sell, sell participations in, or pledge 7(a) loans in accordance with this subpart.

§ 120.432 Under what circumstances does this subpart permit sales of, or sales of participating interests in, 7(a) loans?

(a) A Lender may sell all of its interest in a 7(a) loan to another Lender operating under a current Loan Guarantee Agreement (SBA Form 750) (''participating Lender''), with SBA's prior written consent, which SBA may withhold in its sole discretion. A Lender may not sell any of its interest in a 7(a) loan to a nonparticipating Lender. The purchasing Lender must take possession of the promissory note and other loan documents, and service the sold 7(a) loan. The purchasing Lender purchases the loan subject to SBA's existing rights including its right to deny liability on its guarantee as provided in § 120.524. After purchase, the purchased loan will be subject to the purchasing Lender's Loan Guarantee Agreement.

(b) A Lender may sell, or sell a participating interest in, a part of a 7(a) loan to another participating Lender. If the Lender retains ownership of a part of the unguaranteed portion of the loan equal to at least 10 percent of the outstanding principal balance of the loan, the Lender must give SBA prior written notice of the transaction, and the Lender must continue to hold the note and service the loan. If a Lender retains ownership of a part of the unguaranteed portion of the loan equal to less than 10 percent of the outstanding principal balance of the loan, the Lender must obtain SBA's prior written consent to the transaction,

which consent SBA may withhold in its sole discretion. The Lender must continue to hold the note and other loan documents, and service the loan unless SBA otherwise agrees in its sole discretion.

(c) For purposes of determining the percentage of ownership a Lender has retained, SBA will not consider a Lender to be the owner of the part of a loan in which it has sold a participating interest.

§ 120.433 What are SBA's other requirements for sales and sales of participating interests?

SBA requires the following:

(a) The Lender must be in good standing as determined by the AA/FA; and

(b) In transactions requiring SBA's consent, all documentation must be satisfactory to SBA, including, if SBA determines it to be necessary, a multi-party agreement.

§ 120.434 What are SBA's requirements for loan pledges?

(a) Except as set forth in § 120.435, SBA must give its prior written consent to all pledges of any portion of a 7(a) loan, which consent SBA may withhold in its sole discretion;

(b) The Lender must be in good standing as determined by the AA/FA;

(c) All loan documents must be satisfactory to SBA and must include a multi-party agreement among SBA, Lender, the pledgee, FTA and such other parties as SBA determines are necessary;

(d) The Lender must use the proceeds of the loan secured by the 7(a) loans only for financing 7(a) loans and for costs and expenses directly connected with the borrowing for which the loans are pledged;

(e) The Lender must remain the servicer of the loans and retain possession of all loan documents other than the original promissory notes;

(f) The Lender must deposit the original promissory notes at the FTA; and

(g) The Lender must retain an economic interest in and the ultimate risk of loss on the unguaranteed portion of the loans.

§ 120.435 Which loan pledges do not require notice to or consent by SBA?

Notwithstanding the provisions of § 120.434(d), 7(a) loans may be pledged for the following purposes without notice to or consent by SBA:

(a) Treasury tax and loan accounts;

(b) The deposit of public funds;

(c) Uninvested trust funds;

(d) Discount borrowings at a Federal Reserve Bank; or

(e) Advances by a Federal Home Loan Bank.

9. In § 120.453 revise paragraphs (a) and (b) and remove paragraph (c) to read as follows:

§ 120.453 What are the requirements of a PLP Lender in servicing and liquidating SBA guaranteed loans?

* * * * *

(a) Take any action that confers a Preference on the Lender; and

(b) Accept a compromise settlement without prior written SBA consent.

Dated: December 31, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 99–3122 Filed 2–5–99; 9:29 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE151, Special Condition 23–095–SC]

Special Conditions; Jetcruzer Model 500 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Advanced Aerodynamics & Structures, Incorporated (AASI), 3501 Lakewood Blvd., Long Beach Airport, California 90808, for an Amended Type Certificate for the Jetcruzer Model 500 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is January 29, 1999.

Comments must be received on or before March 12, 1998.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE151, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE151. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE151.'' The postcard will be date stamped and returned to the commenter.

Background

On October 7, 1996, Advanced Aerodynamics & Structures, Incorporated, 3501 Lakewood Blvd., Long Beach Airport, CA 90808, made an

application to the FAA for an Amendment to Type Certificate No. A49NM to include the Jetcruzer Model 500 airplane. The Jetcruzer model 500 is a derivative of the Model 450 currently approved under TC No. A49NM. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Advanced Aerodynamics & Structures, Incorporated must show that the Jetcruzer Model 500 meets the regulations incorporated by reference in TC No. A49NM, which are the following provisions, or the applicable regulations in effect on the date of application for the change to the Jetcruzer Model 500:

Federal Aviation Regulations part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–52; Federal Aviation Regulations part 34 effective September 10, 1990, as amended by the amendment in effect on the date of certification; Federal Aviation Regulations part 36 effective December 1, 1969, as amended by amendment 36–1 through the amendment in effect on the day of certification; The Noise Control Act of 1972; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions are normally issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.191(b)(2).

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

Novel or Unusual Design Features

Advanced Aerodynamics & Structures, Incorporated plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane systems installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and

their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Advanced Aerodynamics & Structures, Incorporated Jetcruzer Model 500. Should Advanced Aerodynamics & Structures, Incorporated apply at a later date for a change to the type certificate to include any other model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701, 14 CFR part 21, §§ 21.16 and 21.17, and 14 CFR part 11, §§ 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Advanced Aerodynamics & Structures, Incorporated Jetcruzer Model 500 airplane:

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 29, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3290 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–66–AD; Amendment 39–11032; AD 99–04–08]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes. This AD requires inspecting the main landing gear hydraulic actuators to determine whether a certain Frisby Aerospace actuator is installed, and reworking or replacing any of these Frisby Aerospace actuators. This AD is the result of reports of fatigue cracks in the end cap of main landing gear hydraulic actuators manufactured by Frisby Aerospace and installed on the affected airplanes. The actions specified by this AD are intended to prevent the main landing gear from failing to lock down due to the hydraulic actuator cracking and separating, which could result in loss of control of the airplane during landing, taxi, or ground operations.

DATES: Effective March 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–66–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models 1900, 1900C, and 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 16, 1998 (63 FR 55560). The NPRM proposed to require inspecting the main landing gear hydraulic actuators to determine whether any Frisby Aerospace actuator, part number (P/N) 120114–380041–11 or P/N 114–380041–13, is installed, and reworking or replacing any of these Frisby Aerospace actuators. Accomplishment of the proposed inspection as specified in the NPRM would be in accordance with Raytheon Mandatory Service Bulletin SB.32–3141, Issued: January, 1998. Accomplishment of the proposed

removal and replacement as specified in the NPRM would be in accordance with the applicable maintenance manual. Accomplishment of the rework as specified in the NPRM would be in accordance with Frisby Aerospace Service Bulletin 1FA10043–0001, dated October 1997.

The NPRM was the result of reports of fatigue cracks in the end cap of main landing gear hydraulic actuators manufactured by Frisby Aerospace and installed on the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 378 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $22,680, or $60 per airplane.

If any of the affected airplanes have any of the affected Frisby Aerospace main landing gear hydraulic actuators installed, it will take approximately 5 workhours per actuator to accomplish the replacement and an additional 4 workhours per actuator to accomplish the rework. The average labor rate is approximately $60 per hour. Parts will cost $3,871 for each new actuator; $2,865 for each overhauled actuator; and $1,997 for each rework/upgrade kit. Based on these figures, the cost impact on those operators choosing the replacement of the main landing gear hydraulic actuators will be approximately $8,342 per airplane that will have two new actuators installed, or $6,330 per airplane that will have two overhauled actuators installed; and the cost impact on those operators choosing to incorporate the main landing gear hydraulic actuator rework/upgrade kit on each actuator will be approximately $5,074 per airplane. Raytheon will give warranty credit for a replacement actuator until January 2001.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–08 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–11032; Docket No. 98–CE–66–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–299.

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

Compliance: Inspection required as indicated below, unless already accomplished; and replacement or rework, if required, would be prior to further flight after the inspection required in paragraph (a) of this AD, unless already accomplished:

Hours time-in-service (TIS) accumulated on the main landing gear hydraulic actuator	Inspection compliance time
Less Than 6,000 hours TIS.	Upon accumulating 6,600 hours TIS on the actuator or within the next 600 hours TIS after the effective date of this AD, whichever occurs later.

Hours time-in-service (TIS) accumulated on the main landing gear hydraulic actuator	Inspection compliance time
6,000 hours TIS through 6,999 hours TIS.	Within the next 600 hours TIS after the effective date of this AD.
7,000 hours TIS through 7,999 hours TIS.	Within the next 500 hours TIS after the effective date of this AD.
8,000 hours TIS through 8,999 hours TIS.	Within the next 400 hours TIS after the effective date of this AD.
9,000 hours TIS through 9,999 hours TIS.	Within the next 300 hours TIS after the effective date of this AD.
10,000 Hours TIS or more.	Within the next 200 Hours TIS after the effective date of this AD.

To prevent the main landing gear from failing to lock down due to the hydraulic actuator cracking and separating, which could result in loss of control of the airplane during landing, taxi, or ground operations, accomplish the following:

(a) Inspect the main landing gear hydraulic actuators to determine whether any Frisby Aerospace actuator, part number (P/N) 114–380041–11 or P/N 114–380041–13, is installed. Accomplish this inspection in accordance with Raytheon Mandatory Service Bulletin SB.32–3141, Issued: January, 1998.

(b) If any Frisby Aerospace actuator, P/N 114–380041–11 or P/N 114–380041–13, is installed, prior to further flight, remove it and accomplish one of the following:

(1) Replace the Frisby Aerospace actuator with one of a part number listed in the Material Information section of Raytheon Mandatory Service Bulletin SB.32–3141, Issued: January, 1998. Accomplish this replacement in accordance with the applicable maintenance manual; or

(2) Rework the Frisby Aerospace actuator by incorporating the kit referenced in the Material Information section of Raytheon Mandatory Service Bulletin SB.32–3141, Issued: January, 1998. Accomplish this rework in accordance with Frisby Aerospace Service Bulletin 1FA10043–0001, dated October 1997.

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

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

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

(e) The inspection required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin SB.32–3141, Issued: January, 1998. The rework required by this AD shall be done in accordance with Frisby Aerospace Service Bulletin 1FA10043–0001, dated October 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 26, 1999.

Issued in Kansas City, Missouri, on February 2, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2904 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–46–AD; Amendment 39–11033; AD 99–04–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited Dart Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited (R–R) Dart series turboprop engines. This action requires initial and repetitive fuel burner fuel flow calibration checks, and overhaul or replacement of fuel burners. This amendment is prompted by reports of an uncontained engine failure and fire due to HPT disk rupture caused by fuel burner failure. The actions specified in this AD are intended to prevent HPT disk rupture, which can result in an uncontained engine failure, engine fire, and damage to the aircraft.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–46–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Limited, Attn.: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce Limited (R–R) Dart 525 series, 526, 527, 528 series, 529 series, 530, 531, 532 series, 535 series, 542 series, and 552 series turboprop engines. The CAA advises that they have received a report of an uncontained engine failure and subsequent fire shortly after takeoff. The investigation revealed that the high pressure turbine (HPT) disk had failed resulting in the release of a section of rim and diaphragm from the disk. The cause of the HPT disk failure was attributed to high cycle fatigue (HCF) induced by a once-per-revolution resonance force resulting from fuel burner malfunction. This condition, if not corrected, could result in HPT disk rupture, which can result in an uncontained engine failure, engine fire, and damage to the aircraft.

R–R has issued Alert Service Bulletin (ASB) No. Da73–A87, dated May 1998, that specifies procedures for fuel burner fuel flow calibration checks and overhaul of fuel burners. The CAA classified the ASB as mandatory and issued CAA AD 002–05–98 in order to assure the airworthiness of these engines in the UK.

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

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design installed on aircraft registered in the United States, this AD requires initial and repetitive fuel burner fuel flow calibration checks, and overhaul or replacement of fuel burners. The fuel burner fuel flow calibration checks, and overhaul or replacement of fuel burners must be performed in accordance with the schedule specified in the compliance section. The schedule was determined based upon R–R risk analysis, and parts and overhaul facility availability.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–46–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–09 Rolls-Royce Limited: Amendment 39–11033. Docket 98–ANE–46–AD.

Applicability: Rolls-Royce Limited (R–R) Dart 525 series, 526, 527, 528 series, 529 series, 530, 531, 532 series, 535 series, 542 series, and 552 series turboprop engines, installed on but not limited to Gulfstream Aerospace Corp. G–159, British Aerospace HS 748, Fokker Aircraft F27, Fairchild Hiller FH227, Mitsubishi Heavy Industries YS–11, General Dynamics (Convair) 640 and 600 series, and Vickers Armstrong (Aircraft Limited) Viscount aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk rupture, which can result in an uncontained engine failure, engine fire, and damage to the aircraft, accomplish the following:

(a) For engines with a complete set of HPT blades that were either inspected and reworked to D.R.S. 611 standard or were installed new at last HPT rework or engine overhaul, perform fuel burner fuel flow calibration checks and overhaul or replacement of fuel burners in accordance with R-R Alert Service Bulletin (ASB) No. Da73–A87, dated May 1998, at each engine overhaul, or prior to exceeding 3,000 hours time in service (TIS) since last fuel burner calibration, whichever occurs first.

(b) Inspection to the D.R.S. 611 standard requires the HPT blades to have both the inner platform and shroud inspected to this standard. This inspection requirement was added to the Engine Overhaul Manual in 1992. Inspection to the D.R.S. 611 standard prior to this date must be considered to be pre-D.R.S. 611 standard.

(c) For engines with HPT blades that have not been inspected and modified during the last engine or HPT overhaul using the D.R.S. 611 build standard, perform initial and repetitive fuel burner fuel flow calibration checks and overhaul or replacement of fuel burners in accordance with R–R ASB No. Da73–A87, dated May 1998, as follows:

(1) For engines with 6,000 or more hours time in service (TIS) since last HPT overhaul and rework, perform the initial check and overhaul as follows:

(i) For fuel burners with more than 850 hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding an additional 150 hours TIS after the effective date of this AD, but not to exceed 1,000 hours TIS since last fuel burner calibration after June 30, 1999.

(ii) For fuel burners with 850 or less hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding 1,000 hours TIS since last fuel burner calibration.

(2) For engines with 5,000 or more hours but less than 6,000 hours TIS since last HPT overhaul and rework, perform the initial check and overhaul as follows:

(i) For fuel burners with more than 700 hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding an additional 300 hours TIS after the effective date of this AD, but not to exceed 1,000 hours TIS since last fuel burner calibration after June 30, 1999.

(ii) For fuel burners with 700 or less hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding 1,000 hours TIS since last fuel burner calibration.

(3) For engines with 4,000 or more hours but less than 5,000 hours TIS since last HPT overhaul and rework, perform the initial check and overhaul as follows:

(i) For fuel burners with more than 550 hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding an additional 450 hours TIS after the effective date of this AD, but not to exceed 1,000 hours TIS since last fuel burner calibration after June 30, 1999.

(ii) For fuel burners with 550 or less hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding 1,000 hours TIS since last fuel burner calibration.

(4) For engines with less than 4,000 hours TIS since last HPT overhaul and rework, perform the initial check and overhaul as follows:

(i) For fuel burners with more than 100 hours TIS since last fuel burner calibration, perform the fuel flow check and calibration prior to exceeding an additional 900 hours TIS after the effective date of this AD, but not to exceed 1,000 hours TIS since last fuel burner calibration after June 30, 1999.

(ii) For fuel burners with 100 or less hours TIS since last fuel burner calibration, perform the fuel flow calibration check and overhaul prior to exceeding 1,000 hours TIS since last fuel burner calibration.

(5) Thereafter, perform repetitive fuel burner fuel flow calibration checks and overhauls at intervals not to exceed 1,000 hours TIS since last fuel burner fuel flow calibration check.

(d) After the effective date of this AD, no new fuel burner may be installed unless it has been subject to a satisfactory fuel flow calibration check within 3 years prior to installation, and no fuel burner run since last overhaul, including those fitted to a combustion chamber, may be installed unless it has been subject to a satisfactory fuel flow calibration check in accordance to R–R ASB Da 73–A87, dated May 1998, prior to installation.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(g) The actions required by this AD shall be performed in accordance with the following R–R ASB:

Document No.	Pages	Date
Da73–A87 ..... Total pages: 8.	1–8	May 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Limited, Attn.: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 25, 1999.

Issued in Burlington, Massachusetts, on February 2, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–3040 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–81–AD; Amendment 39–11028; AD 99–04–04]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Reciprocating Engines IO–540 and O–540 Engines Equipped With Slick Aircraft Products Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Textron Lycoming IO–540 and O–540 engines equipped with Slick Aircraft Products magnetos. This action requires removal of the Slick magneto from the engine and inspection of the impulse coupling pawl for wear. This amendment is prompted by several service difficulty reports, two incidents, and an accident involving severely worn and failed impulse couplings. The actions specified in this AD are intended to prevent failure of the magneto impulse coupling, resulting in seizure of the engine.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–81–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, PA 17701. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 10 Fifth Street, 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received numerous reports of failure of the impulse coupling pawl on Slick Aircraft Products magnetos installed on certain Textron Lycoming IO–540 and O–540 engines that resulted in seizure of the engine. In one accident, a Piper Cherokee Six airplane equipped with a Textron Lycoming IO–540 series engine experienced an engine failure. The left magneto, Slick model number 6531, equipped with impulse coupling Slick P/N M3333, seized within the housing. The seizure of the left magneto caused

the gear drive train to fail. The failure of the gear drive train caused the right magneto to stop operating, which caused the engine to stop. In one incident, a magneto seized when one pawl jammed under the second pawl due to a loose or broken rivet. The seizure resulted in a forced landing. In another incident, a Piper PA–32 experienced a reduction in engine power while in cruise flight. Examination of the engine revealed that the left magneto coupling drive gear had disintegrated and sheared several drive gear teeth. There have also been a number of Service Difficulty Reports of severely worn and failed impulse couplings on certain Textron Lycoming O–540 and IO–540 series reciprocating engines equipped with Slick Aircraft Products magneto model numbers 6251, 6252, 6255, 6351 and 6355. Investigation results suggest that excessive vibration or radial forces acting on the impulse coupling assembly may be causing unusually rapid wear of the impulse coupling pawl. In these cases, the impulse coupling may improperly engage the stop pins when the engine is operating, and cause damage to the accessory drive gear and impulse coupling. Possible causes of failed impulse couplings that are currently under investigation include unusually rapid wear due to excessive vibratory forces, improper crankcase overhaul in magneto bore location, and lack of routine magneto inspection and maintenance. This condition, if not corrected, could result in failure of the magneto impulse coupling, resulting in seizure of the engine.

The FAA has reviewed and approved the technical contents of Textron Lycoming Mandatory Service Bulletin (SB) No. 537, dated November 20, 1998. Textron Lycoming SB No. 537 reprints the Slick Aircraft Product SB SB1–98, dated August 26, 1998, that describes procedures for the inspection of the impulse coupling pawls for wear and proper operation and, if necessary, replacement of the impulse coupling assembly.

Since an unsafe condition has been identified that is likely to exist or develop on certain other Textron Lycoming IO–540 and O–540 engines of the same type design, this AD is being issued to prevent failure of the magneto impulse coupling, resulting in seizure of the engine. This AD requires an initial inspection of the magneto impulse coupling assembly pawls for wear either within the next 10 hours of time in service (TIS) from the effective date of this AD if the magneto has been in service for more than 250 hours TIS since new or overhauled or if the service history of the magneto is unknown, or within the next 10 hours of TIS from the effective date of this AD or by 250 hours TIS since new or overhauled whichever is later if the magneto has been in service for less than 250 hours TIS since new or overhauled; and then repetitive inspections every 250 hours TIS from the last inspection or overhaul of the magneto. The actions are required to be accomplished in accordance with the SB described previously. A final, terminating action cannot be defined until the investigation is completed.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–81–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–04 Textron Lycoming: Amendment 39–11028. Docket 98–ANE–81–AD.

Applicability: Textron Lycoming O–540–B2B5, B2C5, E4B5, E4C5, G1A5, G2A5, IO–540–K1A5, K1B5, and K1G5 reciprocating model engines equipped with Slick Aircraft Products magneto model numbers 6251, 6252, 6255, 6351 and 6355. These engines are installed on, but not limited to, the following airplanes: Britten Norman BN–2A, –2A–2, –2A–3, –2A–6, –2A–9, –2A–20, –2A–21, –2A–26, –2A–27, –2A–MKIII, –2A–MKIII–2, –2A–MKIII–3, –2B–20, –2B–21, –2B–26,

–2B–27 and Piper PA–25–235, PA–25–260, PA–32–260, PA–32–300.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the magneto impulse coupling, resulting in seizure of the engine, accomplish the following:

(a) For engines on which the service history of the magneto is not known, or on which the magneto has greater than 250 hours TIS since new, factory rebuilt, or overhauled, on the effective date of this AD, within 10 hours of the effective date of this AD, inspect the components of the magneto impulse coupling for the conditions listed in accordance with steps 1 through 7 of the Textron Lycoming Mandatory SB No. 537, dated November 20, 1998.

Note 2: The Textron Lycoming Mandatory SB No. 537 dated November 20, 1998 contains the Slick SB No. SB1–98 dated August 26, 1998 in its entirety. The steps referenced to the Textron Lycoming SB No. 537 dated November 20, 1998 by this compliance section are the same steps that are contained in the Slick SB No. SB1–98 dated August 26, 1998.

(b) For engines on which the magneto has less than or equal to 250 hours TIS since new, factory rebuilt, overhauled on the effective date of this AD, before accumulating 250 hours TIS since new, factory rebuilt or overhauled, or within 10 hours TIS from the effective date of this AD, whichever comes later, inspect the components of the magneto impulse coupling for the conditions listed in accordance with steps 1 through 7 of the Textron Lycoming Mandatory SB No. 537, dated November 20, 1998.

(c) Thereafter, at intervals not to exceed 250 hours TIS since the last inspection performed in accordance with this AD, inspect the components of the magneto impulse coupling for the conditions listed in accordance steps 1 through 7 of the Textron Lycoming Mandatory SB No. 537, dated November 20, 1998.

(d) Remove magneto impulse coupling before 2,000 hours TIS since new and replace with a serviceable part.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(f) The inspection shall be done in accordance with the following Textron Lycoming Mandatory SB:

Document No.	Pages	Revision	Date
SB No. 537 ..... Total pages: 9.	1–9	Original	Nov. 20, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, PA 17701. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 25, 1999.

Issued in Burlington, Massachusetts, on February 1, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–3039 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–141–AD; Amendment 39–11026; AD 99–04–02]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that requires repetitive visual inspections for damage or ''electrical spark marks'' on the cover plates for the fuel pumps, and corrective actions, if necessary. This AD also requires modification of the fuel pump installation by incorporating a non-conductive film on the cover plate, which constitutes terminating action for this AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical shorting between the fuel pump electrical connections and the fuel pump cover plate, which could result in the ignition of fuel vapor and consequent fuel tank explosion/fire.

DATES: Effective March 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model C–

212 series airplanes was published in the **Federal Register** on July 9, 1998 (63 FR 37083). That action proposed to require repetitive visual inspections for damage or ''electrical spark marks'' on the cover plates for the fuel pumps, and corrective actions, if necessary. That action also proposed to require modification of the fuel pump installation by incorporating a non-conductive film on the cover plate, which would constitute terminating action for this AD.

Explanation of New Service Information

Since the issuance of the proposal, the manufacturer has issued CASA Maintenance Instructions COM 212–252, Revision 1, dated September 15, 1998; including Attachment 1 (Parker Service Letter Number 47, dated October 29, 1998). Revision 1 of the maintenance instructions is similar to the original issue (which was referenced in the proposal as the appropriate source of service information), except that the accomplishment instructions have been revised to clarify appropriate procedures. In addition, the original issue of the maintenance instructions included procedures for electrical resistance checks to be accomplished after the modification of the fuel pump installation. Since the issuance of the original maintenance instructions, the manufacturer has determined that those electrical resistance checks cannot be performed properly, nor are they necessary to adequately address the identified unsafe condition. Revision 1 eliminates the procedures for electrical resistance checks. Accomplishment of the actions required by this AD, in accordance with either the original issue or Revision 1 of the maintenance instructions, is intended to adequately address the identified unsafe condition. Therefore, paragraphs (a) and (b) of the final rule have been revised to reference both the original issue and Revision 1 as appropriate sources of service information for the accomplishment of the requirements of this AD, and a NOTE has been added to the final rule to specify that accomplishment of the electrical resistance checks described in the original issue of the maintenance instructions is not required.

CASA Maintenance Instructions COM 212–252, Revision 1, references Parker Service Letter Number 47, dated October 29, 1998, as the appropriate source of service information for modification of the fuel boost pumps by installation of an insulator on the cover plate. CASA Maintenance Instructions COM 212–252, Revision 1, includes that service letter as an attachment. Accomplishment of the actions specified in Parker Service Letter Number 47 is intended to adequately address the identified unsafe condition. Therefore, a NOTE has been added to the final rule to specify that modification of the fuel pump installation in accordance with Parker Service Letter Number 47 is an acceptable alternative method of compliance with the terminating modification required by paragraph (b) of this AD.

Differences Between This AD and Maintenance Instructions

Operators should note that CASA Maintenance Instructions COM 212–252, Revision 1, specifies that Parker Hannifin Airborne Division should be contacted for corrective action if any damage from electrical arcing or overheating is detected during any inspection of the cover plate, electrical wiring, or positive screw terminal of the fuel pump. However, this AD provides explicit instructions for corrective actions (i.e., replacement of any damaged wire with a new or serviceable wire, if necessary; incorporation of a non-conductive film on the cover plate; installation of a new fuel pump) if any damage or ''electrical spark mark'' is detected on the cover plate, electrical wiring, or positive screw terminal of the fuel pump.

Comments

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

Request To Issue AD Against the Fuel Pump, Not the Airplane

One commenter states that the AD should be issued against the appliance (the fuel pump) and not the airplane model. The commenter states that the cover plate on which the signs of arcing was found is part of the fuel pump assembly, which is not manufactured by CASA. The commenter also states that the subject fuel pump is installed on many airplanes besides the CASA C–212 series. The commenter concludes that, for these reasons, the AD should be issued against the fuel pump so that it is applicable to all airplanes that may be affected, and not just CASA C–212 series airplanes.

The FAA infers that the commenter is requesting that the proposal be withdrawn, and that another rulemaking action be issued to propose action for all airplanes equipped with the subject fuel pump. The FAA does not concur. The FAA finds that to delay this action would be inappropriate, because the FAA has determined that an unsafe condition exists and that inspections must be conducted to ensure continued safety. However, although there have been no reported problems with the subject fuel pump on airplanes other than the CASA C–212 series, the FAA is reviewing this issue to determine if action against the fuel pump is warranted, and may consider further rulemaking action in the future if such action is deemed necessary. No change to the final rule is necessary in this regard.

Request To Require One-Time Inspection

One commenter requests that the final rule be changed to require a one-time visual inspection of the cover plates on the fuel pumps in lieu of the repetitive visual inspections that are proposed. The commenter states that the purpose of the inspection is to determine how widespread the electrical arcing is among the entire fleet of CASA C–212 series airplanes. The commenter states that, therefore, it may make more sense to require a one-time visual inspection and a report of any evidence of arcing rather than repetitive inspections.

The FAA does not concur with the commenter's request to require a one-time inspection in lieu of repetitive inspections. CASA Maintenance Instructions COM 212–252, Revision 1, recommends a one-time action that includes both the inspection of the cover plates on the fuel pumps and the modification of the fuel pump assembly prior to further flight, regardless of whether any discrepancy is found. Therefore, the FAA finds that to make such a change in this final rule would require the issuance of a supplemental notice of proposed rulemaking to reopen the public comment period. To delay this final rule in this way would be inappropriate, because the FAA has determined that an unsafe condition exists and the required actions must be accomplished to ensure continued safety. The FAA also finds that accomplishment of the terminating modification within 12 months after the effective date of this AD is adequate to ensure the safety of the transport airplane fleet, provided that repetitive inspections are accomplished at intervals not to exceed 300 flight hours. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 38 Model C–212 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,280, or $60 per airplane, per inspection cycle.

It will take approximately 5 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. The cost of required parts will be minimal. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $11,400, or $300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–02 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–11026. Docket 98–NM–141–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical shorting between the fuel pump electrical connections and the fuel pump cover plate, which could result in the ignition of fuel vapor and consequent fuel tank explosion/fire, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, perform a visual inspection for damage or ''electrical spark marks'' on the cover plates for the fuel pumps, in accordance with CASA Maintenance Instructions COM 212–252, Revision 0, dated July 15, 1996; or Revision 1, dated September 15, 1998, including Attachment 1 (Parker Service Letter Number 47, dated October 29, 1998).

(1) If no damage or ''electrical spark mark'' is detected, repeat the visual inspection thereafter at intervals not to exceed 300 flight hours until the terminating action identified in paragraph (b) of this AD is accomplished.

(2) If any damage or ''electrical spark mark'' is detected on the cover plate, prior to further flight, inspect the wires for overheating damage and the positive screw terminal of the fuel pump for ''electrical spark marks'' between the positive screw terminal and the surrounding cartridge or the pump body face; replace any damaged wire with a new or serviceable wire; and accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, in accordance with the maintenance instructions.

(i) If no ''electrical spark mark'' is detected between the positive screw terminal and the surrounding cartridge or pump body face, prior to further flight, modify the fuel pump installation by incorporating a non-conductive film on the cover plate. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(ii) If any ''electrical spark mark'' is detected between the positive screw terminal and the surrounding cartridge or the pump body face, prior to further flight, modify the fuel pump installation by installing a new fuel pump and incorporating a non-conductive film on the cover plate. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Note 2: Accomplishment of the electrical resistance checks described in CASA Maintenance Instructions COM 212–252, Revision 0, dated July 15, 1996, is not required for compliance with this AD.

(b) Within 12 months after the effective date of this AD, inspect the wires for overheating damage and the positive screw terminal of the fuel pump for ''electrical spark marks'' between the positive screw terminal and the surrounding cartridge or the pump body face; replace any damaged wire with a new or serviceable wire; and accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; in accordance with CASA Maintenance Instructions COM 212–252, Revision 0, dated July 15, 1996; or Revision 1, dated September 15, 1998, including Attachment 1 (Parker Service Letter Number 47, dated October 29, 1998); even if no damage or ''electrical spark mark'' has been detected on the cover plate. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Note 3: Modification of the fuel pump installation in accordance with Parker Service Letter Number 47, dated October 29, 1998, is an acceptable alternative method of compliance for the terminating action requirement of paragraph (b) of this AD.

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

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

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

(e) The actions shall be done in accordance with CASA Maintenance Instructions COM 212–252, Revision 0, dated July 15, 1996; or CASA Maintenance Instructions COM 212–252, Revision 1, dated September 15, 1998, which contains the following list of effective pages.

Page number	Revision level shown on page	Date shown on page
1–7	1	Sept. 15, 1998.
Attachment 1		
1–2	None	Oct. 29, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Spanish airworthiness directive 10/96, dated November 5, 1996.

(f) This amendment becomes effective on March 17, 1999.

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

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3036 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–269–AD; Amendment 39–11030; AD 99–04–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that requires modification of the right and left main landing gear (MLG) hydraulic damper assemblies or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. This amendment is prompted by reports indicating that, during overhauls, the MLG hydraulic dampers assemblies failed or had damaged spring retainers due to insufficient material thickness of the spring retainers. The actions specified by this AD are intended to prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG.

DATES: Effective March 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1999.

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

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes was published in the **Federal Register** on October 21, 1998 (63 FR 56125). That action proposed to require modification of the right and left main landing gear (MLG) hydraulic damper assemblies or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies.

Comments

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

One commenter supports the proposed rule.

Comment Concerning Availability of Parts

One commenter states no objection to the proposed rule, however, the commenter questions whether parts will be available within the proposed compliance time. The FAA has consulted with the manufacturer, and finds that parts will be available within the required compliance time.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 111 airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry will be affected by this AD.

It will take approximately 18 work hours per airplane (including access, removal, and closeup) to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $598 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,678 per airplane.

It will take approximately 5 work hours per airplane to accomplish the required replacement at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $300 per airplane.

The cost impact figures discussed above are based on assumptions that no

operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–06 McDonnell Douglas: Amendment 39–11030. Docket 98–NM–269–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Service Bulletin MD90–32–032, dated July 8, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hydraulic damper assemblies of the main landing gear (MLG), which could result in vibration damage and collapse of the MLG, accomplish the following:

(a) Within 2 years after the effective date of this AD, accomplish the requirements specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Modify the right and left MLG hydraulic damper assemblies in accordance with McDonnell Douglas Service Bulletin MD90–32–032, dated July 8, 1998; or

(2) Replace the right and left MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies having part number (P/N) SR09320057–7005, SR09320057–7007, SR09320057–7009, or 5923142–5513, in accordance with paragraph B.5. of the Accomplishment Instructions of the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a damper sub assembly having P/N SR09320057–9, SR09320057–17, or 5923142–5017; or a damper assembly having P/N SR09320057–7001, SR09320057–7003, or 5923142–5511, unless the part is modified in accordance with paragraph (a)(1) of this AD.

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

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

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

(e) The modification and replacement shall be done in accordance with McDonnell Douglas Service Bulletin MD90–32–032, dated July 8, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 17, 1999.

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

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3035 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–373–AD; Amendment 39–11031; AD 99–04–07]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This action requires a review of the airplane maintenance records to identify the bottom engine vibration isolator, an inspection of the aft engine vibration isolator to determine whether the deflection is within limits, and various follow-on actions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent excessive engine vibration, which could lead to damage of the nacelle structure and result in reduced structural integrity and fire shielding capability of the nacelle structure, or which could lead to chafing of the fire sensor loop and a consequent nuisance fire warning and result in a precautionary engine shutdown.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of February 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that degraded bottom engine mounts have been found on several airplanes. Investigation has revealed that the isolator material used in the manufacture of certain bottom engine mounts degrades after a short time in service. Such degradation of the isolator material changes the damping characteristics of the engine support system and results in excessive engine vibration. Such excessive engine vibration could lead to damage of the nacelle structure, and consequent reduced structural integrity and fire shielding capability of the nacelle.

The LFV also advises that it has received a report of chafing of the fire sensor loop on several airplanes. Such chafing also has been attributed to excessive engine vibration and could result in a nuisance fire warning and a precautionary engine shutdown. Precautionary engine shutdown could compromise the safe takeoff of the airplane.

In addition, the LFV advises that it has received a report indicating that the air pressure tube of the engine nacelle was found damaged on several airplanes. That damage also has been attributed to excessive engine vibration. Damage to the air pressure tube could cause loss of cooling to the power turbine discs of the engine, which could result in failure of the blades of the power turbine disc, and consequent uncontained failure of the engine.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999, including Attachment 1, dated January 20, 1999. The service bulletin describes procedures for a review of the airplane maintenance records to identify the bottom engine vibration isolator, a visual inspection of the aft engine vibration isolator to determine whether the deflection is within limits, and various follow-on actions. The follow-on actions, as applicable, include one repetition of the visual inspection of the aft engine vibration isolator to determine whether the deflection is within limits; a one-time visual inspection to detect chafing of the area around the engine; replacement of the existing bottom engine vibration isolator with a new part; repair or replacement of discrepant parts; visual inspections to detect damage of the side and aft engine vibration isolators, and replacement, if necessary; and detailed visual inspections to detect cracked or broken parts of the engine mount support fitting, adjacent structure, and attaching hardware of the bottom, side, and aft engine mount support fittings.

The Saab service bulletin references Barry Controls Service Letter 939–71–02, dated January 20, 1999, as the appropriate source of criteria for the inspection of the bottom vibration isolator. The Saab service bulletin includes that service letter as Attachment 1.

The Saab service bulletin references Barry Controls Component Maintenance Manual Section 71–20–20, dated October 15, 1993, as an additional source of service information to accomplish the visual inspection of the side and aft engine vibration isolators.

Accomplishment of the actions specified in the Saab service bulletin is intended to adequately address the identified unsafe condition. The LFV classified Saab Service Bulletin SAAB 340–71–057, Revision 1, dated December 18, 1998 (including Attachment 1, dated December 11, 1998), as mandatory and issued Swedish airworthiness directive SAD 1–135R1, dated December 18, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent excessive engine vibration, which could lead to damage of the nacelle structure and result in reduced structural integrity and fire shielding capability of the nacelle structure, or which could lead to chafing of the fire sensor loop and a consequent nuisance fire warning and result in a precautionary engine shutdown. This AD requires accomplishment of the actions specified in the Saab service bulletin described previously, except as discussed below.

Differences Between This Rule and the Service Bulletin

Operators should note that, although the service bulletin describes procedures for a detailed visual inspection of the bottom engine vibration isolator if any chafing of the area around the engine is detected, this AD requires replacement of the bottom engine vibration isolator with a new part if any such chafing is found. The FAA has determined that a detailed visual inspection may not provide the degree of safety assurance necessary for the transport airplane fleet. The FAA finds that continued safety of the transport airplane fleet will be better assured by elimination of the source of the problem (i.e., by replacing the bottom engine vibration isolator), rather than by an inspection. The replacement requirement is in consonance with these conditions.

Operators also should note that, although the service bulletin specifies detailed visual inspections of the affected engine mount support fitting, adjacent structure, and attaching hardware if any engine vibration

isolator is replaced; the service bulletin does not specify any source of service information for corrective actions if any discrepancies are found during such inspections. This AD requires any cracked or broken part of the engine mount support fitting, adjacent structure, and attaching hardware of the bottom, side, and aft engine mount support fittings to be repaired prior to further flight in accordance with the SAAB 340 Structural Repair Manual.

Operators also should note that the service bulletin specifies, for airplanes on which no chafing is detected during the inspection of the area around the engine, a visual inspection of the aft engine vibration isolator to determine whether the deflection is within allowable limits following replacement of the bottom vibration isolator. However, the service bulletin does not specify what actions should be accomplished if, during such inspection, the deflection is determined to be outside the limits specified in the service bulletin. This AD requires repair prior to further flight in accordance with a method approved by the FAA or the LFV (or its delegated agent), for airplanes on which no chafing is detected, but on which the deflection of the aft engine vibration isolator is determined to be outside the limits specified in the service bulletin.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–373–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–07 Saab Aircraft AB: Amendment 39–11031. Docket 98–NM–373–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 453 inclusive; as specified in Saab Service Bulletin SAAB 340–71–057, Revision 02, January 26, 1999, including Attachment 1, dated January 20, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive engine vibration, which could result in damage of the nacelle structure and reduced structural integrity and fire shielding capability of the nacelle structure, or which could result in chafing of the fire sensor loop and a consequent nuisance fire warning and precautionary engine shutdown; accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, review the airplane maintenance records to determine the serial number of the bottom engine vibration isolator assembly; in accordance with Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999, including Attachment 1, dated January 20, 1999.

(1) If the serial number of the bottom engine vibration isolator assembly is listed in Attachment 1 of the service bulletin: Prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(2) If the serial number of the bottom engine vibration isolator assembly is *not* listed in Attachment 1 of the service bulletin, *and* the assembly was received new from or overhauled by Barry Controls: No further action is required by this AD.

(3) If the serial number of the bottom engine vibration isolator assembly is *not* listed in Attachment 1 of the service bulletin,

and was not received new from or overhauled by Barry Controls; or if the serial number cannot be identified: Prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(b) For airplanes on which the serial number of the bottom engine vibration isolator is determined, during the review of the maintenance records required by paragraph (a) of this AD, to be listed in Attachment 1, dated January 20, 1999, of Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999: Prior to further flight, remove the bottom engine vibration isolator and perform a one-time visual inspection of the area around the engine to detect chafing, in accordance with the service bulletin.

(1) If no chafing is detected, prior to further flight, install a new bottom engine vibration isolator having a molded assembly with a cure date other than 9801 through 9825 inclusive, and perform a visual inspection of the aft engine vibration isolator to determine whether the deflection is within allowable limits, in accordance with the service bulletin.

(i) If the deflection of the aft engine vibration isolator is within the limits specified in the service bulletin, no further action is required by this AD.

(ii) If the deflection of the aft engine vibration isolator is outside the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsverket (LFV) (or its delegated agent).

(2) If any chafing is detected, prior to further flight, accomplish the requirements of paragraph (e) of this AD.

Note 2: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin SAAB 340–71–057, dated November 20, 1998; or Revision 01, dated December 18, 1998, including Attachment 1, dated December 11, 1998; are considered acceptable for compliance with the applicable actions specified in this amendment.

(c) For airplanes on which, during the review of the maintenance records required by paragraph (a) of this AD, the serial number of the bottom engine vibration isolator assembly is determined not to be listed in Attachment 1, dated January 20, 1999, of Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999; and was not received new from or overhauled by Barry Controls; or cannot be identified: Prior to further flight, perform a visual inspection of the aft engine vibration isolator to determine whether the deflection is within allowable limits, and of the area around the engine to detect chafing; in accordance with Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999, including Attachment 1, dated January 20, 1999; and accomplish the requirements of paragraph (c)(1), (c)(2), (c)(3), or (c)(4); as applicable.

(1) If the deflection of the aft engine vibration isolator is within the limits specified in the service bulletin, if no chafing of the area around the engine is detected, and if the bottom engine vibration isolator has accumulated 250 flight hours or more: No further action is required by this AD.

(2) If the deflection of the aft engine vibration isolator is within the limits specified in the service bulletin, if no chafing of the area around the engine is detected, and if the bottom engine vibration isolator has accumulated fewer than 250 flight hours: Repeat the inspection required by paragraph (b) of this AD one time within 250 flight hours after accomplishment of the first inspection required by paragraph (b) of this AD.

(3) If the deflection of the aft engine vibration isolator is outside the limits specified in the service bulletin, and if no chafing of the area around the engine is detected: Prior to further flight, accomplish the requirements of paragraph (d) of this AD.

(4) If any chafing of the area around the engine is detected: Prior to further flight, accomplish the requirements of paragraph (e) of this AD.

(d) For airplanes on which, during the inspection required by paragraph (c) of this AD, the deflection of the aft engine vibration isolator is determined to be outside the limits specified in Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999, including Attachment 1, dated January 20, 1999; and no chafing of the area around the engine is detected: Prior to further flight, remove the aft engine vibration isolator, rotate the isolator 180 degrees, and perform a visual inspection of the snubbers to detect damage, in accordance with the service bulletin. Prior to further flight, repair any discrepant snubber or replace with a new or serviceable snubber, as applicable; reinstall the aft engine vibration isolator; and perform a visual inspection of the isolator to determine whether the deflection is within allowable limits; in accordance with the service bulletin.

(1) If the deflection of the aft engine vibration isolator is within the limits specified in the service bulletin and no chafing is detected, no further action is required by this AD.

(2) If the deflection of the aft engine vibration isolator is outside the limits specified in the service bulletin, prior to further flight, accomplish the requirements of paragraph (e) of this AD.

(e) For airplanes on which, during the inspection required by paragraph (b) or (c) of this AD, any chafing of the area around the engine was detected; or for airplanes on which, during the inspection required by paragraph (d)(2) of this AD, the deflection of the aft engine vibration isolator is determined to be outside the limits specified in Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999, including Attachment 1, dated January 20, 1999: Prior to further flight, repair any chafing of the area around the engine, and replace any discrepant parts with new parts, and remove the bottom vibration isolator; in accordance with the service bulletin; and, prior to further flight, accomplish the requirements of paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this AD.

(1) Perform a detailed visual inspection to detect cracked or broken parts of the bottom engine mount support fitting, and its adjacent structure and attaching hardware, in accordance with the service bulletin. Except as provided by paragraph (f) of this AD, prior to further flight, repair any cracked or broken part in accordance with the SAAB 340 Structural Repair Manual (SRM).

(2) Install a new bottom vibration isolator having a molded assembly with a cure date other than 9801 through 9825 inclusive, in accordance with the service bulletin.

(3) Perform a detailed visual inspection of the side and the aft engine vibration isolators for damage, in accordance with the service bulletin. If any damage is detected, prior to further flight, replace any damaged isolator with a new part, and perform a detailed visual inspection to detect cracked or broken parts of the affected engine mount support fitting and its adjacent structure and attaching hardware, in accordance with the service bulletin. Except as provided by paragraph (f) of this AD, if any damage of the fittings and adjacent structure is found, prior to further flight, repair in accordance with the SRM.

Note 3: Saab Service Bulletin SAAB 340–71–057, Revision 02, references Barry Controls Component Maintenance Manual Section 71–20–20, dated October 15, 1993, as an additional source of service information for accomplishment of the visual inspection of the side and aft engine vibration isolators.

(4) Perform a visual inspection of the aft engine vibration isolator to determine whether the deflection is within allowable limits, in accordance with the service bulletin.

(i) If the deflection of the aft engine vibration isolator is within the limits specified in the service bulletin, no further action is required by this AD.

(ii) If the deflection of the aft engine vibration isolator is outside the limits specified in the service bulletin, accomplish the requirements of paragraph (f) of this AD.

(f) If, during the inspections required by paragraph (e)(1) or (e)(3) of this AD, any damage is found that is outside the limits specified by the SRM; or if, during the inspection of the aft engine vibration isolator required by paragraph (e)(4) of this AD, the deflection is outside the limits specified in the service bulletin: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or the LFV (or its delegated agent).

(g) As of the effective date of this AD, no person shall install on any airplane a bottom vibration isolator molded assembly having P/N 00–13226–03 and a cure date 9801 through 9825 inclusive.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the International Branch, ANM–116.

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

(j) Except for the repair actions as provided by paragraphs (b)(1)(ii), (e)(1), (e)(3), and (f) of this AD, the actions shall be done in accordance with Saab Service Bulletin SAAB 340–71–057, Revision 02, dated January 26, 1999, including Attachment 1, dated January 20, 1999, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5	02	Jan. 26, 1999.
Attachment 1		
1–10	None	Jan. 20, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swedish airworthiness directive SAD 1–135R1, dated December 18, 1998.

(k) This amendment becomes effective on February 25, 1999.

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

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3033 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

28 CFR Part O

[A.G. Order No. 2205–99]

Agency Organization: Vacancy, Disability, and Absence

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends regulations concerning officials to perform the functions and duties of certain offices within the Department of Justice in case of absence, disability or vacancy. The amendments are necessary in order to conform Department regulations with the requirements of the Federal Vacancies Reform Act of 1998 (FVRA). This rule shall not affect the filling of vacancies that occurred prior to the effective date of the FVRA.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Singdahlsen, Attorney-Adviser, Office of Legal Counsel, U.S. Department of Justice, Washington, DC 20530, (202) 514–1858.

SUPPLEMENTARY INFORMATION: This rule was not published for public comment because it pertains to a matter of internal Department of Justice management and does not have an effect beyond the internal operating procedures of the Department. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a rule within the meaning of section 3(d) of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget pursuant to that Order. Finally, the rule does not have federalism implications warranting the preparation of a federalism assessment in accordance with section 6 of Executive Order 12612.

List of Subjects in 28 CFR Part O

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part O of title 28 of the Code of Federal Regulations is amended as follows:

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

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

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. In § O.132, remove paragraph (e) and revise paragraphs (b) through (d) to read as follows:

§ O.132 Designating officials to perform the functions and duties of certain offices in case of absence, disability or vacancy.

* * * * *

(b) Every office within the Department to which appointment is required to be made by the President with the advice and consent of the Senate (''PAS office'') shall have a First Assistant within the meaning of the Federal Vacancies Reform Act of 1998. Where there is a position of Principal Deputy to the PAS office, the Principal Deputy shall be the First Assistant. Where there is no position of Principal Deputy to the PAS office, the First Assistant shall be the person whom the Attorney General designates in writing.

(c) In the event of a vacancy in the office of the head of an organizational unit that is not covered by paragraphs (a) or (b) of this section, the ranking deputy (or an equivalent official) in such unit who is available shall perform the functions and duties of and act as such head, unless the Attorney General directs otherwise. Except as otherwise provided by law, if there is no ranking deputy available, the Attorney General shall designate another official of the Department to perform the functions and duties of and act as such head.

(d) The head of an organizational unit of the Department not covered by paragraphs (a) or (b) of this section is authorized, in the case of absence from office or disability, to designate the ranking deputy (or an equivalent official) in the unit who is available to act as head. If there is no deputy available to act, any other official in such unit may be designated. Alternatively, in his discretion, the Attorney General may designate any official in the Department to act as head when a head who is not covered by paragraphs (a) or (b) of this section is absent or disabled.

Dated: January 29, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–2713 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing book-entry Treasury bills, bonds, and notes by changing the time period during which the Department of the Treasury (Treasury) may delay the transfer of a newly-purchased security from *TreasuryDirect* to an account in TRADES. The previous rule provided that for Treasury bonds and notes purchased on original issue or on the

additional issue of an outstanding issue, transfer from or within *TreasuryDirect* could be delayed for a period not to exceed 14 calendar days. The potential delay was to ensure that payment, if made by check, could be received and properly credited to Treasury's account. This amendment permits Treasury to delay the transfer of a newly-purchased security from *TreasuryDirect* to an account in TRADES for a period not to exceed 30 days. The previous 14 day period is not appropriate if using *Pay Direct*. With *Pay Direct*, investors purchase securities by having the funds electronically deducted from their deposit account at their financial institution and the 30 day period provides additional time for the investor to become aware of any unauthorized debit. This change benefits Treasury in preventing the transfer and sale of the security before the investor has time to discover any unauthorized debit that may have occurred.

DATES: Effective February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen Parker, Director, Division of Securities Systems, Bureau of the Public Debt (304) 480–7761; Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–3688; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–3692.

SUPPLEMENTARY INFORMATION: The previous rule permitted Treasury to delay the transfer of a Treasury bond or note (but not a bill) purchased on original issue or on the additional issue of an outstanding issue. The delay could not exceed 14 calendar days from the date of issue. The purpose of the delay was to protect Treasury from a loss by providing enough time for a personal check written in payment for the security to clear. The delay prevented an owner from transferring the security into an account in TRADES and selling the security before the check could clear, thus preventing a potential loss to Treasury. Bills were not included in the securities subject to the delay because a personal check cannot be used to pay for a bill.

Currently, an investor has the additional option of paying for a security through *Pay Direct*, which is a debit to the investor's checking or savings account at a financial institution. *Pay Direct* may be used to purchase bills as well as notes or bonds. If the debit is unauthorized, the investor may not discover the debit for a period of time which may exceed the previous 14 day delay period. If the security is transferred to an account in TRADES and sold on the market prior to the discovery of an unauthorized debit, Treasury could sustain a loss because Treasury would make a reimbursement to the account holder at the depository financial institution. Therefore, this rule has been amended to provide the investor a reasonable period of time to discover any unauthorized debit. The 30 day time frame will now apply to bills, since bills may be paid for by *Pay Direct*.

The time period of 30 days is considered a reasonable period of time for an investor to discover an unauthorized debit. Of course, an investor could discover an unauthorized debit after the 30 day period of time. However, there is a need to balance the burden placed on an investor and the risk to Treasury from an unauthorized debit. The 30 day time frame was considered a reasonable balance among various interests.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action,'' pursuant to Executive Order 12866.

This final rule relates to matters of public contract and procedures for U.S. securities. Accordingly, pursuant to 5 U.S.C. 553 (a) (2), the notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply.

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no new collections of information contained in this final rule., Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 357

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Securities.

Dated: February 2, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 357 as set forth below:

PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapters 31, 5 U.S.C. 301 and 12 U.S.C. 391.

2. Amend § 357.22 by revising the introductory text of paragraph (a) to read as follows:

§ 357.22 [Amended]

(a) *General.* A security may be transferred only as authorized by this part. A security may be transferred from an account in *TreasuryDirect* to an account in TRADES, or from an account in TRADES to an account in *TreasuryDirect*. A security may also be transferred between accounts in *TreasuryDirect*. The Department may delay transfer of a newly purchased security from a *TreasuryDirect* account to an account in TRADES for a period not to exceed (30) calendar days from the date of issue. This provides time for the investor to become aware of any unauthorized debits.

* * * * *

[FR Doc. 99–3155 Filed 2–9–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 55

[USCG–1998–3821]

RIN 2115–AF48

Coast Guard Child Development Services Programs

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing child development services for eligible children of the Department of Transportation military and civilian personnel and eligible children of armed forces members and federal civilian employees. This rule also establishes the basis for a ''total family income'' sliding fee schedule to make child care more affordable for lower-income families in center-based programs.

DATES: This final rule is effective March 12, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1998–3821), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Elaine Sweetland or Jessie Broadway, Office of Work-Life, Coast Guard, telephone 202–267–6727/6728. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 29, 1998, the Coast Guard published a notice of proposed rulemaking entitled Coast Guard Child Development Services Programs in the **Federal Register** (63 FR 51878). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held. Therefore, no changes were made to the regulatory text.

Background and Purpose

The first child care programs in the Coast Guard were spouse sponsored. In the early 1970's, Coast Guard sponsored child care centers were developed and became Morale, Welfare, and Recreation (MWR) activities under policy promulgated by MWR following Department of Defense guidelines. In 1987 policy specific to Coast Guard child care was issued.

In 1996 the ''Child Development Services Manual,'' Commandant Instruction M1754.15 was issued providing policy guidance to manage Coast Guard child development programs. A copy of the manual is in the docket of the rulemaking and available there for review. The policy directives in the manual apply to all child development services provided by the Coast Guard, including center-based and family child care.

In 1996 the Coast Guard Authorization Act added section 515 to Title 14 of the U.S. Code requiring the Secretary of Transportation to promulgate regulations pertaining to section 515. The authority to promulgate regulations pertaining to section 515 and other authorities under the Act was delegated to the Commandant of the Coast Guard on July 18, 1997 (62 FR 38278). Section 515 allows the Commandant to make Coast Guard child development services available to members of the Armed Forces and Federal civilian employees and requires that fees be established that take into consideration total family income.

The purpose of this rulemaking is to implement section 515 and to establish a fee regime to permit eligible Federal employees and military members to take advantage of Coast Guard offered child care services. The Child Development Services Manual will continue to provide policy guidance to supplement the rule.

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 not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedure of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedure of DOT is unnecessary.

The rule applies only to providers of Coast Guard Child Development Services Programs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would 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 small entities affected by this rule are the approximately one hundred family home day care providers (e.g., Coast Guard Family Child Care Providers). If funds are available, the family home day care providers may receive funding to enable them to provide services to families of Coast Guard military members and Coast Guard civilian employees at a more affordable rate. This rulemaking does not result in any change in the amount of income by family home day care providers. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Dependent Resource Coordinator or Family Child Care Coordinator on the Coast Guard Work-Life Staff who serves your geographic area.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 1212 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

Under paragraph 2.B.2b(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This authority deals with the use of Coast Guard funds for Coast Guard Child Development Services and requirements for facility and program inspections and for staff training and has no impact on the environment.

A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 55

Day care, Government employees, Infants and children, Military personnel.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR chapter I as follows:

1. In the heading of Subchapter B, remove the word ''Military.''

2. Add part 55 to Subchapter B to read as follows:

PART 55—CHILD DEVELOPMENT SERVICES

Subpart A—General

Sec.

55.1 Purpose.
55.3 Who is covered by this part?
55.5 Who is eligible for child development services?
55.7 Definitions.
55.9 Child development centers.
55.11 How are child development center fees established?
55.13 Family child care providers.

Authority: 14 U.S.C. 515.

Subpart A—General

§ 55.1 Purpose.

This subpart implements 46 U.S.C. 515, which provides for Coast Guard Child Development Services.

§ 55.3 Who is covered by this subpart?

This subpart applies to all Coast Guard installations.

§ 55.5 Who is eligible for child development services?

Coast Guard members and civilian Coast Guard employees are eligible for the child developmental services described in this subpart. As space is available, members of the other Armed Forces and other Federal civilian employees are also eligible.

§ 55.7 Defintions.

As used in this subpart—

Child development center means a facility located on a Coast Guard installation that offers, on a regularly scheduled basis, developmental services designed to foster social, emotional, physical, creative, and intellectual growth to groups of children.

Child development services means developmental services provided at a child development center or by a family child care provider at his or her Coast Guard-owned or -leased home.

Coast Guard family child care provider means a Coast Guard family member, 18 years of age or older, who provides child care for 10 hours or more per week per child to one but no more than six children, including the provider's own children under the age of eight, on a regular basis in his or her Coast Guard-owned or -leased housing.

Coast Guard family child care services means child care provided on a regularly scheduled basis for 10 hours or more a week by an individual certified by the Coast Guard and who resides in Coast Guard-controlled housing.

Command means the Commanding Officer of one or more units of personnel in a limited geographic area with responsibility for a child development center.

Family child care means child care provided in the home of a provider, either a Coast Guard family child care provider or a family home day care provider.

Family home day care provider means an individual 18 years of age or older who is licensed by the state agency that regulates child care. This person provides child care to one but to no more than six children, including the provider's own children under the age of eight, on a regular basis in his or her residence.

Geographic cost of living allowance means the adjustment in basic pay related to higher living costs in certain geographic areas.

Total family income means the earned income for adult members of the household including wages, salaries, tips, long-term disability benefits received by a family, incentive and special pay for service or anything else of value, even if not taxable, that was received for providing services. Also included is Basic Allowance for Housing and Basic Allowance for Subsistence authorized for the pay grade of military personnel, whether the allowance is received in cash or in-kind. Total Family Income does not include: the geographic cost of living allowance; alimony and child support; temporary duty allowances or reimbursements for educational expenses; veterans benefits; workers compensation benefits; and, unemployment compensation. These are to be excluded from total family income.

Uneconomical and inefficient means that the fees collected from parents can not be used in a manner that provides a quality program at an affordable cost to parents using the child care services.

§ 55.9 Child development centers.

(a) The Commandant may make child development services available at child development centers located at Coast Guard installations.

(b) Regular and unannounced inspections of each child development center shall be conducted annually by headquarters program personnel, the commanding officer of the sponsoring command, fire personnel, and health and safety personnel.

(c) Training programs shall be conducted monthly to ensure that all child development center employees complete a minimum of 20 hours of training annually with respect to early childhood development, activities and disciplinary techniques appropriate to children of different ages, child abuse prevention and detection, and appropriate emergency medical procedures.

§ 55.11 How are child development center fees established?

(a) Fees for the provision of services at child development centers shall be set by each Command with responsibility for a center-based program, according to the following total family income chart:

Total Family Income

$0 to $23,000
$23,001 to $34,000
$34,001 to $44,000
$44,001 to $55,000
Over $55,000

(b) Fees for the provision of services at Coast Guard child development centers shall be used only for compensation for employees at those centers who are directly involved in providing child care, unless it is uneconomical and inefficient. If uneconomical and inefficient, then the fees may be used for:

(1) The purchase of consumable or disposable items for Coast Guard child development centers; and

(2) If the requirements of such centers for consumable or disposable items for a given fiscal year have been met, for other expenses of those centers.

§ 55.13 Family child care providers.

When appropriated funds are available, funds may be offered to provide assistance to Coast Guard Family Child Care Providers or to family home day care providers so that family child care services can be provided to military members and civilian employees of the Coast Guard, at a cost comparable to the cost of services at Coast Guard child development centers.

Dated: February 1, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 99–3135 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300791; FRL–6060–3]

RIN 2070–AB78

Propyzamide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for combined residues of the herbicide propyzamide (pronamide) and its metabolites in or on cranberries at 0.05 part per million (ppm) grass forage at 1.0 ppm, and grass hay at 0.5 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cranberries and grass grown for seed. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective February 10, 1999. Objections

and requests for hearings must be received by EPA, on or before April 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300791], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300791], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300791]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of September 16, 1998 (63 FR 49479) (FRL–6022–5), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established time-limited tolerances for the combined residues of propyzamide and its metabolites in or on cranberries at 0.05 ppm, grass forage at 1.0 ppm, and grass hay at 0.5 ppm, with an expiration date of December 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propyzamide on cranberries for this year's growing season to control dodder because dodder is a serious and devastating pest in commercial cranberry production. It is an obligate shoot parasite that, in order to survive, must make a successful attachment to a host plant. The body of the organism consists of thin, yellow, twining stems that produce small clusters of white flowers and can form a dense mat of ''spaghetti-like'' stems on top of infected plants. Dodder is prolific in its seed production, and produces seeds in capsules that are contained in large air spaces and are thus very buoyant. With the widespread adoption of water harvesting, dodder infestations have become practically ubiquitous in the Massachusetts production area. The detrimental impact of dodder infestations on cranberry yields have been reported widely in scientific journals, extension publications and internal memorandum. Yield losses can range from 12% in slight infestations up to 100% in severe infestations. Currently registered herbicides have not been totally effective, leading to a steady increase in dodder infestations. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propyzamide on cranberries for control of dodder in Massachusetts.

EPA received a request to extend the use of propyzamide on grass grown for seed for this year's growing season. Because of cancellation of several herbicide uses in recent years, a shift in weed populations and the development of resistance, plus restrictions imposed on open field burning, grass growers are no longer able to control weeds adequately with registered materials and cultural methods. The Applicants claim that if weeds are not adequately controlled, growers will incur significant economic losses due to reduced yields, and from losses due to contaminated seed, and replanting of fields that do not meet certification requirements. The Applicant proposed use of propyzamide, in conjunction with several other herbicides, to comprise a comprehensive management system to solve the current weed control problems in grass seed production. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propyzamide on grass grown for seed for control of grassy weeds in Oregon.

EPA assessed the potential risks presented by residues of propyzamide in or on cranberries and grass grown for seed. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of September 16, 1998 (63 FR 49479)(FRL–6022–5). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on cranberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. 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 April 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300791] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

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

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

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other

representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 28, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.317 [Amended]

2. In § 180.317, by amending the table in paragraph (b) by changing the date ''12/31/99'' to read ''12/31/01''.

[FR Doc. 99–3250 Filed 2–9–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300782; FRL–6056–4]

RIN 2070–AB78

Cymoxanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the fungicide, cymoxanil, [2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide], in or on imported tomatoes and grapes. E. I. DuPont De Nemours and Co., Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective February 10, 1999. Objections and requests for hearings must be received by EPA on or before April 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300782], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300782], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300782]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-308-9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 15, 1995 (60 FR 57419-57422) (FRL–4971–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by DuPont, DuPont Agricultural Products, P.O. Box 80038, Wilmington, DE 19880-0038. This notice included a summary

of the petition prepared by DuPont, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.503 (e) be amended by establishing tolerances for residues of the fungicide, cymoxanil, [2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide], in or on imported tomatoes and grapes at 0.1 part per million (ppm).

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cymoxanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of Cymoxanil on imported tomatoes and grapes at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. A battery of acute toxicity studies resulted in an acute oral LD_{50} > 760 milligrams/kilograms (mg/kg) for males and LD_{50} > 1,200 mg/kg for females; an acute dermal LD_{50} > 2,000 mg/kg for both sexes; an acute inhalation LC_{50} > 5.06 mg/L for both sexes; no ocular irritation; slight dermal irritation and a finding that the cymoxanil is not a dermal sensitizer.

2. *Subchronic toxicity*. i. A subchronic oral toxicity/neurotoxicity study in rats fed cymoxanil at dose levels of 0, 100, 750, 1,500, or 3,000 ppm (0, 6.54, 47.6, 102, or 224 mg/kg/day for males, and 0, 8.0, 59.9, 137, or 333 mg/kg/day for females) for approximately 97 days. A group of 10 rats/sex/dose were evaluated for subchronic systemic toxicity and a group of 10 rats/sex/dose underwent neurobehavioral testing at pre-test, 5, 9, and 13 weeks. The control and high-dose groups were assessed for neuropathology. The lowest-observed-adverse-effect level (LOAEL) for subchronic systemic toxicity is 1,500 ppm based on decreases in body weights, body weight gains, and food efficiency in the females, and body weight decreases and testicular and epididymal changes in the males. The no-observed-adverse-effect level (NOAEL) for subchronic systemic toxicity is 750 ppm.

ii. A subchronic oral toxicity study in mice fed doses of 0, 50, 500, 1,750, 3,500, or 7,000 ppm (average 0, 8.25, 82.4, 294, 566, or 1,306 mg/kg/day, for males; 0, 11.3, 121, 433, 846, or 1,130 mg/kg/day, for females) for 98 days showed a decrease in body weight gains in males dosed at 500, 1,750, and 3,500 ppm. An increase in the absolute liver and spleen weights was seen in females fed doses of 1,750 and 3,500 ppm. The NOAEL was established at 50 ppm for males and 500 ppm for females; the LOAEL was 500 ppm for males and 1,750 ppm for females.

iii. A subchronic oral toxicity study was conducted in dogs fed doses of 0, 100 or 200 ppm (0, 3 or 5 mg/kg/day) for 13 weeks, or at 250 ppm (5 mg/kg/day) for 2 weeks followed by 500 ppm (11 mg/kg/day) for 11 weeks. Reduced body weight gain and food consumption were observed in the 100 and 200 ppm females, and in both sexes from the 250/500 ppm groups and final body weights were reduced 32% for males (250 ppm group) and 42% for females (500 ppm group), compared to the controls. Both sexes in the 200 and 250/500 ppm treatment groups exhibited reduced red blood cell parameters, and an increased incidence of ketonuria. Red blood cell counts, hemoglobin and hematocrit values were lower in both sexes. Decreased calcium, total protein, albumin, phosphorus, and chloride concentrations, and A/G ratio were also observed in the blood serum of the 250/500 ppm males and females. Males in the 250/500 ppm group had lower epididymal and testicular weights, and aspermatogenesis was observed. The 250/500 ppm females had lower kidney, liver, and thyroid gland weights. No associated microscopic lesions or corresponding decreases in relative organ weights were observed. One euthanized female from the 250/500 ppm group had dark red contents and reddened mucosa throughout the gastrointestinal tract. The LOAEL is 3 mg/kg/day (100 ppm) for dogs based on decreased body weights and food consumption in females. The NOAEL was not established.

iv. In a 28-day dermal toxicity study, cymoxanil was applied to the shaved backs of rats, for 6 hrs/day at doses of 0, 50, 500, and 1,000 mg/kg/day. There were no demonstrated effects and no compound-related histopathology. The NOAEL for systemic toxicity and dermal irritation was 1,000 mg/kg/day, the highest dose tested (HDT).

3. *Chronic toxicity*. i. A combined chronic/carcinogenicity study was conducted in rats fed cymoxanil at doses of 0, 50, 100, 700, or 2,000 ppm (0, 1.98, 4.08, 30.3, and 90.1 mg/kg/day for males, and 0, 2.71, 5.36, 38.4, and 126 mg/kg/day for females) for 23 months. A satellite group was included and terminated at 52 weeks. Because of poor survival in controls and treated rats, the study was terminated after 23 months. Survival was 24-45% and 21-40% in the male and female groups, respectively.

Chronic toxicity observed at 126 mg/kg/day in females, included significant decreases in mean body weight and body weight gains, a decrease in food efficiency, and increased incidences of non-neoplastic lesions in several organ systems including the lungs, intestines, and mesenteric lymph nodes. In females receiving 38.4 mg/kg/day, chronic toxicity was characterized by increased incidences of non-neoplastic lesions of the lungs, liver, sciatic nerve, and eyes (retinal atrophy). Chronic toxicity in the males dosed at 30.3 or 90.1 mg/kg/day included aggressiveness and/or

hyperactivity, decreased mean body weight and body weight gain, decreased food efficiency, and increased incidence of elongate spermatid degeneration and retinal atrophy. No important effects were observed in the low- and low-mid-dose groups. No increases in the incidences of any neoplasm was observed in dosed animals. The chronic LOAEL was 30.3 mg/kg/day for males and 38.4 mg/kg/day for females based on histologic changes detected in several organs of the females and decreased body weight, body weight gains, and food efficiency observed in the males and females. The chronic NOAEL is 4.08 mg/kg/day for males and 5.36 mg/kg/day for females. Under the conditions of this study, there was no evidence of carcinogenic potential.

ii. A chronic toxicity study was conducted in dogs fed cymoxanil at doses of 0, 25, 50 or 100 ppm for females (0, 0.7, 1.6, or 3.1 mg/kg/day) and 0, 50, 100, or 200 ppm for males (0, 1.8, 3.0, or 5.7 mg/kg/day) for 52 weeks. The only effect seen in females in the 100 ppm treatment group was weight loss during the first week of the study. No effect was observed in females in the 25 or 50 ppm group, or in males in the 50 or 100 ppm group. The LOAEL was 200 ppm for males based on depressed weight gains through week 12 and changes in hematology and blood chemistry. No LOAEL was established for females. The NOAEL was 100 ppm.

4. *Carcinogenicity.* i. A combined chronic/carcinogenicity study, conducted in rats (described in the chronic toxicity section in Unit II.A.3.i in the preamble of this document) showed no evidence of carcinogenic potential.

ii. A carcinogenicity study was conducted in mice fed cymoxanil at doses of 0, 30, 300, 1,500, and 3,000 ppm (0, 4.19, 42.0, 216, and 446 mg/kg/day for males; 0, 5.83, 58.1, 298, and 582 mg/kg/day for females) for approximately 80 weeks. Two additional groups were sacrificed at 31-32 days for cell proliferation and biochemical evaluation.

Males and females dosed at 300 ppm and above exhibited alterations in organ weights and microscopic pathology. Affected organs were the testes and epididymis in males, the gastrointestinal tract in females, and the liver in both sexes. Male mice fed 300 ppm exhibited treatment-related increased frequency of sperm cyst/cystic dilation, tubular dilation, and increased lymphoid aggregate. Centrilobular apoptotic hepatocytes, pigment-containing macrophages, and granuloma were detected in males dosed with 300 ppm. Elevated centrilobular hepatocellular hypertrophy and associated significant increases in liver weight in males dosed with 300 ppm was considered a pharmacologic response to cymoxanil. Hyperplastic gastropathy increased significantly in 300 ppm female mice and cystic enteropathy of the small intestine showed a significant positive trend. At the 1,500 ppm dose, decreases in body weight, body weight gain, and food efficiencies were observed in males and females. In addition to the testicular and epididymal abnormalities observed at the lower dose, the 1,500 ppm males exhibited increased incidence of sperm granuloma and bilateral oligospermia. Females at 1,500 ppm exhibited the microscopic liver abnormalities seen in males at the lower dose. Cystic enteropathy was observed in males at 1,500 ppm. At 3,000 ppm, there were significant reductions in body weight, body weight gain, food consumption, and food efficiencies in males and females. Survival over 18 months was decreased in the 3,000 ppm females, 57% compared to 69% in controls. Early deaths among high-dose females were attributed to pancreatic acinar cell necrosis and/or stress, evidenced by splenal and thymic atrophy and bone marrow congestion. Females dosed with 3,000 ppm exhibited increased frequency of pallor, weakness, and hunching over. Male mice dosed with 3,000 ppm showed hematological signs of decreased circulating erythrocyte mass at the 12-month evaluation. The high dose also resulted in gross and microscopic pathology of the liver, gastrointestinal tract, and testes. Dosing was considered adequate based on decreased body weight gains and an increase in non-neoplastic lesions in both sexes relative to the controls at the highest dose level.

The LOAEL was 300 ppm based on toxicity to the testes and epididymides in males and toxicity to the gastrointestinal mucosa in females. The NOAEL was 30 ppm. Under the conditions of this study, there was no evidence of a carcinogenic effect.

5. *Developmental toxicity.* i. A prenatal developmental toxicity study was conducted in rats gavaged with cymoxanil on days 7-16 of gestation at dose levels of 0, 10, 25, 75, or 150 mg/kg/day. The maternal LOAEL was 25 mg/kg/day based upon reduced body weight, body weight change, and food consumption. The maternal NOAEL was 10 mg/kg/day. The developmental LOAEL was 25 mg/kg/day based upon a significant increase in overall malformations and a generalized dose-related delay in skeletal ossification. Fetal body weights were significantly decreased at 75 and 150 mg/kg/day. At 150 mg/kg/day, increased early resorptions resulted in reduced litter sizes. The developmental NOAEL was 10 mg/kg/day.

ii. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6-18 of gestation at dose levels of 0, 4, 8, or 16 mg/kg/day. There was no evidence of treatment-related maternal or developmental toxicity. A maternal and developmental LOAEL was not determined. The maternal and developmental NOAEL was ≥ 16 mg/kg/day. When considered along with other prenatal developmental toxicity studies in rabbits, this study provides acceptable information that assists in determining the overall maternal and developmental NOAEL and LOAEL for cymoxanil in a nonrodent species.

iii. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6-18 of gestation at dose levels of 0, 8, 16, or 32 mg/kg/day. Evaluation of litter data and assessment of embryonic and fetal development revealed treatment-related increases in the incidence of malformations in all treated groups. The maternal LOAEL was 32 mg/kg/day based upon increased incidences of cold ears, anorexia, and/or few feces and body weight loss during the first four days of treatment; the maternal NOAEL was 16 mg/kg/day. The developmental LOAEL was 8 mg/kg/day based upon an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs. The developmental NOAEL was ≤ 8 mg/kg/day but could not be determined. Although the results of this study suggested an additional susceptibility of fetal rabbits to *in utero* exposure with cymoxanil, uncertainties regarding the source of the parental rabbits substantially reduce the confidence that the observed skeletal anomalies are solely related to treatment.

iv. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6-18 of gestation at dose levels of 0, 1, 4, 8, or 32 mg/kg/day. The females showed significant post-treatment increases in body weight gain at 8 and 32 mg/kg/day. The maternal LOAEL was 8 mg/kg/day based upon a significant dose-related rebound in maternal body weight. The maternal NOAEL was 4 mg/kg/day. The developmental LOAEL was 8 mg/kg/day based upon an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs; and, at 32 mg/kg/day, cleft palate was observed. The developmental NOAEL was 4 mg/kg/day.

6. *Reproductive toxicity*. i. A 2-generation reproduction study was conducted in rats fed cymoxanil at doses of 0, 100, 500, or 1,500 ppm (equivalent to 0, 6.5, 32.1, or 97.9 mg/kg/day in males and 0, 7.9, 40.6, or 130 mg/kg/day in females), over two consecutive generations. No effects of treatment were observed at 100 ppm. The parental systemic NOAEL was 100 ppm. The parental systemic LOAEL was 500 ppm, based upon reduced pre-mating body weight, body weight gain, and food consumption for F1 males; and decreased gestation and lactation body weight for F1 females. The offspring NOAEL was 100 ppm and the offspring LOAEL was 500 ppm, based upon decreased F1 pup viability on postnatal days 0-4 and on a significant reduction in F2b pup weight.

7. *Neurotoxicity*. i. The neurotoxicity portion of the subchronic/neurotoxicity study in rats demonstrated no effects on the Functional Observation Battery or on motor activity after 5, 9, and 13 weeks at dietary doses of cymoxanil of 0, 100, 750, 1,500, or 3,000 ppm (0, 6.54, 47.6, 102, or 224 mg/kg/day for males, and 0, 8.0, 59.9, 137, or 333 mg/kg/day for females), for 97 days. There were no treatment-related gross or microscopic findings detected in the nervous system or skeletal muscles. Grip strength and foot splay measurements were decreased (non-significantly) in males at 224 mg/kg/day in the 13-week subchronic neurotoxicity study in rats, although these findings occurred in conjunction with decreased body weight. A LOAEL for neurobehavioral and neuropathic effects was not established. The NOAEL for neurotoxicity was 3,000 ppm.

ii. No evidence of developmental anomalies of the fetal nervous system were observed in the prenatal developmental toxicity studies in either rats, or rabbits at maternally toxic oral doses up to 25 and 32 mg/kg/day, respectively. In addition, there was no evidence of behavioral or neurological effects on the offspring in the 2-generation reproduction study in rats.

iii. There were no major data gaps for the assessment of potential neurotoxicological effects due to cymoxanil. However, following a weight-of-the evidence review of the database, which suggested that neuropathological lesions, changes in brain weight, axon/myelin degeneration, and retinal atrophy could result from long-term exposure to cymoxanil, the Agency will require a confirmatory developmental neurotoxicity study in rats.

8. *Mutagenicity*. Mutagenicity studies with cymoxanil included gene mutation assays in bacterial and mammalian cells, a mouse micronucleus assay and an *in vivo*/*in vitro* unscheduled DNA synthesis (UDS) assay in rats. These studies did not demonstrate mutagenicity. An *in vitro* unscheduled DNA synthesis assay-primary rat hepatocytes was positive from 5-500 µg/mL and cytotoxicity was seen at concentrations of ≥500 µg/mL. A chromosome aberrations in human lymphocytes assay was positive at 100 - 1,500 µg/mL, positive at 1,250 and 1,500 µg/mL -S9 and 850-1,500 µg/mL +S9.

9. *Metabolism*. A metabolism study was conducted by gavaging rats with single doses of radiolabeled cymoxanil at 2.5 or 120 mg/kg, or as a single dose (2.5 mg/kg) following a 14-day pretreatment with unlabeled cymoxanil (2.5 mg/kg/day). Radiolabeled cymoxanil was readily absorbed through the intestinal tract. Maximum plasma concentrations were attained within 3-5 hours of dosing, then declined steadily. Dose rate and pretreatment did not appear to affect absorption.

Elimination was not dependent on sex or dosing regimen; occurring predominantly in the urine (63.8-74.8%), during the first 24 hours (58-66%). Fecal excretion accounted for 15.7-23.6% of the dose, and radioactivity in the tissues and carcasses accounted for <1% of the dose at sacrifice for all three dosing regimens. A pilot study indicated that approximately 3% of the dose would be expected to be respired as $^{14}CO_2$.

For each dosing regimen, there was also no difference between male and female rats in the distribution of radioactivity in tissues. No accumulation of radioactivity was observed over time in any tissues. However, in comparison, concentrations of radioactivity were highest in liver and kidney and lowest in brain tissue at 96 hours post-dosing sacrifice.

Peak plasma concentrations for the low and high dose groups were attained within 3-5 hours of dosing, and both dose groups had similar elimination half-lives from plasma, suggesting that the metabolic process was not saturated by the high dose. In addition, there was a 40-fold difference in the area under the curve for plasma from the low and high dose groups, approximating the 48-fold difference in the dose levels.

The metabolite profile in urine and feces was similar between sexes and among dose groups. In the urine, the majority of the radioactivity (36.7-55% of the dose) was free and/or conjugated [^{14}C]glycine, and 2-cyano-2-methoxyiminoacetic acid (IN-W3595) (6.5-33% of the dose) was also found. Intact [^{14}C] cymoxanil was not detected. In feces, trace levels (<1% dose) of [^{14}C] cymoxanil and IN-W3595 were detected, but the majority of radioactivity was the free and conjugated [^{14}C] glycine (8.5-13.1% of the dose). The data indicate that the principal pathway for the elimination of cymoxanil from rats is via renal elimination.

Based on the data, the proposed metabolic pathway involves hydrolysis of cymoxanil to IN-W3595, which is then degraded to glycine. Subsequently, glycine is incorporated into natural constituents or further metabolized.

10. *Other toxicological considerations*. The available studies indicate that cymoxanil is not mutagenic in bacterial or cultured mammalian cells. There is, however, confirmed evidence of clastogenic activity and UDS induction *in vitro*. In contrast, cymoxanil was neither clastogenic nor aneurogenic in mouse bone marrow cells and did not induce a genotoxic response in rat somatic or germinal cells. Accordingly, the negative results from the mouse bone marrow micronucleus assay support the lack of carcinogenic effect in the rat and mouse long-term feeding study.

Similarity of clinical signs were observed in the micronucleus and *in vivo* UDS assay, but the confidence in the negative findings of the *in vivo* UDS assay was not high because of a failure to demonstrate that test material reached either target tissue. It was concluded that the test may have been inadequate because of the short interval between dosing and cell harvest. Therefore, the Agency will be requiring that a supplemental rat dominant lethal assay be conducted to determine if any effects are noted which are associated with genetic damage to male germinal cells.

B. Toxicological Endpoints

1. *Acute toxicity*. To assess acute dietary exposure in the subpopulation of concern (females 13+), the Agency used a NOAEL of 4 mg/kg/day from prenatal developmental toxicity studies in rabbits based on an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs at 8 mg/kg/day. EPA determined that the 10x factor for infants and children (required by FQPA) should be reduced to 3x and an MOE of 300 is required because of neuropathological lesions observed in the chronic toxicity study in rats and the need for a developmental neurotoxicity study. A dose and endpoint were not selected for the general population (including infants and children) because there were no

effects observed in oral toxicology studies, including maternal toxicity in the developmental toxicity studies in rats or rabbits, that could be attributable to a single exposure.

2. *Short- and intermediate- term toxicity*. The Agency determined that this dose and endpoint was not applicable for risk assessment because no dermal or systemic toxicity was seen in a 28 day dermal toxicity study.

3. *Chronic toxicity*. i. EPA has established the Reference dose (RfD) for cymoxanil at 0.013 mg/kg/day. This RfD is based on a chronic feeding study in rats with a NOAEL of 4.08 mg/kg/day and an uncertainty factor of 300.

ii. Based on the use pattern, chronic dermal exposure is not anticipated; therefore, a long-term dermal risk assessment is not required.

4. *Carcinogenicity*. Based on the lack of evidence of carcinogenicity in mice and rats, EPA has classified cymoxanil as a ''not likely'' human carcinogen, according to EPA's Proposed Guidelines for Carcinogen Risk Assessment.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.503 (a)) for the residues of cymoxanil, in or on potatoes and for the Section 18 emergency exemption use of cymoxanil in or on tomatoes (40 CFR 180.503 (b)). Risk assessments were conducted by EPA to assess dietary exposures from cymoxanil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute exposure analysis for the females (13+) subgroup was performed using tolerance level residues and assuming 100% crop treated. The resulting MOE's are as follows: 2,100 for females (13+/ pregnant/not nursing), 2,200 for females (13+/nursing), 980 for females (13-19 yrs/not pregnant or nursing), 1,500 for females (20+ years/not pregnant or nursing), and 1,200 for females (13-50 years). The estimated acute MOEs of 980 or more (MOE of 300 required) demonstrate no acute dietary concern.

ii. *Chronic exposure and risk*. The chronic dietary risk analysis used the RfD of 0.013 mg/kg/day. Chronic dietary exposure estimates utilized tolerance level residues on potatoes, tomatoes, and grapes, and assumed 100% of the crops were treated. The risk assessment resulted in use of < 3% of the RfD for the general population, < 2% of the RfD for infants (< 1 year), and < 5% of the RfD for children (1-6 years). The chronic dietary risk does not exceed the Agency's level of concern.

2. *From drinking water.* Cymoxanil appears to be mobile in soils. However, the rapid dissipation of cymoxanil in the environment precludes the possibility of extensive leaching. No detections of cymoxanil were observed below the 0-15 cm soil depth. The degradates of cymoxanil are mobile but the aerobic soil metabolism study showed they are short-lived. Therefore, cymoxanil and its degradates should not pose a threat to ground water.

EPA estimated surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a screening level model for determining concentrations of pesticides in surface water. GENEEC uses the soil/water partition coefficient , hydrolysis half life, and maximum label rate to estimate surface water concentration. In addition, the model contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated.

EPA uses drinking water levels of comparison (DWLOCs) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations

i. *Acute exposure and risk.* The acute DWLOC for cymoxanil was calculated for the subpopulation of concern, females (13+ years) to be 280 parts per billion (ppb). The estimated maximum concentration of cymoxanil in surface water (4.13 ppb) derived from GENEEC is much lower than EPA's DWLOC of 280 ppb. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate acute human health risk.

ii. *Chronic exposure and risk.* The chronic DWLOCs are 440 ppb for the U.S. population and 120 ppb for the most sensitive subgroup, children (1-6 years). The DWLOCs are substantially higher than the GENEEC 56-day estimated environmental concentration of 0.19 ppb for cymoxanil in surface water. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate chronic human health risk.

3. *From non-dietary exposure.* Cymoxanil is not registered for use on residential non-food sites. Therefore, no non-occupational, non-dietary exposure and risk are expected.

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

EPA does not have, at this time, available data to determine whether cymoxanil 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, cymoxanil 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 cymoxanil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk*. For the population subgroup of concern, females (13+ years old), the lowest calculated MOE for dietary (food only) exposure is 980. The acute DWLOC for cymoxanil in females (13+ years old) is 280 ppb. The Agency concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to cymoxanil residues for children.

2. *Chronic risk*. Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cymoxanil from food will utilize 2 % of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1-6 years old. 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 cymoxanil 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 cymoxanil residues.

3. *Aggregate cancer risk for U.S. population*. EPA has classified cymoxanil as a ''not likely'' human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats, and therefore has a reasonable certainty that no harm will result from exposure to residues of cymoxanil.

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

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

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

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

ii. *Pre- and post-natal sensitivity*. The Agency determined that a developmental neurotoxicity study is required for cymoxanil. Evidence that support requiring a developmental neurotoxicity study include (1) clinical neurotoxicity in the database, (2) clinical observations of hyperactivity and aggressiveness were reported in males at 700 and 2,000 ppm (30.3 and 90.1 mg/kg/day) in the chronic toxicity study in rats, (3) diarrhea was noted in males in the subchronic dog study at 5-11 mg/kg/day, (4) grip strength and foot splay measurements were decreased (non-significantly) in males at 224 mg/kg/day in the 13-week subchronic neurotoxicity study in rats, although it was noted that these findings occurred in conjunction with decreased body weight, (5) brain weight changes and/or neuropathology in the cymoxanil database, particularly following long-term exposure, (6) absolute brain weight was decreased in both sexes at 1,500 and 3,000 ppm (216/298 and 446/582 mg/kg/day for M/F, respectively) in the chronic toxicity study in mice, (7) equivocal incidences of myelin degeneration were observed in males at 3,000 ppm (224 mg/kg/day) in the 13-week neurotoxicity study in rats, (8) axon/myelin degeneration of the sciatic nerve was observed in females at 700 and 2,000 ppm (38.4 and 126 mg/kg/day) in the chronic toxicity study in rats, and (9) retinal atrophy was reported in both sexes at 700 and 2,000 ppm (30.3/38.4 and 90.1/126 mg/kg/day, respectively) in the chronic toxicity study in rats.

The developmental toxicity and multigeneration reproduction study data demonstrated no indication of increased susceptibility of rats or rabbits *in utero* and/or postnatal exposure to cymoxanil. Overall, in the developmental toxicity studies in rats and rabbits, and in the 2-generation reproductive toxicity study with cymoxanil in rats, offspring toxicity was observed only at treatment levels which were toxic to parental adults. Although increased fetal susceptibility was suggested by the results of one prenatal developmental toxicity study, in which the fetal NOAEL was lower than the maternal NOAEL, uncertainties regarding the source of the rabbits substantially reduced the confidence that observed skeletal anomalies were solely related to treatment, and the results of this study were not duplicated in other rabbit developmental studies.

iii. *Conclusion*. Except for the pending requirements for a developmental neurotoxicity study and a rat dominant lethal study (both in rebuttal), there is a complete toxicity database for cymoxanil and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. The Agency determined that for cymoxanil, the 10x factor should be reduced to 3x, taking into account all of the following information: no sensitivity to perinatal animals, no data gaps for evaluating potential effects on offspring following *in utero* and/or postnatal exposure to cymoxanil by standard required studies and a weight-of-evidence review indicating that neuropathological lesions could result from long-term exposure to cymoxanil. A developmental neurotoxicity study and a rat dominant lethal study (both in rebuttal) were required to resolve concerns for potential genetic damage to male germinal cells that may be associated with the effects noted in the reproduction, developmental subchronic and chronic studies.

2. *Acute risk*. The MOE for the acute dietary (food only) risk assessment for the population subgroup of concern, females 13+ years, not pregnant or nursing, was estimated at 980. This risk estimate does not exceed the Agency's level of concern. EPA has calculated drinking water levels of comparison (DWLOCs) for acute exposure to cymoxanil in drinking water for females (13+ years old) to be 280 ppb. Therefore, EPA concludes with reasonable certainty that the potential risks from aggregate acute exposure (food & water) would not exceed the Agency's level of concern.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to cymoxanil from food will utilize less than 5% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cymoxanil in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

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

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. Only the parent cymoxanil compound is of regulatory concern. There are no animal feed items currently associated with grapes and tomatoes.

B. Analytical Enforcement Methodology

An adequate enforcement method, AMR 3060-94, is available to enforce the tolerance on grapes and tomatoes. Quantitation is by HPLC/UV. These methods have been submitted for publication in PAM I. The methods are available to anyone who is interested in pesticide residue enforcement from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 101FF, 1921 Jefferson Davis Hwy., (701) 305-5229.

C. Magnitude of Residues

EPA has concluded that residue data submitted in support of the tolerances for grapes and tomatoes at 0.1 ppm, indicate that the tolerances requested by the petitioner are adequate.

D. International Residue Limits

There are no Codex or Canadian residue limits established for cymoxanil on grapes or tomatoes. Therefore, no compatibility problems exist for the proposed tolerances.

E. Rotational Crop Restrictions

Rotational crop restrictions are not an issue as there are no U.S. registrations associated with imported tolerances.

IV. Conclusion

Therefore, tolerances are established for residues of cymoxanil, [2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide] in or on the raw agricultural commodities, imported grapes and tomatoes at 0.1 ppm.

V. Objections and Hearing Requests

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

Any person may, by April 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the **ADDRESSES** section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300782] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

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

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive

Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 25, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.503 by adding paragraph (e) to read as follows:

§ 180.503 Cymoxanil; tolerance for residues.

* * * * *

(e) *Import.* Import tolerances are established for residues of the fungicide [2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide] expressed as cymoxanil in or on the following food commodities:

Commodity	Parts per million
Grapes, imported	0.1
Tomatoes, imported	0.1

[FR Doc. 99–3249 Filed 2–9–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300790; FRL–6059–8]

RIN 2070–AB78

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on turnip tops at 5.0 part per million (ppm) for an additional 18–month period. This tolerance will expire and is revoked on August 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on turnip tops. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a

tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective February 10, 1999. Objections and requests for hearings must be received by EPA, on or before April 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300790], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300790], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300790]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 5, 1997 (62 FR 9984)(FRL–5591–7), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on turnip tops at 5.0 ppm, with an expiration date of February 28, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on turnip tops for this year's growing season due to the lack of viable alternative product for control of the beet armyworm. This lack of control is due to the beet armyworm's proclivity for developing resistance to all classes of insecticides. The last 6 years have seen a marked increase in the amounts of active ingredient necessary to achieve control of the beet armyworm in vegetables and some growers have reported failures with all products and combinations. The increase of pesticide use has lead to the pest developing a high tolerance to these chemicals. This tolerance has in turn allowed the pest to develop high populations which cause economic damage to the various cole and leafy vegetable crops. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebufenozide on turnip tops for control of the beet armyworm in Texas.

EPA assessed the potential risks presented by residues of tebufenozide in or on turnip tops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 5,1997 (62 FR 9984) (FRL–5591–7). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18 month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on August 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on turnip tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. 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.

I. 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 April 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the **ADDRESSES** section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300790] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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

opp-docket@epa.gov

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

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

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement

supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 28, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.482 [Amended]

2. In § 180.482, by amending the table in paragraph (b) by changing the date ''2/28/99'' to read ''8/31/00''.

[FR Doc. 99–3248 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300781; FRL–6055–6]

RIN 2070–AB78

3,7-Dichloro-8-quinoline carboxylic acid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of 3,7-dichloro-8-quinoline carboxylic acid in or on wheat forage, grain, straw, milled fractions, and aspirated grain fractions; sorghum grain, grain forage, and grain fodder (stover); fat of cattle, goats, hogs, horses, poultry and sheep; and meat byproducts of cattle, goats, hogs, horses, and sheep. This action is in connection with crisis exemptions declared under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat and sorghum. This regulation establishes a maximum permissible level for residues of 3,7-dichloro-8-quinoline carboxylic acid in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on May 30, 2000.

DATES: This regulation is effective February 10, 1999. Objections and requests for hearings must be received by EPA on or before April 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300781], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300781], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300781]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing tolerances for residues of the herbicide 3,7-dichloro-8-quinoline carboxylic acid in or on wheat forage at 5 ppm, grain at 4 ppm, straw at 1 ppm, milled fractions at 40 ppm, aspirated grain fractions at 800 ppm; sorghum, grain at 4 ppm, grain forage at 5 ppm, grain fodder (stover) at 1 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.6 ppm; fat of poultry at 0.2 ppm ; and meat byproducts of cattle, goats, hogs, horses, and sheep at 1.5 part per million (ppm). These tolerances will expire and are revoked on May 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

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 in this preamble 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 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 tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for 3,7-Dichloro-8-Quinoline Carboxylic Acid on Wheat and Sorghum and FFDCA Tolerances

On May 28, 1998, the North Dakota Department of Agriculture availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of 3,7-dichloro-8-quinoline carboxylic acid on wheat for control of volunteer flax. Hail and unusually highwinds struck last fall in the affected area which caused the seeds of flax plants to fall onto the ground before they were harvested. After germination in the spring, the subsequent crop of wheat was found to be severely infested. No other options for control of flax in wheat are available. On June 22, 1998, the Nebraska Department of Agriculture availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of 3,7-dichloro-8-quinoline carboxylic acid on sorghum for the control of annual weeds. Extreme heavy rains prevented many producers from cultivating their crops, which resulted in a greater-than-normal weed cover.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of 3,7-dichloro-8-quinoline carboxylic acid in or on wheat forage, grain, straw, milled fractions, and aspirated grain fractions; sorghum grain, grain forage, and grain fodder (stover); fat of cattle, goats, hogs, horses, poultry and sheep; and meat byproducts of cattle, goats, hogs, horses, and sheep. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on wheat forage, grain, straw, milled fractions, and aspirated grain fractions; sorghum grain, grain forage, and grain fodder (stover); fat of cattle, goats, hogs, horses, poultry and sheep; and meat byproducts of cattle, goats, hogs, horses, and sheep after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether 3,7-dichloro-8-quinoline carboxylic acid meets EPA's registration requirements for use on wheat and sorghum or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of 3,7-dichloro-8-quinoline carboxylic acid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than North Dakota and Nebraska to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for 3,7-dichloro-8-quinoline carboxylic acid, contact the Agency's Registration Division at the address provided under the **ADDRESSES** section.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of 3,7-dichloro-8-quinoline carboxylic acid (quinclorac) and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of 3,7-dichloro-8-quinoline carboxylic acid on wheat forage at 5 ppm, grain at 4 ppm, straw at 1 ppm, milled fractions at 40 ppm, aspirated grain fractions at 800 ppm; sorghum, grain at 4 ppm, grain forage at 5 ppm, grain fodder (stover) at 1 ppm; fat of cattle, goats, hogs, horses, and sheep at

0.6 ppm; fat of poultry at 0.2 ppm ; and meat byproducts of cattle, goats, hogs, horses, and sheep at 1.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by 3,7-dichloro-8-quinoline carboxylic acid are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. For acute dietary risk assessment, EPA used the no observed adverse effect level (NOAEL) of 200 milligrams/kilograms/day (mg/kg/day), based on increased incidence of fetal resorptions, decrease in the number of live fetuses, and reduced fetal body weight at the lowest observed effect level (LOEL) of 600 mg/kg/day, from the developmental toxicity study in rabbits and an uncertainty factor of 100 (10X for inter-species extrapolation and 10X for intra-species variability). This risk assessment will evaluate acute dietary risk for females 13+ years, the population subgroup of concern, but not to the general population (including infants and children). For the general population, no appropriate endpoint attributable to a single exposure was identified from the oral toxicity studies, including the rat and rabbit developmental toxicity studies.

2. *Short - and intermediate - term toxicity*. EPA did not select either a dose or endpoint for short- and intermediate term dermal exposure since no dermal or systemic toxicity was observed in a dermal toxicity study in New Zealand White rabbits after 21 repeated dermal applications of quinclorac at 0, 10, 200, or 1,000 mg/kg/day, 6 hours/day, 7 days/week. The dose of 1,000 mg/kg/day is the limit dose. Therefore, EPA did not conduct a risk assessment for short- and intermediate-term exposure.

3. *Chronic toxicity*. EPA has established the RfD for 3,7-dichloro-8-quinoline carboxylic acid at 0.4 mg/kg/day. This RfD is based on a carcinogenicity study in mice with a NOAEL of 37.5 mg/kg/day and an uncertainty factor of 100 based on decreased body weights in male and female mice at the LOEL of 150 mg/kg/day.

4. *Carcinogenicity*. After considering an equivocal increase of acinar cell adenomas of the pancreas in male Wistar rats, 3,7-Dichloro-8-quinoline carboxylic acid has been classified as ''Group D -- not classifiable as to human carcinogenicity.''

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.463) for the residues of 3,7-dichloro-8-quinoline carboxylic acid in or on rice grain (5 ppm); rice straw (12 ppm); fat and meat of cattle, goats, hogs, horses, poultry, and sheep (0.05 ppm); meat-byproducts (mbyp) of cattle, goats, hogs, and horses (0.05 ppm); mbyp of poultry and sheep (0.1 ppm); eggs (0.05 ppm); and, milk (0.05 ppm). Risk assessments were conducted by EPA to assess dietary exposures and risks from 3,7-dichloro-8-quinoline carboxylic acid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary (food only) risk assessment was conducted via Dietary Exposure Evaluation Model (DEEM), using the theoretical maximum residue contribution (TMRC), which assumes tolerance level residues and 100% crop-treated. Using the formula, % Acute RfD Occupied = (High-End Exposure ÷ Acute RfD) x 100%, the high-end (99.9 percentile) exposure estimate of 0.256735 mg/kg/day for females 13+/nursing, (the subpopulation in the females 13+ years of age subgroup with the highest exposure), occupies 13% of the acute RfD. This result should be viewed as a very conservative risk estimate; refinement using anticipated residue values and percent crop-treated data would result in a lower estimate of acute dietary exposure.

ii. *Chronic exposure and risk.* The chronic analysis for 3,7-dichloro-8-quinoline carboxylic acid is a conservative estimate of dietary exposure with all residues at proposed or published tolerance levels, and 100% of the commodities assumed to be treated. A risk assessment for chronic dietary exposure from food and feed uses was made for all subpopulations. The percent of the RfD occupied ranged from 2% for nursing infants to 34% for children 1-6 years old.

2. *From drinking water.* Quinclorac is rather persistent in soils and prone to leach into groundwater. There is no entry for quinclorac in EPA's Pesticides in Ground Water Database. No established Maximum Contaminant Level or health advisory levels have been established for residues of quinclorac in drinking water.

i. *Acute exposure and risk.* For purposes of acute risk assessment, the maximum estimated environmental concentration (EEC) for 3,7-dichloro-8-quinoline carboxylic acid in drinking water (26.8 ppb in surface water, GENEEC peak value) was used for comparison to the back-calculated human health Drinking Water Level of Comparison (DWLOC) for acute dietary exposure (52,000 µg/L for the only population of concern, females (13+ years/nursing). The estimated peak concentration in surface water (26.8 µg/L) is significantly less than EPA's level of concern for 3,7-dichloro-8-quinoline carboxylic acid in drinking water as a contribution to acute aggregate exposure.

ii. *Chronic exposure and risk.* For purposes of chronic risk assessment, the maximum EEC for 3,7-dichloro-8-quinoline carboxylic acid in drinking water (25.4 ppb in surface water, rather than 13.8 in ground water, GENEEC average 56-day concentration) was used for comparison to the back-calculated human health DWLOCs for chronic dietary exposure (12,000 µg/L for U.S. population; 2,700 µg/L for infants/children). The estimated average concentration in surface water (25.4 µg/L) is significantly less than EPA's level of concern for 3,7-dichloro-8-quinoline carboxylic acid in drinking water as a contribution to chronic aggregate exposure and does not result in an unacceptable level of chronic aggregate human health risk estimate at this time.

3. *From non-dietary exposure.* There are no registered uses which will result in non-dietary, non-occupational exposure to 3,7-dichloro-8-quinoline carboxylic acid.

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

EPA does not have, at this time, available data to determine whether 3,7-dichloro-8-quinoline carboxylic acid 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, 3,7-dichloro-8-quinoline carboxylic acid 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 3,7-dichloro-8-quinoline carboxylic acid has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Using the conservative TMRC exposure assumptions already described, and taking into account the completeness and reliability of the toxicity data, EPA has calculated that the high end exposure to 3,7-dichloro-8-quinoline carboxylic acid residues in food will utilize 13% of the acute RfD for females 13+ years of age/nursing, the most highly exposed subpopulation of the females 13+ subgroup, which is the only subgroup of concern for acute dietary risk. The DWLOC was back-calculated as described previously, and residues of 3,7-dichloro-8-quinoline carboxylic acid which may be present in drinking water are far below the DWLOC for females 13+ years of age/ nursing. Thus, EPA does not expect the acute aggregate exposure (food plus water) to exceed 100% of the acute RfD. EPA generally has no concern for acute exposures below 100% of the acute RfD, when the FQPA safety factor has been removed, as is the case here. Based on all these considerations, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. adult population from acute aggregate exposure to 3,7-dichloro-8-quinoline carboxylic acid residues.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions already described, and taking into account the completeness and reliability of the toxicity data, EPA has calculated that dietary exposure to 3,7-dichloro-8-quinoline carboxylic acid residues in food will utilize 17% of the chronic RfD for non-hispanic others which, for 3,7-dichloro-8-quinoline carboxylic acid, is the most highly chronically exposed subgroup of the U.S. adult population. DWLOCs were back-calculated as described previously, and residues of 3,7-dichloro-8-quinoline carboxylic acid which may be present in drinking water are far below the DWLOCs for U.S. adult populations, including non-hispanic others. Thus, EPA does not expect the chronic aggregate exposure (food plus water) to exceed 100% of the chronic RfD. EPA generally has no concern for chronic exposures below 100% of the chronic RfD (when the FQPA safety factor has been removed, as is the case here) because the chronic RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Under current EPA guidelines, non-dietary uses of 3,7-dichloro-8-quinoline carboxylic acid do not constitute a chronic exposure scenario, and thus are not a factor in chronic aggregate risk. Based on all these considerations, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. adult population from chronic aggregate exposure to 3,7-dichloro-8-quinoline carboxylic acid residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposures take into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses that may result in non-dietary, non-occupational exposure. Such exposure to 3,7-dichloro-8-quinoline carboxylic acid is not expected and endpoints for short- and intermediate-term exposures have not been selected. Thus, short- and/or intermediate-term risk assessments are not required.

4. *Aggregate cancer risk for U.S. population.* After considering an equivocal increase of acinar cell adenomas of the pancreas in male Wistar rats, 3,7-Dichloro-8-quinoline carboxylic acid was classified as a ''Group D -- not classifiable as to human carcinogenicity'' chemical.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to 3,7-dichloro-8-quinoline carboxylic acid residues.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of 3,7-dichloro-8-quinoline carboxylic acid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 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 the case of 3,7-dichloro-8-quinoline carboxylic acid, for purposes of these section 18 exemption uses, the FQPA 10X safety factor to protect infants and children in cases of enhanced susceptibility was removed for the following reasons: (a) the toxicology data base is complete; (b) there is no evidence of susceptibility in rat or rabbit developmental studies, or in the rat 2-generation reproduction study; (c) in the standard toxicity tests there is no indication of neurotoxicity that would warrant follow-up testing; (d) non-dietary, non-occupational exposures are not expected; and, (e) only limited dietary exposure is expected from these section 18 uses on wheat and grain sorghum. EPA concludes that reliable data support use of a 100-fold margin of exposure/uncertainty factor, for the purposes of these section 18 exemptions, to protect infants and children.

ii. *Developmental toxicity studies*— a. *Rats.* In a developmental toxicity study, 3,7-dichloro-8-quinoline carboxylic acid 3,7 (96.5% a.i.), was administered to twenty-five female Wistar rats by gavage at dose levels of 0, 24.4, 146, and 438 mg/kg/day from gestational days 6-15, inclusive.

Maternal toxicity, observed at 438 mg/kg/day, was manifested as increased mortality, decreased food consumption (10-15%) and increased water consumption (31-54%) during the dosing and/or gestation period. The maternal LOEL is 438 mg/kg/day. The maternal NOAEL is 146 mg/kg/day.

No developmental toxicity was observed. The LOEL for developmental

toxicity is >436 mg/kg/day. The developmental NOEL is ≧436 mg/kg/day.

b. *Rabbits.* In a developmental toxicity study, 3,7-dichloro-8-quinoline carboxylic acid (98.3% a.i.), was administered to fifteen female Himalayan rabbits by gavage at dose levels of 0, 70, 200, or 600 mg/kg/day from gestational days 7-19, inclusive.

Maternal toxicity, observed at 200 mg/kg/day, was manifested as decreased body weight gain (36%) and food consumption (13%) during the dosing period. Additional findings noted at 600 mg/kg/day included increased mortality, water consumption (7% over entire gestation), increased incidence of clinical signs (reduced/no defecation, diarrhea, apathy and poor general state) and discoloration of the kidney. The maternal LOEL is 200 mg/kg/day. The maternal NOAEL is 70 mg/kg/day.

Developmental toxicity, observed at 600 mg/kg/day, consisted of increased rate of resorption and post-implantation loss, a decrease in the number of live fetuses, and reduced fetal body weight. The NOAEL for developmental toxicity is 200 mg/kg/day.

iii. *Reproductive toxicity study—Rats.* In a 2-generation reproduction study, 3,7-dichloro-8-quinoline carboxylic acid (≧97.3% a.i.) was administered to Wistar rats (24/sex/group) at dietary levels of 0, 1,000, 4,000, or 12,000 ppm (0, 40, 160 or 480 mg/kg/day, respectively).

Evidence of toxicity was observed in the male and female parental rats of both generations at 12,000 ppm (480 mg/kg/day). It consisted of reduced body weight during the premating (both sexes) and lactation period. In addition, increased incidence of interstitial nephritis was noted among females. The LOEL for parental systemic toxicity is 12,000 ppm (480 mg/kg/day) based on decreased body weight during premating and lactation. There were no other systemic effects that could be attributed to treatment, nor was there any indication, at any treatment level, of an effect on the reproductive performance of the adults.

Treatment-related effects were observed in F_1 and F_2 offspring at 12,000 ppm (480 mg/kg/day) which consisted of reduced pup viability, delay in growth and physical development (pinna unfolding, eye opening), and reduction in pup survival. Additionally, decreases in body weights of F_1 and F_2 pups were noted throughout lactation.

Systemic LOEL = 480 mg/kg/day for males and females, based upon decreased body weight during premating and lactation. Systemic NOAEL = 160 mg/kg/day for males and females.

Developmental LOEL = 480 mg/kg/day, based on decreased pup viability, and pup weight, and delay in development (pinna unfolding and eye opening). Developmental NOAEL = 160 mg/kg/day.

Reproductive LOEL = >480 mg/kg/day, based on lack of reproductive effects. Reproductive NOAEL = ≧480 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for 3,7-dichloro-8-quinoline carboxylic acid is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. For purposes of these section 18 exemption requests, the FQPA 10X safety factor to protect infants and children in cases of enhanced susceptibility was removed, based on reasons given above.

2. *Acute risk.* This risk assessment was not conducted. EPA did not identify an appropriate endpoint which was applicable to infant and children population subgroups.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to 3,7-dichloro-8-quinoline carboxylic acid from food will utilize 34% of the RfD for children (1-6 years), the most highly exposed subpopulation of the infant and children subgroups. DWLOCs were back-calculated as described previously, and residues of 3,7-dichloro-8-quinoline carboxylic acid which may be present in drinking water are well below the DWLOCs for this population subgroup. Thus, EPA does not expect the chronic aggregate exposure (food plus water) to exceed 100% of the chronic RfD. EPA generally has no concern for exposures below 100% of the RfD (when the FQPA safety factor has been removed, as is the case here) because the chronic RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Under current EPA guidelines, non-dietary uses of 3,7-dichloro-8-quinoline carboxylic acid do not constitute a chronic exposure scenario, and thus are not a factor in chronic aggregate risk. Based on all these considerations, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to 3,7-dichloro-8-quinoline carboxylic acid residues.

4. *Short- or intermediate-term risk.* These risk assessments were not conducted. EPA did not identify endpoints for short- and intermediate-term exposures.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to 3,7-dichloro-8-quinoline carboxylic acid residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in/on rice is adequately understood. For purposes of these section 18s only, the nature of the residues in/on wheat and grain sorghum is considered to be adequately understood (by translation from rice). The residue-of-concern is 3,7-dichloro-8-quinoline carboxylic acid. The nature of the residue in animals is adequately understood. The residue-of-concern in animal commodities is 3,7-dichloro-8-quinoline carboxylic acid.

B. Analytical Enforcement Methodology

GLC/ECD is available BASF Method A8902, rice; BASF Method 268/1, animal and poultry tissues to enforce the tolerance expression. These methods have both undergone agency method trial validation and were found to be adequate to enforce the tolerances on rice and animal commodities, with a limit of determination of ≤0.05 ppm. Recovery data submitted indicate that BASF Method A8902 is also suitable for wheat. The method should also be adequate for grain sorghum for purposes of this use.

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

Residues of 3,7-dichloro-8-quinoline carboxylic acid are not expected to exceed the following levels as a result of this proposed section 18 use:

Grain sorghum, forage	5 ppm
Grain sorghum, grain	4 ppm
Grain sorghum, stover	1 ppm
Wheat, forage	5 ppm
Wheat, grain	4 ppm
Wheat, straw	1 ppm

Residues of 3,7-dichloro-8-quinoline carboxylic acid are not expected to exceed the following concentrations in wheat grain processed fractions as a result of this section 18 use:

Wheat, milled fractions	40 ppm
Aspirated grain fractions	800 ppm

Residues of 3,7-dichloro-8-quinoline carboxylic acid in animal commodities are not expected to exceed the following concentrations as a result of these section 18 uses:

Fat of cattle, goats, hogs, horses, and sheep	0.6 ppm
Fat of poultry	0.2 ppm
Meat by-products of cattle, goats, hogs, horses, and sheep	1.5 ppm

These time-limited tolerances are higher than the existing permanent tolerances (0.05 ppm) for residues (as specified in 40 CFR 180.463). The existing permanent tolerances for 3,7-dichloro-8-quinoline carboxylic acid residues in meat of cattle, goats, hogs, horses, poultry, and sheep (0.05 ppm); meat by-products of poultry (0.1 ppm); milk (0.05 ppm); and eggs (0.05 ppm) are sufficient for these section 18 uses.

D. International Residue Limits

There are no Codex or Mexican maximum residue limits (MRLs) established for 3,7-dichloro-8-quinoline carboxylic acid residues on wheat or grain sorghum.

E. Rotational Crop Restrictions

Restrictions for 3,7-dichloro-8-quinoline carboxylic acid use on wheat specify a plantback interval of not less than 10 months after application for all crops except flax and lentils, which have a 24-month interval. Similarly, restrictions for use on grain sorghum state a 10-month post-application interval for plantback of all crops except flax, peas, lentils, and sugar beets (24-month interval). Rotational crop tolerances are not needed with these plantback intervals.

V. Conclusion

Therefore, the tolerances are established for residues of 3,7-dichloro-8-quinoline carboxylic acid in wheat forage at 5 ppm, grain at 4 ppm, straw at 1 ppm, milled fractions at 40 ppm, aspirated grain fractions at 800 ppm; sorghum, grain at 4 ppm, grain forage at 5 ppm, grain fodder (stover) at 1 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.6 ppm; fat of poultry at 0.2 ppm ; and meat byproducts of cattle, goats, hogs, horses, and sheep at 1.5 part per million (ppm).

VI. Objections and Hearing Requests

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

Any person may, by April 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the **ADDRESSES** section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with anobjection 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.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300781] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

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

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

address in **ADDRESSES** at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

IX. Submission to Congress and the Comptroller General

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

List of Subjects

40 CFR Part 180

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

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: January 22, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 346a and 371.

b. Section 180.463 is amended to read as follows:

i. By designating the existing text as paragraph (a)(1) and adding a heading to newly designated (a).

ii. By adding paragraph (b).

ii. By adding and reserving paragraphs (c) and (d) with headings to read as follows:

§ 180.463 3,7-Dichloro-8-quinoline carboxylic acid; tolerances for residues.

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

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide 3,7-dichloro-8-quinoline carboxylic acid in connection with use of the pesticide under FIFRA section 18 emergency exemptions granted by EPA.

The tolerances are specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.6	5/30/00
Cattle, mbyp	1.5	5/30/00
Goats, fat	0.6	5/30/00
Goats, mbyp	1.5	5/30/00
Hogs, fat	0.6	5/30/00
Hogs, mbyp	1.5	5/30/00
Horses, fat	0.6	5/30/00
Horses, mbyp	1.5	5/30/00
Poultry, fat	0.2	5/30/00
Sheep, fat	0.6	5/30/00
Sheep, mbyp	1.5	5/30/00
Sorghum, grain fodder (stover).	1	5/30/00
Sorghum, grain forage	5	5/30/00
Sorghum, grain, grain	4	5/30/00
Wheat, aspirated grain fractions.	800	5/30/00
Wheat, forage	5	5/30/00
Wheat, grain	4	5/30/00
Wheat, milled fractions	40	5/30/00
Wheat, straw	1	5/30/00

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

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

PART 186—[AMENDED]

2. In part 186:

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

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

§ 186.1860 [Partially Redesignated and Removed]

b. Section 186.1860 is amended as follows:

i. By transferring the text of § 186.1860 to § 180.463, and redesignating it as paragraph (a)(2).

ii. By removing the remainder of § 186.1860.

[FR Doc. 99–3247 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 77—1998 Edition]

RIN 3090–AG90

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to make certain changes to the maximum per diem rates published elsewhere in this issue of the **Federal Register**. This rule adds Great Neck as a new per diem locality in New York and increases the maximum lodging amount in Fort Worth, Texas.

The General Services Administration (GSA), after an analysis of additional data, has determined that current lodging allowances for Great Neck (that part of Nassau County defined as the North Shore (up to and including Great Neck to the West and Oyster Bay to the East)), New York, and for Fort Worth (City limits of Fort Worth), Texas, do not adequately reflect the cost of lodging in those areas. To provide adequate per diem reimbursement for Federal employee travel to Great Neck, New York, the maximum lodging allowance is $190 and the meals and incidental expenses (M&IE) rate is $42, resulting in a maximum per diem rate of $232. The maximum lodging allowance for the City of Fort Worth, Texas, is changed to $94 and the M&IE rate remains at $38, resulting in a maximum per diem rate of $132.

DATES: This final rule is effective retroactive to January 1, 1999, and applies for travel performed on or after January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, General Services Administration, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

D. Small Business Regulatory Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by revising, under the State of New York, the entry for Great Neck, and by removing, under the State of Texas, the corresponding lodging, M&IE, and maximum per diem rates for Fort Worth and inserting in their places the following:

APPENDIX A TO CHAPTER 301.—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

Key City	Per diem locality, county and/or other defined location	Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate (c)
*	* * * *	*		*		*
NEW YORK						
*	* * * *	*		*		*
Great Neck	That part of Nassau County defined as the North Shore (up to and including Great Neck to the West and Oyster Bay to the East).	190		42		232

APPENDIX A TO CHAPTER 301.—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS—Continued

Key City	Per diem locality, county and/or other defined location	Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate (c)
*	* * * *	*		*		*
TEXAS						
*	* * * *	*		*		*
Fort Worth	City limits of Fort Worth	94		38		132
*	* * * *	*		*		*

Dated: February 2, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–3084 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 75—1998 Edition]

RIN 3090–AG86

Federal Travel Regulation; General and Temporary Duty (TDY) Travel Allowances (Maximum Per Diem Rates)

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States (CONUS) contained in a final rule appearing in the **Federal Register** of Wednesday, December 2, 1998 (63 FR 66674). For the convenience of the reader, the entire Appendix A is being reprinted.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, telephone (202) 501–1538.

SUPPLEMENTARY INFORMATION: In rule document 98–32091 beginning at 63 FR 66674 in the issue of Tuesday, December 2, 1998, Appendix A to Chapter 301 is corrected to read as follows:

Appendix A To Chapter 301 [Corrected]

Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under part 301–11 of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses excluding taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–11 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

It is the policy of the Government, as reflected in the Hotel Motel Fire Safety Act of 1990 (Pub. L. 101–391, September 25, 1990 as amended by Pub. L. 105–85, November 18, 1997), referred to as ''the Act'' in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, employees are encouraged to stay in a facility which is fire-safe, i.e., an approved accommodation, when commercial lodging is required. Lodgings that meet the Government requirements are listed on the U.S. Fire Administration's Internet site at *http://www.usfa.fema.gov/hotel/index.htm*.

Note: Major changes in the coverage of per diem rates effective in this amendment are:

- Lodging rates do not include any taxes. They are now room rates only.
- Actual costs paid for lodging taxes may be reimbursed to the traveler as a miscellaneous expense (see part 301–11).
- Additional seasons (up to four) have been added where appropriate.
- There may be more than one rate within a county now. Please read the tables carefully.
- Many previously combined locations are now shown separately with different rates (e.g., Alexandria, Arlington, Montgomery County, Prince Georges County, Fairfax County, and Loudoun County, are now listed separately from Washington, DC).
- There is one new M&IE tier: $46.

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
CONUS, Standard rate:						
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302–2, 302–4, and 302–5 of this subtitle.).		$50		$30		$80

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
ALABAMA						
Birmingham	Jefferson	59		38		97
Gulf Shores	Baldwin					
(May 1–September 30)		116		34		150
(October 1–April 30)		50		34		84
Huntsville	Madison	58		38		96
Mobile	Mobile	50		34		84
Montgomery	Montgomery	51		38		89
ARIZONA						
Casa Grande	Pinal					
(January 1–April 30)		80		34		114
(May 1–December 31)		50		34		84
Chinle	Apache					
(April 1–October 31)		80		34		114
(November 1–March 31)		59		34		93
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area.					
(April 1–October 31)		67		34		101
(November 1–March 31)		50		34		84
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County.	94		42		136
Kayenta	Navajo					
(June 1–September 30)		92		30		122
(October 1–May 31)		50		30		80
Phoenix	Maricopa (except Scottsdale)					
(January 1–April 30)		106		38		144
(May 1–August 31)		62		38		100
(September 1–December 31)		86		38		124
Prescott	Yavapai	50		38		88
Scottsdale	City limits of Scottsdale (see Maricopa County).					
(January 1–April 30)		107		42		149
(May 1–August 31)		56		42		98
(September 1–December 31)		79		42		121
Tucson	Pima County; Davis-Monthan AFB					
(January 1–May 31)		79		38		117
(June 1–December 31)		58		38		96
Yuma	Yuma	52		34		86
ARKANSAS						
Little Rock	Pulaski	55		34		89
CALIFORNIA						
Barstow	City limits of Barstow	58		34		92
Bridgeport	Mono (except Mammoth Lakes)					
(April 1–October 31)		66		42		108
(November 1–March 31)		53		42		95
Clearlake	Lake					
(April 1–September 30)		59		38		97
(October 1–March 31)		50		38		88
Contra Costa County	Contra Costa County	69		42		111
Death Valley	Inyo	85		46		131
Eureka	Humboldt					
(May 1–September 30)		59		38		97
(October 1–April 30)		50		38		88
Fresno	Fresno	53		38		91
Gualala	City limits of Gualala (see Mendocino County).	114		38		152
Kern County	Kern County	59		38		97
Los Angeles	Los Angeles; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.	95		46		141
Madera	Madera (except Oakhurst)	50		34		84
Mammoth Lakes	City limits of Mammoth Lakes (see Mono County).					
(November 1–April 30)		85		46		131
(May 1–October 31)		62		46		108
Marin County	Marin County	82		42		124
Merced	Merced	58		38		96

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
Modesto	Stanislaus	58		34		92
Monterey	Monterey					
(June 1–October 31)		94		42		136
(November 1–May 31)		71		42		113
Napa	Napa					
(April 1–October 31)		98		42		140
(November 1–March 31)		75		42		117
Oakhurst	City limits of Oakhurst (except Madera)	76		38		114
Oakland	Alameda	93		38		131
Ontario	San Bernardino (except Barstow)	55		38		93
Orange County	Orange County	75		46		121
Palm Springs	Riverside					
(January 1–May 31)		73		42		115
(June 1–August 31)		50		42		92
(September 1–December 31)		55		42		97
Palo Alto	City limits of Palo Alto (see Santa Clara County).	115		42		157
Point Arena	Mendocino (except Gualala)	100		38		138
Redding	Shasta	52		38		90
Redwood City	City limits of Redwood City (see San Mateo County).	94		42		136
Sacramento	Sacramento	79		42		121
San Diego	San Diego	89		46		135
San Francisco	San Francisco	129		46		175
San Jose	Santa Clara (except Palo Alto and Sunnyvale).	99		46		145
San Luis Obispo	San Luis Obispo	54		38		92
San Mateo	San Mateo (except Redwood City)	74		42		116
Santa Barbara	Santa Barbara					
(June 1–September 30)		110		38		148
(October 1–May 31)		92		38		130
Santa Cruz	Santa Cruz					
(June 1–September 30)		75		42		117
(October 1–May 31)		55		42		97
Santa Rosa	Sonoma	67		42		109
South Lake Tahoe	El Dorado (see also Stateline, NV)	108		42		150
Stockton	San Joaquin	50		38		88
Sunnyvale	City limits of Sunnyvale (see Santa Clara County).	116		42		158
Tahoe City	Placer	86		42		128
Ventura County	Ventura County	99		38		137
Victorville	City limits of Victorville	60		34		94
Visalia	Tulare	58		38		96
West Sacramento	Yolo	64		30		94
Yosemite Nat'l Park	Mariposa					
(April 1–October 31)		189		46		235
(November 1–March 31)		79		46		125
COLORADO						
Adams County	Adams County	60		38		98
Arapahoe County	Arapahoe County	83		38		121
Aspen	Pitkin					
(January 1–March 31)		163		46		209
(April 1–May 31)		68		46		114
(June 1–December 31)		140		46		186
Boulder	Boulder					
(May 1–October 31)		74		42		116
(November 1–April 30)		64		42		106
Colorado Springs	El Paso					
(May 1–October 31)		73		38		111
(November 1–April 30)		58		38		96
Cortez	Montezuma					
(June 1–September 30)		64		34		98
(October 1–May 31)		50		34		84
Denver	Denver	80		42		122
Durango	La Plata					
(June 1–October 31)		84		38		122
(November 1–May 31)		54		38		92

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
Fort Collins	Larimer (except Loveland)					
(May 1–September 30)		53		34		87
(October 1–April 30)		50		34		84
Glenwood Springs	Garfield	50		38		88
Gunnison	Gunnison					
(June 1–September 30)		69		34		103
(October 1–May 31)		50		34		84
Jefferson County	Jefferson County	61		34		95
Loveland	City limits of Loveland (see Larimer County)					
(April 1–September 30)		65		30		95
(October 1–March 31)		55		30		85
Montrose	Montrose					
(June 1–September 30)		59		34		93
(October 1–May 31)		50		34		84
Pueblo	Pueblo					
(June 1–September 30)		75		34		109
(October 1–May 31)		67		34		101
Silverthorne/Keystone	Summit					
(January 1–April 30)		81		38		119
(May 1–December 31)		62		38		100
Steamboat Springs	Routt					
(December 1–March 31)		59		38		97
(April 1–November 30)		50		38		88
Telluride	San Miguel					
(November 1–March 31)		117		46		163
(April 1–October 31)		75		46		121
Trinidad	Las Animas					
(June 1–October 31)		62		30		92
(November 1–May 31)		50		30		80
Vail	Eagle					
(November 1–March 31)		183		46		229
(April 1–May 31)		104		46		150
(June 1–October 31)		106		46		152
CONNECTICUT						
Bridgeport	City limits of Bridgeport (see Fairfield County).	85		34		119
Danbury	Fairfield (except Bridgeport)	77		38		115
Groton	New London (except New London)	65		30		95
Hartford	Hartford	85		42		127
Lakeville	Litchfield (except Salisbury)	85		38		123
Middlesex County	Middlesex County	50		34		84
New Haven	New Haven	70		38		108
New London	City limits of New London (see New London County).	93		34		127
Putnam/Danielson	Windham	56		30		86
Salisbury	City limits of Salisbury (see Litchfield County).	95		46		141
Vernon	Tolland	56		34		90
DELAWARE						
Dover	Kent	64		34		98
Lewes	Sussex					
(June 1–August 31)		73		42		115
(September 1–May 31)		50		42		92
Wilmington	New Castle	93		34		127
DISTRICT OF COLUMBIA						
Washington, DC	District of Columbia	115		46		161
FLORIDA						
Altamonte Springs	Seminole	71		38		109
Boca Raton	City limits of Boca Raton (see Palm Beach County).					
(January 1–April 30)		105		38		143
(May 1–December 31)		69		38		107
Bradenton	Manatee					
(January 1–May 31)		52		34		86
(June 1–December 31)		50		34		84
Cocoa Beach	Brevard	77		34		111
Daytona Beach	Volusia					

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
(February 1–August 31)		64		38		102
(September 1–January 31)		54		38		92
Delray Beach	City limits of Delray Beach (see Palm Beach County).					
(November 1–March 31)		239		42		281
(April 1–October 31)		67		42		109
Fort Lauderdale	Broward					
(December 1–April 30)		99		42		141
(May 1–November 30)		63		42		105
Fort Myers	Lee					
(January 1–April 30)		89		42		131
(May 1–December 31)		50		42		92
Fort Walton Beach	Okaloosa					
(May 1–August 31)		61		38		99
(September 1–April 30)		68		38		106
Gainesville	Alachua	61		34		95
Gulf Breeze	Santa Rosa	61		38		99
Jacksonville	Duval County; Naval Station Mayport	63		34		97
Jupiter	City limits of Jupiter (see Palm Beach County).					
(January 1–April 30)		126		34		160
(May 1–December 31)		59		34		93
Key West	Monroe					
(December 1–April 30)		143		46		189
(May 1–November 30)		95		46		141
Kissimmee	Osceola					
(February 1–April 30)		65		34		99
(May 1–January 31)		50		34		84
Lakeland	Polk					
(January 1–April 30)		55		34		89
(May 1–December 31)		50		34		84
Miami	Dade					
(January 1–April 30)		75		42		117
(May 1–December 31)		71		42		113
Naples	Collier					
(December 1–April 30)		94		38		132
(May 1–November 30)		53		38		91
Orlando	Orange	75		42		117
Palm Beach	City limits of Palm Beach (see Palm Beach County).					
(January 1–April 30)		116		46		162
(May 1–December 31)		79		46		125
Palm Beach Gardens	City limits of Palm Beach Gardens	69		38		107
Palm Beach Shores	Palm Beach (except Jupiter, Palm Beach, Delray Beach, West Palm Beach, Boca Raton, and Singer Island).					
(January 1–April 30)		85		38		123
(May 1–December 31)		52		38		90
Panama City	Bay					
(May 1–August 31)		60		38		98
(September 1–April 30)		50		38		88
Pensacola	Escambia	52		34		86
Punta Gorda	Charlotte					
(January 1–April 30)		65		38		103
(May 1–December 31)		50		38		88
St. Augustine	St. Johns					
(February 1–August 31)		58		38		96
(September 1–January 31)		50		38		88
St. Petersburg	Pinellas					
(January 1–April 30)		59		38		97
(May 1–December 31)		50		38		88
Sarasota	Sarasota					
(January 1–May 31)		94		38		132
(June 1–December 31)		53		38		91
Singer Island	Singer Island (except Palm Beach Shores and also see Palm Beach County).					
(January 1–April 30)		121		38		159

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
(May 1–Decemer 31)		67		38		105
Stuart	Martin					
(January 1–April 30)		62		38		100
(May 1–December 31)		55		38		93
Tallahassee	Leon	52		34		86
Tampa	Hillsborough					
(January 1–April 30)		103		38		141
(May 1–December 31)		81		38		119
Vero Beach	Indian River					
(February 1–April 30)		72		38		110
(May 1–December 31)		50		38		88
West Palm Beach	City limits of West Palm Beach (see Palm Beach County).					
(January 1–April 30)		81		38		119
(May 1–December 31)		55		38		93
GEORGIA						
Albany	Dougherty	57		34		91
Athens	Clarke	51		34		85
Atlanta	Fulton	90		38		128
Augusta	Richmond	55		38		93
Cobb County	Cobb County	56		34		90
Columbus	Muscogee	56		34		90
Conyers	Rockdale	65		34		99
DeKalb County	DeKalb County	59		34		93
Gwinnett County	Gwinnett County	84		30		114
Macon	Bibb	51		34		85
Savannah	Chatham	63		38		101
Warner Robins	Houston	50		34		84
IDAHO						
Boise	Ada	55		38		93
Coeur d'Alene	Kootenai					
(June 1–September 30)		56		34		90
(October 1–May 31)		50		34		84
Ketchum	Blaine (except Sun Valley)	58		42		100
McCall	Valley	59		38		97
Stanley	Custer	50		38		88
Sun Valley	City limits of Sun Valley (see Blaine County).					
(June 1–September 30)		164		42		206
(April 1–May 31)		124		42		166
(October 1–March 31)		89		42		131
ILLINOIS						
Champaign/Urbana	Champaign	50		34		84
Chicago	Cook	104		46		150
DeCatur	Macon	50		34		84
Du Page County	Du Page County	89		38		127
Lake County	Lake County	108		42		150
Peoria	Peoria	50		38		88
Rock Island	Rock Island	59		30		89
Rockford	Winnebago	55		34		89
Springfield	Sangamon	51		38		89
INDIANA						
Bloomington/Crane	Monroe and Martin	50		34		84
Carmel	Hamilton	65		38		103
Fort Wayne	Allen	52		34		86
Indianapolis	Marion County; Fort Benjamin Harrison	70		42		112
Michigan City	La Porte	50		34		84
Muncie	Delaware	50		34		84
Nashville	Brown					
(June 1–October 31)		75		38		113
(November 1–May 31)		50		38		88
South Bend	St. Joseph	58		34		92
Valparaiso/Burlington Beach	Porter	69		34		103
IOWA						
Cedar Rapids	Linn	52		34		86
Davenport/Bettendorf	Scott	55		34		89
Des Moines	Polk	67		34		101

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
KANSAS						
Kansas City	Wyandotte (see also Kansas City, MO)	51		30		81
Overland Park	Johnson	78		38		116
Wichita	Sedgwick	58		38		96
KENTUCKY						
Covington	Kenton	80		38		118
Florence	Boone	60		34		94
Lexington	Fayette	55		34		89
Louisville	Jefferson	60		38		98
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	59		38		97
Bossier City	Bossier Parish	54		34		88
Gonzales	Ascension Parish	55		34		89
Lake Charles	Calcasieu Parish	77		34		111
New Orleans	City limits of New Orleans	88		42		130
Opelouses	St. Landry	55		30		85
Slidell	St. Tammany	55		34		89
St. Francisville	West Feliciana	50		38		88
MAINE						
Bangor	Penobscot	56		30		86
Bar Harbor	Hancock	.....		.....		.....
(July 1–August 31)		139		38		177
(September 1–June 30)		119		38		157
Bath	Sagadahoc	.....		.....		.....
(June 1–September 30)		57		34		91
(October 1–May 31)		50		34		84
Kennebunk	York	.....		.....		.....
(July 1–August 31)		96		38		134
(September 1–June 30)		65		38		103
Kittery	Portsmouth Naval Shipyard (see York County).	.....		.....		.....
(May 1–October 31)		70		34		104
(November 1–April 30)		50		34		84
Portland	Cumberland	.....		.....		.....
(July 1–October 31)		82		38		120
(November 1–June 30)		58		38		96
Rockport	Knox	.....		.....		.....
(July 1–August 31)		90		42		132
(September 1–June 30)		55		42		97
Wiscasset	Lincoln	59		38		97
MARYLAND						
Annapolis	Anne Arundel	90		42		132
Baltimore	Baltimore	110		42		152
Columbia	Howard	89		42		131
Easton	Talbot	69		34		103
Frederick	Frederick	53		38		91
Grasonville	Queen Annes	56		38		94
Hagerstown	Washington	56		34		90
Harford County	Harford County	55		38		93
Lexington Park/Leonardtown/Lusby	St. Mary's	59		34		93
Montgomery County	Montgomery County	115		38		153
Ocean City	Worcester	.....		.....		.....
(April 1–August 31)		129		46		175
(September 1–March 31)		52		46		98
Prince Georges County	Prince Georges County	109		38		147
Salisbury	Wicomico	55		34		89
St. Michaels	City limits of St. Michaels	100		42		142
MASSACHUSETTS						
Andover	Essex	83		38		121
Boston	Suffolk	105		46		151
Cambridge	City limits of Cambridge (see Middlesex County).	105		46		151
Falmouth	City limits of Falmouth	105		38		143
Greenfield	Franklin	.....		.....		.....
(May 1–October 31)		55		30		85
(November 1–April 30)		50		30		80

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
Hyannis	Barnstable	.....		.....		.....
(July 1–September 30)		94		38		132
(October 1–June 30)		72		38		110
Lowell	Middlesex (except Cambridge)	89		34		123
Martha's Vineyard	Dukes					
(June 1–September 30)		159		46		205
(October 1–May 31)		92		46		138
Nantucket	Nantucket					
(June 1–September 30)		90		46		136
(October 1–May 31)		85		46		131
New Bedford	City limits of New Bedford (see Bristol County).	65		34		99
Northampton	Hampshire	68		34		102
Pittsfield	Berkshire	56		38		94
Plymouth	Plymouth.					
(June 1–October 31)		87		34		121
(November 1–May 31)		56		34		90
Quincy	Norfolk	74		38		112
Springfield	Hampden	61		34		95
Taunton	Bristol (except New Bedford)	58		30		88
Worcester	Worcester	79		34		113
MICHIGAN						
Ann Arbor	Washtenaw	70		38		108
Auburn	Bay	59		38		97
Charlevoix	Charlevoix	.....		.....		.....
(July 1–September 30)		125		38		163
(October 1–June 30)		56		38		94
Detroit	Wayne	77		46		123
East Lansing	City limits of East Lansing (see Ingham County).	72		38		110
Flint	Genesee	50		34		84
Frankfort	Benzie	.....		.....		.....
(June 1–September 30)		95		34		129
(October 1–May 31)		63		34		97
Gaylord	Otsego	55		38		93
Grand Rapids	Kent	59		34		93
Grayling	Crawford	.....		.....		.....
(April 1–November 30)		59		34		93
(December 1–March 31)		50		34		84
Holland	Ottawa					
(May 1–September 30)		72		34		106
(October 1–April 30)		64		34		98
Lansing	Ingham (except East Lansing)	56		34		90
Leland	Leelanau	.....		.....		.....
(June 1–August 31)		75		34		109
(September 1–May 31)		60		34		94
Mackinac Island	Mackinac	140		46		186
Manistee	Manistee	.....		.....		.....
(June 1–September 30)		62		30		92
(October 1–May 31)		50		30		80
Midland	Midland	59		34		93
Mount Pleasant	Isabella	71		34		105
Petoskey	Emmet	65		38		103
Pontiac	City limits of Pontiac (see Oakland County)	93		34		127
Sault Ste Marie	Chippewa	65		34		99
South Haven	Van Buren	50		34		84
Traverse City	Grand Traverse	.....		.....		.....
(June 1–September 30)		97		42		139
(October 1–May 31)		60		42		102
Troy	Oakland (except Pontiac)	84		38		122
Warren	Macomb	62		34		96
MINNESOTA						
Anoka County	Anoka County	50		34		84
Dakota County	Dakota County	52		34		86
Duluth	St. Louis	58		42		100
Minneapolis	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount.	85		46		131

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
Rochester	Olmsted	69		34		103
St. Paul	Ramsey	64		38		102
MISSISSIPPI						
Bay St. Louis	Hancock	68		38		106
Biloxi	City limits of Biloxi (see Harrison County)	72		38		110
Gulfport	Harrison (except Biloxi)					
(May 1–August 31)		60		34		94
(September 1–April 30)		53		34		87
Jackson	Hinds	59		34		93
Pascagoula	Jackson	50		34		84
Ridgeland	Madison	51		38		89
Robinsonville	Tunica	55		34		89
Vicksburg	Warren	50		34		84
MISSOURI						
Branson	Taney					
(June 1–September 30)		60		34		94
(October 1–May 31)		50		34		84
Cape Girardeau	Cape Girardeau	51		34		85
Clay County	Clay	82		30		112
Hannibal	Marion					
(June 1–September 30)		54		30		84
(October 1–May 31)		50		30		80
Jefferson City	Cole	52		34		86
Kansas City	Jackson (see also Kansas City, KS)	85		42		127
Lake Ozark	Camden	50		34		84
Osage Beach	City limits of Osage Beach (see Camden County).					
(June 1–September 30)		64		34		98
(October 1–May 31)		50		34		84
Platte County	Platte County	65		34		99
St. Charles County	St. Charles County	51		34		85
St. Louis	St. Louis	66		46		112
MONTANA						
Polson/Kalispell	Lake/Flathead					
(May 1–September 30)		54		34		88
(October 1–April 30)		50		34		84
West Yellowstone Park	Gallatin					
(May 1–October 31)		64		34		98
(November 1–April 30)		60		34		94
NEBRASKA						
Lincoln	Lancaster	50		34		84
Omaha	Douglas	55		38		93
NEVADA						
Elko	All points in Elko County excluding Wendover.	52		30		82
Incline Village	All points in the Northern Lake Tahoe area within Washoe County.					
(June 1–September 30)		94		38		132
(October 1–May 31)		74		38		112
Las Vegas	Clark County; Nellis AFB	55		38		93
Reno	All points in Washoe County not covered under Incline Village per diem locality.	50		38		88
Stateline	Douglas (see also South Lake Tahoe, CA)	108		42		150
Winnemucca	Humboldt	54		34		88
NEW HAMPSHIRE						
Concord	Merrimack	57		34		91
Conway	Carroll					
(June 1–October 31)		90		38		128
(November 1–May 31)		50		38		88
Durham	Strafford					
(May 1–October 31)		71		30		101
(November 1–April 30)		63		30		93
Hanover	Grafton.					
(June 1–October 31)		96		42		138
(November 1–May 31)		59		42		101
Laconia	Belknap					
(June 1–October 31)		65		34		99

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
(November 1–May 31)		55		34		89
Manchester	Hillsborough	78		34		112
Portsmouth/Newington	Rockingham County; Pease AFB					
(June 1–October 31)		75		42		117
(November 1–May 31)		59		42		101
Sullivan County	Sullivan County	50		34		84
NEW JERSEY						
Atlantic City	Atlantic					
(July 1–August 31)		98		42		140
(September 1–November 30)		76		42		118
(December 1–April 30)		65		42		107
(May 1–June 30)		79		42		121
Bergen County	Bergen County	94		38		132
Cape May	Cape May (except Ocean City)					
(June 1–September 30)		132		42		174
(October 1–May 31)		80		42		122
Cherry Hill/Camden/Moorestown	Camden/ Burlington	74		42		116
Eatontown	Monmouth County; Fort Monmouth	84		38		122
Edison	Middlesex (except Piscataway)	61		34		95
Flemington	Hunterdon	74		34		108
Freehold	City limits of Freehold					
(May 1–September 30)		95		34		129
(October 1–April 30)		75		34		109
Hudson County	Hudson County	99		38		137
Millville	Cumberland	51		38		89
Newark	Essex	94		42		136
Ocean City	City limits of Ocean City (see Cape May County).					
(June 1–August 31)		215		38		253
(September 1–May 31)		80		38		118
Parisippany/Dover	Morris County; Picatinny Arsenal	80		38		118
Passaic County	Passaic County	95		38		133
Piscataway	City limits of Piscataway	129		38		167
Princeton	City limits of Princeton (see Mercer County)	107		42		149
Trenton	Mercer (except Princeton)	84		38		122
Union County	Union County	125		38		163
NEW MEXICO						
Albuquerque	Bernalillo	60		38		98
Cloudcroft	Otero	74		30		104
Los Alamos	Los Alamos	71		34		105
Santa Fe	Santa Fe					
(May 1–October 31)		85		46		131
(November 1–April 30)		78		46		124
Taos	Taos	63		34		97
NEW YORK						
Albany	Albany	68		42		110
Batavia	Genesee	57		34		91
Binghamton	Broome	50		38		88
The Bronx	The Bronx	159		46		205
Brooklyn	Brooklyn	159		46		205
Buffalo	Erie	78		42		120
Corning	Steuben	54		38		92
Elmira	Chemung	50		34		84
Glens Falls	Warren					
(June 1–October 31)		74		34		108
(November 1–May 31)		50		34		84
Great Neck	The part of Nassau County defined as the North Shore (up to and including Great Neck to the West and Oyster Bay to the East).	Pending		Pending		Pending
Ithaca	Tompkins	50		34		84
Kingston	Ulster	51		38		89
Lake Placid	Essex					
(June 1–October 31)		80		38		118
(November 1–May 31)		59		38		97
Manhattan	Manhattan	195		46		241
Nassau County	Nassau County	70		38		108

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
Niagara Falls	Niagara					
(June 1–October 31)		65		34		99
(November 1–May 31)		55		34		89
Nyack/Palisades	Rockland	62		38		100
Owego	Tioga	63		30		93
Plattsburgh	Clinton	50		34		84
Poughkeepsie	Dutchess	74		38		112
Queens Borough	Queens	159		46		205
Rochester	Monroe	55		42		97
Saratoga Springs	Saratoga					
(August 1–August 31)		147		38		185
(September 1–March 31)		50		38		88
(April 1–July 31)		71		38		109
Schenectady	Schenectady	55		34		89
Staten Island Borough	Richmond	94		42		136
Suffolk County	Suffolk	68		38		106
Tarrytown	Westchester (except White Plains)	114		42		156
Utica	Oneida	51		34		85
Waterloo/Romulus	Seneca	89		34		123
Watkins Glen	Schuyler					
(May 1–October 31)		60		34		94
(November 1–April 30)		50		34		84
West Point	Orange	121		34		155
White Plains	City limits of White Plains (see Westchester County).	165		42		207
NORTH CAROLINA						
Asheville	Buncombe					
(June 1–October 31)		56		34		90
(November 1–May 31)		50		34		84
Chapel Hill	Orange	69		38		107
Charlotte	Mecklenburg	69		38		107
Durham	Durham	69		42		111
Fayetteville	Cumberland	55		34		89
Greensboro	Guilford	60		38		98
Kill Devil	Dare					
(May 1–August 31)		125		38		163
(September 1–October 31)		68		38		106
(November 1–February 28)		50		38		88
(March 1–April 30)		72		38		110
New Bern	Craven	71		34		105
Raleigh	Wake	74		38		112
Research Triangle Park	City limits of Research Triangle Park	85		38		123
Wilmington	New Hanover					
(March 1–September 30)		60		34		94
(October 1–February 28)		53		34		87
Winston-Salem	Forsyth	64		38		102
NORTH DAKOTA (See footnote 5)						
OHIO						
Akron	Summit	56		38		94
Bellevue	Huron					
(June 1–August 31)		55		30		85
(September 1–May 31)		50		30		80
Cambridge	Guernsey					
(April 1–October 31)		60		34		94
(November 1–March 31)		50		34		84
Canton	Stark	55		34		89
Cincinnati	Hamilton	69		46		115
Cleveland	Cuyahoga	85		42		127
Columbus	Franklin	70		38		108
Dayton	Montgomery, Wright-Patterson AFB	54		38		92
Elyria	Lorain					
(May 1–September 30)		67		34		101
(October 1–April 30)		50		34		84
Fairborn	Greene	66		34		100
Geneva/Hamilton	Ashtabula/Butler	58		34		92
Lancaster	Fairfield	60		34		94
Port Clinton/Oak Harbor	Ottawa					

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
(June 1–August 31)		80		34		114
(September 1–May 31)		50		34		84
Portsmouth	Scioto	50		34		84
Sandusky	Erie					
(May 1–September 30)		83		38		121
(October 1–April 30)		53		38		91
Springfield	Clark	50		34		84
Toledo	Lucas	50		38		88
Warren County	Warren County	59		30		89
OKLAHOMA						
Oklahoma City	Oklahoma	59		38		97
Tulsa	Tulsa/Osage	50		38		88
OREGON						
Ashland	Jackson	59		42		101
Beaverton	Washington	69		38		107
Bend	Deschutes	59		38		97
Clackamas	Clackamas	59		34		93
Coos Bay	Coos	51		34		85
Crater Lake	City limits of Crater Lake (see also Klamath County).	74		38		112
Eugene	Lane (except Florence)	64		38		102
Florence	City limits of Florence (see Lane County)	87		34		121
Gold Beach	Curry					
(June 1–September 30)		65		34		99
(October 1–May 31)		50		34		84
Klamath Falls	Klamath (except Crater Lake)	54		30		84
Lincoln City/Newport	Lincoln					
(July 1–September 30)		80		34		114
(October 1–June 30)		69		34		103
Portland	Multnomah	72		38		110
Salem	Marion	53		34		87
Seaside	Clatsop					
(May 1–September 30)		85		34		119
(October 1–April 30)		60		34		94
PENNSYLVANIA						
Allentown	Lehigh	59		38		97
Chester/Radnor/Essington	Delaware (except Wayne)	69		34		103
Easton	Northampton	59		34		93
Erie	Erie					
(May 1–September 30)		65		30		95
(October 1–April 30)		50		30		80
Gettysburg	Adams					
(May 1–October 31)		82		34		116
(November 1–April 30)		53		34		87
Harrisburg	Daulphin (except Hershey)	56		42		98
Hershey	City limits of Hershey (see Daulphin County).					
(May 1–October 31)		125		42		167
(November 1–April 30)		53		42		95
King Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (see also Philadelphia, PA).	84		42		126
Lancaster	Lancaster	65		38		103
Malvern/Downington/Valley Forge	Chester	100		38		138
Mechanicsburg	Cumberland					
(May 1–October 31)		79		34		113
(November 1–April 30)		65		34		99
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County.	113		46		159
Pittsburgh	Allegheny	79		46		125
Reading	Berks	57		38		95
Scranton	Lackawanna	60		30		90
Warminster	Bucks County; Naval Air Development Center.	75		42		117
Wayne	City limits of Wayne (see also Delaware County).	95		42		137
RHODE ISLAND						
Block Island	Block Island only	94		42		136

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville.	69		38		107
Newport	Newport					
(June 1–September 30)		111		42		153
(October 1–May 31)		77		42		119
North Kingstown	Washington, (except Block, Island)					
(June 1–Septemer 30)		60		30		90
(October 1–May 31)		50		30		80
Providence	Providence	79		42		121
SOUTH CAROLINA						
Charleston	Charleston	64		42		106
Columbia	Richland	50		38		88
Greenville	Greenville	62		38		100
Hilton Head	Beaufort					
(March 1–August 31)		110		42		152
(September 1–February 28)		63		42		105
Myrtle Beach	Horry County; Myrtle Beach AFB					
(June 1–September 30)		114		42		156
(October 1–May 31)		50		42		92
Spartanburg	Spartanburg	50		34		84
SOUTH DAKOTA						
Custer	Custer					
(June 1–August 31)		69		34		103
(September 1–May 31)		50		34		84
Hot Springs	Fall River					
(June 1–August 31)		85		30		115
(September 1–May 31)		50		30		80
Rapid City	Pennington					
(June 1–August 31)		72		34		106
(September 1–May 31)		50		34		84
TENNESSEE						
Chattanooga	Hamilton	50		34		84
Gatlinburg	Sevier	70		38		108
Knoxville	Knox	50		38		88
Memphis	Shelby	79		38		117
Nashville	Davidson	72		42		114
Townsend	Blount	70		34		104
TEXAS						
Arlington	Tarrant	76		34		110
Austin	Travis	80		38		118
Brownsville	Cameron	50		34		84
College Station	Brazos	55		34		89
Corpus Christi	Nueces	56		38		94
Dallas	Dallas	89		46		135
Eagle Pass	Maverick	54		30		84
El Paso	El Paso	78		38		116
Fort Davis	Jeff Davis	65		30		95
Fort Worth [revised rate pending)	City limits of Fort Worth	69		38		107
Galveston	Galveston					
(May 1–August 31)		56		42		98
(September 1–April 30)		50		42		92
Houston	Harris County; L.B. Johnson Space Center and Ellington AFB.	72		42		114
Killeen	Bell	52		30		82
Laredo	Webb	50		34		84
Lubbock	Lubbock	53		34		87
McAllen	Hidalgo	80		34		114
Odessa	Ector	55		34		89
Plano	Collin	55		34		89
San Antonio	Bexar	91		42		133
South Padre Island	Cameron					
(March 1–August 31)		58		38		96
(September 1–February 28)		50		38		88
Tyler	Smith	51		34		85
Victoria	Victoria	53		30		83
UTAH						
Bullfrog	Garfield					

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
(April 1–October 31)		104		30		134
(November 1–March 31)		73		30		103
Cedar City	Iron					
(June 1–August 31)		71		34		105
(September 1–May 31)		59		34		93
Davis County	Davis County	63		34		97
Moab	Grand	70		34		104
Ogden	Weber	54		34		88
Park City	Summit					
(December 1–March 31)		155		46		201
(April 1–November 30)		84		46		130
Provo	Utah	57		38		95
Salt Lake City	Salt Lake and Dugway Proving Ground and Tooele Army Depot.	76		42		118
VERMONT						
Burlington/St. Albans	Chittenden and Franklin	82		38		120
Manchester	Bennington	95		42		137
Middlebury	Addison					
(May 1–October 31)		93		38		131
(November 1–April 30)		90		38		128
Rutland	Rutland					
(December 1–March 31)		64		34		98
(April 1–November 30)		50		34		84
White River Junction	Windsor					
(July 1–October 31)		74		34		108
(November 1–June 30)		60		34		94
VIRGINIA						
Alexandria*		126		42		168
Arlington	Arlington	115		42		157
Blacksburg	Montgomery	54		34		88
Charlottesville*		52		42		94
Chesterfield County	Chesterfield County	63		38		101
Loudoun County	Loudoun	75		38		113
Lynchburg*		62		38		100
Manassas	Prince William County (except Woodbridge)	62		34		96
Fairfax County	Fairfax County (includes the cities of Falls Church and Fairfax).	118		42		160
Richmond*	Henrico, also Defense Supply Center	76		38		114
Roanoke*		50		34		84
Shenandoah County	Shenandoah County	50		34		84
Virginia Beach*	Virginia Beach (also Norfolk, Portsmouth and Chesapeake)*.					
(June 1–August 31)		97		38		135
(September 1–May 31)		54		38		92
Wallops Island	Accomack					
(June 1–September 30)		77		34		111
(October 1–May 31)		54		34		88
Williamsburg*	Williamsburg (also Hampton, Newport News, York County, Naval Weapons Station, Yorktown)*.					
(June 1–October 31)		91		38		129
(November 1–May 31)		59		38		97
Wintergreen	Nelson					
(June 1–October 31)		110		46		156
(November 1–May 31)		95		46		141
Woodbridge	City limits of Woodbridge	67		38		105
*Denotes independent cities.						
WASHINGTON						
Anacortes	Skagit	74		38		112
Bellingham	Whatcom	50		34		84
Bremerton	Kitsap	61		34		95
Everett	Snohomish (except Lynnwood)	59		38		97
Friday Harbor	San Juan					
(June 1–September 30)		82		42		124
(October 1–May 31)		59		42		101
Island County	Island County	84		34		118
Lynnwood	City limits of Lynnwood (see Snohomish County).	79		34		113

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
		(a)		(b)		(c)
Ocean Shores	Grays Harbor					
(April 1–September 30)		82		38		120
(October 1–March 31)		72		38		110
Olympia/Tumwater	Thurston	58		38		96
Port Angeles	City limits of Port Angeles (see Clallam County).					
(June 1–September 30)		65		38		103
(October 1–May 31)		54		38		92
Port Townsend	Jefferson	65		34		99
Seattle	King	104		46		150
Sequim	Clallam (except Port Angeles)					
(May 1–September 30)		59		34		93
(October 1–April 30)		50		34		84
Spokane	Spokane	61		38		99
Tacoma	Pierce	54		38		92
Vancouver	Clark	55		38		93
WEST VIRGINIA						
Berkeley Springs	Morgan	69		34		103
Charleston	Kanawha	77		38		115
Harpers Ferry	Jefferson	50		34		84
Morgantown	Monongalia	64		34		98
Parkersburg	Wood	52		34		86
Wheeling	Ohio	55		34		89
WISCONSIN						
Brookfield	Waukesha	66		38		104
Eau Claire	Eau Claire	52		34		86
Green Bay	Brown	54		34		88
Kenosha	Kenosha	52		30		82
La Crosse	La Crosse	52		30		82
Lake Geneva	Walworth	86		38		124
Madison	Dane	59		38		97
Milwaukee	Milwaukee	72		42		114
Minocqua/Rhinelander	Oneida	52		38		90
Oshkosh	Winnebago	56		34		90
Sturgeon Bay	Door					
(July 1–August 31)		73		34		107
(September 1–June 30)		50		34		84
Wisconsin Dells	Columbia					
(June 1–September 30)		71		38		109
(October 1–May 31)		50		38		88
WYOMING						
Cody	Park					
(June 1–September 30)		79		30		109
(October 1–May 31)		50		30		80
Jackson	Teton					
(June 1–September 30)		88		42		130
(October 1–May 31)		59		42		101
Thermopolis	Hot Springs					
(June 1–August 31)		54		30		84
(September 1–May 31)		50		30		80

[1] Unless otherwise specified, the per diem locality is defined as ''all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries.''

[2] Per diem localities with county definitions shall include ''all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties (unless otherwise listed separately).''

[3] When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the two rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the location. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual review.

[5] The standard CONUS rate of $80 ($50 for lodging and $30 for M&IE) applies to all per diem localities in the State of North Dakota.

Note: Recognizing that all locations are incorporated cities, the term ''city limits'' has been used as a general phrase to denote the commonly recognized local boundaries of the location cited.

Dated: January 21, 1999.

William T. Rivers,

Acting Director, Travel and Transportation Management Policy Division.

[FR Doc. 99–3085 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 97–95; FCC 98–336]

Allocation and Designation of Spectrum for Fixed-Satellite and Wireless Services in the 36.0–51.4 GHz Frequency Band, and Allocation of Spectrum in the 37.0–38.0 GHz and 40.0–40.5 GHz Band for Government Operations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 15, 1999, a document concerning a frequency segmentation plan for non-Government operations in the 36.0–51.4 GHz band. Inadvertently, errors were made in the table contained in § 25.202(a)(1). This document corrects those errors.

DATES: Effective on February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Breig, Planning and Negotiation Division, International Bureau, (202) 418–2156 or via electronic mail: cbreig@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of January 15, 1999 (64 FR 2585), which incorrectly amended § 25.202(a)(1) by adding two footnotes that did not belong. This correction removes those two incorrect footnotes.

In rule § 25.202(a)(1) published on January 15, 1999 (64 FR 2585), make the following correction. On page 2591, in the third column, remove footnote 2 from the 10.95–11.2 GHz space-to-Earth designation and remove footnote 1 from the 11.45–11.7 GHz space-to Earth designation.

Dated: February 2, 1999.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–2936 Filed 2–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–54; FCC 98–348]

1998 Biennial Review—Part 76 Cable Television Service Pleading and Complaint Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order reorganizes and simplifies the Commission's procedural rules for filing petitions and complaints pursuant to part 76. The intended effect of these changes is to make the part 76 rules more concise and easier to use.

DATES: These rules contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the proposed information collection requirements should be submitted on or before April 12, 1999.

ADDRESSES: A copy of any comments on the information collections in §§ 76.6, 76.7, 76.8, 76.9, 76.10, 76.61, 76.914, 76.1003, 76.1302, and 76.1513 should be submitted to Judy Boley, Federal Communications Commission, Room C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act:

This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Report and Order,* as required by the 1995 Act. Public comments are due April 12, 1999. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX (new collection).

Title: Part 76 Cable Television Service Pleading and Complaint Rules.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 400.

Estimated Time Per Response: 4 hours to 40 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 8,800 hours.

Total Annual Cost to Respondents: $1,204,000.

Needs and Uses: The procedural requirements set forth in this proceeding describe the process for filing petitions and complaints under part 76 of the Commission's rules. This information contained in the petitions and complaints is part of the record used by the Commission in its decision-making. Without the information, the Commission would be unable to enforce its rules and would be unresponsive to entities regulated by the Commission.

1. The *Report and Order* addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 98–54, 63 FR 24145 (May 1, 1998) (''*NPRM*''), regarding the Commission's 1998 biennial regulatory review of its regulations conducted pursuant to section 11 of the Telecommunications Act of 1996. In the *NPRM,* the Commission sought comments and proposals on how to achieve a streamlined complaint process for part 76 pleadings.

2. *Discussion.* This Order implements several rule changes designed to consolidate the procedural requirements for most part 76 filings. These requirements are codified at §§ 76.6 through 76.10 of the Commission's rules. This Order also eliminates the provisions rendered redundant by the amendments to the rules. Specifically, § 76.6 is adopted. This section contains the general pleading requirements for all written submissions made pursuant to part 76. In addition, § 76.6 will require

that all submissions be verified by the submitting party or by the party's attorney. Further, each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, the submission is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. Prior to this amendment not all submissions pursuant to the part 76 rules required verification.

3. Section 76.7 is amended to provide a uniform filing format, deadlines, and other procedural requirements which most pleadings filed pursuant to part 76 will follow. Going forward, unless the rule in question contains its own specific procedural guidelines, a party seeking special relief, waiver of the Commission's rules, resolution of a complaint, determination of effective competition, or resolution of a disputed question relating to part 76 should file a petition pursuant to, and follow the procedural rules set forth in § 76.7. To the extent a conflict is perceived between the general pleading requirements of § 76.7 and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

4. To comport with its new generalized nature, those portions of § 76.7 which pertain only to must-carry complaints have been moved to § 76.61, thereby incorporating all unique procedural aspects of must carry complaints in that rule. Section 76.61 is further amended to merge the specific requirements of must-carry complaints filed by local commercial television stations and must-carry complaints filed by local noncommercial educational television stations in one rule.

5. The procedures regarding petitions for effective competition are consolidated in § 76.7. The result is that all effective competition petitions filed pursuant to § 76.7 will be placed on public notice and have the same 20 day deadline to file comments or oppositions and 10 days to reply. Additionally, § 76.7 is revised to set forth rules providing for referrals to the referral of proceedings for an adjudicatory hearing before an administrative law judge (''ALJ'').

6. Section 76.8 has been recast to provide that status conferences may be convened at the discretion of Cable Services Bureau (''Bureau'') staff for all part 76 proceedings. Section 76.9 is revised to set forth rules providing for confidential treatment of proprietary information. Section 76.10 is added to clarify and describe the review process available to parties following a Bureau ruling or an ALJ decision in a matter referred by the Bureau. This includes the procedures for interlocutory review, petitions for reconsideration, and applications for review.

7. Although not a change to the part 76 rules, the Commission will change its public notice format to provide the public with additional information regarding proceedings filed with the Commission. The Commission is currently upgrading to a new computer system which will have the capacity to store and display more information about each filing. The improved public notice format will be implemented once the new case tracking system becomes operational.

8. Additionally, the Order adopts a procedural amendment clarifying essentially similar provisions related to the one-year limitations period for filing program access (§ 76.1003(g)(2)), program carriage (§ 76.1302(f)(2)), and open video system complaints (§ 76.1513(h)(2)). These sections now provide that complaints based on allegedly discriminatory offers to the complainant must be unrelated to any existing contract between the complainant and the party making such offer. This amendment is intended to clarify that an offer to amend an existing contract that has been in effect for more than one year does not reopen the existing contract to complaints that the provisions thereof are discriminatory.

Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the *Notice* in this proceeding. The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the *Notice*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') in this *Report and Order* conforms to the RFA.

10. *Need for Action and Objectives of the Rules.* Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

11. *Summary of Significant Issues Raised by the Public Comments in Response to the IRFA.* One comment was filed specifically in response to the IRFA. The commenter disagrees with the conclusion in the IRFA that the number of small cable businesses affected by the Commission's rules has declined since 1995.

12. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SBA. The rules adopted in the *Report and Order* will affect cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish manufacturers, open video systems, satellite master antenna television, local multipoint distribution systems, program producers and distributors, and television stations. Below set forth are the general SBA and FCC cable small size standards. Each service is addresses individually to provides a more precise estimate of small entities. Also described are program producers and distributors.

13. *SBA Definitions for Cable and Other Pay Television Services:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were approximately 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue.

14. *Additional Cable System Definitions:* In addition, the Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the

Commission's rules, a ''small cable company'' is one serving no more than 400,000 subscribers nationwide. The Commission estimated that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted. The Commission concludes that only a small percentage of these entities currently provide qualifying ''telecommunications services'' as required by the Communications Act and, therefore, estimates that the number of such entities are significantly fewer than noted.

15. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 cable subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Multipoint Multichannel Distribution Systems (''MMDS''):* The Commission refined its definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

17. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Available information indicates that no MMDS facility generates revenue in excess of $11 million annually. The Commission concludes that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

18. *Direct Broadcast Satellite (''DBS''):* Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. The *Notice* concluded that no DBS operator qualifies as a small entity. Since the publication of the *Notice*, more information has become available. In light of the 1997 gross revenue figures for the various DBS operators, the Commission restates its conclusion that no DBS operator qualifies as a small entity.

19. *Home Satellite Dish (''HSD''):* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

20. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,184,470 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator (''MSO'').

21. *Satellite Master Antenna Television (''SMATVs''):* Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.162 million residential subscribers as of June 30, 1997. The ten largest SMATV operators together pass 848,450 units. Assuming that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, the Commission is not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, the Commission concludes that a substantial number of SMATV operators qualify as small entities.

22. *Local Multipoint Distribution System (''LMDS''):* Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA approved definition for cable and other pay services that qualify as a small business is defined above. A small radiotelephone entity is one with 1500 employees or fewer. However, for the purposes of this *Report and Order*, only an estimate of LMDS video service providers is included.

23. An auction for licenses to operate LMDS systems was recently completed by the Commission. The vast majority of the LMDS license auction winners were small businesses under the SBA's definition of cable and pay television (SIC 4841). The Commission adopted a small business definition for entities bidding for LMDS licenses as an entity that, together with affiliates and controlling principles, has average gross revenues not exceeding $40 million for each of the three preceding years. The Commission has not yet received approval by the SBA for this definition.

24. There is only one company, CellularVision, that is currently providing LMDS video services. In the *IRFA*, the Commission assumed that CellularVision was a small business under both the SBA definition and our auction rules. No commenters addressed the tentative conclusions reached in the *Notice*. Accordingly, the Commission affirms the tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

25. *Open Video System (''OVS''):* The Commission has certified 15 OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone (''VDT'') system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. One OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, the Commission concludes that at least some of the OVS operators qualify as small entities.

26. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs and, therefore, will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and 7822, and $5 million or less in annual receipts for SIC 7922. The 1992 Bureau of the Census data indicate the following: (1) There were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had $16,999 million or less in annual receipts and 7002 of these firms had $24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had $16,999 million or less in annual receipts and 1013 of these firms had $24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than $5 million in annual receipts.

27. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, the Commission concludes that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this *Report and Order*.

28. *Television Stations:* The rules will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number (SIC 7812). There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 LPTV stations that may also be affected by the Commission's rules. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

29. Thus, the rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

30. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

31. *Description of Reporting, Recordkeeping and Other Compliance Requirements.* This analysis examines the costs and administrative burdens associated with our rules and requirements. The rules adopted do not add additional compliance requirements, except in that a party involved in a non-rulemaking part 76 proceeding may be required to participate in a status conference. The Commission believes, however, that this requirement would not necessitate significant additional costs or skills beyond those already utilized in the ordinary course of business. The Commission believes that this requirement will be beneficial to participants. The status conference is a useful mechanism for achieving a swift conclusion to disputes. The rules provide that such conferences may be conducted over the telephone, thereby eliminating the need for parties to incur travel expenses to attend the conference.

32. *Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered.* The Commission believes that the rules implemented to streamline the pleading requirements associated with part 76 filings, make the amended part 76 easier to use than the current rules. Several rules have been shortened or eliminated in order to make the part 76 rules more concise. Additionally, where possible, the procedural requirements for part 76 filings have been standardized.

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

34. It is further ordered that the rules as amended shall become effective upon approval by OMB.

35. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall

send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

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

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

1a. The heading of part 76 is revised to read as set forth above.

2. Section 76.6 is added to read as follows:

§ 76.6 General pleading requirements.

(a) *General pleading requirements.* All written submissions, both substantive and procedural, must conform to the following standards:

(1) A pleading must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, should be pleaded fully and with specificity.

(2) Pleadings must contain facts which, if true, are sufficient to warrant a grant of the relief requested.

(3) Facts must be supported by relevant documentation or affidavit.

(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

(5) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority. Opposing authorities must be distinguished. Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(6) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(b) *Copies to be Filed.* Unless otherwise directed by specific regulation or the Commission, an original and two (2) copies of all pleadings shall be filed in accordance with § 0.401(a) of this chapter, except that petitions requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(c) *Frivolous pleadings.* It shall be unlawful for any party to file a frivolous pleading with the Commission. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

3. Section 76.7 is revised to read as follows:

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) *Initiating pleadings.* In addition to the general pleading requirements, initiating pleadings must adhere to the following requirements:

(1) *Petitions.* On petition by any interested party, cable television system operator, a multichannel video programming distributor, local franchising authority, or an applicant, permittee, or licensee of a television broadcast or translator station, the Commission may waive any provision of this part 76, impose additional or different requirements, issue a ruling on a complaint or disputed question, issue a show cause order, revoke the certification of the local franchising authority, or initiate a forfeiture proceeding. Petitions may be submitted informally by letter.

(2) *Complaints.* Complaints shall conform to the relevant rule section under which the complaint is being filed.

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

(4) *Statement of relief requested.* (i) The petition or complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.

(ii) The petition or complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(iii) A petition or complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition or complaint. A request for the return of an initiating document will be regarded as a request for dismissal.

(5) *Failure to prosecute.* Failure to prosecute petition or complaint, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the initiating pleading.

(b) *Responsive pleadings.* In addition to the general pleading requirements, responsive pleadings must adhere to the following requirements:

(1) *Comments/oppositions to petitions.* Unless otherwise directed by the Commission, interested persons may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(2) *Answers to complaints.* (i) Unless otherwise directed by the Commission, any party who is served with a complaint shall file an answer in accordance with the following, and the relevant rule section under which the complaint is being filed.

(ii) The answer shall be filed within 20 days of service of the complaint,

unless another period is set forth in the relevant rule section.

(iii) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party against whom a complaint is filed failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(iv) The answer shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(v) Averments in a complaint are deemed to be admitted when not denied in the answer.

(c) *Reply.* In addition to the general pleading requirements, reply comments and replies must adhere to the following requirements:

(1) The petitioner or complainant may file a reply to a responsive pleading which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. Unless expressly permitted by the Commission, reply comments and replies to an answer shall not contain new matters.

(2) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.

(3) Unless otherwise directed by the Commission or the relevant rule section, comments and replies to answers must be filed within ten (10) days after submission of the responsive pleading.

(d) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(e) *Additional procedures and written submissions.* (1) The Commission may specify other procedures, such as oral argument or evidentiary hearing directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(i) These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(ii) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(iii) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(f) *Discovery.* (1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories, depositions or document production.

(2) The Commission staff may in its discretion direct the parties to submit discovery proposals, together with a memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, document production or depositions. The Commission staff may hold a status conference with the parties, pursuant to § 76.8 of this part, to determine the scope of discovery, or direct the parties regarding the scope of discovery. If the Commission staff determines that extensive discovery is required or that depositions are warranted, the staff may advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (g) of this section.

(g) *Referral to administrative law judge.* (1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Cable Services Bureau Chief, the Cable Services Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph.

(h) *System community units outside the Contiguous States.* On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

(i) *Commission ruling.* The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute, issue an order to show cause, or initiate a forfeiture proceeding.

Notes 1 through 4 to § 76.7:

Note 1: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§ 1.91–1.95 of this chapter shall apply.

Note 2: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to § 1.80(g) of this chapter will not be initiated by such motion until the affected parties are given an opportunity to respond to the Commission's charges.

Note 3: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of § 1.80(f) of this

chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of § 1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

Note 4: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

4. Section 76.8 is revised to read as follows:

§ 76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia,* procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

5. Section 76.9 is revised to read as follows:

§ 76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the proceeding and any support personnel employed by such attorneys;

(ii) Officers or employees of the parties in the proceeding who are named by another party as being directly involved in the proceeding;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(d) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The other parties will have an opportunity to respond to such requests.

(e) The persons designated in paragraphs (c) and (d) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense of the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(f) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (c) and (d) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(g) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

6. Section 76.10 is added to read as follows:

§ 76.10 Review.

(a) *Interlocutory review.* (1) Except as provided below, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the staff or administrative law judge.

(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on the merits.

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling.

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right.

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(b) *Petitions for reconsideration.* Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104 through 1.106 of this chapter.

(c) *Application for review.* (1) Any party to a part 76 proceeding aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with § 1.115 of this chapter.

(2) Any party to a part 76 proceeding aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with §§ 1.276(a) and 1.277(a) through (c) of this chapter, except that in proceedings brought pursuant to §§ 76.1003, 76.1302, and 76.1513 of this part, unless a stay is granted by the Commission, the decision by the administrative law judge will become effective upon release and will remain in effect pending appeal.

7. Section 76.61 is amended by revising paragraphs (a)(3), (a)(4) and (b), and adding (a)(5) to read as follows:

§ 76.61 Disputes concerning carriage.

(a) * * *

(3) A local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator may file a complaint with the Commission in accordance with the procedures set forth in § 76.7 of this part. In addition to the requirements of § 76.7 of this part, such complaint shall specifically:

(i) Allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(ii) Be accompanied by the notice from the complainant to the cable television system operator, and the cable television system operator's response, if any. If no timely response was received, the complaint shall so state.

(iii) Establish the complaint is being filed within the sixty-day deadline stated in paragraph (a)(5) of this section.

(4) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other time period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

(5) No must-carry complaint filed pursuant to paragraph (a) of this section will be accepted by the Commission if filed more than sixty (60) days after—

(i) The denial by a cable television system operator of request for carriage or channel position contained in the notice required by paragraph (a)(1) of this section, or

(ii) The failure to respond to such notice within the time period allowed by paragraph (a)(2) of this section.

(b) *Complaints regarding carriage of qualified local NCE television stations.* (1) Whenever a qualified local NCE television station believes that a cable operator has failed to comply with the signal carriage or channel positioning requirements, pursuant to §§ 76.56 through 76.57 of this part, the station may file a complaint with the Commission in accordance with the procedures set forth in § 76.7 of this part. In addition to the requirements of § 76.7 of this part, such complaint shall specifically:

(i) Allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(ii) Be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(2) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for a period of time the Commission deems appropriate for the specific case under consideration. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

(3) With respect to must-carry complaints filed pursuant to paragraph (b) of this section, such complaints may be filed at any time the complainant believes that the cable television system operator has failed to comply with the applicable provisions of subpart D of this part.

8. Section 76.914 is amended by revising paragraph (c) to read as follows:

§ 76.914 Revocation of certification.

* * * * *

(c) A cable operator may file a petition for special relief pursuant to § 76.7 of this part seeking revocation of a franchising authority's certification.

* * * * *

9. Section 76.1003 is revised to read as follows:

§ 76.1003 Program access proceedings.

(a) *Complaints.* Any multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in §§ 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, a program access complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, whether the defendant is a cable operator, satellite broadcast programming vendor or satellite cable programming vendor (describing each defendant), and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the program access requirements;

(3) Evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable

programming or satellite broadcast programming vendor;

(4) In complaints alleging discrimination, documentary evidence such as a rate card or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing multichannel video programming distributor or, if no programming contract or rate card is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exits, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

(5) If a programming contract or a rate card is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein;

(6) In complaints alleging exclusivity violations:

(i) The identity of both the programmer and cable operator who are parties to the alleged prohibited agreement,

(ii) Evidence that complainant can or does serve the area specified in the complaint, and

(iii) Evidence that the complainant has requested to purchase the relevant programming and has been refused or unanswered;

(7) In complaints alleging a violation of § 76.1001 of this part, evidence demonstrating that the behavior complained of has harmed complainant.

(8) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (a) of this section has been made.

(d) *Damages requests.* (1) In a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim in accordance with the requirements of paragraph (d)(3) of this section.

(2) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded if the complaint complies fully with the requirement of paragraph (d)(3) of this section where the defendant knew, or should have known that it was engaging in conduct violative of section 628.

(3) In all cases in which recovery of damages is sought, the complainant shall include within, or as an attachment to, the complaint, either:

(i) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(ii) An explanation of:

(A) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(B) The reason such information is unavailable to the complaining party;

(C) The factual basis the complainant has for believing that such evidence of damages exists; and

(D) A detailed outline of the methodology that would be used to create a computation of damages when such evidence is available.

(e) *Answer.*

(1) Any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint, unless otherwise directed by the Commission.

(2) An answer to an exclusivity complaint shall provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area, the defendant shall so certify in its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to § 76.9 of this part.

(3) An answer to a discrimination complaint shall state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and shall specify the particular justification set forth in § 76.1002(b) of this part relied upon in support of the differential.

(i) When responding to allegations concerning price discrimination, except in cases in which the alleged price differential is *de minimis* (less than or equal to five cents per subscriber or five percent, whichever is greater), the defendant shall provide documentary evidence to support any argument that the magnitude of the differential is not discriminatory.

(ii) In cases involving a price differential of less than or equal to five cents per subscriber or five percent, whichever is greater, the answer shall identify the differential as *de minimis* and state that the defendant is therefore not required to justify the magnitude of the differential.

(iii) If the defendant believes that the complainant and its competitor are not sufficiently similar, the answer shall set forth the reasons supporting this conclusion, and the defendant may submit an alternative contract for comparison with a similarly situated multichannel video programming distributor that uses the same distribution technology as the competitor selected for comparison by the complainant. The answer shall state the defendant's reasons for any differential between the prices, terms and conditions between the complainant and such similarly situated distributor, and shall specify the particular justifications in § 76.1002(b) of this part relied upon in support of the differential. The defendant shall also provide with its answer written documentary evidence to support its justification of the magnitude of any price differential between the complainant and such similarly situated distributor that is not *de minimis*.

(4) An answer to a complaint alleging an unreasonable refusal to sell programming shall state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and shall specify why the defendant's actions are not discriminatory.

(f) *Reply.* Within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The satellite cable programming or satellite broadcast programming vendor enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) The satellite cable programming or satellite broadcast programming vendor offers to sell programming to the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this subpart, and such offer to sell programming is unrelated to any existing contract between the complainant and the satellite cable programming or satellite broadcast programming vendor; or

(3) The complainant has notified a cable operator, or a satellite cable programming vendor or a satellite broadcast programming vendor that it intends to file a complaint with the Commission based on a request to purchase or negotiate to purchase satellite cable programming or satellite broadcast programming, or has made a request to amend an existing contract pertaining to such programming pursuant to § 76.1002(f) of this part that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this subpart.

(h) *Remedies for violations*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor. Such order shall set forth a timetable for compliance, and shall become effective upon release.

(2) *Additional sanctions.* The remedies provided in paragraph (h)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

(3) *Imposition of damages.* (i) *Bifurcation.* In all cases in which damages are requested, the Commission may bifurcate the program access violation determination from any damage adjudication.

(ii) *Burden of proof.* The burden of proof regarding damages rests with the complainant, who must demonstrate with specificity the damages arising from the program access violation. Requests for damages that grossly overstate the amount of damages may result in a Commission determination that the complainant failed to satisfy its burden of proof to demonstrate with specificity the damages arising from the program access violation.

(iii) *Damages adjudication.* (A) The Commission may, in its discretion, end adjudication of damages with a written order determining the sufficiency of the damages computation submitted in accordance with paragraph (d)(3)(i) of this section or the damages computation methodology submitted in accordance with paragraph (d)(3)(ii)(D) of this section, modifying such computation or methodology, or requiring the complainant to resubmit such computation or methodology.

(1) Where the Commission issues a written order approving or modifying a damages computation submitted in accordance with paragraph (d)(3)(i) of this section, the defendant shall recompense the complainant as directed therein.

(2) Where the Commission issues a written order approving or modifying a damages computation methodology submitted in accordance with paragraph (d)(3)(ii)(D) of this section, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated methodology.

(B) Within thirty days of the issuance of a paragraph (d)(3)(ii)(D) of this section damages methodology order, the parties shall submit jointly to the Commission either:

(1) A statement detailing the parties' agreement as to the amount of damages;

(2) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(3) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(C)*(1)* In cases in which the parties cannot resolve the amount of damages within a reasonable time period, the Commission retains the right to determine the actual amount of damages on its own, or through the procedures described in paragraph (h)(3)(iii)(C)*(2)* of this section.

(2) Issues concerning the amount of damages may be designated by the Chief, Cable Services Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge.

(D) Interest on the amount of damages awarded will accrue from either the date indicated in the Commission's written order issued pursuant to paragraph (h)(3)(iii)(A)*(1)* of this section or the date agreed upon by the parties as a result of their negotiations pursuant to paragraph (h)(3)(iii)(A)*(2)* of this section. Interest shall be computed at applicable rates published by the Internal Revenue Service for tax refunds.

10. Section 76.1302 is revised to read as follows:

§ 76.1302 Carriage agreement proceedings.

(a) *Complaints.* Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, a carriage agreement complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) For complaints alleging a violation of § 76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Answer.* (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(e) *Reply.* Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(f) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(g) *Remedies for violations*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (g)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

11. In Section 76.1513, the heading, paragraphs (a), (d) through (h) are revised and paragraphs (i) through (u) are removed to read as follows:

§ 76.1513 Open video dispute resolution.

(a) *Complaints.* Any party aggrieved by conduct that it believes constitute a violation of the regulations set forth in this part or in section 653 of the Communications Act (47 U.S.C. 573) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The Commission shall resolve any such dispute within 180 days after the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes.

* * * * *

(d) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, an open video system complaint shall contain:

(1) The type of entity that describes complainant (e.g., individual, private association, partnership, or corporation), the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) If discrimination in rates, terms, and conditions of carriage is alleged, documentary evidence shall be submitted such as a preliminary carriage rate estimate or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing video programming provider or, if no programming contract or preliminary carriage rate estimate is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exists, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

Note to paragraph (d)(2): Upon request by a complainant, the preliminary carriage rate estimate shall include a calculation of the average of the carriage rates paid by the unaffiliated video programming providers receiving carriage from the open video system operator, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate.

(3) If a programming contract or a preliminary carriage rate estimate is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (c) of this section has been made.

(e) *Answer.*

(1) Any open video system operator upon which a complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) An answer to a discrimination complaint shall state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and shall specify the particular justification relied upon in support of the differential. Any documents or contracts submitted pursuant to this paragraph may be protected as proprietary pursuant to § 76.9 of this part.

(f) *Reply.* Within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs

(1) The open video system operator enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this part; or

(2) The open video system operator offers to carry programming for the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this part, and such offer to carry programming is unrelated to any existing contract between the complainant and the open video system operator; or

(3) The complainant has notified an open video system operator that it intends to file a complaint with the Commission based on a request for such operator to carry the complainant's programming on its open video system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this part.

(h) *Remedies for violations*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate

remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

(2) *Additional sanctions.* The remedies provided in paragraph (h)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[FR Doc. 99–3139 Filed 2–9–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 27
Wednesday, February 10, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

Telecommunications Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend 7 CFR part 1755 to change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, engineering services, or architectural services financed through loans made or guaranteed by RUS. The required contract forms are currently published in the text format in the Code of Federal Regulations (CFR). This proposed rule would eliminate this unnecessary and burdensome publication in the CFR.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule, and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule, and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received on or before March 12, 1999.

ADDRESSES: Written comments should be sent to Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1598, Washington, DC 20250–1598. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Norberto Esteves, Chairman, Technical Standards Committee A (Telecommunications), Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1598, Washington, DC 20250–1598, telephone number 202–720–0699, fax number 202–720–4099, E-mail nesteves@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: January 24, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–3164 Filed 2–9–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–338–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 757–200PF series airplanes. This proposal would require revising the Airplane Weight & Balance (W&B) Manual to prohibit operation of any airplane without side vertical restraints installed on the main cargo deck when carrying a particular pallet. This proposal also would provide for optional terminating action for the Airplane W&B Manual revision. This proposal is prompted by reports indicating that some airplanes have been operated without side vertical restraints installed on the main cargo deck when carrying certain pallets. The actions specified by the proposed AD are intended to prevent inadvertent movement of a cargo pallet during flight, which could result in an adverse center of gravity condition and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patrick Safarian, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2775; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–338–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports indicating that some Boeing Model 757–200PF series airplanes have been operated without side vertical restraints installed on the main cargo deck when carrying the National Aerospace Standard (NAS) 3610 Type II cargo pallets. These airplanes are certified to carry Type I cargo pallets and therefore do not have side vertical restraints installed. Currently, the Airplane Weight & Balance Manual allows operators of the affected airplanes to operate with Type II cargo pallets. The use of these pallets without restraints could allow the cargo to shift and come loose under certain flight conditions. This condition, if not corrected, could result in inadvertent movement of a cargo pallet during flight, which could result in an adverse center of gravity condition and consequent reduced controllability of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the Airplane Weight & Balance (W&B) Manual to prohibit operation of any 757–200PF series airplane without side vertical restraints installed on the main cargo deck when carrying Type II cargo pallets.

Cost Impact

There are approximately 100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed Airplane W&B Manual revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–338–AD.

Applicability: All Model 757–200PF series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent movement of a cargo pallet during flight, which could result in an adverse center of gravity condition and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Weight & Balance (W&B) Manual to include the following statement. This action may be accomplished by inserting a copy of this AD into the W&B Manual.

''Operation of any airplane without side vertical restraints installed on the main cargo deck when carrying any Type II cargo pallet is prohibited.''

(b) Installation of side vertical restraints in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, constitutes terminating action for the requirements of paragraph (a) of this AD.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3180 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–10]

Proposed modification of Class E Airspace; Marlette, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marlette, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 011° helicopter point in space approach, has been developed for Marlette Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Marlette, MI, in order to include the point in space approach serving Marlette Airport.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7 Rules Docket No. 99–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being place on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Marlette, MI, to accommodate aircraft executing the proposed GPS SIAP 011° helicopter point in space approach for Marlette Airport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. 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 7400.9F dated September 10, 1998, and effective September 16, 1998, 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 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Marlette, MI [Revised]

Marlette Airport, MI
(Lat. 43°18′43″ N., long. 83°05′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Marlette Airport.

* * * * *

Issued in Des Plaines, Illinois on January 29, 1999.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3289 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–9]

Proposed revocation of Class E airspace, Saginaw, Harry W. Browne Airport, MI; revocation of Class E airspace, Saginaw, Tri-City Airport, MI; and establishment of Class E Airspace; Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class E airspace for Saginaw, Harry W. Browne Airport, MI, and Saginaw, Tri-City Airport, MI, and establish a single Class E airspace area for Saginaw, MI. The Class E airspace for Harry W. Browne Airport is largely encompassed by the Class E airspace for Tri-City Airport already. Further, the airport names for Harry W. Browne Airport and Tri-City Airport have recently changed, requiring renaming the Class E airspace areas. Harry W. Browne Airport is now called Saginaw County H. W. Browne Airport, and Tri-City Airport is now called MBS International Airport. In addition, a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 021° helicopter point in space approach, has been developed for Saint Mary's Hospital Heliport, Saginaw, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing this approach. This action would combine the two existing Class E airspace areas into one Class E airspace area, rename the Class E airspace area to Saginaw, MI, incorporate the new airport names, and increase the size of the new airspace area slightly in order to include the point in space approach serving Saint Mary's Hospital Heliport.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–9, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–9.'' 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 Rule Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, *Attention:* Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the 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 14 CFR part 71 to establish a new Class E airspace area at Saginaw, MI. This action would revoke the two existing Class E airspace areas (Saginaw, Harry W. Browne airport, MI, and Saginaw, Tri-City Airport, MI) and combine them into one new Class E airspace area. The new Class E airspace area would be slightly larger than the two existing Class E airspace areas in order to accommodate aircraft executing the proposed GPS SIAP 021° helicopter point in space approach for Saint Mary's Hospital Heliport, Saginaw, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing this approach. The area would be depicted on appropriate aeronautical charts. 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 7400.9F dated September 10, 1998, and effective September 16, 1998, 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 12966; (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 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Saginaw, Harry W. Browne Airport, MI [Removed]

* * * * *

AGL MI E5 Saginaw, Tri-City Airport, MI [Removed]

* * * * *

AGL MI E5 Saginaw, MI [New]

MBS International airport, MI
(Lat. 43°31′58″ N., long. 84°04′47″ W.)
Saginaw County H.W. Browne Airport, MI
(Lat. 43°26′00″ N., long. 83°51′45″ W.)
Bay City, James Clements Municipal Airport, MI
(Lat. 43°32′49″ N., long. 83°53′44″ W.)
Midland, Jack Barstow Airport, MI
(Lat. 43°39′46″ N., long. 84°15′5 41″1 W.)
Saint Mary's Hospital, MI
Point in Space Coordinates
(Lat. 43°24′54″ N., long. 83°56′5 27″1 W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of MBS International Airport, within a 6.4-mile radius of Saginaw County H.W. Browne Airport, within a 6.4-mile radius of James Clements Municipal Airport, within a 6.3-mile radius of Jack Barstow Airport, and within a 6.0-mile radius of the Point in Space serving Saint Mary's Hospital.

* * * * *

Issued in Des Plaines, Illinois on January 29, 1999.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3288 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–71]

Proposed Modification of Class E Airspace; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Flint, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 047° helicopter point in space approach, has been developed for Genesys Regional Medical Center Heliport, Grand Blanc, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Flint, MI, in order to include the point in space approach serving Genesys Regional Medical Center Heliport.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the 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 14 CFR part 71 to modify Class E airspace at Flint, MI, to accommodate aircraft executing the proposed GPS SIAP 047° helicopter point in space approach for Genesys Regional Medical Center Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. 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 7400.9F dated September 10,

1998, and effective September 16, 1998, 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 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Flint, MI [Revised]

Flint, Bishop International Airport, MI
(Lat. 42°57′56″ N., long. 83°44′37″ W)
Owosso Community Airport, MI
(Lat. 42°59′35″ N., long. 84°08′20″ W)
Davison, Athelone Williams Memorial Airport, MI
(Lat. 43°01′45″ N., long. 83°31′47″ W)
Linden, Prices Airport, MI
(Lat. 42°48′28″ N., long. 83°46′29″ W)
PETLI LOM
(Lat. 42°58′05″ N., long. 83°53′25″ W)
Grand Blanc, Genesys Regional Medical Center, MI
Point in Space Coordinates
(Lat. 42°52′59″ N., long. 83°39′05″ W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Bishop International Airport, and within 4.4 miles north and 7.0 miles south of the Flint ILS localizer west course, extending from the 10.5-mile radius area to 10.5 miles west of the PETLI LOM, and within a 6.4-mile radius of the Owosso Community Airport, and within a 6.3-mile radius of the Prices Airport, and within a 6.3-mile radius of the Athelone Williams Memorial Airport, and within a 6.0-mile radius of the Point in Space serving Genesys Regional Medical Center, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 29, 1999.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3287 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–8]

Proposed modification of Class E Airspace; Detroit, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Detroit, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 008° helicopter point in space approach, has been developed for Port Huron Hospital Heliport, Port Huron, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Detroit, MI, in order to include the point in space approach serving Port Huron Hospital Heliport.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the 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 14 CFR Part 71 to modify Class E airspace at Detroit, MI, to accommodate aircraft executing the proposed GPS SIAP 008° helicopter point in space approach for Port Huron Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. 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 7400.9F dated September 10, 1998, and effective September 16, 1998, 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 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Detroit, MI [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 43°06′30″ N., long. 82°22′30″ W.; on the Canadian boundary to lat. 43°04′00″ N., long. 82°30′00″ W.; to lat. 42°56′00″ N., long. 83°00′00″ W.; to lat. 42°45′00″ N., long. 83°50′00″ W.; to 42°30′00″ N., long. 83°50′00″ W.; to lat. 42°10′00″ N., long. 84°00′00″ W.; to lat. 42°00′00″ N., long 83°30′00″ W.; thence east along the 42nd parallel to the Canadian boundary, thence along the Canadian boundary to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on January 29, 1999.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3286 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–6]

Proposed Modification of Class E Airspace; Howell, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Howell, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 036° helicopter point in space approach, has been developed for McPherson Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Howell, MI, in order to include the point in space approach serving McPherson Hospital Heliport.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified

closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, 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 14 CFR part 71 to modify Class E airspace at Howell, MI, to accommodate aircraft executing the proposed GPS SIAP 036° helicopter point in space approach for McPherson Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. 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 7400.9F dated September 10, 1998, and effective September 16, 1998, 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 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Howell, MI [Revised]

Howell, Livingston County Airport, MI
(Lat. 42°37′46″ N., long. 83°59′03″ W)
McPherson Hospital, MI
Point in Space Coordinates
(Lat. 42°36′25″ N., long. 83°56′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Livingston County Airport, and within a 6.0-mile radius of the Point in Space serving McPherson Hospital, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 29, 1999.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3285 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 2970]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Schedule of Fees for Consular Services. Specifically, it lowers the cost of the machine readable combined border crossing card and nonimmigrant visa for certain Mexican citizens under the age of 15 applying in Mexico and it exempts certain diplomatic visa applicants from visa fees for non-official travel.

DATES: Written comments must be received no later than March 12, 1999.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, D.C. 20520–4818, telephone (202) 647–3682; telefax (202) 647–3677.

FOR FURTHER INFORMATION CONTACT: Alcy Frelick, Office of the Executive Director, Bureau of Consular Affairs, Department of State, telephone (202) 647–3682; telefax (202) 647–3677.

SUPPLEMENTARY INFORMATION:

Authority to Collect Fees

Public Law 103–236, enacted April 30, 1994, authorizes the Secretary of State to collect a surcharge for the processing of machine readable visa (MRV) applications and for the processing of machine readable combined border crossing card and nonimmigrant visa applications. This authority has been delegated to the Undersecretary for Management. The Secretary of State is also authorized under E.O. 10718 of June 27, 1957, to exercise the President's authority under 22 U.S.C. 4219 to prescribe the fees to be charged for official services performed by the Department of State. The Schedule of Fees for Consular Services is set forth in 22 CFR 22.1, as amended on January 30, 1998, [63 FR 5098].

Combined Border Crossing Card and Nonimmigrant Visa

Section 410 of Public Law 105–277, enacted October 21, 1998, provides for a revised fee for certain categories of applicants for the machine readable combined border crossing card and

nonimmigrant visa. This rule amends item 54 on the Schedule of Fees for Consular Services. Effective 6 months after October 21, 1998, it reduces the fee for the processing of an application for a combined border crossing card and nonimmigrant visa to $13 (for recovery of costs of manufacturing the combined card and visa) in the case of any Mexican citizen under 15 years of age where the application for the machine-readable combined border crossing card and nonimmigrant visa is made in Mexico by a person who has at least one parent or guardian who has a visa or is applying for a machine-readable combined border crossing card and nonimmigrant visa as well. This revised fee is proposed to take effect on April 21, 1999, as provided by the law.

Pub. L. 107–277 Section 410 (b)(3) states: ''Notwithstanding any other provision of law, the Secretary of State shall set the amount of the fee . . . at a level that will ensure the full recovery by the Department of State of the costs of processing such machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas, including the costs of processing the machine readable combined border crossing cards and nonimmigrant visas for which the fee is reduced pursuant to this subsection.''

A cost analysis determined that the $13 fee would cover the cost of production of the combined machine-readable border crossing card and nonimmigrant visa for qualifying Mexican citizens. Given this and the fact that the $45 fee is based on world wide average of processing visas and given the small percentage of the worldwide workload this new fee affects and the cost of production of the machine readable combined border crossing card and nonimmigrant visa, it is not anticipated that the reduction in the fee for this group will mandate a change in the MRV processing fee worldwide in order to comply with the full cost recovery provisions of the law.

Diplomatic Visas for Non-Official Travel

The second item in this rule amends items 55 and 57 of the Schedule of fees for Consular Services by adding an exemption from the visa processing and issuance fees for certain applicants applying for diplomatic visas for non-official travel to the U.S. Exempting these categories of visas from the visa processing and issuance fees is consistent with diplomatic practice worldwide. Officials of foreign governments regularly apply for visas for non-official travel to the U.S. through diplomatic channels. These applications, when submitted under diplomatic note but without the fee, must currently be returned for resubmission, causing delays and adding to the cost of service. In addition, they generate complaints to senior U.S. officials and often require comprehensive explanations to clarify the reason for the return of the visa application. The exemption from processing and issuance fees of these visas is in the interest of the U.S. government, as these officials and their immediate family members play pivotal roles in U.S. relations with their countries. Encouraging personal travel of foreign government officials and their immediate family members has long term positive impact on the achievement of U.S. policy goals because it contributes to understanding of U.S. culture and policies. This amendment is proposed to take effect March 1, 1999.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. Chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. Such entities are defined as small businesses (those with fewer than 500 employees), small non-profit organizations (those with fewer than 500 employees), and small governmental entities (those in areas with fewer than 50,000 residents). The Department has assessed the potential impact of the Rule, and the Undersecretary for Management by approving it certifies that it will not have a significant economic effect on a substantial number of small entities. It imposes no requirements on such entities.

In addition, pursuant to the Small Business Regulatory Fairness Act (U.S.C. Chapter 8), the Department has screened the Rule and determines that it is not a ''major rule,'' as defined in 5 U.S.C. 804(2). It will not result in an annual effect on the economy of $100,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of US-based companies in domestic and export markets.

Paperwork Reduction Act

No new information requirements are contained in this rule.

Executive Orders 12866 and 12988

This rule is exempt from Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the objective thereof. This rule has also been reviewed as required by Executive Order 12988 and determined to be in compliance therewith.

Executive Order 12612

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2U.S.C. 1501 *et seq.*) and Executive Order 12875.

Proposed Rule

List of Subjects in 22 CFR Part 22

Passports and visas, Schedule of consular fees.

Accordingly, this rule proposes to amend 22 CFR part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 214, 250(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. In § 22.1 by revising items 54, 55(a) and 57(a) to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
* * * * *	
54. Nonimmigrant visa application and combined border crossing card and nonimmigrant visa processing fees:	
(a) Nonimmigrant visa	$45.00
(b) Combined border crossing card and nonimmigrant visa (age 15 and over)	$45.00

Item No.	Fee
(c) Combined border crossing card and nonimmigrant visa (under age 15) [for Mexican citizen if parent or guardian has or is applying for a combined border crossing card and nonimmigrant visa]	13.00
55. EXEMPTIONS from nonimmigrant visa application processing fee:	
(a) Applicants for diplomatic visas, as defined in 22 CFR 41.26	No fee
* * * * *	
57. EXEMPTIONS from nonimmigrant visa issuance fee:	
(a) Applicants for diplomatic visas, as defined in 22 CFR 41.26	No fee
* * * * *	

Dated: January 20, 1999.

Bonnie R. Cohen,

Under Secretary for Management.

[FR Doc. 99–2697 Filed 2–9–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 227

RIN 1010–AC51

Change to Delegated State Audit Functions

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulation at 30 CFR 227.101, to allow States which choose to assume audit duties to do so for less than all of the Federal mineral leases within the State or leases offshore of the State, subject to section 8(g), of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g).

DATES: Comments must be submitted on or before April 12, 1999.

ADDRESSES: If you wish to comment, you may submit your comments any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, CO 80225. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1010–AC51'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Ms. Shirley Burhop, State and Indian Compliance Division, Royalty Management Program (RMP).

We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

I. Background

This proposed rule will amend regulations governing the delegation of royalty management duties to States. Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1735, gives MMS the authority to delegate audit functions to States. Currently, 10 States have entered into the cooperative agreements authorized by Section 205.

Regulations in 30 CFR part 227 implementing the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Pub. L. 104–185, as corrected by Pub. L. 104–200, expanded upon the delegation of duties that States could assume. Those regulations at 30 CFR 227.101 inserted the term ''all'' into the description of Federal mineral leases subject to audit, thereby requiring that States audit all Federal mineral leases within that State and all 8(g) leases offshore of the State in order to enter into a cooperative agreement to assume the audit function. The word ''all'' was, in fact, intended in the case of the other delegable functions authorized by RSFA, but does not seem to be either necessary or desirable in the case of the audit function.

This change is necessary in order for States, which are now delegated audit authority under FOGRMA, to continue that audit authority without significantly altering their staffing, funding, or other operations.

By removing the requirement that they exercise audit authority over all Federal mineral leases within the State, the States will again be able to work with us in those cases where State resources do not allow the State to sufficiently cover their entire audit universe. Thus, the State would designate the limits of its audit activity each year through an annual audit work plan. This wording change would also enable the MMS to continue to assist a State in its audit efforts when necessary.

II. Statutory Authority

Authority for this change is granted by FOGRMA, 30 U.S.C. 1735, as amended by RSFA, Pub. L. 104–185, August 13, 1996, as corrected by Pub. L. 104–200. Authority regarding solid mineral leases, geothermal leases, and 8(g) leases is granted by Pub. L. 102–154.

III. Analysis

The requirement that a State audit all Federal and 8(g) leases within/offshore of that State is only stated in 30 CFR 227.101. It is not required by law. RSFA, § 3, FOGRMA § 205, states ''Upon written request of any State, the Secretary is authorized to delegate * * * all or part of the authorities and responsibilities of the Secretary * * * to any State with respect to all Federal land within the State.''

The only way to negate the effect of the rule is to write a new rule which changes the requirement to audit all leases.

This solution will be cost neutral. States which are delegated audit duties will continue to be fully reimbursed in accordance with their annual, approved audit plan for their costs. This solution will enable those States which currently are delegated audit duties to continue to perform that delegated function, in spite

of staffing, funding, or other limitations. It will enable other States which might desire to take on the delegated audit function to do so without being fully staffed to the extent necessary were they required to audit all Federal mineral and 8(g) leases in or offshore of that State.

IV. Procedural Matters

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Requesting States may incur additional costs for delegation responsibilities. However, these direct costs will be fully reimbursed by the Federal Government in accordance with their annual, approved audit plan each year. This rule change does not require any additional information or fees to be filed by the States.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The States' delegated audit authority will follow the policies of the Department. State actions will be coordinated with the Bureau of Land Management and MMS.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Audits of Federal leases within State boundaries will be individually budgeted through an annual work plan proposal prepared by the State and approved by MMS. This is a process which has been used effectively since 1985 and will continue under the proposed rule.

(4) This rule does not raise novel legal or policy issues. The authority to delegate audit duties to States has been available to MMS since 1983. The operational history has been one where the States covered as much of the Federal lease universe as practical for each State and MMS covered the remainder. We expect these circumstances of operation to continue under the proposed rule.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The major impact of the rule will be on State governments, which are not small entities. There will be some effect on the oil and gas companies which are subject to audit, as various audit staffs, including MMS's Compliance Divisions, State delegations, and Indian Tribal delegations, may now audit Federal and Indian leases located within a particular State's boundaries. This is no change from the way in which MMS and delegated States and Tribes have audited companies in the past, prior to the passage of RSFA. As has been done in the past, MMS will continue to coordinate audit efforts of the various entities which might be involved in any particular audit in order to minimize disruptions to the companies being audited.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The expense of delegated audit functions would be initially incurred by the States and later reimbursed by MMS. The maximum economic impact for audit delegation is estimated to be $5.5 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The audit of Federal leases is not a function which generates impacts on costs or prices to individuals or areas. States will be reviewing royalty calculation and payments to enforce existing Federal lease terms and royalty policies. States will conduct the audits as efficiently and economically as possible in accordance with State and Departmental policies.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The laws providing for the delegation of audit duties, FOGRMA and RSFA, do not provide for any other entity, except tribal governments, to conduct these duties.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this proposed rule, call 1–888–734–3247.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule does not change valuation requirements, impose additional royalty collections or require new reporting forms. This rule merely gives State governments the option to conduct audits and investigations on less than all of the Federal mineral leases within State boundaries. The costs incurred to conduct the audits and investigations will be fully reimbursed by the Federal Government in accordance with the State's annual, approved audit plan. We expect those costs to be no more than $5.5 million per year. County, local, or tribal governments will not perform the delegable audit functions on behalf of State governments; therefore, they will not be impacted by this rule.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have a significant takings implication. States seeking audit delegation from year to year will propose the level of effort they can expend auditing Federal leases. This method of operation will give States first choice in cooperatively planning annual work with MMS. This rule does not represent a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule allows States to continue to audit selected leases within legal boundaries. It does not alter roles, rights or responsibilities of States conducting delegated audits. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an additional information collection approval under the Paperwork Reduction Act of 1995. There is currently in place an approved information collection titled Delegation of Authority to States, OMB Control Number 1010–0088, which expires on June 30, 2000.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is proceeded by the symbol ''§'' and a number heading; for example:

§ 227.101 What Royalty Management functions may MMS delegate to a State?

(5) Is the description of the rule in the ''Supplementary Information'' section of this preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also E-mail your comments to this address: Exsec@ios.doi.gov.

List of subjects in 30 CFR Part 227

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 26, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 227 is proposed to be amended as follows:

PART 227—DELEGATION TO STATES

1. The authority citation for part 227 continues to read as follows:

Authority: 30 U.S.C. 1735; 30 U.S.C. 196; Pub. L. 102–154.

2. Revise § 227.101 to read as follows:

227.101 What royalty management functions may MMS delegate to a State?

(a) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for all such Federal oil and gas leases to you under this part:

(1) Receiving and processing production or royalty reports;

(2) Correcting erroneous report data; and

(3) Performing automated verification.

(b) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for some or all of the Federal oil and gas leases to you under this part:

(1) Conducting audits and investigations; and

(2) Issuing demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees or their designees, and entering into tolling agreements under section 115(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(c) If there are oil and gas leases offshore of your State subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337 (g), or solid mineral leases or geothermal leases on Federal lands within your State, MMS only may delegate authority to conduct audits and investigations for some or all such Federal leases.

[FR Doc. 99–3174 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–250126; FRL–6025–3]

Standards for Pesticide Containers and Containment; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation under section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule partially reopens the comment period for a previously issued proposed regulation that would require container design and residue removal requirements for refillable and nonrefillable pesticide containers and standards for pesticide containment structures. This action is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: By mail: Nancy Fitz, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1103, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–7385, e-mail: fitz.nancy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Part 165

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 27, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–2780 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–25, 101–31, and 101–38

RIN 3090–AG84

Guidelines for Making Purchase or Lease Determinations and Use of Private Inspection, Testing, and Grading Services

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to remove Federal Property Management Regulations (FPMR) 101–25.5, Guidelines for Making Purchase or Lease Determinations, and 101–31.2, Use of Private Inspection, Testing, and Grading Services, from the FPMR. Adequate coverage on these issues is contained in the Federal Acquisition Regulation (FAR). As a result, no replacement coverage will be included in the forthcoming Federal Property and Administrative Services Regulation (FPASR). A cross-reference will be added to the FPMR to direct readers to the appropriate FAR coverage.

DATES: Comments must be received on or before April 12, 1999 to be considered in the formulation of the final rule.

ADDRESSES: Written comments should be sent to the Regulatory Secretariat (MVRS), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content contact: FPMR Part 101–25, Jack O'Neill, at 501–3856, or FPMR Part 101–31, Ms. Linda Klein, at (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Background

In an effort to improve GSA's external directives system, GSA has undertaken a review of the Federal Property Management Regulations (FPMR). The FPMR prescribes Governmentwide regulations for real property, personal property, and other programs and activities within GSA's regulatory authority. GSA will update, streamline, and clarify the content of the FPMR over the next year. As part of this review, GSA is proposing to:

1. Remove FPMR 101–25.5 regarding Guidelines for Making Purchase or Lease Determinations and add a cross-reference to the FAR in its place. The decision to lease or purchase is an acquisition matter and coverage on this subject is contained in FAR Subpart 7.4.

2. Remove FPMR 101–31.2 regarding the use of private inspection, testing, and grading services and add a cross-reference to the FAR in its place. Coverage on this subject is provided in the Federal Acquisition Regulation (FAR). FAR Part 46, Quality Assurance, prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included in Part 46 are inspection and other measures associated with quality requirements. FAR Part 37 covers service contracting. FAR Subpart 7.5, Inherently Governmental Functions, addresses what is and is not an inherently Governmental function.

B. Executive Order 12866

The General Services Administration has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because similar coverage continues to be provided in the Federal Acquisition Regulation.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Act

This proposed rule is not a major rule under 5 U.S.C. 804. List of Subjects in 41 CFR Parts 101–25, 101–31 and 101–38 Government property management.

For the reasons set forth in the preamble, it is proposed that 41 CFR parts 101–25, 101–31, and 101–38 be amended as follows:

1. The authority citation for parts 101–25, 101–31, and 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

PART 101–25—GENERAL

2. Subpart 101–25.5 is revised to read as follows:

Subpart 101–25.5—Purchase or Lease Determinations

§ 101–25.2–1 Cross-reference to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1, Parts 1–99).

For guidance see Federal Acquisition Regulation Subpart 7.4 (48 CFR Subpart 7.4).

PART 101–31—INSPECTION AND QUALITY CONTROL

3. Subpart 101–31.2 is revised to read as follows:

Subpart 101–31.2—Inspection, Testing, and Grading

§ 101–31.2–1 Cross-reference to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1, Parts 1–99).

For guidance see Federal Acquisition Regulation (e.g., Subpart 7.5, and Parts 37 and 46) (48 CFR Subpart 7.5, and Parts 37 and 46).

PART 101–38—MOTOR VEHICLE MANAGEMENT

4. Section 101–38.105 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h) respectively.

Dated: February 4, 1999.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 99–3259 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 300–80

RIN 3090–AG88

[FTR Amendment_____1998 Edition]

Federal Travel Regulation; Travel and Relocation Expenses Test Programs

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the Federal Travel Regulation (FTR) to add authority to implement sections of the Travel and Transportation Reform Act of 1998 (Pub. L. 105–264, October 19, 1998), which authorizes Federal agencies to conduct travel and relocation expenses test programs when determined by the Administrator of General Services to be in the interest of the Government. This change will permit agencies to test new and innovative methods of reimbursing travel and relocation expenses without seeking a waiver of current rules or authorizing legislation. It will also assist the Government to determine whether such innovations provide advantageous and effective travel and transportation costs and processes.

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

ADDRESSES: Written comments should be sent to Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW, Washington, DC 20405. E-mail comments may be sent to *RIN.3090–AG88@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel Team Leader, Travel and Transportation Management Policy Division (MTT), telephone 202–501–0483.

SUPPLEMENTARY INFORMATION: On October 19, 1998, the President signed into law the Travel and Transportation Reform Act of 1998 (the Act) (Pub. L. 105–264). This proposed change will implement the provisions of the Act authorizing travel and relocation expenses test programs designed to enhance cost savings or other efficiencies that may accrue to the Government.

A. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

D. Small Business Regulatory Reform Act

This proposed rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 300–80

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, it is proposed that 41 CFR part 300–80 be added to read as follows:

PART 300–80—TRAVEL AND RELOCATION EXPENSES TEST PROGRAMS

Sec.

300–80.1 What is a travel and relocation expenses test program?
300–80.2 Who may authorize such test programs?
300–80.3 What must be done to apply for test program authority?
300–80.4 How many test programs may be authorized by GSA throughout the Government?
300–80.5 What factors will GSA consider in approving a request for a travel or relocation expenses test program?
300–80.6 May the same agency be authorized to test travel and relocation expenses programs at the same time?
300–80.7 What limits are there to test programs?
300–80.8 What is the maximum duration of test programs?
300–80.9 What reports are required for a test program?
300–80.10 When does the authority of GSA to authorize test programs expire?

Authority: 5 U.S.C. 5707, 5710, 5738, and 5739.

§ 300–80.1 What is a travel and relocation expenses test program?

It is a program to permit agencies to test new and innovative methods of reimbursing travel and relocation expenses without seeking a waiver of current rules or authorizing legislation.

§ 300–80.2 Who may authorize such test programs?

Only the Administrator of General Services may authorize an agency to conduct such tests when the Administrator determines such tests to be in the interest of the government.

§ 300–80.3 What must be done to apply for test program authority?

The head of the agency or designee must design the test program to enhance cost savings or other efficiencies to the Government and submit in writing to the Administrator of General Services (Attention: MTT), 1800 F Street, NW, Washington, DC 20405:

(a) An explanation of the test program;

(b) Specific provisions of the FTR to be tested (travel and/or relocation);

(c) An analysis of the expected costs and benefits; and

(d) A set of criteria for evaluating the effectiveness of the program.

§ 300–80.4 How many test programs may be authorized by GSA throughout the Government?

No more than 10 travel expense test programs and 10 relocation expense test programs may be conducted at the same time.

§ 300–80.5 What factors will GSA consider in approving a request for a travel or relocation expenses test program?

The following factors will be considered:

(a) Potential savings to the Government;

(b) Applicability of results to other agencies;

(c) Feasibility of successful implementation;

(d) Number of tests, if any, already authorized to the same activity;

(e) Whether the request meets the requirements of § 300–80.3;

(f) Other agency requests under consideration at the time of submission; and

(g) Uniqueness of proposed test.

§ 300–80.6 May the same agency be authorized to test travel and relocation expenses programs at the same time?

Yes, if authorized, both test programs may be conducted by the same agency at the same time.

§ 300–80.7 What limits are there to test programs?

None. When authorized by the Administrator of General Services, the agency may pay any necessary travel or relocation expenses in lieu of payments authorized or required under chapters 301 and 302 of this title.

§ 300–80.8 What is the maximum duration of test programs?

Each test program may be continued for a period of up to 24 months from the date the test is authorized to begin.

§ 300–80.9 What reports are required for a test program?

Two reports are required:

(a) The Administrator of General Services must submit a copy of an approved test program to Congress at least 30 days before the effective start date of the authorized test program.

(b) The agency authorized to conduct the test program must submit a report on the results of the test program to the Administrator of General Services and to Congress within 3 months after completion of the program.

§ 300–80.10 When does the authority of GSA to authorize test programs expire?

The authority to conduct test programs expires on October 20, 2005.

Dated: January 26, 1999.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–3222 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 91–221 and 87–8; DA 99–281]

En Banc Hearing Regarding Local Television Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission will hold an *en banc* hearing concerning the issues raised in connection with the Commission's pending review of its local television ownership rules. The purpose of the hearing is to educate and inform the Commissioners, FCC staff, and the public about differing perspectives on whether the Commission's local television ownership rules should be modified to respond to ongoing changes in the mass media industry.

DATES: Friday, February 12, 1999, from 9:30 a.m. to noon.

ADDRESSES: The Commission's new headquarters building at 445 12th Street, SW, Washington, DC 20554, Room TW–C305.

FOR FURTHER INFORMATION CONTACT: Robert Somers, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission will hold an *en banc* hearing on Friday, February 12, 1999, from 9:30 a.m. to noon in the Commission meeting room, Room TW–C305 of the Commission's new headquarters building located at 445 12th Street, SW, Washington, D.C. The hearing will concern issues raised in connection with the Commission's pending review of its local television ownership rules.

The purpose of this *en banc* hearing is to educate and inform the Commissioners, FCC staff, and the public about differing perspectives on whether the Commission's local television ownership rules should be modified to respond to ongoing changes in the mass media industry. The Commission's pending proceeding on this issue is part of a larger examination of these and other broadcast media ownership rules first initiated by the Commission in 1991, and more recently guided by the statutory directives of the Telecommunications Act of 1996.

In its pending Local Ownership proceeding, the Commission has proposed modifying the ''TV duopoly'' rule, which prohibits the common ownership of more than one TV station in a local market, and the radio-television cross-ownership rule, which prohibits the common ownership of radio and TV stations in a local market. It has also sought comment on the appropriate grandfathering policy for TV local marketing agreements (''LMAs'') that may become attributable under the Commission's proposed revisions of the rules which govern attribution of broadcast ownership interests.

The hearing will consist of presentations to the Commission by two panels. The first panel will be composed of legal scholars, economists, political scientists, and Wall Street observers. This panel will provide the Commission with a general perspective on the relevant trends in the mass media industry, the purposes for a free over-the-air broadcasting system, the future consequences of economic changes, and the role of the FCC in regulating broadcast ownership. The second panel will focus more specifically on the proposed rule modifications with perspectives from parties who have been actively involved in these issues. Although there are other ownership issues currently pending before the Commission, this hearing will focus solely on the issues raised by the ''TV duopoly'' and radio-television cross-ownership rules and the related TV LMA grandfathering policy.

The *en banc* is open to the public, and seating will be available on a first come, first served basis. A transcript of the *en banc* will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is <http://www.fcc.gov>.

The *en banc* will also be carried live on the Internet. Internet users may listen to the real-time audio feed of the *en banc* by accessing the FCC Internet Audio Broadcast Home Page. Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Audio Broadcast Home Page. The URL address for this home page is <http://www.fcc.gov/realaudio/.>

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–3333 Filed 2–9–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by the Coalition of Small Volume Automobile Manufacturers (COSVAM). COSVAM requested that small volume automobile manufacturers be given additional time to comply with the phase-in of the upper interior head protection requirements of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact.* Specifically, COSVAM requested that the agency initiate a rulemaking proceeding to create alternative compliance dates to address concerns of manufacturers producing or importing 10,000 vehicles per year or less. The petitioner based its request on the argument that compliance costs for such manufacturers would be disproportionately burdensome. NHTSA denies this petition because the agency

has already established a variety of compliance schedules that afford these manufacturers sufficient compliance flexibility.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Dr. William Fan, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329, electronic mail ''*bfan@nhtsa.dot.gov*''

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820, electronic mail ''*omatheke@nhtsa.dot.gov*''.

SUPPLEMENTARY INFORMATION:

Background on Existing Requirements

NHTSA issued a final rule on August 18, 1995, amending Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact,* to require passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, to provide head protection during a crash when an occupant's head strikes the upper interior, i.e., the pillars, side rails, headers, and the roof of the vehicle. (60 FR 43041) This final rule, which mandated compliance with the new requirements beginning on September 1, 1998, significantly expanded the scope of Standard 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of 24 km/h (15 mph). Data collected from a FMH impact are translated into a value known as a Head Injury Criterion (HIC) score. The resultant HIC must not exceed 1000.

The standard, as further amended on April 8, 1997 (62 FR 16718), provides manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. First, as set forth in S6.1.1, manufacturers may comply by having the following percentages of their production meet the upper interior impact requirements: 10 percent of production on or after September 1, 1998 and before September 1, 1999; 25 percent of production on or after September 1, 1999 and before September 1, 2000, 40 percent of production on or after September 1, 2000 and before September 1, 2001, 70 percent of production on or after September 1, 2001 and before September 1, 2002, and 100 percent of production after September 1, 2002.

Second, an alternative schedule set forth in S6.1.2 provides that manufacturers may comply by meeting the following phase-in schedule: 7 percent of the vehicles manufactured on or after September 1, 1998 and before September 1, 1999; 31 percent of vehicles manufactured on or after September 1, 1999 and before September 1, 2000; 40 percent of vehicles manufactured on or after September 1, 2000 and before September 1, 2001; 70 percent of vehicles manufactured on or after September 1, 2001 and before September 1, 2002; and 100 percent of all vehicles manufactured after September 1, 2002.

Third, under the phase-in schedule set forth in S6.1.3, manufacturers need not produce any complying vehicles before September 1, 1999. However, all vehicles produced on or after that date must comply. Fourth, under the phase-in schedule set forth in S 6.1.4 that applies only to final stage manufacturers, no vehicle produced before September 1, 2002, need comply. However, all vehicles manufactured on or after that date must comply.

The August 14, 1996 Petition for Rulemaking

The Coalition of Small Volume Automobile Manufacturers (COSVAM) [1] submitted a petition for rulemaking on August 14, 1996 seeking to amend Standard 201 so that Small Volume Manufacturers (SVMs) would not be required to produce any cars meeting the upper interior head impact protection requirements between September 1, 1998 and September 1, 2004. Under the amendments requested by COSVAM in its petition, single stage SVMs would not have had to produce any vehicles meeting the upper interior impact requirements until September 1, 2004. On and after that date, all SVMs would have had to meet those requirements.

The December 18, 1997 Petition for Rulemaking

On November 5, 1997, COSVAM withdrew its August 14, 1996 petition and submitted a new petition on December 18, 1997. This second petition asked that the agency consider three possibilities:

- revising an existing phase-in schedule generally available to all manufacturers,
- adopting an additional alternative phase-in that might either be generally available to all manufacturers or available to SVMs only, or
- adopting an additional alternative phase-in available to SVMs only.

More specifically, COSVAM suggested first that the agency revise an existing schedule found in S6.1.3 of the Standard (known as phase-in schedule #3). This schedule specifies that manufacturers need not produce any vehicles that comply with the head impact protection provisions of Standard 201 in the period after August 31, 1998 and before September 1, 1999 if all the vehicles they produce on or after September 1, 1999 comply with the head impact protection requirements. COSVAM suggested that this schedule be modified so that manufacturers need not produce any complying vehicles before September 1, 2000 if all the vehicles they produce after September 1, 2000 comply.

Second, COSVAM suggested that the agency consider creating an additional phase-in schedule, which COSVAM suggested might only apply to SVMs. Under this schedule, five percent of a manufacturer's production for the time period between September 1, 1998 and August 31, 1999 must comply with the head impact requirements, fifteen percent of production between September 1, 1999 and August 31, 2000 must comply, fifty percent of production between September 1, 2000 and August 31, 2001 must comply, seventy percent of production between September 1, 2001 and August 31, 2002 must comply and all production after September 1, 2002 must comply.

Third, COSVAM asked that NHTSA consider creating a phase-in expressly for single stage SVMs. Such a phase-in would delay compliance for these manufacturers until on or after September 1, 2004. For the purposes of determining which companies are SVMs and thus eligible to elect to comply with this alternative phase-in, COSVAM suggested that NHTSA define an SVM as ''any automobile producer that either manufactures 10,000 or fewer vehicles in the United States or imports fewer than 10,000 vehicles into the U.S.'' In suggesting this definition, COSVAM contended that setting a limit of 10,000 vehicles produced in, or imported into, the U.S. is consistent with existing statutory provisions relating to exemption from fuel economy and safety standards.

COSVAM offered several arguments in support of its requests. First, because

[1] COSVAM consists of 19 manufacturers, each of which produces fewer than 5000 vehicles world wide each year.

of their limited resources, SVMs do not have the ability to fund substantial redesigns of vehicles or their components. In addition, the financial burden associated with redesign is exacerbated by the limited production of SVMs, whose low volume makes it harder to recoup costs. COSVAM also contended that the impact of a phase-in, regardless of the percentages involved, is greater on SVMs. This is because such manufacturers frequently produce only one or two different models and these models are often produced over many model years. As a result, lead times are often very long. Design changes and improvements cannot be integrated into a new or redesigned model, but must be integrated into existing products. As an example, COSVAM provided information relating to the Lotus Esprit, whose basic body style has remained unchanged for 20 years, and the severe difficulties that the manufacturer would face in attempting to bring this design into compliance with the head protection requirements. Lotus estimated that complying with upper interior impact requirements would require an expenditure of £348,000 (approximately $585,197 US Dollars), due in large part to the necessity of redesigning the vehicle pillars and roof. Based on these costs, and the fact that the company was planning to replace the Esprit platform sometime after 2000, Lotus indicated that it would not be cost-effective for the company to produce an Esprit model that would meet those requirements. Therefore, according to COSVAM, if a substantial redesign were required, an SVM might have to produce an entirely new model. The low production volume of these manufacturers also results in disproportionately high costs. These costs, according to COSVAM, not only relate to production, but also to development and testing. This results from an SVM's need to perform compliance testing with fewer vehicles produced and fewer opportunities to distribute such testing costs through increased prices.

COSVAM also stated that in creating a separate phase-in schedule for final stage manufacturers, NHTSA recognized that such manufacturers have little control over the year of the phase-in in which a particular vehicle will be certified as meeting the new requirements. SVMs, in COSVAM's view, suffer from similar lack of control over their ability to produce vehicles with interiors that will meet Standard 201. COSVAM submitted that just as final stage manufacturers have no control over when their suppliers will provide them with compliant interiors in incomplete vehicles, SVMs have no control over when suppliers of safety systems will be willing to meet the needs of the SVM market. This problem is particularly acute, according to COSVAM, because safety system suppliers will only meet the needs of SVMs after they have addressed those of their larger customers.

The COSVAM petition also indicated that, as evidenced by requests for interpretation filed with NHTSA by the Association of International Automobile Manufacturers (AIAM) and a petition for reconsideration filed by the American Automobile Manufacturers Association (AAMA), a number of technical issues relating to compliance with Standard 201 remained unresolved. According to COSVAM, the existence of these unresolved technical issues illustrates the difficulties inherent in complying with Standard 201. The petitioner argued that the difficulties are more acute for small manufacturers because of their limited resources.

COSVAM also suggested that the requested phase-in would be consistent with regulatory reform and recent legislative initiatives seeking to ease regulatory burdens on small businesses. COSVAM contended that many of its members are small businesses and that the requested SVM phase-in would help to minimize regulatory burdens on these small businesses.

Finally, COSVAM indicated that providing a special phase-in for SVMs would be consistent with other agency actions. In particular, COSVAM cited a recent change in the requirements for compliance with Standard 208's seat belt comfort and fit provisions for trucks with a gross vehicle weight rating (GVWR) between 3,402 and 4,536 kilograms (7,500 and 10,000 lbs.). In that instance, NHTSA granted a petition for rulemaking to changing a compliance date from September 1, 1997, to January 1, 1998, in response to a petition filed by a manufacturer indicating that a new product line incorporating the required feature would not be in production until January 1, 1998. Based on the relatively small impact on safety that would result from a four month change in the compliance date, NHTSA granted the petition. COSVAM argues that its request for a change in the Standard 201 phase-in requirements is similar in that the existing phase-in would impose a severe burden on its members and that the safety impact would be minimal, due to the low U.S. sales of vehicles manufactured by SVMs.

Agency Analysis

NHTSA is well aware that compliance with safety standards may involve different burdens on manufacturers, depending on their size, technical sophistication and resources. The agency acknowledges that conforming with and adapting to increased requirements may be more difficult for manufacturers that have limited product lines and produce a relatively small number of vehicles in any given model year. However, the agency believes it has given due consideration to the difficulties faced by smaller manufacturers. In promulgating the August 1995 final rule, NHTSA created an alternative phase-in schedule for manufacturers with few vehicle lines. That phase-in allows these manufacturers to delay compliance during the first year of the phase-in, which begins on September 1, 1998. Manufacturers selecting this option, however, must certify all vehicles manufactured on or after September 1, 1999 as meeting the new requirements. Those manufacturers that chose this option had four years of lead time to meet the new requirements. This four-year lead time is, in the agency's view, sufficient to meet the needs of smaller manufacturers. The agency notes that one purpose of a phase-in is to enable vehicle manufacturers the opportunity to decide which models to redesign first. As a practical matter, full-line manufacturers were required to redesign at least one model to meet the new requirements by September 1, 1998. The alternative phase-in designed for limited line manufacturers provided a full additional year to meet the new requirements.

In seeking an alternative phase-in, COSVAM contends that such schedules would be appropriate because SVMs face the same challenges as final stage manufacturers. The agency has given specific consideration to final stage manufacturers[2] in Standard 201 and other standards for which phase-ins have been employed. In the vast majority of cases, final stage manufacturers are provided with an incomplete vehicle that has been certified by its manufacturer as meeting applicable standards. Moreover, a final stage manufacturer may need to use one

[2] The term ''final stage manufacturer'' is defined at 49 CFR 568.3 as ''a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle.'' An ''incomplete vehicle'' is defined in that section as ''an assemblage consisting, at a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system * * * that requires further manufacturing operations * * * to become a completed vehicle.''

particular model for its purposes. Final stage manufacturers must, therefore, rely on incomplete vehicle manufacturers to provide a complying product. If this model is one that the incomplete vehicle manufacturer chooses to redesign last, final stage manufacturers and alterers may be forced to reduce or even suspend production and wait until the end of a phase-in to obtain a complying incomplete vehicle that they can use.

Unlike final stage manufacturers, who are dependent upon the incomplete vehicle manufacturers providing them with a particular complying incomplete vehicle, single stage SVMs need not wait for another manufacturer to produce a particular model that meets Standard 201. Further, SVMs have greater control over the configuration and design of the vehicles they produce. COSVAM's argument implies that such control is irrelevant; it submits that its members cannot obtain the components or materials needed to bring vehicles into compliance. While alleging that its members cannot procure the required materials or components, COSVAM has not submitted any evidence indicating that this is so.

One means of compliance is the addition of padding to interior surfaces. In developing the August 18, 1995 final rule (60 F.R. 43041) adding requirements for upper interior impact protection requirements to Standard No. 201, NHTSA performed an analysis of the effect of different padding thicknesses on existing passenger cars and LTVs (i.e., light trucks, vans and sport utility vehicles) and determined that all of the sampled passenger cars and LTVs could meet the 19 km/h (12 mph) impact speed with one-half inch of additional padding on the A-pillars, side rails and B-pillars. Since the vehicles examined by the agency and designed prior to the August 1995 amendments to Standard 201 would require additional padding of a half inch or less to provide adequate protection in a 19 km/h (12 mph) FMH impact, NHTSA believes that the use of additional padding may provide a means for meeting the 24 km/h (15 mph) impact requirement set forth in the August 1995 final rule. The procurement and application of such padding, is not, in NHTSA's view, a task which would necessitate the additional lead time requested by COSVAM.

Moreover, there are other means of compliance. Manufacturers may choose whatever means they wish to meet the upper interior head protection requirements of Standard 201. NHTSA observes that many manufacturers are meeting those requirements by applying energy absorbing ribs and other structures on the under or rear side of plastic trim components. This adaptation of existing designs has allowed manufacturers to comply without abandoning basic trim concepts and materials that have been in use for many years.

The petitioner also contends that its member companies would face financial hardship in complying with the existing phase-in. While the per vehicle cost of any required redesign will be higher for SVMs, many of these manufacturers are in a position to pass these costs on to the purchasers of these vehicles. At the time of filing the petition at issue, COSVAM represented 19 vehicle manufacturers and suppliers. Many COSVAM member companies are specialty or luxury car manufacturers such as AM General, Rolls-Royce, Maserati, Lamborghini, Ferrari, and Aston Martin. While it is true that many of these manufacturers sell a small number of cars in the United States each year, many of these vehicles are quite sophisticated, particularly those in the high performance market segment. Given the existing prices of these vehicles, which indicates that their target markets are not particularly price sensitive, NHTSA believes that additional costs associated with compliance may be addressed by price increases.

Several luxury and higher priced performance cars have been, or will soon be, equipped with advanced dynamic head protection systems such as side air bags to cover the A/B-pillars and front side rails. It is anticipated that a number of large automobile manufacturers, especially several European companies, will introduce advanced dynamic systems to certain vehicle models. It appears that some advanced dynamic systems are already available, well before the deadline of one of the optional phase-in schedules already available to single stage SVMs—September 1, 1999. NHTSA believes, and COSVAM has not submitted any evidence to the contrary, that single stage manufacturing SVMs could have adopted one of the advanced dynamic systems being shown by suppliers of large vehicle manufacturers.

COSVAM sought to invoke as precedent a prior instance in which a manufacturer successfully petitioned the agency to amend the phase-in requirements for Standard 208 for a certain class of trucks. In that particular case, the petitioner alleged that it would be introducing a new model designed to meet new safety belt comfort and fit requirements on January 1, instead of September 1 of the preceding year. In its analysis of that earlier petition, NHTSA noted that the class of vehicle involved, trucks with a gross vehicle weight rating of 8,500 to 10,000 pounds, was less likely to be driven or used by occupants who would benefit from improvements in safety belt comfort and fit. In changing the phase-in requirements for this class of vehicle, the agency's action resulted in a four month delay in the implementation of the comfort and fit requirements. In that case, both the delay and the safety consequences of that delay were minimal. The vehicles involved were still required to have safety belts that provided the same degree of protection in a frontal impact as belts used in other vehicles. Any reduction in safety was limited solely to the number of occupants who may have been deterred from using safety belts because they were in a vehicle produced during that four month period which did not meet the comfort and fit requirements.

In contrast, one alternative compliance schedule sought by COSVAM would exclude all SVMs from any requirement to produce vehicles complying with the upper interior head impact protection requirements of Standard 201 until September 1, 2004. Under that suggested compliance schedule, single stage SVMs would not be required to meet the upper interior head protection requirements until nine years after promulgation of the final rule and six years after any other manufacturers, except final stage manufacturers, began producing conforming vehicles. This additional length of time presents an additional risk to safety, particularly in light of the fact that, unlike the comfort and fit requirements which mandated refinement of an existing safety measure, the upper interior head impact protection requirements require manufacturers to introduce completely new safety features.

Another alternative compliance schedule suggested by COSVAM would also have a more significant impact on safety than the modification of the comfort and fit compliance schedule it cites in support of its petition. In one proposal offered by COSVAM, existing phase-in schedule #3, found at S6.1.3 of Standard 201, would be modified to provide all manufacturers with an additional year during which they would not have to produce vehicles meeting the requirements. Phase-in #3 currently provides that manufacturers do not have to produce any vehicles meeting the requirements during the period from September 1, 1998 to August 31, 1999, provided that all vehicles produced on or after September

1, 1999 comply. The COSVAM petition requests that NHTSA modify this schedule so that manufacturers need not produce vehicles meeting the requirements during the period from September 1, 1998 to August 31, 2000, provided that all production after September 1, 2000 complies. The agency observes that COSVAM's proposed extension of the compliance schedule under Phase-in #3 by one year, thereby delaying implementation of measures to reduce head injuries in crashes, would have a significant impact on safety.

COSVAM's December 1997 submission also requested that the agency add a new phase-in schedule to Standard 201. This new phase-in would specify that five percent of a manufacturer's production for the time period between September 1, 1998 and August 31, 1999 must comply with the upper interior head impact requirements, 15 percent of production between September 1, 1999 and August 31, 2000 must comply, 50 percent of production between September 1, 2000 and August 31, 2001 must comply, 70 percent of production between September 1, 2001 and August 31, 2002 must comply, and all production after September 1, 2002 must comply.

NHTSA notes that this suggested phase-in schedule seems ill suited to provide COSVAM with the relief that it argues that its members must have. COSVAM's principal arguments are that SVMs face difficulties in redesigning vehicles, lack flexibility because they have limited numbers of vehicle lines and are unable to procure materials and technology needed for compliance because suppliers will meet the needs of larger manufacturers first, before attending to small manufacturers. The alternative offered here differs from existing phase-in schedules #1 and #2 by requiring that smaller percentages of production comply in the first two years with a larger percentage complying in the third year. In the fourth year and beyond, the proposed phase-in is identical to existing alternatives #1 and #2. Such a phase-in, while offering relaxed requirements for the first two years, seems ill suited to accommodate manufacturers that allegedly cannot obtain the parts or technology required for compliance at the same time that larger manufacturers can. It is also not clear how such a schedule would better meet the needs of producers with few vehicle lines than the existing schedules do. The most specific information supplied by the petitioner, relating to the Lotus Esprit, indicates that the alternative suggested in this instance would offer no relief whatsoever. COSVAM has not offered any data or arguments directly or indirectly supporting this particular option. It is therefore difficult for the agency to consider it, particularly when the relaxed requirements would entail additional safety risks in the first two years and an overall net loss in safety.

In support of the phase-in alternatives suggested in its petition, COSVAM also argued that the existence of certain testing and compliance questions, evidenced by inquiries by the AAMA and AIAM, illustrate the technical difficulties involved in complying with the upper interior head protection requirements. According to COSVAM, problems posed by these issues, and similar technical questions, place a disproportionate burden on small manufacturers because of their limited resources. NHTSA begins by noting that it is not uncommon for new FMVSS requirements to produce technical questions. While the agency notes that the upper interior head impact requirements have produced, and will undoubtedly continue to produce, technical questions relating to testing and compliance that must be resolved by manufacturers or the agency, NHTSA notes that some of the issues have already been resolved. Further, the questions raised by those groups, and others, have generally related to interpretation of the upper interior head impact requirements and the associated test procedures. These issue are, in NHTSA's view, not issues that a larger manufacturer can more readily resolve than a small one could.

NHTSA also observes that if an SVM encounters special difficulties in developing and/or adopting a safety countermeasure, it may choose to file a petition for exemption in accordance with the criteria and procedures outlined in Part 555—Temporary Exemption From Motor Vehicle Safety Standards. NHTSA is authorized by 49 U.S.C. 30113 to exempt, on a temporary basis, a manufacturer whose total yearly production does not exceed 10,000 motor vehicles, from any FMVSS that would cause the manufacturer substantial economic hardship should it be required to meet it immediately. The application procedures for such an exemption are contained in 49 CFR 555.5 and 555.6(a). The applicant must not only show hardship, but also that it has tried in good faith to meet the standard from which it requests relief.

If, as COSVAM asserts, compliance with Standard 201 would create substantial financial hardship for its member companies, those companies would have the option of applying for an exemption. NHTSA also notes that if an SVM is unable to procure safety equipment from suppliers, as COSVAM alleged its members will, because such suppliers give priority to addressing the needs of larger customers, the efforts of a manufacturer to secure this safety equipment may well be considered as evidence of a good faith effort to meet a standard from which the manufacturer seeks exemption.

Conclusion

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded both that there is no reasonable possibility that the actions requested by the petitioner would be taken at the conclusion of a rulemaking proceeding and that the concerns alleged by COSVAM do not warrant the expenditure of agency resources to conduct a rulemaking proceeding. Accordingly, NHTSA denies COSVAM's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: February 5, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–3294 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020299C]

New England Fishery Management Council; Public Meeting

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

ACTION: Public Meeting

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on February 24 and 25, 1999, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, February 24, 1999, at 9:00 a.m. and on Thursday, February 25, 1999, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone (860) 443–7000. Requests for special accommodations

should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Wednesday, February 24, 1999

Following introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Acting Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, the Atlantic States Marine Fisheries Commission, and the U.S. Fish and Wildlife Service. Following reports, the Chairman of the Gear Conflict Committee will make recommendations for resolving gear conflicts involving lobster traps and mobile gear in the offshore canyon areas. The Herring Committee will discuss possible measures to be included in the annual framework adjustment to the Atlantic Herring Fishery Management Plan (FMP). After a noon break, the Executive Director will review scientific information and research needs for 1999 and there will be a presentation on Overfishing Definition/Control Rule by staff members of the Council and the Northeast Fisheries Science Center. The day will conclude with the Marine Mammal Committee report during which the Council will approve final action on Framework Adjustment 28 to the Northeast Multispecies FMP. Framework Adjustment 28 would contain measures which would modify harbor porpoise regulations previously implemented by the Council to be consistent with the Harbor Porpoise Take Reduction Plan recently implemented by NMFS.

Thursday, February 25, 1999

The Council will consider initial action on Framework Adjustment 29 to the Northeast Multispecies FMP. Framework Adjustment 29 contains measures which would modify the FMP regulations to allow scallop vessels controlled access to the Georges Bank groundfish closed areas and establish measures to reduce fishing mortality on Georges Bank cod by 22 percent to meet FMP target levels. Additionally, the Council will approve a range of measures to be considered at public hearings and for inclusion in Amendment 13 to the Northeast Multispecies FMP. Potential items include but are not limited to revised rebuilding programs as needed under new overfishing definitions for all multispecies stocks; implementation of a two-tier permit system to address latent fishing effort; quota management, managing fleet capacity, proposals for industry support systems involving scientific research and conservation engineering programs; modification of the annual adjustment schedule and possible change to the fishing year and development of an exemption certification for access to groundfish closed areas by groundfish vessels targeting specific species. The Office of General Counsel will make a presentation on conflict of interest issues. Following a noon break, the Scallop Committee will consider initial action on Framework Adjustment 11 to the Atlantic Sea Scallop FMP to establish measures for managing scallop vessel access to the Georges Bank groundfish closed areas. The day will conclude with the Spiny Dogfish Committee report which will discuss and seek possible approval of recommendations for an overfishing definition, rebuilding schedule, and interim management measures. Discussion of any other business will take place before the close of the meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–3246 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649 and 697

[Docket No. 990105002–9002–01; I.D. 110598D]

RIN 0648–AH41

American Lobster Fishery; Extension of the Comment Period

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

ACTION: Proposed rule; extension of the comment period.

SUMMARY: In a document published in the **Federal Register** on January 15, 1999, NMFS requested comments on proposed regulations to implement proposed management measures for the American lobster fishery in the Exclusive Economic Zone (EEZ) from Maine through North Carolina on or before February 10, 1999. The intent of this document is to announce an extension of the public comment period from February 10, 1999, to February 26, 1999.

DATES: Receipt of comments on the proposed rule is extended from February 10, 1999, to February 26, 1999.

ADDRESSES: Comments on the rule should be sent to, and copies of supporting documents, including a Draft Environmental Impact Statement/ Regulatory Impact Review and an Initial Regulatory Flexibility Analysis, are available from the Director, State, Federal and Constituent Programs Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Comments regarding burden estimates should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NMFS, Northeast Region, 978-281-9234.

SUPPLEMENTARY INFORMATION: As announced in the **Federal Register** on January 15, 1999 (64 FR 2708), NMFS requested comments on proposed regulations to implement proposed management measures for the American lobster fishery in the EEZ from Maine through North Carolina on or before February 10, 1999. By this document, NMFS is extending the public comment period. There were no changes from the proposed rule previously published.

Dated: February 5, 1999.

Gary C. Matlock,

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

[FR Doc. 99–3244 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990121026–9026–01; I.D. 112498A]

RIN 0648–AL52

Pacific Coast Groundfish Fishery; Amendment 11

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement portions of Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared Amendment 11 in order to bring the FMP into compliance with the Sustainable Fisheries Act (SFA) regarding overfishing, bycatch, essential fish habitat, and fishing communities. This proposed rule would implement the portions of Amendment 11 that would establish procedures for compensating a vessel owner or operator who has collected resource information according to a NMFS-approved protocol, with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions. The proposed rule would also modify the regulatory definition of ''processing or to process,'' and add a regulatory definition for ''optimum yield'' consistent with the definitions of those terms in Amendment 11. This action is also intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific coast groundfish fishery.

DATES: Comments must be submitted in writing by March 29, 1999.

ADDRESSES: Send comments to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Dr. William T. Hogarth, Administrator, Southwest Region, (Regional Administrator) NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of Amendment 11 to Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule, including suggestions for reducing the burden, William Stelle, Jr. or to Dr. William T. Hogarth and to the Office on Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier at 206–526–6140, or James Morgan at 562–980–4000.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the SFA amended the law first known as the Fishery Conservation and Management Act of 1976. For over 20 years, successive iterations of that law have provided broad guidelines and policy direction for U.S. fisheries management. Those guidelines and policy directions have been significantly revised in the law's current iteration, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The new Magnuson-Stevens Act gives the Regional Fishery Management Councils and the Secretary of Commerce (Secretary), through NMFS, many new responsibilities.

The SFA amended the requirements for FMPs in section 303(a) of the Magnuson-Stevens Act. The SFA established a 2-year deadline (October 11, 1998) by which each Regional Fishery Management Council had to submit amendments to NMFS to bring its FMPs into compliance with the new requirements in section 303(a) of the Magnuson-Stevens Act.

Through Amendment 11, the Council intends to make the Pacific Coast Groundfish FMP consistent with the Magnuson-Stevens Act by amending the FMP framework that defines ''optimum yield'' for setting annual groundfish harvest limits; setting framework control rules on defining rates of ''overfishing'' and levels at which managed stocks are considered ''overfished;'' defining Pacific Coast groundfish essential fish habitat; setting a bycatch management objective and a framework for bycatch reduction measures; establishing a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; providing authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizing the use of fish for compensation for private vessels conducting NMFS-approved research; removing jack mackerel from the fishery management unit; and updating FMP objectives, definitions, and industry descriptions.

NMFS is proposing this rule to implement the portions of Amendment 11 that would authorize NMFS to compensate the owners or operators of private vessels conducting NMFS-approved research with fish. The proposed rule would add a definition for the term ''optimum yield'' (OY) and make minor changes to the definitions of several regulatory terms in the existing regulations governing the Pacific Coast groundfish fishery. This proposed rule would not remove jack mackerel from the fishery management unit, because that will be done with the implementation of the Coastal Pelagic Species FMP, which will include jack mackerel in its fishery management unit. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR prepared by the Council for Amendment 11.

Background

Among the many changes to the Magnuson-Stevens Act was an amendment to authorize the Secretary to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to compensate vessel owners or operators with the fish taken during the survey and with the opportunity to harvest fish in excess of otherwise applicable management measures, if the quality or amount of fish is not adequate, on a subsequent commercial fishing trip (sec. 402(e)) of the Magnuson-Stevens Act. Section 303(b)(11) of the Magnuson-Stevens Act further enables the Secretary to ''reserve a portion of the allowable biological catch of the fishery for use in scientific research.''

At its November 1997 meeting, the Council recommended that NMFS implement an emergency rule for 1998 that would allow owners or operators of vessels that collect resource information to be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions (hereinafter ''compensated with fish''). At the time, the Council was

developing Amendment 11, and expected that a portion of Amendment 11 would authorize the Council to set a policy allowing small amounts of the acceptable biological catches (ABC)s of managed species to be reserved for use in scientific research and in compensation with fish for that research. To allow NMFS to use private vessels in its resource surveys in the summer and fall of 1998, NMFS implemented an emergency rule authorizing the agency to make fish available for those surveys prior to the Council's adoption of Amendment 11. On July 7, 1998 (at 63 FR 36614), NMFS implemented a final emergency rule to allow vessel owners and operators to be compensated with fish for their participation in NMFS-approved research surveys. This rule was extended for an additional 180 days on January 4, 1999 (64 FR 45).

The fishing industry, environmental groups, and NMFS have actively explored various ways to expand and improve information used in management of the groundfish fishery and to involve the fishing industry in gathering that information. As a result of this effort, the Council recommended amending the FMP to include provisions allowing NMFS to compensate fishers who participate in resource surveys with fish. This proposed rule would permit the use of fish as compensation for participation in resource surveys through codifying with minor changes regulatory language that was temporarily set in place as an emergency rule in 1998.

Compensation for a Chartered Vessel Conducting a Resource Survey

The Magnuson-Stevens Act authorizes the Secretary, in consultation with the Council and the interested public, to structure competitive solicitations by which a vessel's owner or operator may compete for a NMFS contract to conduct a resource survey. Resource surveys generally are conducted from chartered fishing vessels, chartered university vessels, and dedicated NOAA vessels. In a resource survey, all samples (fish) are collected according to a specified research plan or protocol. NMFS distinguishes survey activities by a scientific research vessel from commercial fishing activities according to a process of acknowledging scientific research, which involves issuing a Letter of Acknowledgment (LOA), described at 50 CFR 600.745(a). Scientific research is not governed by regulations that cover commercial fishing. NMFS frequently uses this mechanism to conduct surveys from chartered fishing vessels, and, in some cases, some of the sample has been retained by the vessel owner/operator for sale, to reduce waste and to defray some of the costs of the charter. Scientific research is not governed by regulations that cover commercial fishing. However, any additional harvest taken on a subsequent commercial trip as payment for the resource survey would not have been considered scientific research and, was not authorized under the old provisions of the Magnuson-Stevens Act.

The new provisions of the Magnuson-Stevens Act provide NMFS the authority to go beyond allowing the retention and sale of fish caught during the course of a resource survey by providing compensation through the opportunity to harvest fish in excess of current vessel limits and/or outside of other restrictions. This rule would authorize such ''compensation fishing'' through the issuance of an exempted fishing permit (EFP) in the Pacific Coast groundfish fishery. Such an EFP would be called a compensation EFP and would enable the vessel to take and retain compensation fish through revised trip limits and/or relaxation of other specified management measures.

The compensation EFP would include terms and conditions that limiting the activities authorized. Conditions for disposition of bycatch or any excess catch and for reporting the value of the amount landed and other appropriate terms and conditions would be specified in the EFP. The Council anticipates that compensation fishing would occur no later than the end of September of the year after the survey occurred. Compensation fishing must take place during the period specified in the EFP and must be conducted according to the terms and conditions of the EFP. The compensation EFP may also require the vessel owner or operator to keep separate records of compensation fishing conducted after the survey is completed and to submit them to NMFS within a specified period of time after the compensation fishing is completed. NMFS and the States of Washington, Oregon, and California may need to modify their catch reporting systems, so that fish taken under the compensation EFP are counted separately from other commercial landings.

Process

The process incorporates selection of commercial vessels to be used to conduct the resource surveys, issuance of compensation EFPs to provide for compensation with fish, and adjustment of the ABC to account for the compensation fish used.

Competitive Offers

NMFS may initiate a competitive solicitation (request for proposals, or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation. The RFP would be publicized in the ''Commerce Business Daily'' and would specify factors that NMFS would use in evaluating the proposals. NMFS would anticipate that vessel owners would submit offers to conduct the resource survey for a combination of dollars and compensation fish, or entirely compensation fish. The competitive solicitation would be part of the Federal procurement process, and it would not be governed by this rule.

Consultation

At a Council meeting, NMFS would consult with the Council and receive public comment on upcoming resource surveys where NMFS proposes to use groundfish to compensate in whole or in part, the vessel owners or operators conducting the survey.

For each proposal, NMFS would present (1) the maximum number of vessels expected or needed to conduct the survey, (2) an estimate of the species and amount of fish likely to be needed to compensate the vessels, (3) the time when the survey and the compensation fish would be taken, and (4) the year in which the compensation fish would be deducted from the ABC before determining the OY or quota. This is, in effect, equivalent to NMFS presenting a compensation EFP application to the Council for the compensation amounts. In general, compensation fish should be similar to surveyed species, but there may be reasons to provide compensation with healthier, more abundant, less restricted, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also want to take into account such other factors as expected discards and incidental catches of other species. If the Council does not approve the proposal to use fish as compensation to pay for a resource survey, NMFS would not use fish, other than fish taken during the scientific research, as compensation for that survey.

Awarding the Contract

NMFS would negotiate and award the resource survey contracts in accordance with normal Federal procurement procedures. The contract could include

any conditions and limits on compensation fishing, including a requirement to carry on board (1) a letter of acknowledgment of research signed by the Regional Administrator or designee, while conducting any resource survey, and (2) the compensation EFP while conducting compensation fishing for at least 15 days after the end of any applicable cumulative trip limit period in which compensation fishing occurred.

Retention of Samples

All fishing on a resource survey trip would be required to be conducted according to scientific protocol and would be

considered scientific research. However, some fish caught during the survey could be retained and sold as partial payment for the vessel's participation as long as the retention of these fish did not interfere with the exclusive research mission of the trip. Retention of samples for sale would be at the discretion of the chief scientist aboard, who would consult with the vessel captain. Collection of scientific information

and samples would be the highest priority and might interfere with the vessel's ability to retain market-quality fish.

Issuance of the Compensation EFP

Upon successful completion of the resource survey and determination of the amount and/or value of the survey sample that was retained for sale as payment for conducting the survey, NMFS would issue a compensation EFP to the owner or operator of the vessel if full compensation has not been achieved by the cash payment and retention of the survey sample. The compensation EFP would allow the vessel an opportunity to exceed the current commercial fishing or landing limits by the total amount of compensation fish needed and/or exempt the vessel from other specified management measures as necessary to harvest such fish. The amount of compensation fish needed would generally be the amount of fish equivalent to the value specified in the contract less the value of the survey sample retained for sale. The compensation EFP also may exempt the vessel from other specified management measures.

Accounting for Compensation Fish

The fish used for compensation should be deducted from the ABC at the beginning of the year so that it will come off the top before the various allocations are made. Deducting the fish inseason instead could cause great confusion with the many allocations and limits that are set at the beginning of the year. The exact species and amount of fish to be taken as compensation will not be known until the contract has been awarded and the compensation EFP has been issued. During the annual specification process (50 CFR § 660.321(b)), NMFS would advise the Council of the total amount of fish authorized in the compensation EFPs for conducting a resource survey, which then would be deducted from the following year's ABCs before setting the OYs or quotas. Fish caught under EFPs issued too late in the year for the authorized catch to be deducted from the next year's ABC would be deducted in the next management cycle practicable.

Compensation for a Commercial Vessel Collecting Resource Information

NMFS also intends to conduct smaller scale cooperative projects on vessels that are operating in the commercial fishery. This type of activity would not be considered scientific research under 50 CFR 600.745(a) because it would not be conducted by a scientific research vessel, even though the vessels would be

collecting resource information according to strict scientific standards approved by NMFS. For small-scale cooperative projects, NMFS could issue EFPs to fishing vessels to collect the resource information. The EFP would require a vessel to conduct specific activities and allow it to retain and sell the limited amount of fish harvested during these activities, which would be in addition to the amount it could take under its regular trip limit or under other management measure. After the resource information had been obtained, the vessel could sell the fish that were taken under the EFP. This would be a standard EFP, issued under the procedures at 50 CFR 600.745(b). Fish caught under such an EFP would count against the ABCs and OYs or quotas in the year they are caught.

In some circumstances, NMFS might allow the vessel to harvest slightly more fish than necessary for the particular project. These proposed regulations would allow NMFS to provide such compensation. A vessel might be permitted to retain the scientific sample plus a modest compensation amount, no larger than the size of the sample, above the vessel's normal trip limits. For example, these samples might be less than 500–1,500 lb (227–680 kg) of fish per vessel per month, although other amounts could be authorized depending on the scope of the project. NMFS could propose the amount of fish that would be used as compensation, or the EFP applicant could propose an amount in the EFP application. The extra fish would compensate the vessel for the extra work involved in collecting the samples and may encourage vessels to participate in cooperative projects. Also, more of the fish taken during the samplings that is surplus to sampling needs would be used, rather than discarded.

In cases where NMFS might allow harvesting of fish beyond what is necessary for a project, when NMFS announces receipt of the EFP application and requests comments as required under 50 CFR 600.745(b), NMFS could also announce a window period during which vessels would have an opportunity to submit EFP applications. NMFS contemplates two ways of issuing such EFPs: First, the EFPs could be issued to individuals implementing a protocol approved by NMFS. NMFS would consider the qualified applicants, issue EFPs to all of them, select participation by lottery, issue EFPs to the first applicants, or use other impartial selection methods. Second, NMFS could issue the EFP to a NMFS element, or a state or other Federal research agency, and the research agency's proposal would include an impartial way of selecting fishing vessel participants that would receive individual EFPs under the umbrella EFP held by the research agency.

Regulatory Definitions of Terms

The term, ''Processing or to process,'' is codified in the regulations that implement the FMP and has been modified by Amendment 11. This proposed rule would amend the codified definition of ''Processing or to process'' to include the preparation or packaging of groundfish to render it suitable for retail sale.

The term, ''optimum yield,'' is not new to the FMP or to Pacific coast groundfish management, but its definition has not been codified in the regulations that implement the FMP. Optimum yield (OY) is defined in the Magnuson-Stevens Act as the amount of fish that will provide the greatest overall benefit to the Nation. The Magnuson-Stevens Act also specifies that OY is based on maximum sustainable yield (MSY) and may be equal to or less than MSY. The FMP authorizes establishment of a numerical or non-numerical OY for any groundfish species or species group and lays out the procedures the Council will follow in determining appropriate numerical OY values. An OY may be specified for

the fishery management area as a whole or for specific subareas. Numerical OYs will be specified annually, based on ABCs for major species or species groups, which are in turn based on quantitative or qualitative stock assessments. ''Control rules'' for determining the numerical values of OYs ensure they will not exceed the ABCs except under tightly limited conditions.

OY may be expressed non-numerically (in terms of fish that are caught under certain management measures) or numerically (as a harvest guideline or quota). Therefore, the current definitions for harvest guideline and quota remain in effect, as expressions of a numerical OY. ''Harvest guideline'' continues to mean any specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery, although closure remains an option. ''Quota'' continues to mean any specified harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group. Some sections of the codified text that refer to ''harvest guideline'' or ''quota'' have been modified to include the term ''optimum yield.''

The following analysis focuses on the use of compensation fishing in the context of chartering vessels to conduct resource surveys because the issues and impacts are the same as and of a much greater magnitude than those involved in an EFP with a compensation clause.

Biological Impacts

The biological impacts of using fish as compensation would be expected to be neutral in the short term and positive in the long term. In the short term, the amount of fish used as compensation is intended to be within the ABC and, therefore, would be within current acceptable biological levels. In general, NMFS would be most likely to compensate the owner or operator of a vessel with identical or similar species to those taken in the resource survey. However, NMFS may decline to compensate a vessel with certain species, particularly stocks that are (or are expected to be) overfished, subject to overfishing, or have bycatch that are overfished (or are expected to be) or are subject to overfishing. In the long term, the additional information that is gathered because of NMFS's ability to compensate vessels with fish will provide more and better data for use in stock assessments, which should result in better management of the stock and less likelihood of overfishing.

Socio-Economic Impacts

The amount of the compensation fish (as a percentage of the ABC) would depend on the value of the compensation species and the cost of the survey. The cost of a Pacific coast trawl survey is relatively fixed, regardless of the abundance and value of the species surveyed. The contract for an extensive survey (e.g., two vessels for 60 days at sea each), such as the current NMFS triennial trawl survey, would probably cost less than $450,000, under 0.5 percent of the landed value of all Pacific coast groundfish, ($90 million), or approximately 1 percent of the $45 million value of the 1996 fisheries for the Dover sole, thornyheads, and trawl-caught sablefish complex (DTS), the most valuable portion of the Pacific coast groundfish complex. A smaller scale survey targeted on nearshore flatfish (e.g., Petrale sole, English sole, rex sole) would cost close to $175,000, 2.5 percent of the value of this $7 million flatfish fishery.

Not all components of the groundfish fishery are useful as compensation fish. Groundfish species for which there is no constraining trip limit, season, or other management restriction would not be desirable targets as compensation because a vessel is not limited in its catch of those species. Groundfish species that are under management restrictions could be compensation species because fishers participating in resource surveys would be authorized to catch a greater quantity of the management-restricted (and generally more valuable) species than otherwise available to the rest of the fleet. An unfortunate aspect is that most depressed stocks (such as Pacific ocean perch) may not afford an allocation of compensation fish, while most healthy stocks (like English sole) have no trip limits or allocations, so would not be desirable compensation. These considerations do not diminish the utility of using fish as compensation, but they do limit the range of species that could be considered as payment.

Vessels engaged in extended resource surveys may not have adequate opportunity to take their monthly cumulative trip limit (or other limit). The contract and EFP may allow the take of a cumulative trip limit (or other fishing opportunity that was lost due to time used in conducting the survey) outside the normal period as one of the activities that might be provided as compensation for conducting the survey.

The amount of compensation fish awarded to a survey vessel would be deducted from the subsequent year's ABC. If compensation fish comprise a large proportion of an OY or quota, then, potentially, trip or bag limits for that species could be lowered, or other constraints on the fishery could be necessary. However, the amounts used as compensation are expected to be less than 5 percent of an ABC, well within the range of uncertainty associated with ABCs, inseason catch monitoring, and trip limit derivations. Therefore, it is unlikely that awarding fish for compensation would result in lower trip limits or additional or earlier restrictions, although this could potentially occur.

Because the amount of fish used for compensation would be subtracted ''off the top'' of the ABC, the loss of compensation fish would be shared among all sectors and vessels (commercial, recreational, and tribal) in the fishery.

Use of compensation fish would reduce the Federal outlay of capital, although it would increase the Federal workload by adding new EFP procedures and potentially complicating the determination of acceptable charter offers for resource surveys.

Use of fish as compensation for conducting resource surveys should increase the participation and interest by members of

the fishing industry, some of whom have been skeptical of NMFS's data and survey procedures. Resource survey cooperation between industry and government would provide scientists with valuable guidance from veteran fishers and would provide industry with first-hand insight into scientific sampling procedures.

A survey vessel would receive an extra financial benefit under this process; however, the recipient and level of the benefit would be determined through a competitive process.

Using fish as compensation would enable NMFS to gather more data than would otherwise be possible. More data should lead to better stock assessments and a more accurate long-term prognosis for a sustainable fishery, and thus contribute to stability in the fishing industry and in the resources upon which the industry depends.

Classification

At this time, NMFS has not determined that Amendment 11 that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

NMFS has established standards for determining whether an action will have a significant economic impact on a substantial number of small entities. NMFS has determined that, in general, a substantial number of small entities would be 20 percent of those small entities affected by the rule. Economic impacts on small entities are considered to be ''significant'' if the proposed action would result in any of the following: (a) reduction in annual gross revenues by more than 5 percent; (b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; (c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; (d) capital cost of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, (e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations. The proposed rule would result in no additional compliance costs, and therefore items (b), (c), and (d) are not at issue. Item (e) is not relevant as this action would not force any business to cease operations. Only (a) appears potentially relevant to this issue.

The groundfish species that would be most desirable to fishers as compensation for resource survey participation would be species under management restrictions such as trip limits or season length limits. The amounts of each species that would be used as compensation are expected to be less than 5 percent of the ABCs of those species. The majority of the groundfish species managed under the FMP are not managed with species-specific landing limits. Therefore, even if as much as 5 percent of each of the management-restricted species were used as compensation fish, the compensation fish would still represent much less than 5 percent of all possible groundfish landings, and less than 5 percent of all groundfish landings revenue. It is possible that more than one survey could be conducted in a given year. Even so, it is not expected that more than 5 percent of any species' ABC would be designated for compensation fishing. For these reasons, it is extremely unlikely that this proposed rule could result in a reduction in annual gross revenues by more than 5 percent for 20 percent of the affected fishers.

To demonstrate the expected insignificant impact of this proposed rule, an analysis is presented below that shows the effect on the groundfish fleet of using the Dover sole, thornyhead, and sablefish (DTS) complex as compensation fish. These particular fish species were chosen for this analysis because DTS complex species are some of the highest value species within the groundfish complex. The financial effects of reducing the quantity of these species available to fishers who do not participate in resource surveys would be significantly greater than the financial effects of reducing the availability of other management-restricted species.

This proposed rule could affect a maximum of 2,270 vessels, of which approximately 2,260 (almost 100 percent) are considered small entities. The rule is expected to have several different types of effects. For vessels that obtain contracts to conduct research in exchange for fish, this rule would provide increased opportunity for profit. This rule is also expected to lead to the availability of increased scientific data on the status of the fishery, which will enhance the ability of the agency to manage the fishery and may lead to long-term benefits for all participants.

There is also the small possibility that this proposed rule could result in negative economic effects on some fishery participants. The fish that are awarded as compensation would be deducted from next year's ABC. The amounts likely to be diverted for compensation would be so small as to be within the range of accuracy expected for inseason monitoring of harvest guidelines and quotas, and most likely would not change the size of trip limits or their date of achievement. However, there is a remote possibility that some trip limits would be lowered, or lowered earlier in the year, as a result of the small compensation allocation for survey vessels. If this happens, those vessels that routinely achieve their trip limits could experience some degree of economic loss. Again, Dover sole, thornyheads, and trawl-caught sablefish are used to illustrate the greatest expected impact on fishery participants, as those are the most valuable species in the groundfish complex. NMFS estimates that approximately 208 limited entry vessels achieved these limits during at least one trip-limit period between July 1996-June 1997. Thus, 9 percent (208 vessels out of the 2,260 affected small entities) could hypothetically experience some economic loss as a result of this rule. NMFS estimates that the total cost of the fish used as compensation for the 1998 slope survey could be $135,000. If this amount is divided between the limited entry and open access fleets in proportion to their share of the fishery, then the cost to the limited entry fleet would be approximately $128,000 and the cost to the open access fleet would be approximately $7,000.

If the entire $128,000 share of the survey cost for the limited entry fleet were supported by the 208 vessels that achieved a cumulative trip limit of one DTS species during one trip-limit period, the average cost to each of these 208 vessels would be $615. The average annual fishing revenue for limited entry vessels in 1996 was $204,000. Thus, the average cost per vessel of spreading the $128,000 cost among 208 vessels would be 0.3 percent ($615 divided by $204,000). In addition, NMFS notes that the smallest 12-month revenue for any of these 208 vessels was $15,000, 5 percent of which is $750, which is higher than the $615 average cost of the compensation fish for these 208 vessels. As the vessel revenue increases, which it does for the remaining 207 vessels, the relative impact of the cost of compensation fish becomes smaller, and remains less than 5 percent. From a slightly different perspective, if the cost associated with using fish as compensation were $128,000 and were distributed amongst the limited entry vessels in proportion to the number of periods in which they attained a limit (during July 1996-June 1997), then the largest reduction in annual revenue for any vessel would be 0.5 percent. NMFS does not anticipate that setting aside a portion of management-restricted species ABCs for compensation fishing could lower trip limits in the open access fishery, because open access allocations of management-restricted species are small enough so that the burden of ABC reduction shared by the open access fleet would be negligible.

For these reasons, and because the effects of the proposed rule would be spread over approximately 2,270 limited entry and open access vessels making Pacific coast groundfish landings, this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under OMB control number 0648–0203 for Federal fishing permits. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments

regarding this burden estimate or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: February 4, 1999.

Gary C.Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

l. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definition ''Optimum yield'' is added, and the definitions of ''Commercial harvest guideline or commercial quota'', ''Processing or to process'', and ''Specification'' are revised in alphabetical order to read as follows:

§ 660.302 Definitions

* * * * *

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes, for recreational fisheries, and for compensation fishing under § 660.350. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

* * * * *

Optimum yield (OY) means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as an HG, quota, or other specification) or non-numerically.

* * * * *

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

* * * * *

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

* * * * *

3. In § 660.306, paragraphs (d), (e), and (f) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.350.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP issued under § 660.350 or part 600 of this chapter.

(f) Take and retain, possess, or land more groundfish than specified under §§ 660.321 and 660.323, or under an EFP issued under § 660.350 or part 600 of this chapter.

* * * * *

4. In § 660.321, paragraph (b) is revised to read as follows:

§ 660.321 Specifications and management measures.

* * * * *

(b) *Annual actions.* The Pacific Coast groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations.

* * * * *

5. Section 660.350 is revised to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to take and retain fish as compensation in excess of trip limits and/or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council, receive public comment, and seek Council approval of upcoming resource surveys for which NMFS proposes to use groundfish as whole or partial compensation. If the Council does not approve providing whole or partial compensation with fish for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the

survey, NMFS will issue a ''compensation EFP'' to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subpart G).

(4) *Terms and conditions of the compensation EFP*. Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch*. The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch*. As part of the annual specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas. Fish authorized in an EFP too late in the year to be deducted from the following year's ABC will be accounted for in the next management cycle practicable.

(b) *Compensation for commercial vessels collecting resource information under a standard EFP*. NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application*. In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial*. In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications*. If the RA or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may chose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions*. The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch*. Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

[FR Doc. 99–3280 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 27
Wednesday, February 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, February 12, 1999. The meeting will be held at the University of Phoenix, Honolulu Campus, University Center, 828 Fort Street Mall, first floor conference room, Honolulu, Hawaii, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Swearing-In Ceremony
III. Chairman's Report
IV. Millennium Issues
  A. Federal Stewardship and the Military—Discussion and Action
  B. Internet Discussion Forum—Presentation and Official Inauguration
V. Section 106 Regulations—Discussion and Action
VI. Legislative Issues
  A. Historic Preservation Fund/Council Reauthorization—Discussion and Action
  B. FY 2000 Historic Preservation Funding—Discussion and Action
VII. Executive Director's Report
  A. Section 106 Cases—Report
  B. Narragansett Tribal Regulations—Discussion to prepare for post-meeting action
VIII. New Business
IX. Adjourn

Note: The meetings of the Council are open to the public.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: February 8, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99–3298 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on the 21st Century Production Agriculture

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the fourth meeting of the Commission on 21st Century Production Agriculture. The purpose of this meeting is to review the final draft of the Commission's initial report on the effects on the Federal Agriculture Improvement and Reform Act of 1996, plan for public listening sessions to be held in 1999, construct a budget for fiscal year 2000, and conduct any other necessary business. This meeting will be open to the public.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held in Room 5140, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, from 8:30–5:00 EST on February 23, 1999, and from 8:30–12:00 EST on February 24, 1999.

FOR FURTHER INFORMATION CONTACT: Keith J. Collins (202–720–5955), Chief Economist, Room 112–A Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW, Washington, DC 20250–3810.

Dated: February 4, 1999.

Keith J. Collins,

Chief Economist.

[FR Doc. 99–3262 Filed 2–9–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, March 17–19, 1999.

On Wednesday, March 17, the Advisory Board will sponsor its 3rd National Stakeholder Symposium, focusing on two topic areas: Marketing and Trade Competitiveness and Landowner Rights and Responsibilities. The Symposium will begin promptly at 9 a.m. and use a panel format as in previous years. Each panelist will be permitted to make an opening presentation, with time limits to be announced, and will receive questions from the Advisory Board Members. If you wish to be considered as a panelist or would like to nominate a panelist, please forward speaker names, phone

numbers, and a brief summary, outline, or similar indication of the intended remarks regarding the two topic areas to the contact person below for Board consideration. Names for panelists will be reviewed and selections will be made by the Advisory Board and its Executive Committee. The general Advisory Board meeting will begin at 9 a.m. on Thursday, March 18 and continue until approximately noon on Friday, March 19. During this time, the Advisory Board will (1) incorporate input of stakeholders for use in recommendations for the FY 2001 priorities; (2) report the Advisory Board recommendations on the USDA scientific merit/peer review procedures for competitive education and extension grants; (3) report on the progress of REE programs and projects with regard to relevance to research priorities and adequacy of funding (Note: No. 1,2, and 3 above are all mandated by the Agricultural Research, Extension, Education Reform Act of 1998); (4) discussion on vision statements for the agricultural research and education programs; (5) hear progress reports on Advisory Board working group activities; (6) review the draft report by the Research, Education, and Economics Strategic Planning Task Force on agricultural research facilities; (7) plan two listening sessions for 1999 (in the Northeastern Region and at an 1890 institution); (8) conduct a focus session on nutrition and the integration of production and human nutrition by USDA Research, Education, and Economics; and (9) a possible session on enrollment trends for agricultural/natural resource subdisciplines and the CSREES funding relationship.

Dates:

March 17—9:00 a.m. to 5:00 p.m., 3rd National Stakeholder Symposium
March 18—9:00 a.m. to 5:00 p.m.
March 19—9:00 a.m. to Noon

March 19—12:30 p.m., Optional tour of the Smithsonian agricultural exhibit.

Place: Holiday Inn-National Airport (Crystal City), Grand Ballroom, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC this 3rd day of February 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–3263 Filed 2–9–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agriculture Service, USDA.

ACTION: Notice of determination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 (''NAFTA Implementation Act''), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was lower than the trigger price.

FOR FURTHER INFORMATION CONTACT: Mark Petty, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–0897.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports from Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term ''daily price'' means the daily closing price of the New York Cotton Exchange (the ''Exchange''), or any successor as determined by the Secretary of Agriculture for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term ''business day'' means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term ''trigger price'' means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of— (1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term ''entered'' means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period January 13–20, 1999, the daily price for frozen concentrated orange juice was less than the trigger price.

Issued at Washington, D.C. the 1st day of February, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–3165 Filed 2–9–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and atmospheric Administration (NOAA).

Title: Deep Seabed Mining Regulations for Exploration Licenses.

Agency Form Number(s): None.

OMB Approval Number: 0648–0145.

Type of Request: Reinstatement of a previously approved collection.

Burden: 40 hours.

Number of Respondents: 2.

Avg. Hours Per Response: 20 hours.

Needs and Uses: The Deep Seabed Hard Minerals Resources Act authorizes NOAA to issue licenses for exploration of deep seabed hard mineral resources. The statute is very specific as to what is expected of an exploration licensee and certain determinations must be made by NOAA before a license can be granted. After the license is granted, NOAA monitors the licensees closely to determine if there have been environmental effects from the exploration. Without this information, NOAA would be unable to determine if the statutory requirements continue to be met after the license is issued.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: February 4, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–3220 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Post-Enumeration Survey (PES) Independent Listing Operation Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 12, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Magdalena Ramos, Bureau of the Census, Room 2126A/SFC2, Washington, DC 20233, (301) 457–4295.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census developed the Post-Enumeration Survey (PES) approach for measuring coverage of the population in the decennial census. In PES, we independently count a sample of housing units and the people living in those units, then compare those results to the census. We then use this comparative information to produce final estimates of the coverage for Census 2000. The PES approach was tested during the Census 2000 Dress Rehearsal. The Independent Listing Operation is the first step in the PES process. It will be conducted to obtain a complete housing unit inventory of all addresses within the Census 2000 PES sample of block clusters before the Census 2000 enumeration commences. The Independent Listing will undergo a quality assurance operation to ensure that the work performed is of acceptable quality and to verify that the correct blocks were visited. There will be two Independent Listing forms, D–1302 and D–1302PR. The D–1302 is the English language version of the listing form and will be used in the PES sample areas except in Puerto Rico. The D–1302PR is the Spanish language version of the listing form and will be used only in the PES sample areas in Puerto Rico.

The Independent Listing will be matched to the address list used in the census; the unmatched cases will be sent to the field for reconciliation during the next phase of the PES, Housing Unit Follow-up. The forms and procedures to be used in the Housing Unit Follow-up phase of the PES in the Census 2000 and all subsequent PES phases will be submitted separately.

II. Method of Collection

Person to person interview.

III. Data

OMB Number: Not available.

Form Number: D–1302 and D–1302PR.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,046,700 Housing units (HUs).

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: Total = 71,634 Hours.

Independent Listing = 68,223 hrs (2 min. × 2,046,700 HUs).

Independent Listing QA = 3,411 hrs (2 min. × 102,335 HUs).

Estimated Total Annual Cost: No cost to the respondent except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–3221 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Jose Luis Sesin; Order Denying Permission To Apply For or Use Export Licenses

In the Matter of: Jose Luis Sesin, 7764 SW 57 Terrace, Miami, Florida 33143–1624.

On May 20, 1998, Jose Luis Sesin (Sesin) was convicted in the United States District Court for the Southern District of Florida on, *inter alia*, one count of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)) (IEEPA). Sesin was convicted of knowingly, willfully, and unlawfully exporting and causing to be exported, under a false bill of lading, eight containers of goods to the Dominican Republic, which were then transshipped to Havana, Cuba, without the required export licenses.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. parts 730–774 (1998)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Sesin's conviction for violating the IEEPA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Sesin permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of eight years from the date of his conviction. The eight-year period ends on May 20, 2006. I have also decided to revoke all licenses issued pursuant to the Act in which Sesin had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. Until May 20, 2006, Jose Luis Sesin, 7764 SW 57 Terrace, Miami, Florida 33143–1624, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export of reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Sesin by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This order is effective immediately and shall remain in effect until May 20, 2006.

VI. A copy of this Order shall be delivered to Sesin. This Order shall be published in the **Federal Register.**

Dated: February 1, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–3274 Filed 2–9–99; 8:45 am]

BILLING CODE 3510 –DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Meg. 44121, August 17, 1998), continued the Export Administration Regulations in effect under the IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Kenneth Broder; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Kenneth Broder, Calle Rafael Agusto Sanchez No. 22 Torre, Don Roberto Ens, Piantini, Aparto (Post Office Box) 30298, Santo Domingo, Dominican Republic.

On February 2, 1998, Kenneth Broder (Broder) was convicted in the United States District Court for the Southern District of Florida on, *inter alia*, one count of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)) (IEEPA). Broder was convicted of knowingly, willfully, and unlawfully exporting and causing to be exported 18 containers of goods to Ria Haina, Dominican Republic, which were then transshipped to Havana, Cuba, without the required export licenses.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act,[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administrations Regulations (currently codified at 15 CFR Parts 730–774 (1998)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Broder's conviction for violating the IEEPA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Broder Permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of nine years from the date of his conviction. The nine-year period ends on February 2, 2007. I have also decided to revoke all licenses issued pursuant to the Act in which Broder had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. Until February 2, 2007, Kenneth Broder, Calle Rafael Agusto Sanchez No. 22 Torre, Don Roberto Ens, Piantini, Apartado (Post Office Box) 30298, Santo Domingo, Dominican Republic, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Broder by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until February 2, 2007.

VI. A copy of this Order shall be delivered to Broder. This order shall be published in the **Federal Register**.

Dated: February 2, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–3275 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Export Administration Regulations in effect under the IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(H) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review of chrome-plated lug nuts from Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on chrome-plated lug nuts from Taiwan. This review covers 18 producers/exporters of chrome-plated lug nuts. The period of review is September 1, 1996 through August 31, 1997.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351.101, *et seq.* (62 FR 27296—May 19, 1997).

Extension of Preliminary Results

The Department initiated this administrative review on October 30, 1997 (62 FR 58703). Under section 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. Because of the complexity of an issue in this case, it is not practicable to complete this review within the statutory time limit of 365 days. The Department, therefore, is extending the time limit for the final results of the aforementioned review to April 5, 1999. See memorandum from Holly A. Kuga to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: February 4, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 99–3278 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1996, through June 30, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results. The final results are listed below in the section *Final Results of the Review*.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4195 or 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1998, the Department published in the **Federal Register** (63 FR 42366) the preliminary results of the administrative review of the antidumping order on industrial nitrocellulose (INC) from the United Kingdom, 55 FR 28270 (July 10, 1990). We gave interested parties an opportunity to comment on the Preliminary Results. On September 8, 1998, we received a case brief from Imperial Chemical Industries PLC (ICI) (respondent). On September 9, 1998, we received a case brief from Hercules Incorporated (petitioner). On September 14, 1998, we received rebuttal case briefs from both respondent and petitioner. A hearing was held September 16, 1998. Based on our analysis of the comments received, we changed the final results from those presented in the preliminary results as described below in ''*Changes from the Preliminary Results*'' and ''*Interested Party Comments*'' sections of this notice. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Changes From the Preliminary Results

The Department corrected an error by removing from the calculation of NV sales to one affiliated customer that were not at arm's length. See Comment 5.

The Department corrected a clerical error that involves units of measure and affected the assessment rates. Rather than continuing to convert U.S. net price to kilograms, as was done in the preliminary determination, we have converted the foreign unit price to pounds. In addition, because the respondent reported total entered value for each transaction rather than on a per unit value, we did not multiply total entered value for each sale by the quantity. See Comment 6.

Interested Party Comments

Comment 1

The respondent argues that the Department should reclassify ICI's U.S. sales as export price (EP) for the final results. Respondent argues that it's U.S. sales process for INC satisfies both the statutory definition of EP sales and the three criteria set forth under the Department's judicially approved test for EP classification. Respondent asserts that based on the statutory definitions of both EP and CEP in 19 U.S.C. sections 1677a(a) and 1677a(b) respectively, only U.S. sales made ''before the date of importation'' can be classified as EP. Respondent argues that because its U.S. sales of INC are made before the date of importation, its U.S. sales meet the definitional requirement for EP treatment.

Respondent also argues that the key distinction between EP and CEP sales established by *P.Q. Corp.* v. *United States*, 652 F. Supp. 724,731 (Ct. Int'l Trade 1987) (*PQ*) is the involvement of affiliated entities in the U.S. sales process. Respondent claims that ICI's U.S. sales process satisfies the three criteria set forth under the Department's test of EP classification established in *PQ*. The three criteria are as follows: (1) The manufacturer must ship the merchandise directly to the unrelated buyer, without introducing it into the related selling agent's inventory; (2) this procedure must be the customary sales channel between the related parties; (3) the related selling agent located in the United States must act only as a processor of documentation and a communication link with the unrelated buyer. Respondent points to several court cases which it interprets to hold that CEP and the test for it are applicable only where there is a related selling agent, which is not the case in this review.

Respondent refers to the Statement of Administrative Action (SAA), which states that ''constructed export price is * * * calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers,'' to argue that because the stated objective of the CEP calculation is to approximate a non-affiliated price, it is ''inescapable'' that the affiliation is the predicate that enables the CEP analysis. Respondent argues that because the underlying goal of EP/CEP classification is to reconstruct at arm's length the transaction between the exporter and its related importer, the Department's decision to apply the third prong of the test to an unaffiliated party is not supported by the legislative history for the statute.

Respondent asserts that the Department's practice has been to apply this test only to activities of affiliated parties. Respondent argues that the record clearly supports the fact that the U.S. selling agent is unaffiliated and that the Department itself referred to the U.S. selling agent in question as ''unaffiliated'' in its verification report and Memorandum dated July 22, 1998. Respondent argues that as a result, the Department incorrectly applied the three-part test to sales made through unaffiliated parties in the preliminary results.

Respondent then argues that even if the Department determines that the analysis of the selling activities of unrelated parties is appropriate, CEP treatment is still not appropriate given the insignificant level of selling activities of ICI's U.S. selling agent. Respondent asserts that the record does not support ICI's U.S. sales agent's ''involvement in sales solicitation and price negotiation.'' Respondent claims that its U.S. selling agent has a very limited role in sales of INC to the United States, and that there is no evidence on the record to indicate that the U.S. selling agent solicits new customers and sales. Respondent points to the verification report, which states that it is the agent/distributors who place orders with ICI America (ICIA), ICI's U.S. subsidiary on their own behalf. As for price negotiation, respondent argues that CEP treatment is not appropriate where the foreign producer rather than the U.S. affiliate accepts or rejects the final sales terms to a U.S. Customer, as is the case here, evidenced by the verification report.

Respondent argues that this review is different from *Viscose Rayon Staple Fiber from Finland* (63 FR 32820), where the Department decided to use CEP, because in that case there was no *bona fide* give and take between the producer and the U.S. selling agent. In this case, there is correspondence indicating a give and take between ICI and its U.S. agent. *See Department's June 28, 1998 Report on the United Kingdom Sales Verification of ICI in the Third Administrative Review*, at exhibit 36.

Petitioner argues that the Department's classification of respondent's U.S. sales as CEP was correct. Petitioner states that according to 19 U.S.C. 1677a(a) and 1677a(b), U.S. sales made prior to the date of importation can be either EP or CEP.

The petitioner also points to the three prong test used by the Department to determine whether sales are EP or CEP. The criteria, recently re-stated in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews* 63 FR 13170 (March 18, 1998) (*Cold Rolled Steel*) and validated by the Court of International Trade in *Mitsubishi Heavy Industries, Ltd.* v. *United States* (''*Mitsubishi*''), 15 F.Supp. 2d 807 (CIT 1998) include the following: whether (1) the goods were shipped directly from the manufacturer to the U.S. customer; (2) this was the customary commercial channel between the parties; and (3) the U.S. sales agent was functioning merely as a ''processor of sales-related documentation'' and ''communications link'' with the unaffiliated U.S. buyer. If any of the three criteria are not met, the Department considers the U.S. sales agent not to be ancillary to the sales process and therefore, the Department classifies the sales as CEP.

Petitioner cites *Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review* 63 FR 32820 (June 16, 1998) (*Viscose from Finland*), where the Department determined that U.S. sales were CEP by applying the statutory definition of CEP and the Department's three-prong test to U.S. sales previously classified as EP. Petitioner argues that this case is similar to *Viscose from Finland*, and *Cold-Rolled Steel* because in those cases, the Department re-evaluated the respondents' activities related to U.S. sales, which had been categorized as EP sales in previous determinations, and determined that the function of the U.S. selling agent was substantially more than a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer.

Petitioner argues that whether or not ICI's U.S. representative is affiliated or non-affiliated is irrelevant to the CEP vs. EP determination. It is the role that the U.S. sales agent acts on behalf of the exporter which is important. In *Stainless Steel Wire From Spain: Notice of Final Determination of Sales at Less Than Fair Value* 63 FR 40391 (July 29, 1998), the Department stated: ''When

sales are made prior to importation through *an affiliated or unaffiliated* U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria in order to determine whether the sales are EP sales.'' (emphasis added). Petitioner points to several recent notices, including *Viscose from Finland*, where the Department either referred to the U.S. selling agent as ''affiliated or unaffiliated U.S. sales agent'' or simply as ''U.S. sales agent''.

Petitioner argues that the Department correctly applied its three-prong test to determine that respondent's U.S. sales were CEP transactions. Petitioner maintains that in order to qualify as EP sales, U.S. sales must pass all three prongs of the Departments test. While there is no dispute that ICI's U.S. sales pass the first two prongs, petitioner argues that numerous facts on the record show that ICI's U.S. sales agent is more than ''ancillary'' to the U.S. sales process. In fact, its activities constitute ''substantial involvement'' in the sales process and support the Departments determination of CEP sales.

Furthermore, petitioner argues that because ICI's U.S. sales agent made U.S. sales ''on behalf of the producer or exporter'' the sale is, by definition, a CEP sale. Petitioner argues that the statute includes activities of U.S. sales agents exactly like ICI's U.S. sales agent in the definition of CEP. Petitioner points to various services on the record performed by ICI's U.S. sales agent to support their claim.

In its rebuttal brief, respondent argues that two cases cited by petitioner, *Cold Rolled Steel* and *Mitsubishi*, support respondent's position that the Department's third prong has been only applied to the activities of U.S. affiliates and never to unaffiliated entities. Respondent refers to the CIT's statement in *Mitsubishi* that ''the test reflects that the key distinction between EP and CEP is the relationship between the exporter and the importer.''

Respondent further argues that both petitioner and the Department are incorrect to characterize ICI's U.S. sales agent as being substantially involved in the sales process. Respondent points to several verification exhibits, *See U.K. Verification Report*, which it claims demonstrate that the U.S. sales agent is not substantially involved in the sales process. Respondent refutes petitioner's claim that all sales are made through the agent. Rather, respondent claims that all sales are made through ICIA and not the agent. Respondent points to the Department's *U.K. Verification Report* to correct what respondent alleges are misrepresentations made by petitioner with regard to the selling agent's activities and role in the U.S. sales process of INC.

Department's Position

We agree with the petitioners. In our preliminary results of review, we examined the facts of this case in light of the statutory definitions of EP and CEP sales. Section 772(b) of the Act, as amended, defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation *by or for the account of the producer or exporter* of such merchandise *or* by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted'' (emphasis added). Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise *outside of the United States* to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted.''

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. Moreover, the CEP definition expressly encompasses sales made on behalf of the exporter *or* an affiliated party. Thus, affiliation is not the key. To the contrary, for sales prior to importation, the decisive factor is where the selling activity takes place, *i.e.*, in or outside the United States. Distinguishing EP and CEP transactions based on where selling activity takes place is consistent with the purpose of ensuring that, where appropriate, expenses related to selling activity in the United States are deducted to reach a constructed ''export'' price.

Furthermore, based on the Department's practice, we examine several criteria for determining whether sales made prior to importation through a sales agent to an unaffiliated customer in the United States are EP sales, including: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales. (*See, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820, 32821 (June 16 1998); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170 (March 18, 1998).)

The crucial distinction lies in the last factor, *i.e.*, whether the entity in the United States acted only as a processor of documentation and a communication link. This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate.

Our analysis of the facts indicates that, while ICI's U.S. sales meet the first two conditions, they fail to meet the third one. ICI engaged a U.S. selling agent who is substantially involved in the process of selling INC in the U.S. Discussion of the agent's selling activities in a public notice is not possible due to their proprietary nature. For a complete discussion of the classification of ICI's U.S. sales including a discussion of the agent's role in pricing decisions, *See* Memorandum to Holly Kuga, January 29, 1999.

The Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond an ancillary role. Therefore, even if the agent's role is not autonomous with respect to the final sales terms as respondent claims, this does not mean that its role in the process is ancillary. (*See Final Results of Antidumping Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 63 FR 13170 (March 18, 1998).) Because selling activities of ICI's agent were more than ancillary to the sales process in the U.S., we determine that ICI's U.S. selling agent is substantially involved in the sales process for INC, *i.e.*, the function of the U.S. selling agent is not limited to that of a ''processor of sales-related documentation'' and a

''communications link'' with the unaffiliated U.S. buyer.

While a sales agent, even one unaffiliated in an equity sense, can be an affiliated party within the meaning of section 771(33) (*see Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24403 (May 5, 1997); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa*, 60 FR 22550 (May 8, 1995)), the question of affiliation is not decisive in determining whether CEP treatment is appropriate. As the language in Section 772(b) of the Act states, CEP methodology is required if the subject merchandise is first sold (or agreed to be sold) *in the United States* ''*by or for the account of the producer or exporter* of such merchandise *or* by a seller affiliated with the producer or exporter.'' (emphasis added). As a result, if, as in this case, an entity in the U.S. is substantially involved in selling in the United States on behalf of or for the account of the producer, CEP methodology is required. Accordingly, we have determined that the price for ICI's U.S. sales of INC are CEP.

Comment 2

Respondent claims that the Department has fundamentally departed from its longstanding methodology for EP/CEP classification in prior administrative reviews by shifting the focus from the related importer to an unaffiliated entity. Respondent argues that this departure from the Department's methodology for EP/CEP classification denies respondent ICI due process and violates agency practice. Respondent argues that for the preliminary results in this review, the Department applied the same methodology of the three prong test to essentially the same facts, as in previous reviews, but reached the opposite conclusion. Further, the only factual difference between this review and the previous two, where the Department treated ICI's sales as EP, is that the U.S. sales agent is unquestionably unaffiliated. Respondent argues that the Department can not arbitrarily abandon a methodology without a relevant change in the facts presented, or at least provide an explanation for changing its practice. *See Cinsa* v. *United States*, 966 F. Supp. 1230, 1238 (Ct Int'l Trade 1997)(*Cinsa*). Respondent asserts that the Department's CEP determination is arbitrary because the change is unsupported by any factual findings except the fact that the U.S sales agent is now unaffiliated which gives only more weight to the sales being classified as EP.

Respondent argues that the Department's change in EP/CEP methodology is unwarranted because it does not represent an improved basis for EP/CEP calculations, and violates principles of administrative equity. *See Shikoku Chemicals* v. *United States*, 795 F. Supp. 417, 418–19 (Ct Int'l Trade 1992). Since ICI was not notified of a Departmental change in the EP/CEP analysis, ICI was not given the opportunity to fully develop the administrative record to support its EP claim, nor relevant adjustments to CEP sales such as CEP profit and CEP offset. Respondent argues that principles of procedural fairness dictate that when an agency changes its methodology, interested parties must have advance notice and an opportunity to present relevant factual information on the record addressing the new methodology.

Petitioner argues that the Department's actions were procedurally fair and protected respondent's right to due process. Petitioner points to *Asociacion Colombiana de Exportadores de Flores, et al.* v. *United States* 6F. Supp. 2nd 865, 1998 Ct.Int. Trade Slip Op. 98–33, March 25, 1998, dated as Amended June 29, 1998, which articulated the CIT's standard of review for the Department's decisions under the antidumping law: (1) Whether the Department's determination was in accordance with law, and (2) whether the Departments conclusions are based on substantial evidence on the record. In this case, petitioner argues, the statutory definition of CEP is clear and unambiguous. As to the second point, petitioner points to substantial evidence on the record which justifies the Department's CEP determination.

Petitioner argues that the three prong test that the Department uses to determine whether a respondent's sales are EP or CEP is not new and has been consistently used and approved by the court. The Department is free to apply the three prong test in each review and base the results on the facts in that review, not on the facts in the preceding reviews. Furthermore, petitioner argues that the respondent was aware of the Department's reconsideration of its U.S. sales because the Department requested additional information including activities of ICI's U.S. sales agent and data on indirect selling expenses for U.S. sales.

Department's Position

In essence, respondent argues that because we applied EP methodology in prior reviews, it is unfair to apply in the current review what they argue is a new, broader CEP test which encompasses unaffiliated parties. We disagree on several grounds. First, as discussed above in response to Comment 1, section 772(b) of the current statute expressly requires CEP methodology where sales are made in the United States on behalf of the foreign producer, regardless of whether the entity selling in the United States is an affiliate. Thus, we have in recent cases more closely scrutinized the selling activities of parties in the United States, whether or not they are affiliated, to ensure that we are correctly applying the statute. *See Roller Chain, Other Than Bicycle From Japan; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 25450, 25457 (May 8, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 40391, 40395 (July 29, 1998); *See also, Viscose from Finland*. To the extent that respondent views this as a change in policy, we note that it is a basic principle of administrative law that an agency may change its policies and practices as long as it articulates the reasons for doing so. *See British Steel Plc* v. *United States*, 127 F.3rd 1471, 1475 (Fed. Cir. 1997).

Further, each review is a separate segment of the proceeding with a separate and distinct factual record. Respondent had ample opportunity in this review to present information and arguments pertaining to CEP treatment, as is evident from its questionnaire responses and case brief. As discussed in Comment 1, above, the issue is not affiliation, but rather the role of the agent in the U.S. sales process and the facts on record in this review support our conclusion that the role of ICI's agent in the United States is substantial. Therefore, CEP treatment is warranted. In any event, we note that respondent's assertion that the U.S. agent is unaffiliated is not necessarily accurate. Affiliation is not limited to equity relationships; it also encompasses relationships in which one party controls another. However, because affiliation is not key to an analysis of whether CEP treatment is warranted, it was not necessary for the Department to determine whether any basis for a finding of affiliation between ICI and the selling agent exists to resolve this issue.

Comment 3

Respondent argues that if the Department continues to classify ICI's U.S. sales as CEP, then the Department should only deduct the payment to ICI's U.S. selling agent. Respondent asserts

that if the Department continues its methodology where it shifts its focus from the activities of the U.S. affiliate to the activities of an unrelated party, then it must make a similar shift in the universe of expenses to be deducted from CEP. Since the Department based its CEP determination on the activities of its unrelated U.S. selling agent, the only expense which the Department can deduct from CEP is the annual payment to the unrelated U.S. selling agent.

Respondent points to *Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 FR 18390 (April 15, 1997), where the Department focused on the activities of the U.S. affiliate in determining classification of CEP sales and based CEP deductions on selling expenses incurred by the U.S. affiliate that engaged in the selling activities. Respondent argues that because the Department didn't base its CEP determination on the activities of ICIA, there is no reason to deduct any of ICIA's expenses .

Petitioner disagrees with respondent's claim that only the payment to ICI's U.S. selling agent should be deducted. Petitioner agrees with the Department's methodology in the preliminary results. Petitioner maintains that failing to deduct all U.S. selling and indirect expenses would result in an artificially high U.S. price. It would exclude from the dumping margin calculation a significant cost to the respondent's sale in the U.S. market, while including the cost in the other market.

Departments Position

We agree with the petitioner. Under section 772(d)(1), CEP must be reduced by the amount of direct and indirect selling expenses associated with economic activity in the United States. *See* also The Statement of Administrative Action Accompanying the Uruguay Round Agreements Act at 823. Thus, all direct and indirect selling expenses incurred in connection with a sale to the unaffiliated U.S. customer must be deducted to arrive at the CEP. The indirect selling expenses of ICIA (*e.g.*, order processing) were incurred in connection with the sale to the unaffiliated U.S. customer. Therefore, we have deducted those expenses in calculating the CEP. For a complete description of ICIA's U.S. expenses related to selling the subject merchandise to the United States, see ICI's Supplemental Questionnaire Response, April 3, 1998, Exhibit C–16.

Comment 4

Respondent argues that if the Department persists in treating ICI's U.S. sales as CEP transactions, ICI is entitled to a CEP offset to account for differences between the home market level of trade (LOT) and the LOT of the CEP. ICI is entitled to a CEP offset adjustment pursuant to Section 1667b(a)(7)(B) because (1) sales in the home market occur at a different, non-comparable LOT; (2) a LOT adjustment completely accounts for the differences between the levels of trade in the U.S. and home market (3) the LOT in the comparison market is more remote than the CEP LOT; and (4) there is adequate information in the record to make the CEP offset.

Respondent argues that the Department incorrectly concluded in its preliminary results that the normal value (NV) LOT was identical to the CEP LOT. Respondent claims that vastly different sales efforts are involved in selling to home market customers and so, more expenses are incurred in selling to the home market than are incurred in making CEP sales to ICIA. ICI's CEP selling expenses are limited to communication expenses resulting from order entries because all sales were to its wholly-owned subsidiary unlike home market sales which were to unaffiliated end-users. Respondent asserts that ICI's home market sales are more remote in the chain of distribution than are sales at the CEP LOT, and that this is demonstrated by the significantly greater number of selling functions performed in connection with home market sales as compared to the functions involved in making CEP sales to ICIA. Respondent asserts that in its home market, ICI incurs selling expenses which include sales personnel, customer service representatives and technicians, and marketing activities to expand sales, while its U.S. expenses consist of significantly fewer functions and thus, less expenses.

Petitioner disagrees. In the preliminary results, the Department determined that all of respondent's sales in the U.S. and the home markets were at the same LOT. Petitioner argues that this determination was based on respondent's response to the questionnaire. In its response, respondent said that it sells to end-users and distributors in both markets, identical services are provided in both markets, and there are identical channels of trade in both markets. (*See* Questionnaire Response, October 31, 1997). Therefore a LOT adjustment is not necessary.

Department's Position

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or when NV is based on constructed value, the LOT is that of the sales from which we derive selling, general and administrative expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*). The statute and the SAA support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer—that is, the level after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has adopted this interpretation in previous cases. *See e.g. Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50872 (September 23, 1998).

To evaluate the LOT, we examined information regarding the distribution systems in both the U.S. and U.K. markets, including the selling functions, classes of customer, and selling expenses for the respondent. Customer categories such as distributors, retailers, or end-users are commonly used by petitioners and respondents to describe different LOTs, but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling function substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process in both the home market and the United States begins with goods being sold by the producer and extends to the sale of the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market sales, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even

substantial ones, are not sufficient alone to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

We compared the channels of distribution and selling functions in the U.S. and home markets. The channels of distribution are similar for both markets with ICI selling mainly to end-user customers who use INC in their manufacturing process. At the level of the constructed export sale to the United States, *i.e.*, after the deductions required under section 772(d), we found the following selling activities were performed by ICI: taking orders, order processing, issuing confirmations, projecting ship dates, and arranging transportation. ICI performs these same selling functions, plus invoicing, when selling in the home market. Because the channels of distribution and selling functions are essentially identical in both markets, we find that there is no difference in the CEP and NV levels of trade. Because there is no difference in level of trade, there is no basis for granting a CEP offset.

Comment 5

Petitioner argues that the Department should correct a clerical error, *i.e.*, failure to remove non-arm's-length sales from calculation of NV. In the preliminary results the Department stated that it ''excluded sales to one affiliated customer in calculating NV because we determined that sales to this customer were not made at arm's-length prices (i.e., at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers).'' The *Preliminary Results Analysis Memorandum to the File* similarly discusses the exclusion of non-arm's-length sales from the calculation of NV. However, an error in the program resulted in the inclusion of non-arm's-length sales from the calculation of NV.

The respondent did not comment.

Department's Position

The Department agrees with the petitioner and has corrected this error by excluding sales to one affiliated customer in calculating NV because we determined that sales to this customer were not made at arm's-length prices.

Comment 6

Petitioner argues that the Department should correct a clerical error made in calculating the assessment rate. Petitioner asserts that the Department inadvertently multiplied total entered value for each sale by the quantity, which was not necessary because respondent reported total entered value for each transaction, rather than a per unit value.

Respondent argues that there is an error in the calculation of the commission offset that should be corrected. The error results in the incorrect comparison of kilograms to pounds. The respondent argues that the U.S. commission field should be converted to kilograms to make a valid comparison. Respondent further argues that two variables, EMARGIN and VALUE, are incorrect because a variable used to create them was based on pounds rather than kilograms. Respondent adds that the quantity listed in section I of the *Preliminary Results Analysis Memorandum to the File* should be expressed in pounds, not kilograms.

Department's Position

We agree with both respondent and petitioner that there is a clerical error that involves the assessment rates and the units of measure. However, we disagree with respondent on the solution. Rather than continuing to convert U.S. net price to kilograms, as was done in the preliminary determination, and make the changes requested by respondent, we have converted the foreign unit price to pounds. This is the standard method of weight conversion used in the standard program. In addition, since respondent reported total entered value for each transaction, rather than on a per unit value, we did not multiply total entered value for each sale by the quantity.

Final Results of the Review

As a result of our review, we determine that the following margin exists for the period of July 1, 1996 through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Imperial Chemicals Industries PLC	18.2

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR.

The following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of industrial nitrocellulose from the United Kingdom 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 the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 11.13 percent, the ''all others'' rate established in the LTFV investigation (55 FR 21058, May 22, 1990). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3279 Filed 2–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

[International Trade Administration]

[A–475–818]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Italy. The review covers shipments of this merchandise to the United States by eight respondents during the period January 19, 1996, through June 30, 1997.

For our final results, we have found that, for certain exporters, sales of the subject merchandise have been made below normal value. We will instruct the Customs Service to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Case History

This review covers the following manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Italy: (1) Arrighi S.p.A. Industrie Alimentari (''Arrighi''); (2) Barilla Alimentari S.r.L. (''Barilla''); (3) F. lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''); (4) Industria Alimentari Colavita S.p.A. (''Indalco''); (5) La Molisana Industrie Alimentari S.p.A. (''La Molisana''); (6) Pastificio Fratelli Pagani S.p.A. (''Pagani''); (7) N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''); and (8) Rummo S.p.A. Molino e Pastificio (''Rummo'').

On August 7, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 63 FR 42368 (*Preliminary Results*). From July 22 through July 30, 1998, we verified the cost information submitted by De Cecco [1]. From July 27 through July 31, 1998, we verified the cost information submitted by Puglisi. On September 23 and September 24, 1998, we received case briefs from the following parties: (1) Borden Foods Corp., Hershey Pasta and Grocery Group, Inc., and Gooch Foods, Inc. (collectively, ''the petitioners''), (2) the five manufacturers/exporters that responded to our requests for information (De Cecco, Indalco, La Molisana, Puglisi, and Rummo); (3) Barilla; and (4) World Finer Foods, Inc. (''World Finer Foods''), an importer of pasta produced by Arrighi. We received rebuttal briefs from the petitioners, De Cecco, Indalco, Puglisi, and Rummo from October 6 through October 8, 1998. On the basis of requests by interested parties, a public hearing was held on October 19, 1998.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, by QC&I International Services or by Ecocert Italia.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders, (*see* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997).

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. (*See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.)

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation against Barilla S.r.L., an Italian producer and exporter of pasta. On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Act, circumvention of the

[1] We verified De Cecco's sales information prior to the *Preliminary Results*, from May 4–8, 1998.

antidumping duty order is occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States. (*See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).)

(4) On October 26, 1998, we self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On November 18, 1998, the Department received comments regarding this scope inquiry. The Department received rebuttal comments on November 30, 1998. In accordance with 19 CFR 351.225(f)(iii)(5), the Department will issue a scope ruling within 120 days of the initiation of the inquiry.

Partial Rescission

As noted in the preliminary results, on September 2, 1997, the petitioners withdrew their request for reviews of Castelletti S.p.A., Societa Transporti Castelletti, General Noli S.p.A., and R. Queirolo & Co., S.p.A. In addition, Petrini, S.p.A. (''Petrini'') withdrew its request for a review on October 24, 1997, and Delverde Srl (''Delverde'') and Tamma Industrie Alimentari di Capitanata, SrL (''Tamma'') withdrew their requests for a review on November 10, 1997. Because there were no other requests for reviews of these companies, and because the letters withdrawing the requests for reviews were timely filed, we rescinded the review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

Use of Facts Available

Arrighi, Barilla, and Pagani ''failed to cooperate by not responding to our antidumping questionnaire and, thus, have not acted to the best of their abilities to comply with requests for information * * * .'' *See Preliminary Results*, 63 FR at 42369. Accordingly, we based the antidumping duty rate for these companies on facts otherwise available and assigned to them the highest margin from the petition, as adjusted by the Department, 71.49 percent. For the reasons described below, we are continuing to assign Arrighi, Barilla, and Pagani the highest margin from the petition, as adjusted by the Department, for these final results.

Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person ''fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782.'' As provided in section 782(c)(1) of the Act, if an interested party ''promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Arrighi communicated with the Department concerning the difficulties which impeded its ability to respond to the Department's questionnaire. In a letter dated October 1, 1997, Arrighi stated that it would be unable to respond to the Department's questionnaire due to a deficiency of financial and personnel resources. Arrighi did add, however, that it ''might be able to supply limited information if the Department felt that might be worthwhile or helpful in the context of this [review].''

While responding to the Department's questionnaire may be a burden on Arrighi, the company has not demonstrated that it was unable to do so. The company made only general claims regarding limited personnel and financial resources, which is true for many companies that respond to our questionnaires. Arrighi gave neither specific reasons why it could not respond nor any specific proposal for what the company was prepared to do and why it could do no more. Instead, the statements in Arrighi's letter of October 1, 1997, demonstrate that the company merely made a business decision not to allocate resources to this task. Furthermore, it was also evident from the letter, taken as a whole, that any ''limited information'' Arrighi might provide would be insufficient to calculate a dumping margin. Therefore, given that the company did not demonstrate an inability to respond to our questionnaire or a willingness to cooperate to the best of its ability, we find that the use of facts available in accordance with section 776(a) of the Act is warranted.

Barilla and Pagani neither responded to the Department's questionnaire nor provided any notification or information to the Department pursuant to section 782(c)(1) of the Act. Accordingly, we find that these companies did not cooperate to the best of their abilities and the use of facts available is appropriate for Barilla and Pagani.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. As discussed above, Arrighi, Barilla, and Pagani failed to act to the best of their abilities to comply with our requests for information. Accordingly, we have determined that an adverse inference with respect to Arrighi, Barilla, and Pagani is warranted.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The petition margin is reliable if, in light of evidence reasonably available, it provides a reasonable estimate of a level at which dumping occurred during the period of investigation (''POI''). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that a selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

In this instance, as discussed below in Comment 5, we have no reason to believe that the application of the highest petition margin for Italian pasta, as revised by the Department, is inappropriate. Therefore, for purposes of these final results, we are continuing to assign Arrighi, Barilla, and Pagani the rate of 71.49 percent as adverse facts

available. We find that this margin continues to be of probative value and continues to be an appropriate basis for facts otherwise available. We note that the SAA, at 870, states that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference * * * .'' In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

Comparisons

We calculated export price (EP), constructed export price (CEP), and normal value based on the same methodology used in the *Preliminary Results,* with the following exceptions:

General

For those companies which have both CEP sales and commissions, we have revised our commission and CEP-offset calculation (*see* Comments 2 and 3).

For those companies which have CEP sales, we have included U.S. commissions in the calculation of the total selling expenses that we deducted from revenues to determine the CEP-profit amount for calculation of the CEP-profit rate (*see* memorandum from Jarrod Goldfeder to the file, *Analysis Memorandum for F. lli De Cecco di Filippo Fara S. Martino S.p.A.,* December 7, 1998).

We have corrected a clerical error which had caused the weighted-average normal value to be calculated over the 90/60-day contemporaneity period rather than monthly (*see* Comment 8).

Indalco

We recalculated certain Indalco home market discounts (*see* a separate business proprietary memorandum from Cindy Robinson to John Brinkmann, *Recalculation of Certain Home Market Discount for Industria Alimentare Colavita, S.p.A in the Final Results of the First Administrative Review of Certain Pasta from Italy,* December 7, 1998). We have corrected the following three computer-programming errors: (1) An error concerning our level-of-trade comparison which matched EP sales erroneously to only one level-of-trade (LOT–1) in the home market when we intended to match to all home market sales (*see* Comment 8); (2) an error concerning Indalco's U.S. invoice adjustments in which we subtracted Indalco's invoice adjustments erroneously from, rather than added them to, the reported U.S. gross unit price or U.S. sales quantity, respectively (*see* memorandum from Cindy Robinson to the file, *Analysis Memorandum for Industria Alimentare Colavita, S.p.A,* December 7, 1998); and (3) an error which prevented the computer program from implementing an intended correction for commissions paid to one of Indalco's home market sales agents (*see Id.*).

La Molisana

We matched U.S. sales to sales at the LOT1 level of trade (*see* Comment 10B) and corrected a clerical error which caused us to double-count the cost of vitamins in the U.S. total and variable costs of manufacturing (*see* memorandum from Constance Handley to the file, *Analysis Memorandum for La Molisana Industrie Alimentari S.p.A.,* December 7, 1998) (*La Molisana Analysis Memo*).

Rummo

We used November 3, 1997, as a surrogate payment date to calculate credit expenses for those sales without a reported date of payment (see Comment 21). In addition, we corrected a programing error which converted inventory carrying cost to a kilogram basis incorrectly. The expense had already been reported in kilograms (*see* memorandum from James Kemp to the file, *Analysis Memorandum for Rummo S.p.A. Molino e Pastificio,* December 7, 1998).

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether each of the five respondents participating in the review made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP for these final results following the same methodology as in the preliminary results, with the following exceptions:

De Cecco

Based on minor corrections presented at the onset of the cost verification, we revised the total cost of manufacture for several control numbers and the interest expense factor. We also excluded the general and administrative expenses (G&A) of Molino, De Cecco's affiliated semolina supplier, in the calculation of the G&A rate (*see* memorandum from Garri Gzirian to Neal Halper, *Cost of Production and Constructed Value Adjustments for the Final Determination,* December 5, 1998).

Puglisi

We recalculated G&A to include the input of government grants received (*see* Comment 13). We also adjusted Puglisi's product-specific manufacturing costs in the following ways: (1) By reallocating the product-specific depreciation and electricity expenses (*see* Comments 17 and 18); (2) by using the transfer prices for services provided by Puglisi's affiliate (*see* Comment 16); and (3) by including certain lease payments and a portion of the garbage tax paid at the end of the year (*see* memorandum from Laurens van Houten to Neal Halper, *Cost of Production and Constructed Value Adjustments Calculations in the Final Results of Pasta from Italy—N. Puglisi & F. Industria Paste Alimentari S.p.A.,* November 24, 1998 (''*Puglisi COP Memo*'')).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners and respondents.

I. General Issues

Comment 1: Level-of-Trade Methodology and Constructed Export Price (''CEP'') Offset

The petitioners argue that the Department applied an improper methodology when conducting its level-of-trade analysis for De Cecco, Rummo, and Puglisi. Specifically, they claim that the Department granted De Cecco, Rummo, and Puglisi a CEP offset incorrectly on the grounds that the Department conducted its level-of-trade analysis based on the adjusted CEP, rather than the CEP starting price, and cite *Borden Inc.* v. *United States,* 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998) (''*Borden*''), and the *Final Remand Results for Borden, Inc. et al.* v. *United States,* Consol. Court No. 96–08–01970 (August 28, 1998) (''*Remand Results*''). In addition, the petitioners comment on the Department's apparent intent to consider the level of trade of the CEP starting price in determining the CEP offset, after the Department had already established the level of trade of the adjusted CEP price. The petitioners contend that section 773(a)(7)(B) of the Act grants the CEP offset but it does not envision the use of two distinct and different levels of trade. They urge the Department to revise its decision.

De Cecco argues that the Department examined CEP properly in conducting its level-of-trade analysis for De Cecco and that the Department's decision to grant a CEP offset is valid and correct and should be sustained. It maintains that the petitioners' arguments concerning the application of a CEP offset are immaterial to De Cecco

because De Cecco is entitled to the CEP offset regardless of whether the Department conducts its analysis of level of trade based on the U.S. starting price or the CEP.

Rummo states that the Department granted Rummo a CEP offset properly after a level-of-trade analysis that was based on the CEP price after adjustments made pursuant to section 772(d) of the Act. Citing the *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934 (February 23, 1998) (*SRAMs*), Rummo claims that it has been the Department's long-standing practice and is consistent with the statute and SAA to analyze the level of trade of CEP sales at the constructed export level price, *i.e.*, after expenses associated with economic activities in the United States have been deducted. Therefore, Rummo contends that the petitioners' arguments are contrary to the statute, the SAA, and the Department's long-standing policy. Furthermore, Rummo notes that the *Borden* case the petitioners cite is not final or conclusive because the Department is appealing that decision. Rummo urges the Department to continue to apply the same level-of-trade analysis for the final results.

Puglisi argues that the Department's level-of-trade methodology in this review is both lawful and in accordance with each of the Court's five stated guidelines in *Borden*. Specifically, concurring with the Department in its remand results in *Borden*, Puglisi maintains that ''the Court did not explicitly require the Department to determine the level of trade of the CEP based upon the CEP starting price.'' Furthermore, Puglisi states that the Department's level-of-trade methodology focused on the selling functions, not the adjustments to price, and as such was analytically distinct from the price calculation. Finally, Puglisi states that the CEP offset was not applied automatically as suggested by the petitioners; rather it was only applied after the Department determined that there was no information to provide an appropriate basis for determining a level-of-trade adjustment. Therefore, Puglisi urges the Department to sustain its preliminary decisions.

DOC Position: We agree with De Cecco, Rummo, and Puglisi that we were consistent with the statute and with our long-standing policy when we granted a CEP offset to De Cecco, Rummo, and Puglisi after conducting both qualitative and quantitative level-of-trade analyses based on adjusted CEP, rather than the CEP starting price. The *Borden* case the petitioners cite is not a final and conclusive decision because it is still subject to appeal. Accordingly, the *Borden* decision is not binding on the Department.

As stated in the level-of-trade memorandum from John Brinkmann to Susan Kuhbach, dated July 31, 1998, our level-of-trade analyses for De Cecco, Rummo, and Puglisi showed that each company had only one CEP level of trade in the U.S. market. This CEP level of trade differed considerably from the single level of trade in the home market for each company and was at a less advanced stage of distribution than the home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on these three respondents' home market sales. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Because this is so, and because the normal value is at a more advanced level of trade than the CEP, we made a CEP offset in accordance with section 773(a)(7)(B) of the Act.

Inasmuch as our level-of-trade methodology is consistent with the statute and with our practice, we continued to apply the same methodology to make level-of-trade comparisons based on the adjusted CEP starting price for the purposes of the final results.

Comment 2: Commission Offset

The petitioners contend that the Department made a commission offset to account for the difference in the commissions amount paid by Rummo when U.S. commissions are greater than home market commissions. They claim that an offset is authorized under 19 CFR 351.410(e) only when there is a commission paid in one market but none in the other market. If the Department disagrees with the petitioners' contention, then they believe that a similar offset should be made when home market commissions are greater than U.S. commissions. Further, with regard to CEP sales, the petitioners point out that there was no offset made for instances where there were commissions in the home market but none in the U.S. market.

Rummo argues that the offset was applied correctly because Rummo did not pay commissions on all of its home market sales. In a review, Rummo contends, the Department compares individual U.S. sales to monthly weighted-average prices in the home market. Therefore, because Rummo had commissions on some sales, it states that the result was weighted-average prices with small commissions which were significantly less than commissions paid on U.S. sales. Rummo contends that the Department's offset methodology is intended to compensate for this imbalance.

DOC Position: We applied the EP commission offset in the preliminary results correctly. When calculating normal value for EP comparisons, the Department makes a circumstance-of-sale adjustment by deducting home market commissions and adding U.S. commissions. In this case, only a portion of home market sales have commissions; therefore, only that portion of home market sales was reduced by a home market commission. To account for those home market sales with no commissions, we calculated a weighted-average surrogate home market commission based on indirect selling expenses incurred on home market sales and deducted that amount from the weighted-average monthly normal value, limited by the amount of the difference between U.S. commissions and home market commissions. Because we look at each individual sale in the U.S. market, this problem does not occur and therefore there is no reason to make an adjustment when U.S. commissions are lower than home market commissions as suggested by the petitioners.

We agree with the petitioners that, for CEP sales, a commission offset should be made in those instances where there were commissions in the home market and none in the U.S. market. We have done so for these final results. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; Canned Pineapple Fruit from Thailand*, 63 FR 43661, 43671 (August 14, 1998).

Comment 3: Segregation of Commission and CEP Offsets

The petitioners argue the Department erred in combining the CEP and commission offsets in its computer program, thereby failing to limit the CEP offset by the amount of U.S. indirect selling expenses.

Rummo and De Cecco agree with the petitioners that the offsets should be segregated. Rummo points out that the offsets are intended to accomplish different goals; the CEP offset is meant to be a surrogate level-of-trade adjustment and the commission offset is meant to account for the presence of commissions in one market and not the other (or for unbalanced commission situations). Rummo contends these

offsets should be treated separately in the final results.

De Cecco also contends that the Department calculated the CEP offset incorrectly based on the relationship of home market and U.S. commissions. According to De Cecco, where commissions are paid in both the domestic and U.S. markets on CEP sales, the Department calculates the offset as the lower of home market indirect selling expenses (including imputed expenses) or the sum of U.S. indirect selling expenses (excluding those expenses incurred in the home market) and U.S. commissions. Thus, De Cecco maintains this offset is assigned without regard to the relationship between commissions in the two markets.

DOC Position: While commissions and CEP offsets are two separate offsets, separating them in the computer program could result in our double-counting indirect selling expenses incurred in the home market. The Department's regulations state that ''the amount of the [CEP] offset will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted in determining constructed export price.'' 19 CFR 351.412(f)(2). Thus, like the commission offset, the CEP offset is based on home market indirect selling expenses. We will not deduct an amount greater than home market indirect selling expenses for the combination of the two offsets.

We do recognize, however, that the language in the computer program for the preliminary results did not combine the two offsets properly. We have used different programming language for the final results, which allows us to combine the two offsets and limit the combined deduction at the amount of home market indirect selling expenses. In other words, the applicable offset is the full amount of the commission offset, plus a CEP offset. The CEP offset is the lower of indirect selling expenses incurred in the United States or the indirect selling expenses incurred in the home market that remain after making the commission offset.

II. Company-Specific Comments

Arrighi and Barilla

Comment 4: Use of an Adverse Inference for Arrighi and Barilla

World Finer Foods, who was an unaffiliated U.S. importer of Arrighi's pasta products during the POR, and Barilla submitted comments addressing the Department's application of the highest rate from the petition, *i.e.*, 71.49 percent, as the adverse facts available rate assigned at the *Preliminary Results.*

Arrighi

World Finer Foods submitted comments addressing the Department's application of an adverse inference in determining a rate for Arrighi. According to World Finer Foods, and as noted in the ''Facts Available'' section above, Arrighi stated in a letter dated October 1, 1997, that it would be unable to respond to the Department's questionnaire due to deficiency of financial and personnel resources. World Finer Foods notes that Arrighi did add, however, that it ''might be able to supply limited information if the Department felt that might be worthwhile or helpful in the context of this [review].'' Citing *Allied Signal Aerospace Co.* v. *United States*, 996 F.2d 1185, 1192–93 (Fed. Cir. 1993), World Finer Foods argues further that the Department may not find a respondent uncooperative where a respondent is experiencing financial difficulties impeding its ability to provide the information as requested and where it suggests alternative reporting methods.

World Finer Foods also argues that in a letter dated October 20, 1997, it offered to supply the Department with information concerning its purchases from Arrighi. An officer of World Finer Foods met with Department officials on January 8, 1998, and subsequently submitted such information for the Department's examination on March 10, 1998. On the basis of this information, the company asserts that the Department had information demonstrating that during the POR Arrighi had significantly increased its selling price to World Finer Foods since the less-than-fair-value (LTFV) investigation. According to World Finer Foods, the Department could have reasonably created a surrogate for Arrighi's home market prices by using other respondents' information ''in order to develop a reasonably complete estimate of Arrighi's costs and prices during the period of review.'' Moreover, World Finer Foods alleges that the results of this review will affect only World Finer Foods with respect to the assessment of antidumping duties, inasmuch as Arrighi no longer sells its products in the U.S. market. Given World Finer Foods' cooperation by responding to the best of its ability, it asserts that the Department should not use an adverse inference in applying the facts available to Arrighi.

With respect to Arrighi's failure to respond, the petitioners contend that Arrighi made a deliberate business decision not to respond, and indeed never filed any questionnaire responses, but only stated that it might be able to supply limited information. The petitioners note that, in Arrighi's October 1 letter to the Department, the company acknowledged that it could not respond to the Department's questionnaire because its company resources were dedicated to developing alternative markets upon ceasing sales to the United States. The petitioners distinguish Arrighi's situation from that of a company in *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Administrative Review,* 59 FR 15159 (March 31, 1994), where the Department acknowledged that a respondent undergoing liquidation proceedings was precluded from utilizing its financial and personnel resources toward providing a response to the Department's questionnaire. The petitioners argue further that Arrighi's offer to supply limited information does not in itself constitute a willingness to cooperate fully since piecemeal data is not sufficient to conduct a complete and accurate dumping analysis.

DOC Position: We disagree with World Finer Foods. As discussed in the ''Facts Available'' section above, we have concluded that the record demonstrates that Arrighi has not cooperated to the best of its ability. Therefore, we are continuing to assign Arrighi 71.49 percent as facts available for purposes of these final results.

Section 776(b) of the Act states that we may draw an adverse inference where the party has not acted to the best of its ability to comply with our requests for necessary information. Despite the numerous arguments put forth by World Finer Foods, we disagree with World Finer Foods' contention that Arrighi acted to the best of its ability, given its financial circumstances, to comply with our requests for information in this administrative review. Under certain limited circumstances, such as where a company informs the Department in a timely manner that it cannot comply with the Department's information requests due to the liquidation of its assets, it may be appropriate not to use an adverse inference in applying the facts available. However, where a respondent continues to produce the subject merchandise but fails altogether to provide information, we find that it has failed to act to the best of its ability. *See Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 16772, 16775 (April 8, 1997), and *Certain Fresh Cut Flowers From Colombia: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287 (October 14, 1997)

(''*Flowers from Colombia*'') (an adverse inference is warranted where a respondent states merely ''that it was on the verge of bankruptcy'' but provides no further information).

In the instant case, Arrighi was still in operation and reported that it was devoting its company resources toward developing alternative markets to the United States. Thus, unlike the respondent in *Flowers From Colombia*, Arrighi made a conscious business decision not to respond to the Department's questionnaire. Under these circumstances, we find that Arrighi was unwilling, rather than unable, to comply with our requests for information.

We also find that World Finer Foods' argument concerning *Allied Signal* is unpersuasive. In *Allied Signal*, the Court held that the Department's determination that SNFA, the respondent, had refused to cooperate was unreasonable because it supplied some of the requested information and also offered an alternative proposal to provide the remaining information in a simplified form. However, in the present case, Arrighi did not submit any information for the record nor did it suggest any alternative or simplified reporting method. Arrighi merely ended its letter of October 1, 1997, with a general offer to supply limited information if it would be helpful. However, if a respondent cannot provide information in the form or manner requested, section 782(c) of the Act places on the respondent the burden of suggesting alternative forms in which the party is able to submit the information. In this case Arrighi neither demonstrated that it could not respond in the form or manner requested nor proposed an alternative.

Furthermore, we noted in the *Preliminary Results* that we examined the documentation submitted by World Finer Foods, an importer that is not a respondent in this review, and determined that it was insufficient for purposes of calculating a dumping margin for Arrighi in accordance with the statute. We find World Finer Foods' argument that we had information demonstrating that Arrighi had significantly increased its selling price to it during the POR, as compared to the selling price during the LTFV investigation, to be unpersuasive. The basis for the Department's determination of whether subject merchandise has been sold at LTFV is a comparison between the export price or constructed export price and normal value or constructed value. In this case, we cannot determine the normal value of the subject merchandise.

Furthermore, we examined the information submitted by World Finer Foods and have determined that it is inadequate for purposes of estimating Arrighi's U.S. prices during the period of review. The information is so incomplete that World Finer Foods' efforts cannot overcome Arrighi's failure to respond.

Finally, we find that World Finer Foods' argument concerning the effect the results of this review will have on an importer, such as itself, is unpersuasive. Section 737(b)(1) of the Act requires that any antidumping duties in excess of the amount deposited be collected when the amount deposited is lower than the duty determined. Therefore, importers are on notice that the cash deposit rate is not a duty assessment rate but, rather, an estimate. Assessment may depend upon the results of a review and, hence, the continued cooperation of the exporter. There is no guarantee that the final assessment rate will not be higher than the cash deposit rate. ''When a U.S. importer deals with a foreign company that is subject to an antidumping duty order, the importer must realize that the dumping margin could change to its benefit or detriment.'' *Union Camp Corporation* v. *United States*, CIT Court No. 97–03–00483, Slip Op. 98–38 at 22 (March 27, 1998).

Barilla

Barilla maintains that it informed the Department at the onset of the review that it would not respond to the Department's questionnaire due to the company's expenditures associated with building a new plant in Iowa. Accordingly, Barilla characterizes its communication with the Department as a ''course of action designed to minimize the administrative inconvenience for the Department'' and, therefore, has been ''as cooperative as possible within the constraints of reasonable business practices.'' Thus, Barilla contends that an adverse inference was not warranted.

The petitioners assert that the Department was justified in assigning Barilla the highest petition rate as adverse facts available. Since Barilla did not file any questionnaire responses and did not lack the resources to do so, as evidenced by its ability to hire counsel to file case briefs, the petitioners contend that Barilla's participation in this review cannot be properly characterized as cooperative.

DOC Position: We disagree with Barilla. With respect to Barilla's claim of cooperation in this review, we find the company's arguments unpersuasive. Barilla has stated unequivocally that it made a deliberate decision not to respond to the Department's questionnaire. The primary issue is not administrative inconvenience, but rather the Department's responsibility to conduct a review and calculate a margin. It is evident, therefore, that Barilla's refusal to comply with the Department's requests for information has significantly impeded this proceeding. Therefore, we find that Barilla has failed to cooperate by not acting to the best of its ability.

Comment 5: Reliability of the Highest Petition Margin

Barilla submitted comments addressing the use of the highest petition margin as the facts available rate. According to Barilla, the adverse facts available rate should be the highest calculated margin from any segment of the proceeding, which is more reliable, reflective of current market conditions, and consistent with the Department's recent practice and judicial rulings. Barilla argues further that the highest margin from the petition cannot be corroborated and has been discredited by calculated, verified margins. Barilla also notes that, in the LTFV investigation, the Department used an average of the petition margins in applying adverse facts available to De Cecco, a respondent the Department found to have significantly impeded the Department's investigation, at considerable inconvenience and expense, by not cooperating, citing *Borden Inc. et al.* v. *United States*, Consol. Ct. No. 96–08–01970 (August 28, 1998 (''*Redetermination on Remand*'')[2]. As such, Barilla asserts that it should not receive a more adverse rate than that applied to De Cecco.

World Finer Foods considers the Department's application of the highest rate of the petition as adverse facts available to be punitive, arbitrary, and inconsistent with the statute, the Department's regulations, judicial decisions, and the Department's normal

[2] In litigation arising out of the LTFV investigation, the CIT remanded to the Department its decision to use an adverse inference for De Cecco and its determination of the appropriate rate to use as facts available. Even if the Department determined that an adverse inference was warranted, the CIT instructed the Department that it could use a rate of no more than 21.34 percent, the highest calculated and verified margin from the LTFV investigation. In performing this remand, the Department applied this rate as adverse facts available but argued that ''the use of this rate thwarts the purpose of the adverse inference provision of the Statute by failing to provide the necessary incentive for cooperation.'' On December 16, 1998, the CIT affirmed the Department's decision to use an adverse inference and the CIT's decision to apply an antidumping duty margin of 21.34 percent for De Cecco.

practice. It alleges that, because the results of this review will only affect World Finer Foods with respect to the assessment of antidumping duties (inasmuch as Arrighi no longer sells the subject merchandise in the U.S. market) and given World Finer Foods' cooperation by responding to the best of its ability, the Department should not apply the highest petition rate as an adverse inference against Arrighi.

The petitioners agree with the Department's application of the highest petition margin as adverse facts available. They assert that the facts between De Cecco in the LTFV investigation and Arrighi and Barilla in the instant review are different. According to the petitioners, De Cecco was assigned an average rate from the petition because it had made some effort to cooperate, although not to the best of its ability, whereas Arrighi and Barilla never attempted to respond to the Department's questionnaire. The petitioners contend further that the Department assigned the highest margin from the petition as an adverse facts available rate properly inasmuch as the Department need not prove that the petition margins are the best alternative information. They argue further that the Department must ensure that Arrighi and Barilla do not benefit from their failure to respond to the Department's questionnaire.

DOC Position: We disagree with Barilla and World Finer Foods. Section 776(b) of the Act notes that adverse inferences may include reliance on information derived from (1) the petition; (2) a final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. Thus, the statute does not limit the specific sources from which the Department may obtain information for use as facts available. The SAA recognizes the importance of facts available as an investigative tool in antidumping duty proceedings. The Department's potential use of facts available provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires. *See* SAA at 868.

In this segment of the proceeding, we have chosen as adverse facts available the highest rate based on corroborated petition data, 71.49 percent. Our decision to use a rate higher than the average petition rate is consistent with our decision in the LTFV investigation. In the investigation, we determined that ''[b]ecause De Cecco made some effort to cooperate, even though it did not cooperate to the best of its ability, we did not choose the most adverse rate based on the petition.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996). *See also Oil Country Tubular Goods From Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 48594 (September 16, 1997), and *Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*, 62 FR 46947 (September 5, 1997). Thus, the Department chose an adverse facts available rate of 46.67 percent; this represented the average rate based on corroborated petition data.[3]

In this case, Arrighi, Barilla, and Pagani did not cooperate at all with our requests for information. Since they made no attempt to cooperate, we agree with the petitioners that these companies should not receive the same or a lower rate than that of a company that made some effort to cooperate with our requests for information. Moreover, we believe that the highest petition margin is sufficiently adverse to induce cooperation in subsequent administrative reviews. Therefore, for purposes of these final results, we are continuing to assign the highest margin from the petition as adverse facts available.

At the time of initiation of the LTFV investigation, we reviewed all of the data the petitioners had submitted and the assumptions they made in estimating dumping margins and, as a result, we adjusted the petition rates. *See Notice of Initiation of Antidumping Duty Investigations: Certain Pasta from Italy and Turkey*, 60 FR 30268, 30269 (June 8, 1995). For purposes of these final results, we compared the petition rates with the range of transaction margins we found during the investigation based on actual data submitted, which were the basis for the final company-specific weighted-average dumping margins. *See* ''The Facts Available Rate and Corroboration of Secondary Information'' memorandum, dated February 3, 1999. Specifically, we reviewed the transaction margins for those fully cooperative respondents that were found to have dumping margins in the investigation and found that certain respondents had a number of calculated margins in excess of the highest petition margin. Thus, we concluded that the petition rates were within the range of transaction dumping margins found for certain respondents during the POI. Therefore, the petition rates represent a reasonable estimate of a level of dumping that occurred during the POI, *i.e.*, they are reliable. In addition, there is no evidence of circumstances that would render the petition margin inappropriate as facts available. Therefore, we consider the petition rates corroborated. Moreover, we have compared the petition rates with the range of transaction margins calculated for the final results of this review. Id. We found that the petition rates fall within the range of individual transaction margins calculated for cooperative respondents. While it is not necessary to find that the petition rates fall within the range of margins calculated in this review, this evidence further confirms the reliability of these rates in this case. Thus, we have considered information reasonably at our disposal and no record evidence exists indicating that the highest petition rate, as adjusted by the Department, is aberrational, uncorroborated, or unduly punitive.

De Cecco

Comment 6: Major Inputs

De Cecco argues that, for the final results, the Department should not use transfer prices to value transactions between De Cecco and its affiliated semolina supplier, Molino F.lli De Cecco di Filippo S.p.A. (''Molino''). Instead, De Cecco suggests that, for purposes of computing cost of production and constructed value, the Department should value transfers of semolina, the major input of pasta, from Molino to De Cecco at Molino's cost.

De Cecco argues that the corporate entity Molino, 97.9 percent of which is owned by De Cecco and the remainder by shareholders of De Cecco's parent company, is in essence a wholly owned subsidiary of De Cecco. De Cecco contends that sections 773(f)(2) (''transactions disregarded'') and 773(f)(3) (''major-input rule'') of the Act do not apply in this instance because, although Molino is incorporated separately from De Cecco, Molino's semolina production and De Cecco's pasta-manufacturing operation are part of a single integrated production process under the same ownership. According to De Cecco, Molino's sole purpose is to process grain, selected by De Cecco, into semolina that is then transferred to De Cecco, which consumes all of Molino's semolina production. Therefore, De Cecco contends that the Department

[3] On December 16, 1998, the CIT affirmed the revised antidumping duty margin of 21.34 percent for De Cecco, stating that ''De Cecco's new margin of [21.34%] fulfills the statutory purposes to provide an incentive to cooperate with Commerce without utilizing punitive, aberrational, or uncorroborated margins.'' The Department has until February 16, 1999, to file an appeal with the Court of Appeals for the Federal Circuit.

should value transfers of semolina from Molino to De Cecco at Molino's cost in order to reflect the economic and operational reality of the relationship and transactions between these two companies. De Cecco points out that the application of the major-input rule could subject it to a dumping margin on the basis of an element of profit to the De Cecco Group which De Cecco has chosen to accord to Molino rather than to itself. The respondent argues that these matters are tax-driven and not issues of economics or production.

Noting that the Department ''collapsed'' De Cecco and Molino e Pastificio F.lli De Cecco S.p.A. (''Pescara''), another affiliated supplier of semolina and a pasta producer, De Cecco argues that Molino should be granted the same treatment since, as a provider of semolina to De Cecco, Molino is no different than Pescara. De Cecco claims that, because it conducts operations essential to De Cecco, Molino is in fact more integral to De Cecco than Pescara. De Cecco asserts that it would be inconsistent with the reasoning set forth in *Final Results of Antidumping Administrative Review: Certain Cold Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea,* 62 FR 18430 (April 15, 1997), to treat transfers of semolina from Molino to De Cecco differently from transfers of semolina from Pescara to De Cecco.

The petitioners maintain that sections 773(f)(2) and (3) of the Act permit the Department to value major inputs between affiliated companies at the higher of transfer price, market price, or the cost to the affiliated producer to value raw materials or services fairly used in the production of subject merchandise. Citing *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review,* 63 FR 13217, 13218 (March 18, 1998), the petitioners argue that for the final results the Department should continue to apply the transactions-disregarded and major-input rules in this case.

The petitioners point out that the Department's criteria for ''collapsing'' two or more affiliated producers are the following: (1) the producers must be affiliated; (2) the producers must have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there must be a significant potential for manipulation of price or production, citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 16974, 16975 (April 7, 1998). The petitioners also cite the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, 31421–27 (June 9, 1998), which, according to the petitioners, demonstrates the Department's application of sections 773(f)(2) and 773(f)(3) of the Act. The petitioners contend that, since Molino is a supplier of semolina and not a producer of subject merchandise, the affiliation between De Cecco and Molino does not satisfy the three criteria stated above, and, therefore, the transactions-disregarded and major-input provisions of the statute should continue to be applied.

DOC Position: The Department does not agree that semolina De Cecco purchased from its affiliated supplier, Molino, should be exempt from the application of the major-input rule. Thus, we have continued to rely on the higher of transfer price, market value, or the affiliate's cost of production in accordance with sections 773(f)(2) and (3) of the Act to value those transactions.

Sections 773(f)(2) and (3) of the Act prescribe how the Department is to treat affiliated-party transactions in the calculation of cost of production and constructed value. With respect to major inputs purchased from affiliated suppliers, the Department's practice is that such inputs will normally be valued at the higher of the affiliated party's transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the input.

Since implementation of the URAA, the Department has applied this interpretation consistently (*see, e.g., Fresh Atlantic Salmon From Chile: Final Determination of Sales at Less Than Fair Value,* 63 FR 31426, 31427 (June 9, 1998) (Comment 22); *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review,* 63 FR 13217, 13218 (March 18, 1998) (Comment 1)), except in those situations where it treats respondents who are producers of the subject merchandise as a single entity for purposes of sales reporting and margin calculations (*see, e.g., Steel Flat Products from Korea* (Comment 19)).

Each company in question, De Cecco and Molino, is a separate legal entity in Italy. We disagree with the respondent that the operational reality of close association between the two companies outweighs the legal form of the entities. The Department has observed the legal status of the responding parties to the proceeding consistently when determining if the ''transactions-disregarded'' and ''major-input'' rule sections of the Act are applicable. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom,* 61 FR 54613, 54614 (October 21, 1996) (Comment 1) (''*Crankshafts*''). In *Crankshafts,* UES Steels and UEF were unincorporated divisions of the same corporation and, thus, we did not apply the ''transactions-disregarded'' and ''major-input rule'' sections of the Act.

We disagree with De Cecco that Molino should be granted the same treatment as Pescara, a producer of the subject merchandise, because Molino's operational relationship to De Cecco renders it more integral to the respondent than Pescara. We collapsed the sales and production activities of Pescara and DeCecco in accordance with 19 CFR 351.401(f), not because of the integral nature of what each entity does for the other. Section 351.401(f) of the regulations provides for special treatment of affiliated producers where the potential for manipulation of prices or production in an effort to evade antidumping duties imposed on the sale of subject merchandise exists. In accordance with this section of the regulations, we collapse all sales prices and production costs of the affiliated entities as if they were a single company. Since we do not apply the major-input rule for transactions within the same company, the major-input rule does not apply for transactions between Pescara and DeCecco. Inasmuch as Molino is not a producer of the subject merchandise, is solely a producer of semolina, and, unlike Pescara, has not been collapsed with De Cecco for purposes of sales reporting and margin calculation, we have continued to treat De Cecco and Molino as separate entities for the purposes of reporting costs. We have continued to treat De Cecco and Pescara, which is both a producer of the subject merchandise and a semolina supplier, as a single entity for sales reporting and the calculation of an antidumping margin for the final results. Thus, consistent with the exception to the major-input rule established in the *Steel Flat Products from Korea* case, we have collapsed De Cecco and Pescara for cost calculation purposes. In effect, the Department, for purposes of these final results, has treated De Cecco and Pescara as one entity and, thus, the major-input rule is not applicable.

Therefore, we have used the actual COP to value semolina obtained by De Cecco from Pescara.

Indalco

Comment 7: Treatment of Artiginal Pasta

The petitioners argue that the Department should disregard the added pasta-shape codes and the corresponding product control numbers (CONNUMs) for artiginal pasta which was produced by Indalco's affiliate. They maintain that these added shape codes and CONNUMs are improper because they were derived from differences in plant facilities, a non-physical characteristic, rather than for differences in shapes, as claimed by Indalco. According to the petitioners, Indalco has not demonstrated in its response any *bona fide* differences in shape or quality between artiginal pasta and other Indalco pasta produced in its own facility (hereafter referred to as industrial pasta). They also contend that Indalco failed to tie the cost difference associated with artiginal pasta to differences in shapes of pasta. Therefore, they urge the Department to consolidate Indalco's reported CONNUMs and revise Indalco's reported COP and CV database to calculate a single, weighted-average COP and CV for each product, as defined by the Department's questionnaire.

The petitioners argue further that Indalco's use of line speeds to differentiate artiginal pasta from industrial pasta is unwarranted because the slower line speeds associated with artiginal production could be attributable to the age or inefficiency at the artiginal pasta plant, which is unrelated to pasta shape. By contrast, the petitioners note that the Department's use of line speeds in the original investigation to distinguish pasta shapes produced on the same production line was warranted because some pasta cuts require slower line speeds than other cuts. They argue that the issue of line speeds in the original investigation and the line speed for artiginal pasta in this review differs in that the shape of pasta dictated the line speed during the investigation, but it is the production facility, rather than pasta shape, that dictates the line speed for artiginal pasta.

Indalco maintains that artiginal pasta has distinctive physical characteristics—such as rougher texture, unique hand-made appearance and shape—which require it to be identified separately and matched with other artiginal pasta and not with Indalco's industrial pasta. Indalco notes that artiginal pasta's different characteristics are obtained by using coarser semolina, bronze dies, smaller machines, and lower temperature and slower speeds during the extrusion and drying processes. Indalco argues that these distinctive physical characteristics are commercially significant and relevant to consumers and that they enable Indalco to command a selling price three to five times higher for artiginal pasta than for industrial pasta.

With respect to the petitioners' argument regarding line speeds, Indalco maintains that its affiliate's artiginal facility was newly established in 1997 and, therefore, the differences in processing artiginal and industrial pasta are not accidental differences in efficiency or age of machinery but are specifically designed to produce the unique artiginal characteristics. According to Indalco, artiginal pasta cannot be produced on its industrial-pasta machinery using the high-speed, high-temperature industrial process; rather, it must be produced using slower, lower pressure and lower temperature during the extrusion and drying processes in order to preserve artiginal pasta's unique physical characteristics.

Indalco argues further that, in the original investigation, the Department established seven pasta-shape categories to differentiate the hundreds of pasta shapes that the pasta industry produces. Indalco claims that, except in the most broad terms (long, short, nested, etc.), the Department did not use the exact physical shape to classify its shape categories. Rather, Indalco states, the Department used line speed and the resulting impact on production cost and final price as a distinguishing characteristic for classifying shape categories. Indalco claims that, since the differences in line speed, production cost and end price between industrial and artiginal shapes are far greater than the differences the Department has already recognized among the various industrial shape categories it identified, creation of the two new artiginal shape categories is consistent and appropriate. Indalco notes further that the Department's questionnaire contains instructions for companies to follow in modifying shape classifications based on documented differences in line speed.

DOC Position: We agree with Indalco that information on the record in this case, including a video showing the production process, supports Indalco's position that artiginal pasta merits separate treatment. We also agree that it is the nature of the artiginal production process, rather than the age and inefficiency of the artiginal production plant, that leads to the slower line speeds for the production of artiginal pasta cuts. As Indalco stated in its response, its standard high-speed industrial pasta production lines can produce hundreds of pieces of pasta simultaneously through Teflon-coated dies while its artiginal machine produces only one or just a few pieces at a time.

We agree with the petitioners that we used a 75 percent line-speed benchmark in the investigation to distinguish pasta shape for speciality long and short pasta cuts from regular long and short pasta cuts produced on the same long or short production line. Typically, pasta producers dedicate specific production lines to either long or short pasta cuts and the purpose of the benchmark was to assign a ''speciality'' shape category to pasta cuts on a dedicated long or short production line that were produced at less than 75 percent of the rated line capacity. Thus, the use of line speed to distinguish speciality shapes within long and short pasta cuts was not due to any special physical differences in pasta cuts within the long or short shape category (other than being long or short) but rather was attributable solely to the higher production costs associated with slower line speeds. For example, fettuccine, linguine, vermicelli, and spaghetti are classified in the shape category for ''long cuts'' and capellini and bucatini are classified in the shape category for ''speciality long cuts.'' All are generally produced on the same long production line. While they share the same ''long'' shape characteristic, they differ physically from one another in other visible shape features (*e.g.,* width and thickness). Yet we segregated them ultimately into regular long or speciality long shape categories on the basis of line speed. We used this shape-classification methodology in both the original investigation and in this administrative review and it has been communicated to respondents both in instructions to the questionnaire, as well as in addressing respondent requests for assigning shape classifications to shapes not included in our questionnaire shape list (*see, e.g.,* letters to William Silverman of Rogers and Wells, dated October 27, 1995, and October 30, 1997).

While we agree with the petitioners that artiginal long and short pasta cuts are produced on different production lines and in a different factory than Indalco's industrial long and short pasta cuts, the difference in line speeds between artiginal and industrial pasta of the same general shape category (long or

short) is dramatic and must be addressed. The fact that a long or short artiginal pasta cut takes up to 20 times longer to produce than the comparable industrial long or short pasta cut is sufficiently significant to warrant the creation of a special shape category for artiginal pasta long or short cuts for the same reason that led the Department to create speciality long and short shapes for industrial pasta long or short cuts; in other words, the production cost for artiginal pasta is significantly influenced by the slower line speeds required to produce the same long or short industrial pasta cut. We also note that artiginal long and short pasta cuts have different physical characteristics than the same cuts produced on Indalco's industrial pasta line. Rigatoni, for example, is classified as a regular short cut but artiginal rigatoni differs significantly in texture, shape, thickness and length from the industrial rigatoni. Accordingly, we agree with Indalco that the artiginal pasta constitutes a separate shape category and for these final results have continued to assign separate product-control numbers to artiginal pasta. For the same reason, we disagree with the petitioners that we should revise Indalco's reported COP and CV database to calculate a single, weighted-average COP and CV for industrial and artiginal pasta of the same shape category. Therefore, we have continued to assign COP and CV to the artiginal product-control numbers based on the cost associated with manufacturing artiginal pasta.

Comment 8: Level-of-trade Comparison

The petitioners state that, according to the Department's preliminary level-of-trade analysis, Indalco's home market consists of two groups of customers which constitute two levels of trade: group 1 (LOT 1) (including wholesalers, supermarket chains and retailers), and group 2 (LOT 2) (including food service entities). They claim that Indalco's U.S. sales should be compared to its home market sales to LOT 2 customers on the grounds that the selling activities associated with Indalco's U.S. sales were more similar to those associated with home market LOT 2 customers.

Indalco argues that its U.S. sales to distributors should not be matched to its home market sales to end-users (LOT 2). Rather, the respondent contends, they should be matched to its home market sales to wholesalers and supermarket chain distributors (LOT 1) on the following grounds: (1) Both U.S. sales and home market LOT 1 sales were high-volume, produced-to-order, direct sales, while home market LOT 2 sales were small-lot, warehouse sales from inventory; and (2) home market LOT 1 customers are at a very early level of trade while the end-users further down the chain of distribution are at the most advanced level-of-trade.

Indalco argues further that the Department's level-of-trade quantitative analysis erred in characterizing the warehousing function as ''low'' for home market LOT 2 sales. According to Indalco, a significant portion of home market LOT 2 sales were made from Indalco's own on-site warehouse, the cost of which was included in the production cost and, therefore, was excluded from the Department's level-of-trade quantitative analysis.

DOC Position: We agree with Indalco in part. We agree that U.S. sales should not be compared only to Indalco's home market LOT 2 sales, but we disagree with Indalco that its U.S. sales should be compared only to its home market LOT 1 sales. In this review, all of Indalco's U.S. sales were EP sales made at a single level of trade. We found that there were significant differences between the selling activities associated with the U.S. sales and those associated with each of the home market levels of trade. Consequently, we matched the U.S. sales to home market sales without regard to level of trade and made no level-of-trade adjustment. As noted in the ''Level-of-trade Findings'' memorandum from John Brinkmann to Susan Kuhbach dated July 31, 1998, because we determined that U.S. and home market sales were not made at the same level of trade, our intention in the preliminary results was to match Indalco's U.S. sales without regard to level of trade. However, in our preliminary computer program, we inadvertently matched U.S. sales only to home market sales at LOT 1. We have corrected the programming error in our final results.

Comment 9: Treatment of Indalco's Certain Home Market On-Invoice Discounts

This comment contains proprietary information which cannot be summarized here (*see* proprietary memorandum from Cindy Robinson to John Brinkmann, *Recalculation of Certain Home Market Discount for Industria Alimentare Colavita, S.p.A in the Final Results of the First Administrative Review of Certain Pasta from Italy,* December 7, 1998).

La Molisana

Comment 10: Level of Trade

La Molisana submitted comments proposing the following level-of-trade methodologies: (1) the Department should use brand distinctions in determining a level of trade (*see* Comment 10A below); (2) if the Department does not use brand distinctions, it should determine that the sole level of trade in the United States is similar to the least advanced level in the home market (*see* Comment 10B below); or (3) the Department should use price-averaging groups in making price-to-price comparisons (*see* Comment 10C below).

Comment 10A: Use of Brand Distinctions in Determining Level of Trade

In the U.S. and home markets, La Molisana sells both its own La Molisana brand pasta and private-label brands. La Molisana argues that, when customers contract with La Molisana to produce what is really the customer's product (*i.e.*, a private label), those customers occupy a different point in the chain of distribution. In effect, the respondent contends, such customers are ''co-manufacturers'' as compared to those customers which purchase pasta under the La Molisana brand. In this case, according to the respondent, the sole U.S. customer occupies two different places in the chain of distribution depending on the brand of pasta that it purchases.

Further, La Molisana states that different selling activities are performed for the two different brands. For example, it asserts it performs a high degree of advertising and promotional activities in connection with its own brand and none for private label brands. Also, La Molisana maintains an inventory of its own brand both at the factory and at regional warehouses, whereas all private-label sales are made to order. In terms of sales support, La Molisana uses both commissioned sales agents and internal sales people to sell the La Molisana brand, whereas all private-label sales are handled through its plant.

The petitioners point out that the Department already determined in a July 31, 1998, memorandum to the file, *''La Molisana's Proposed Level-of-trade Categories,''* that La Molisana's brand distinctions do not satisfy the criteria for establishing that La Molisana and private-label sales were made in different stages of the marketing process. Finally, according to La Molisana, the U.S. distributor orders both brands and occupies only one place in the chain of distribution.

DOC Position: We agree with the petitioners. As we stated in our memorandum to the file, differences in selling functions alone do not establish a level of trade. *See* Memorandum from John Brinkman to the file, *La Molisana's Proposed Level-of-trade Categories* (July

31, 1998). La Molisana's original response did not classify buyers of the private-label merchandise as a distinct customer category with a distinct channel of distribution. La Molisana's single U.S. customer for both La Molisana and private-label merchandise is defined by La Molisana in its response as a distributor, a classification that does not change depending on the brand purchased. Furthermore, in the case of this customer, the difference in selling functions between the two brands of merchandise rests primarily on advertising, which is not sufficient to establish differences in levels of trade in this case. Several home market customer categories, as defined by La Molisana, buy both La Molisana and private-label brands, and there is no evidence on the record to suggest that the channels of distribution within these customer categories vary greatly depending on the brand purchased or that a particular customer cannot receive both brands through the same channel. Therefore, we did not use brand distinctions to determine level of trade in these final results.

Comment 10B: Whether the U. S. Level of Trade is Comparable to the Least-Advanced Level in the Home Market

La Molisana argues that miscategorization of the level of certain selling functions caused the Department to conclude that the U.S. level of trade was not similar to either of the two home market levels of trade. First, La Molisana contends that distributors should be in the same level of trade as wholesalers, buying consortia and supermarket chains (HM1). Like these customers, the respondent asserts, distributors act as middlemen who do not sell directly to end customers, unlike the supermarkets, restaurants and retailers with whom distributors were grouped for the preliminary results.

Second, La Molisana claims that the Department did not look at the same sales and marketing selling functions in the two markets, looking at four factors (discounts, two types of rebates and commissions) in the home market, none of which were considered in the analysis of the U.S. level of trade. La Molisana comments that, in the quantitative frequency analysis of home market sales and marketing selling functions in the home market, the Department looked at the number of observations with positive values for each of the four factors considered and then used those values to determine an overall average frequency for the sales and marketing support category. La Molisana contends that the Department, by not taking into account those factors which had no observations with positive values, calculated an erroneous average. Further, in the *Preliminary Results* La Molisana observes, the Department gave equal weight to commissions and the three different categories of discounts and rebates when calculating the average. According to La Molisana, this resulted in understating the importance of the use of a sales agent as a selling function. La Molisana argues that the Department should consider discounts and rebates as a single factor and commissions as another factor within the sales and marketing support category; then it should give equal weight to both when averaging them. If commissions were given their proper weight, La Molisana contends, distributors would be found highly comparable to supermarket chains in relation to the level of sales-processing activity.

Third, La Molisana argues that customers in HM1, all of which purchase both La Molisana and private-label brands, benefit from a lesser degree of advertising and promotional activities because those activities are only performed for the La Molisana brand. La Molisana claims that the composition of sales to distributors with respect to the two brands is comparable to that of the other groups in the HM1 category.

Finally, La Molisana contends that the Department misclassified the level of activity for certain selling functions in the United States. Freight and delivery arrangements made for U.S. sales are, according to La Molisana, made in the same manner as those for the home market and should be classified accordingly. If the Department corrects these alleged miscategorizations, La Molisana believes it will conclude that the single level of trade in the U.S. market is comparable to the HM1 level of trade in the home market. La Molisana points out that in the underlying investigation the Department determined that sales were made at the same level of trade in both markets, and it contends that circumstances have not changed significantly.

The petitioners agree with the Department's level-of-trade analysis in the preliminary results. The petitioners point out that including the zero-frequency percentages in the quantitative portion of the ''sales and administration and marketing support'' category analysis would not have a large enough effect on the result to change the conclusion about the level of sales and marketing support provided by distributors. They point out further that, if the Department were to use the same factors to evaluate the U.S. sales and marketing support that were used in the home market (*i.e.* discounts, rebates, and commissions), the result would not change. With regard to La Molisana's contention that the circumstances have not changed since the investigation, the petitioners point out that the Department has refined its level-of-trade analysis since the original investigation and now conducts a more detailed examination.

DOC Position: We agree with La Molisana, in part. For the final results, where possible, we have compared La Molisana's U.S. sales to the HM1 level of trade in the home market and have included distributors in the HM1 level of trade.

With regard to the classification of La Molisana's selling functions, we recognize that the use of a sales agent is an important consideration in the sales administration and marketing support category. Therefore, in these final results we have given more weight to the fact that agents are not used for sales to distributors. Further, we have reviewed our analysis of the off-price-list discounts received by distributors and have found them comparable to those received by the other customers in HM1 (*see La Molisana Analysis Memo*). In terms of the quantitative frequency analysis we performed for the preliminary results, in which we determined the number of observations with positive values for each selling-function variable, we emphasize that this quantitative analysis was intended only as a guide for use in the final analysis. The existence of any zero frequencies, together with all other relevant factors as outlined in the narrative portion of the response, was taken into account in the qualitative portion of our level-of-trade analysis. Therefore, it is unnecessary to revise the quantitative portion of the analysis. We acknowledge that we did not look at the same functions in both the U.S. and home markets because the same fields in the computer database did not exist for both. With regard to the level of advertising and promotions support incurred by distributers, the data show La Molisana's statement that the composition of sales with respect to the two brands being similar between distributors and the other customers in the HM1 category is erroneous. We have not re-categorized the level of advertising support to distributors in our final level-of-trade analysis.

In considering the U.S. freight arrangements, we agree with La Molisana that these arrangements do require a comparable level of activity as the freight arrangements made in the

home market, and we have factored that into our final level-of-trade analysis.

Finally, to determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the two may have many or few links, with the respondent's sales occurring somewhere along this chain. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 6173 (November 19, 1997). In looking at the chain of distribution to see where the customer categories in the U.S. and home markets fall, it is clear that La Molisana's U.S. customer is at the same point in the chain of distribution as its customers in the home market level of trade HM1. All of the home market customers in HM1 are the first to take possession of the merchandise from La Molisana and none of them sells directly to end-users. While position in the chain of distribution alone does not determine level of trade, we feel that the selling functions of these customers are sufficiently similar to those of the U.S. customer to warrant considering them the same level of trade.

Even without changing the analysis with regard to advertising, our revised analysis with regard to sales administration and marketing support and chain of distribution warrants including distributors in the HM1 level of trade with wholesalers, supermarket chains and buying consortia.

Comment 10C: Use of Price-Averaging Groups in Making Price-to-Price Comparisons

La Molisana argues that, if the Department does not match to the HM1 level of trade, it should continue with its practice established in the investigation of comparing sales by using price-averaging groups based on customer category.

The petitioners argue that use of price-averaging groups based on customer category would effectively substitute customer categories as defined by the respondent itself for the detailed level-of-trade analysis carried out by the Department.

DOC Position: Because we have decided to match La Molisana's sales at the HM 1 level of trade, this argument is moot.

Comment 11: Calculation of the Difference-in-Merchandise Adjustment

La Molisana argues that the only ''physical difference'' between U.S. and Italian pasta that it produces is the vitamin enrichment in the U.S. pasta. Any other differences in cost do not result in a physical difference and should not be included in the calculation of the difference-in-merchandise (difmer adjustment). It claims a cost differential arises between different types of pasta within a given shape category because of different extrusion times involved in producing them.

The petitioners claim that La Molisana's cost differences were based on brand distinctions and the Department calculated a weighted-average cost using the two submitted costs correctly to determine one unique cost of manufacturing for each control number and used that cost in the calculation of the difmer appropriately.

DOC Position: Contrary to the Department's instructions in Section D, page D–1, of the antidumping questionnaire, which requested that the respondent report one weighted-average cost for each unique control number, La Molisana reported two costs for each control number based on brand distinctions. The difference in these costs was not related to extrusion times as claimed by La Molisana in its brief. *See* La Molisana's November 10, 1998, section D response, p. D–20 and exhibit D–9. Therefore, we have continued to use the weighted-average figure based on the two costs presented by La Molisana as the basis for the difmer.

Comment 12: Comparing Green Nested Pasta to Constructed Value

La Molisana claims that its green nested pasta is sufficiently different from any other pasta type that it should be compared to constructed value (CV). In the preliminary results, the Department matched across shape, additives and enrichment resulting in a comparison of vitamin-enriched green nested pasta to unenriched, plain nested or, in some cases, specialty long cut pasta. Although the calculated difmer falls just within the 20 percent range the Department uses normally, La Molisana contends that in this case it results in an unreasonable comparison of dissimilar merchandise.

The petitioners point out that the home market sales that the Department used to compare La Molisana's U.S. sales of green nested pasta do not exceed the 20 percent difmer test. They contend that the Department's application of the decision in *Cemex, S.A.* v. *the United States* (''*Cemex*'') dictates that the Department use similar merchandise rather than CV to calculate margins when there are no comparison sales of identical merchandise.

DOC Position: We agree with the petitioners. Although the 20 percent difmer test is not mandated by the statute, the Department has used it continuously for a long period of time and in 1992 established a clear policy on its use. *See Policy Bulletin 92.2 Difference in Merchandise; 20% rule* (July 29, 1992). While the bulletin states that we are not inflexibly bound to this guideline, we find no basis for making an exception to this policy in this case. Moreover, La Molisana's green nested pasta, which goes through the same production process as the other pasta types and has largely the same ingredients, is not sufficiently dissimilar from other pasta types to make these comparisons unreasonable.

Puglisi

Comment 13: Offset to G&A for Government Grants and Restitution of Lease Payments

Puglisi maintains that during Fiscal Year (FY) 1996 the company received (1) grants for equipment purchases and (2) loan-restitution payments for leased production equipment. Puglisi argues that the Department should uphold its long-standing and consistent practice and treat the grants for equipment purchases and the loan-restitution payments as offsets to G&A expenses as it did in previous cases, including the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (July 14, 1996) (*Pasta from Italy*), and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556 (May 8, 1995) (*Furfuryl Alcohol from South Africa*).

The petitioners contend that the Department should exclude non-production-related offsets from the calculation of G&A as was done in the preliminary analysis. The petitioners argue that, because the machinery-investment subsidy is available to all Italian companies, it is general in nature. Therefore, they argue that the Department should continue to exclude this subsidy as an offset to G&A for the final results.

DOC Position: We agree with Puglisi that the grants for equipment purchases and loan-restitution payments for leased production equipment should be treated as offsets to total G&A expenses. The grants relate specifically to the company's general operations. Consistent with our findings in *Pasta*

from Italy, 61 FR 30326, 30355, and *Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556, we have included the grants received for equipment purchases and loan-restitution payments for leased production equipment by the Italian government as offsets to total G&A expense for the final margin calculation.

Comment 14: Gain on Sale of Puglisi's U.K. Property

Puglisi contends that the gain on the sale of the company's U.K. property should be treated as an offset to G&A expense because the property was used not only as a residence but also as an administrative office and was therefore related to the general operations and administration of the company. Puglisi argues that the Department referred to the sale of the U.K. property incorrectly as a gain on a sale of investments in its *Preliminary Results.* According to Puglisi, the company sold an apartment in London in FY 1996, which had been used as the residence and administrative office of the managing director of an affiliated company, Puglisi Pasta (U.K.) Ltd. According to Puglisi, the use of the property was treated as compensation to the director of the affiliated company and benefitted the management operations as a whole and therefore was not a passive investment. Puglisi contends that the Department has treated the sales of fixed assets such as the London property consistently as a G&A item in various cases including *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea,* 57 FR 53693, 53704 (Nov. 12, 1992) (*Pipe from Korea*), and *Final Results of Antidumping Administrative Review: Fresh Kiwifruit from New Zealand,* 59 FR 48596, 48608 (September 22, 1994) (Kiwifruit 1994). Puglisi argues that compensation to a shareholder/director, in kind or otherwise (*e.g.,* the provision of a residence/office), has been held by the Department to be included properly in the calculation of COP. Thus, according to Puglisi, any gain or loss on the sale of this compensating item should also be included in G&A.

The petitioners contend that, for the final results, the Department should disallow the gain on the sale of real estate located in the United Kingdom as an offset to G&A expense. The petitioners argue that, according to the case record, the U.K. property had been used as a residence of the managing director and there is no evidence that this property related to the production of subject merchandise. Further, the petitioners contend that the gain on the sale of the U.K. real estate was not related to the general operations of the company and the disposition of the property does not reasonably reflect costs associated with the production and sale of the merchandise under review; therefore, they conclude, it should be excluded from G&A for the final results.

DOC Position: In its case brief, Puglisi indicated for the first time that this property is part of the compensation package paid to one of the shareholders who is the director of its affiliated company located in the United Kingdom. Pulgisi did not provide any support or documentation for this assertion. Even if we treated the gain on sale of the residential real estate as a G&A-type item and record support existed, the use of the dwelling was part of the total compensation package to the director of the affiliated company located in the United Kingdom, not Puglisi. Thus, we disagree that the gain should be included in Puglisi's G&A rate computation because the gain relates to an asset that directly benefits the operations of the U.K. company (the entity for which the compensated director works), not Puglisi. Accordingly, we have disallowed this gain as an offset to Puglisi's G&A expenses for the final results.

Comment 15: Inclusion of Purchased Products in the G&A Allocation Denominator

Puglisi argues that the cost of the merchandise purchased for resale should be included in the denominator in calculating the G&A ratio because G&A expenses are the costs incurred by a company that relate to the administrative activities of the company as a whole and are not specific to one production line, one production facility or to self-produced merchandise. Puglisi contends that the exclusion of these cost-of-sales totals from the denominator used in the calculation of the G&A ratio would not only distort the G&A calculation but contradict clear and consistent Department policy. Puglisi argues that the Department has held that G&A expenses, like selling expenses, are to be treated as period-specific costs, relating to the general operations of the company during a particular period and not to production activities during the period. Puglisi also adds that the most recent version of the Department's antidumping manual confirms that ''G&A is calculated by dividing the fiscal year G&A expense by the fiscal year cost of goods sold (adjusted for categories of expense not included in the cost of manufacture (COM), such as packing) and then applying the percentage to the COM of the product,'' citing the AD manual, Chapter 8, XIII(c)(1)(d), pages 58–59. Therefore, Puglisi argues that G&A expenses should be allocated over the total cost of goods sold, not over the total cost of goods produced or over the total sales of goods produced.

The petitioners contend that the Department should exclude the cost of merchandise purchased for resale from the cost-of-goods-sold denominator used to calculate the G&A expense ratio in its final margin calculation. The petitioners argue that it would be inappropriate to allocate G&A expenses to merchandise that is purchased for resale because minimal, if any, G&A expenses would be incurred for this merchandise. In fact, according to the petitioners, any expenses Puglisi would incur related to the pasta purchased for resale may more appropriately be considered selling expenses.

DOC Position: We agree with Puglisi that the denominator we used to compute the company's G&A expense rate should be the total cost of sales as reported on the company's audited financial statements, including that related to the pasta purchased for resale. As was explained in the CIT decision in *U.S. Steel Group, et al.* v. *United States, et al.,* 998 F.Supp. 1151 (CIT 1998), G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process. As part of its normal operations, Puglisi is sometimes required to purchase pasta for resale to satisfy customer needs. Therefore, we consider the pasta purchased for resale to be related to the general operations of Puglisi as a whole and, for the final results, we recomputed Puglisi's G&A expense rate inclusive of the cost of sales related to the pasta purchased for resale.

Comment 16: Valuation of Inputs from Affiliated Parties

Puglisi argues that the Department should use the actual cost of the services provided by its affiliate and not the transfer price because the value of those services is not a significant percentage of COM. Further, since Puglisi collapsed the two companies for purposes of reporting cost of manufacturing, the major-input rule as provided under section 773(f)(2) of the Act does not apply. Puglisi concludes that, in the absence of the major-input rule, it is the Department's preference to use the actual cost of inputs as reflected in the affiliated party's accounting records and financial statements. Puglisi cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea,* 63 FR

40404, 40421 (July 29, 1998) (*Korean Rod*), to support its contention that intra-company transactions between affiliated parties should be valued at cost.

The petitioners argue that Puglisi should report the higher of transfer price or actual cost of services provided by its affiliated supplier, in accordance with the major-input rule.

DOC Position: We agree with Puglisi that, because the affiliated-party input in question is not a major input, the major-input rule does not apply. We disagree, however, that we should not use the transfer price between Puglisi and its affiliate. Section 773(f)(2) of the Act directs the Department to disregard transactions between two affiliated persons if such transactions did not occur at arm's-length prices. In this instance, we have determined that the transfer price between the two companies occurred at an arm's-length price. Because there were no comparable transactions between two non-affiliated parties to compare to the transfer price between Puglisi and its affiliate, we compared the transfer price to the affiliate's COP, noting that the transfer price exceeded the COP. Thus, there is no reason not to use the transfer price between Puglisi and its affiliate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434, 40440 (July 29, 1998).

We disagree with Puglisi that the facts in this case related to collapsing the costs of Puglisi and its affiliated supplier are the same as those in the *Korean Rod* case. In *Korean Rod,* we collapsed the affiliated parties under 19 CFR 351.401(f) which concerns special treatment of affiliated producers where there the potential for manipulation of prices or production in an effort to evade antidumping duties exists. In this case, Puglisi decided on its own to ''collapse'' itself and its affiliate for the purpose of reporting cost. However, the Department does not collapse affiliated companies for margin-calculation purposes unless both companies produce or sell the subject merchandise since the Department collapses affiliated companies only where the potential for price manipulation exists. In this case, the affiliated company does not produce or sell the subject merchandise; rather it provides certain services to Puglisi. Puglisi's unilateral decision to collapse the two companies and to use its affiliate's COP rather than the transfer price for transactions occurring between the two parties during the POR was not in accordance with Department practice. Therefore, we used transfer prices rather than COP for the purposes of the final results.

Comment 17: Allocation of Electricity Expenses

Puglisi argues that it allocated production-line electricity costs accurately and reasonably on the basis of total relative production throughput times. According to Puglisi, this method accounts for differences in electricity consumption or operating efficiencies between production machines reasonably, as well as accounting for differences in electricity usage due to drying times of the different pasta shape types. Puglisi disagrees with the Department's contention in the memorandum from Laurens van Houten to Christian B. Marsh, *Verification of the Cost of Production and Constructed Value Data,* at p.3, August 21, 1998 (*Verification Report*) that, because one particular shape of pasta is produced predominately on a machine that uses much less electricity than the other production lines, the reported electricity cost was misallocated to that pasta shape. Puglisi argues that, because it used relative production times, the electricity costs were allocated to all pasta shapes properly.

The petitioners argue that Puglisi did not use the most reasonable and verifiable method of electricity allocation available to it. Because one shape code was produced predominantly on a machine that uses significantly less electricity than the other machines, the petitioners contend that the shape code produced on that machine should be allocated less electricity consumption per standard machine time than the other shapes. The petitioners maintain that the smaller machine which produces the shape code in question is not more efficient but uses less electricity because it is ''significantly smaller.'' The petitioners argue that, because the shape code in question was produced predominately on this older, smaller machine and company officials indicated that this production line uses significantly less electricity, electricity costs were over-allocated to that shape code.

DOC Position: We agree with Puglisi that it is reasonable to allocate production-line electricity costs on the basis of total relative production throughput times only if all the pasta production machines consume the same amount of electricity per standard throughput time. At verification, company officials indicated that one of Puglisi's machines consumes significantly less electricity than the other machines (*see Verification Report* at page 18). Since the shape code in question was produced predominantly on the one machine which consumed significantly less electricity per standard throughput time, the electricity cost assigned to this shape is unreasonably high.

Evidence on the record shows that virtually all shapes produced by Puglisi, with the exception of the shape code in question, can only be made on the larger machines (*see Verification Report,* exhibit 20). Because the reported costs for those few shapes (other than the shape code in question) that can be produced on either the smaller or larger machines were based on standard machine times of the larger machines, we conclude that these shapes were produced predominantly on the larger machines. It follows that, because the reported costs for the shape code in question were based on the standard machine times for the small machine only, we conclude that the shape code in question was produced predominantly on the smaller machine. Therefore, for the final results we have adjusted Puglisi's reported product-specific electricity costs to take into account the lower electricity consumption of the older machine in question.

Comment 18: Allocation of Depreciation Expenses

Puglisi argues that it reported its depreciation expenses in a reasonable manner consistent with principles of Italian Generally Accepted Accounting Principles (''GAAP''), Italian tax law, and pursuant to its normal accounting practices. According to Puglisi, these depreciation expenses include a multitude of capital expenditures for repair, maintenance, modernization and calibration of machines of various ages which Puglisi cannot isolate by production line. However, it believes that the allocation of total depreciation expenses by relative production throughput times accounts for any such repair or improvement expense made after the initial purchase as well as any ''reasonable use allowance'' remaining on the older machines. Puglisi maintains that it is not required under Italian GAAP or Italian tax law to charge depreciation costs or expenses on a machine-specific basis. Puglisi therefore does not do so in its normal accounting records because there are too many additions to the depreciation expense account which would require an extraordinary manual accounting effort to isolate the costs per production line. Puglisi argues that the older production line requires more maintenance, repair and modernization expenditures than

the newer lines and, thus, carries a higher proportion of the depreciable expenses for renovation maintenance from prior years than the newer machines. Puglisi contends that, by treating the older machine in a similar manner as the newer machines, it not only took into account the many capital expenditures which were incurred over all lines, but also the reasonable use allowance of a machine that was purchased earlier than the other machines.

Puglisi argues that the Department should accept its method of allocating depreciation expenses because this method is used in the company's normal accounting records. Furthermore, citing section 773(f)(1)(A) of the Act, Puglisi asserts that the Department's long-standing practice is to rely on data from a respondent's normal books and records if they are prepared in accordance with the home country's GAAP and reasonably reflect the cost of producing the merchandise.

The petitioners argue that the Department should reallocate depreciation expenses for the final results based on its verification findings. They contend that, because Puglisi treated all production lines equally with respect to depreciation expense per standard machine time, despite the fact that one line is significantly older, depreciation expenses should be reallocated. The petitioners argue that, while Puglisi states that there is ''a multitude of machine-related expenses for repair, maintenance, calibration and modernization of the various product lines'' and that the Department reviewed sample invoices and documents for services and capital improvements made to the long and short lines in FY 1992, there is no indication of this in the Department's verification report.

DOC Position: We agree with Puglisi that the allocation of total depreciation expenses by relative production throughput time is reasonable as long as all production lines incur approximately the same amount of depreciation expense. However, in this situation, we have reason to believe this is not the case. At verification, we had concerns as to whether Puglisi's oldest production line, which is significantly older than the other lines, had any depreciable basis remaining. We requested company officials to provide records to support that the oldest production line still had a depreciable basis remaining during the POR. Company officials failed to provide any such support (*see Verification Report* at page 19).

In its case brief, Puglisi for the first time makes the claim that its oldest production line incurred significantly more maintenance, repair, and modernization costs than the other lines, and, thus, its depreciable basis is comparable to that of the other lines. First, we note that normally repairs and maintenance costs are expensed in the year incurred, not capitalized and depreciated. Second, at verification, Puglisi provided no evidence to support its claim that it incurred and capitalized amounts related to repairs, maintenance, and modernization for either its oldest or newer machines.

Finally, we disagree with Puglisi that we should accept its method of allocating depreciation expense because it is used in the company's normal accounting records. Puglisi does not allocate depreciation expense to specific products in the normal course of business. Rather, it developed its reporting methodology specifically for antidumping purposes. For the final results, we adjusted Puglisi's allocation methodology for depreciation by allocating depreciation expense only to those products produced on the newer production lines.

Comment 19: Adjusted Leasing Costs

The petitioners argue that Puglisi made an adjustment incorrectly to its recorded machinery leasing costs for a particular leased machine. Accordingly, the petitioners contend that the Department should adjust for this error for the final results.

Puglisi argues that the petitioners' assertion that it had adjusted certain recorded machinery leasing cost incorrectly, for amounts posted to the accounts after June 30, 1997, is an inherently factual issue that must be decided based on the facts on the record. Puglisi contends that this issue is entirely distinct from the other issue concerning machinery-leasing restitution payments which are discussed separately in its briefs.

DOC Position: We agree with the petitioners that Puglisi made an adjustment to its recorded machinery leasing costs incorrectly. The purpose of the adjustment was to take into account the fact that it did not receive a particular leased machine until after the POR. Puglisi believed that in its normal books and records it had recorded the first lease payment related to this machinery during the first six months of 1997 (which falls within the POR). A review of the leasing account, however, shows that the lease payment for which Puglisi adjusted the account was not posted until after June 30, 1997. Thus, Puglisi reduced its recorded costs by an amount that was not included initially. For the final results, we increased Puglisi's costs to account for this error.

Rummo

Comment 20: Bug-Infested and Defective Pasta

Rummo argues that the Department should reverse the position it took in the preliminary results and exclude U.S. sales of defective or bug-infested pasta to food banks from the margin calculation or, in the alternative, craft a methodology to account for the unrepresentativeness and distortive nature of the food-bank sales. Rummo identifies five options for resolving this issue: (1) It contends that the Department has considerable discretion to exclude U.S. sales from the margin calculation when the sales are found to be distortive or unrepresentative. Otherwise, according to Rummo, the Department is required to employ a methodology which compensates for the distortion. (2) It claims that the merchandise sold to food banks constitutes a by-product of pasta and as such should be excluded from the margin calculation with revenue earned from the food bank sales applied to costs as an offset. (3) It contends that the Department has the authority to weight-average U.S. sales to account for the unrepresentativeness of distress sales of scope merchandise in the United States. The company asserts that, if the Department chooses not to exclude the sales in question altogether, this is a situation in which the Department should use its discretion to weight-average U.S. prices. (4) It contends that, if the Department does not exclude the food-bank sales from the margin calculation, the Department should compare the food-bank sales to constructed value, since the food-bank sales are not ''like'' its home market sales of prime merchandise. Rummo continues that, since merchandise sold to food banks constitutes a by-product, the Department should adjust constructed value by deducting the sales revenue generated from the sales in question. (5) Rummo argues that, if the Department does not exclude all food-bank sales from the margin calculation, it must exclude one sale to a food bank for which no consideration was received.

The petitioners respond that Rummo has not placed sufficient evidence on the record to support its claim that the merchandise sold to food banks was, in fact, bug-infested or defective. Additionally, the petitioners argue that the record evidence does not demonstrate that the entire volume of

sales coded as food-bank sales in the database was sold to food banks. The petitioners contend that the Department must affirm the preliminary results because Rummo has not placed additional information on the record that would alter the Department's preliminary decision on this issue.

The petitioners claim that Rummo's internal memoranda and bills of lading, placed on the record to explain the managerial decision to sell the merchandise to food banks and to demonstrate that the merchandise actually went to food banks, do not account for the entire volume of sales coded as food-bank sales in Rummo's database. Furthermore, the petitioners argue that the internal memoranda are contradictory in that they indicate that some of the pasta discussed in the memoranda may not have been actually sold to food banks as Rummo claims.

DOC Position: We agree with the petitioners that Rummo has not demonstrated that the pasta coded as food-bank sales was defective or bug-infested nor that it was actually sold to food banks. Therefore, the arguments put forth by Rummo to account for the unrepresentative and distortive nature of these low-price sales are moot. We have included all of these sales in the margin calculation without making any special adjustment or consideration for sales identified as food-bank sales.

To support its claim that the merchandise in question was defective or bug-infested and was sold to food banks, Rummo provided the Department with four internal memoranda in its November 3, 1998, section A response and eight bills of lading in a March 17, 1998, submission. While the memoranda discuss food banks as a possible outlet for defective pasta, but not bug-infested pasta, they refer to only a small quantity of merchandise and provide no definitive evidence that any defective pasta was sold to food banks. The memoranda also discuss a problem with bug infestation, but they never refer to food banks as an outlet for that merchandise and, instead, mention a different remedy for the problem. Moreover, the quantity of problem merchandise discussed in the memoranda is not linked directly to sales in the database or to the bills of lading Rummo provided to document the food-bank sales.

Likewise, the eight bills of lading, which document a quantity far below that claimed as food-bank sales by Rummo, provide no direct link between the pasta listed on the bills of lading and the observations coded as food-bank sales in the database. Moreover, there is no indication that the merchandise on the bills of lading was defective or bug-infested, and, since we cannot link the pasta from the bills of lading to that in the internal memoranda, we have no basis to conclude that this merchandise was defective or bug-infested. Additionally, two of the bills of lading list pasta products that are not coded as food-bank sales in the database, which brings into question whether Rummo reported the product type of the merchandise sold to food banks properly. Therefore, we have concluded that the bills of lading do not demonstrate sufficiently that the merchandise shipped to food banks was defective or bug-infested. Finally, we note that Rummo did not provide any information linking any of the food-bank sales in the database to its support documentation.

Therefore, we have concluded that, while the documentation seems to indicate that Rummo had a problem with some quantity of defective and bug-infested pasta and may have shipped a portion of it to food banks, the memoranda and bills of lading do not confirm the quantity nor do they offer sufficient proof that any of the pasta labeled as food-bank sales in the database was defective or insect-infested and subsequently sold to food banks during the POR.

Comment 21: Credit Expenses

Rummo requests that the Department correct the calculation error in its reported U.S. credit expenses that it identified in its September 4, 1998, submission. Rummo contends that it erred in calculating credit expenses for U.S. sales in its supplemental response on sales for which Rummo had not yet received payment. Rummo explains that, for sales with missing payment dates, it calculated a weighted-average credit expense on a customer-specific basis, when there were other sales to the same customer for which Rummo had received payment. In cases where there were no other sales to the same customer, Rummo states that it calculated an overall credit expense based on all U.S. sales. Rummo continues that an error occurred because it based the overall and customer specific weighted-average credit expenses on a combination of sales, without adjusting for differences in currencies, where credit was reported in lira/kg for EP sales and $/lb for CEP sales. According to Rummo, the flawed calculation inflated the credit expense for the sales in question and resulted in a higher margin for Rummo.

The petitioners respond that the Department should recalculate credit expense using the date of the final results as payment date. They contend that it is the Department's practice to use the date of the final results as the surrogate payment date when the respondent does not provide the payment date.

DOC Position: Our review of Rummo's methodology for calculating the credit expense for U.S. and home market sales with missing dates of payment shows that Rummo calculated the credit expense using inconsistent methodologies in each market. We have rejected Rummo's methodology for calculating U.S. credit expense for sales with a missing date of payment based on the average credit expense for a specific customer or for aggregate customers because the credit expense was calculated using average expense, rather than average credit days. Furthermore, this methodology differs from the home market where Rummo calculated credit expense for sales with a missing date of payment using November 3, 1997, the date that Rummo submitted its sections A, B, & C questionnaire responses to the Department, as the surrogate date of payment. In order to achieve consistency in our calculations, we have recalculated the credit expense for Rummo's U.S. sales with a missing date of payment using November 3, 1997, as the date of payment.

We do not agree with the petitioners' assertion that we should use the date of the final results as the payment date for U.S. sales without a known date of payment. Although the Department has used the date of the final results as a surrogate for date of payment in past proceedings, we find that such a methodology would constitute an adverse inference and is not warranted in this case.

Therefore, for these final results, we have revised our calculations from the preliminary results by calculating credit expense in both markets for sales with missing dates of payment by using November 3, 1997, as the date of payment.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period January 19, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Arrighi	71.49
Barilla	71.49
De Cecco	[1] 0.32
Indalco	2.00
La Molisana	12.26
Pagani	71.49
Puglisi	1.46

Manufacturer/exporter	Margin (percent)
Rummo	7.02

[1] De minimis.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is *de minimis* (*see* 19 CFR 351.106(c)(2)).

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 11.26 percent, the all-others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3277 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewal of the U.S. Automotive Parts Advisory Committee

AGENCY: International Trade Administration, Commerce.

SUMMARY: The U.S. Department of Commerce has renewed the Automotive Parts Advisory Committee (APAC), which advises Department of Commerce officials on issues related to sales of U.S.-made automotive parts and accessories to Japanese and other Asian markets.

FOR FURTHER INFORMATION CONTACT: Robert Reck, U.S. Department of Commerce, International Trade Administration, Trade Development, Office of Automotive Affairs, (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Department of Commerce has determined that the work of the U.S. Automotive Parts Advisory Committee (APAC) continues to be in the public interest and has renewed the (APAC) in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and Federal Advisory Committee Management Rule, 41 CFR Subpart 101–6.1001 (1997).

The APAC was originally established by the Secretary of Commerce on June 6, 1989, pursuant to the Fair Trade in Auto Parts Act of 1988, Public Law 100–418, to advise Department of Commerce officials on issues related to sales of U.S.-made automotive parts and accessories to Japanese markets. The Committee was then reauthorized for five years on April 30, 1994 as part of Public Law 103–236. On October 17, 1998, the Committee was re-authorized by the Fair Trade in Automotive Parts Act of 1998, Public Law 105–261 for an additional five years to advise Department of Commerce officials on issues related to sales of U.S.-made automotive parts and accessories to Japanese and other Asian markets.

The Committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Authority for the committee is found in the Fair Trade in Automotive Parts Act of 1998 sections 3803 and 3804 of Public Law 105–261.

Dated: February 1, 1999.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 99–3276 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 88–2A015.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review originally granted to the Ferrous Scrap Export Association (''FSEA'') on December 12, 1988. Notice of issuance of the original Certificate was published in the **Federal Register** on December 21, 1988 (53 FR 51294).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce with the concurrence of the Attorney General to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set

aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88–00015, was originally issued to Ferrous Scrap Export Association (''FSEA'') on December 12, 1988 (53 FR 51294, December 21, 1988), and subsequently amended on February 28, 1989 (54 FR 9542, March 7, 1989).

FSEA's Export Trade Certificate of Review has been amended to:

1. Add Metal Management, Inc., Chicago, IL as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)); and

2. Delete Michael Schiavone & Sons, Inc., North Haven, CT; and Schiavone-Bonomo Corporation, Jersey City, NJ as ''Members'' of the Certificate.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Effective Date: November 13, 1998.

Dated: February 5, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–3295 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 122898D]

Notice of Extension of Public Comment Period for Environmental Assessment and Application for an Incidental Take Permit by the City of Seattle, King County, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Extension of public comment period.

SUMMARY: NMFS and FWS (the Services) are extending the public comment period for an Environmental Assessment, a proposed Habitat Conservation Plan, and an Implementation Agreement. These documents relate to an application for an Incidental Take Permit, pursuant to the Endangered Species Act of 1973, as amended. The applicant is the City of Seattle, and the application pertains to water withdrawal and forest-related management activities in the Cedar River Watershed, in King County, Washington. The availability of these documents was announced in two previous **Federal Register** documents (December 11, 1998 and January 5, 1999), which stated that comments would be accepted through February 9, 1999. The purpose of this document is to announce the extension of the comment period to March 1, 1999.

DATES: Written comments on the permit application, Environmental Assessment, Habitat Conservation Plan, and Implementation Agreement must be postmarked by March 1, 1999.

ADDRESSES: Requests for documents should be made by calling the City of Seattle at (206) 684–4144. Copies are also available for viewing or for partial or complete duplication at all King County and City of Seattle libraries and at four libraries on the University of Washington main campus, including the Fisheries and Oceanography Library, Forest Resources Library, Engineering Library, and at the Federal Publications desk of the Suzzallo Library. Comments should be mailed to Seattle Public Utilities, P.O. Box 21105, Seattle, Washington 98111–3105. Requests for information on the draft Habitat Conservation Plan should be directed to Jim Erckmann, Project Manager. Requests for information on the draft Environmental Assessment should be directed to Jim Freeman, Senior Watershed Planner. Both can be contacted at Seattle Public Utilities, 19901 Cedar Falls Road SE., North Bend, Washington, 98045 (telephone: 206/233–1512; facsimile: 206/233–1527). Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling 206/233–1512.

FOR FURTHER INFORMATION CONTACT: Brian Bogaczyk, Project Biologist, Fish and Wildlife Service, 510 Desmond Drive, SE., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–5824; facsimile: 360/534–9331), and Matt Longenbaugh, Project Biologist, National Marine Fisheries Service, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–7761; facsimile: 360/753–9517). The Habitat Conservation Plan, Implementation Agreement, and the Environmental Assessment are also available for inspection at the preceding Service office addresses.

SUPPLEMENTARY INFORMATION: For background information about this permit application refer to the previously published **Federal Register** documents (63 FR 68468, December 11, 1998; and 64 FR 480, January 5, 1999).

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR parts 1500 through 1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, and the National Environmental Policy Act of 1969, as amended.

Dated: February 4, 1999.

David Wesley,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: February 4, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–3243 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010599C]

Marine Mammals; File No. 519–1469–00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Jeffrey D. Goodyear, Department of Zoology, University of British Columbia, 6270 University Boulevard, Vancouver, British Columbia, Canada V6T 1Z4, has been issued a permit to take gray whales, and various other cetaceans and pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705,

Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On August 17, 1998, notice was published in the **Federal Register** (63 FR 43915) that a request for a scientific research permit to take gray whales and harass various cetacean and pinniped species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 3, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–3150 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 980212036–9040–04]

Enhancement of the .us Domain Space, Notification of Public Meeting

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Notification is hereby given that the National Telecommunications and Information Administration (NTIA) will hold a public meeting to explore the future administration and management of the .us domain name space. The meeting is scheduled to occur on the dates and times described below. All times noted are eastern standard time. Attendees should complete and submit the meeting pre-registration form located at *http://www.ntia.doc.gov*. The meeting is open to the public and seating at the meeting will be available on a first-come, first-served basis. It is strongly recommended that participants review ''Request for Comments on the Enhancement of the .us Domain Space,'' 63 Fed. Reg. 41547 (1988) (also posted at http://www.ntia.doc.gov/ntiahome/domainname/usrfc/dotusrfc.htm), and the public comments received in response to the RFC. These comments can be viewed at *http://www.ntia.doc.gov*. The agenda will proceed through presentations and panel/roundtable discussions. The public will be afforded an opportunity to participate through question and answer/open discussion periods as time permits.

DATES: March 9, 1999, 10:00 am to 4:30 pm.

ADDRESSES: The meeting will be held at the Department of Commerce, Room 4830, 14th and Constitution Avenue, NW, Washington, DC. Attendees should use the Main Entrance on 14th Street. To facilitate entry please have a picture ID available and/or a U.S. Government building pass if applicable ready upon arrival.

FOR FURTHER INFORMATION CONTACT:

General: Karen Rose, NTIA/OIA, (202) 482–1866. More detailed information regarding the agenda and other aspects of the meeting will be made available and updated periodically at http://www.ntia.doc.gov. The pre-registration form will also be made available at this address.

Media Inquiries: Please contact the NTIA Office of Public Affairs, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: On August 4, 1998, NTIA published ''Request for Comments on the Enhancement of the .us Domain Space,'' 63 Fed. Reg. 41547 (1988) (also posted at http://www.ntia.doc.gov/ntiahome/domainname/usrfc/dotusrfc.htm). The .us domain is currently administered by the Information Sciences Institute at the University of Southern California. The RFC sought comments regarding the future administration and management of the .us domain space. That comment period was extend on August 24 to afford interested parties a full opportunity to address the issues on which NTIA solicited public comment. See 63 Fed. Reg. 45800 (1998).

Purpose: The purpose of the meeting is to discuss the future management and administration of the .us domain, including how .us could be optimized or enhanced to encourage increased utilization of the domain space.

Agenda: The tentative agenda is as follows:

1. .us Today: Overview of current management and structure of the .us domain space.

2. .us Issues and Opportunities: A discussion of the issues and opportunities facing the current and future management of the .us space, with a view toward identifying possible solutions. Questions and issues posed in the .us RFC will be explored as well as other issues and opportunities as identified during the discussion.

3. Other Systems: An overview of the manner in which other country code top level domains (ccTLDs) are administered. What are the current practices and issues in the management of other ccTLDs and to what extent such practices inform the utilization, design, and management of .us?

4. .us RFC Proposals: Specific proposals with respect to administering the .us domain name system submitted in response to the .us RFC will be discussed focusing on how these proposed models function to address the issues and opportunities associated with the .us domain space.

5. Going Forward: A discussion on the next steps for the management and administration of the .us space. We will attempt to summarize the issues, opportunities, and possible solutions identified throughout the day and focus on the possible elements, policies or other solutions that could be implemented as part of future .us administration and management. As part of this item, the feasibility of issuing a Request for Proposals (RFP) for .us management and administration will be discussed.

The agenda is subject to change. An updated, more detailed agenda will be made prior to the meeting. Please check the NTIA website at http://www.nita.doc.gov.

Dated: February 5, 1999.

Kathy Smith,

Acting Chief Counsel.

[FR Doc. 99–3203 Filed 2–9–99; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0073]

Proposed Collection; Comment Request Entitled Advance Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Advance Payments. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 12, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (see FAR 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *1*; total annual responses, *500*; preparation hours per response, *1*; and total response burden hours, *500*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

Dated: February 4, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–3151 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074]

Proposed Collection; Comment Request Entitled Limitation of Costs/ Funds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Limitation of Costs/Funds. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 12, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *50,000* responses per respondent, *1*; total annual responses, *50,000*; preparation hours per response, *.5*; and total response burden hours, *25,000*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds, in all correspondence.

Dated: February 4, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–3152 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0094]

Proposed Collection; Comment Request Entitled Debarment and Suspension

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Debarment and Suspension. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 12, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm or its principals have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. This certification would require the disclosure of this information.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per subcontractor and *5* minutes per prime contractor per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,100,000*; responses per respondent, *1*; total annual responses, *1,100,000*; preparation hours per response, *30* minutes/subcontractor, *5* minutes/prime contractor; and total response burden hours, *91,667*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

Dated: February 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–3153 Filed 2–9–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology (AFIT) Subcommittee of the Air University Board of Visitors Meeting

The AFIT Subcommittee of the Air University Board of Visitors will hold an open meeting (five seats available) on March 28–30, 1999, with the first business session beginning at 8:30 a.m. in the Commandant's Conference Room, Building 125, Wright Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Ms. Beverly Houtz in the Directorate of Plans and Operations, Air Force Institute of Technology, (937) 255–5760.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–3172 Filed 2–9–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting With the Community College of the Air Force Board of Visitors To Review and Discuss Academic Policies and Issues Relative to the Operation of the College

AGENCY: Air Force Department, DOD.

ACTION: Notice of meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the College. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Cornel Taite, Designated Federal Officer for the Board, at the address below no later than 4 p.m. on April 22, 1999. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and include an outline of the issues to be addressed. A minimum of 35 copies of the presentation materials must be provided to First Lieutenant Cornel Taite no later than 3 days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Cornel Taite on a 3½″ computer disc in Microsoft PowerPoint format no later than 4 p.m. on April 22, 1999 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Wednesday, May 5, 1999 at 8:00 a.m. in the First Floor Conference Room, Community College of the Air Force, Building 836, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Cornel Taite, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail at cotaite@max1.au.af.mil.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–3169 Filed 2–9–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1999 Spring General Board Meeting in support of the HQ USAF Scientific Advisory Board will meet at Colorado Springs, CO on March 24–26, 1999 from 8 a.m. to 5 p.m.

The purpose of the meeting is to complement the ''data gathering'' phase of ongoing study efforts.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–3170 Filed 2–9–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Intelligence and Vigilance Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Washington, DC on March 8–10, 1999 from 8 a.m. to 5 p.m.

The purpose of the meeting is to gather information and receive briefings in support of the USAF Scientific Advisory Board's 1999 Summer Study.

The meeting will be closed to the public in accordance with section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–3171 Filed 2–9–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF THE DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: February 23 & 24 1999.

Time of Meeting: 0800–1800 (both days).

Place: Arlington, VA.

Agenda: The Army Science Board's (ASB) Summer Study panel on ''Full Spectrum Protection for 2025–Era Ground Platforms'' will meet for briefings and discussions. This meeting will open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and manner permitted by the committee. The classified portion of this meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact LTC Henry Franke at (757) 727–3758.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 99–3173 Filed 2–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 15, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 12, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 5, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program: Loan Deferment and Permanent Total Disability Cancellation Request Documents.

Abstract: These documents will serve as the means of collecting the information needed by the Department of Education to determine whether a Direct Loan borrower qualifies for a loan discharge based on permanent total disability or a loan deferment.

Additional Information: A proposed information collection is presented that would require the Department to consult with the Department of Veterans Affairs to establish a means by which their physicians will be permitted to certify that disabled veterans may be eligible for these benefits.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 259,000.

Burden Hours: 51,800.

[FR Doc. 99–3226 Filed 2–9–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 12, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 5, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Goals 2000 Parental Assistance Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions

Reporting and Recordkeeping Hour Burden: Responses: 58.

Burden Hours: 226.

Abstract: Recipients of grants under the Parental Assistance Program must submit an annual performance report that establishes substantial progress toward meeting their project objective to receive a continuation award.

[FR Doc. 99–3227 Filed 2–9–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.120A]

Revision of Application Availability Date for the Fiscal Year (FY) 1999 Grant Competition for the Minority Science and Engineering Improvement Program

On December 29, 1998, a notice was published inviting applications for new awards for FY 1999 under the Minority Science and Engineering Improvement Program (63 FR 71625–71626). The purpose of this notice is to revise the application availability date. This action is taken as a result of the unavailability of applications until January 15, 1999. The closing date for applications, March 5, 1999, will remain the same.

For Applications or Information Contact: Mr. Kenneth Waters or Ms. Deborah Newkirk, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 400 Maryland Avenue, SW, (Portals CY–80) Washington, DC 20202–5335. Telephone: 202/708–9926 or by Internet to *deborah__newkirk@ed.gov*. The government encourages applicants to FAX requests for applications to 202/401–7532. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800/877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audiotape, or computer (diskette) on request to the contact persons listed in the preceding paragraph. However, the department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access To This Document

Anyone may view this document, as well as other Department of Education documents published in the **Federal Register** in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888/293–6498.

Program Authority: Section 301(a)(b) and 307 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1581.

Dated: February 4, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–3195 Filed 2–9–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.015]

Title VI, National Resource Centers (NRC) and Foreign Language and Area Studies (FLAS) Fellowships Programs; Notice of Technical Assistance Workshop for Fiscal year (FY) 2000 Grant Applications

SUMMARY: The Secretary announces a technical assistance workshop to assist institutions of higher education in preparing grant applications for the Title VI, National Resource Centers (NRC) and Foreign Language and Area Studies (FLAS) Fellowships Programs fiscal year (FY) 2000 grant competition.

DATE AND TIME: The technical assistance workshop will be held on Monday and Tuesday, March 8–9, 1999, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The Radisson Plaza Hotel, 5000 Seminary Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Gibbs, Ed McDermott, or Karla Ver Bryck Block, U.S. Department of Education, 400 Maryland Avenue, S.W., Suite 600–B, Portals Building, Washington, D.C. 20202–5331. Telephone (202) 401–9798. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339 between 8:00 a.m. and 5:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, listening device, or materials in an alternate format), should notify the contact persons listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to accommodate requests received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530, or toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511, or toll free, at 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1122.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–3196 Filed 2–9–99; 8:45 am]

BILLING CODE 400–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–456–003, OA98–6–002, and OA97–276–002]

Baltimore Gas and Electric Company, First Energy Corp., Centerior Energy Corporation, Cleveland Electric Illuminating Co., Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, and Portland General Electric Company; Notice of Filing

February 4, 1999.

Take notice that on November 12, 1998, Portland General Electric Company filed revised standards of conduct in response to the Commission's October 14, 1998 Order on Standards of Conduct. 85 FERC ¶ 61,068 (1998).

The October 14, 1998 Order accepted the standards of conduct submitted by Baltimore Gas and Electric Company and First Energy Corporation on behalf of Centerior Energy Corporation, Cleveland Electric Illuminating Co., Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company, but required them to revise their organizational charts and job descriptions posted on OASIS within 30 days. These companies did not make any filings with the Commission (nor were they required to). However, by this notice, the public is invited to intervene, protest or comment regarding their revised organizational charts and job descriptions.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3179 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1413–000]

Central Main Power Company; Notice of Filing

February 4, 1999.

Take notice that on January 15, 1999, Central Maine Power Company (CMP), tendered for filing its response to the Commission's December 16, 1998, Order regarding the North American Electric Reliability Council Transmission Loading Relief (TLR) Procedures.

CMP states that it will not be making a filing because CMP does not conduct interchange transactions it therefore has

no need for TLR or parallel flow procedures.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3177 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP97–287–029]

February 4, 1999.

Take notice that on February 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective February 1, 1999:

Twenty-Second Revised Sheet No. 30
Thirteenth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3216 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–7–000]

Jefferson Island Storage & HUB L.L.C.; Notice of Petition for Rate Approval

February 4, 1999.

Take notice that on January 15, 1999, Jefferson Island Storage & Hub L.L.C. (Jefferson Island), formerly known as Equitable Storage Company, located at 5555 San Felipe, Suite 2000, Houston, Texas 77079, filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, its current maximum system-wide rate of $0.0800 per MMBtu, plus ots current two-percent in-kind fuel reimbursement when compression is required, for interruptible transportation services being rendered pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Jefferson Island's petition states that it is an intrastate natural gas pipeline company within the meaning of Section 2(16) of the NGPA, and was formed primarily to own and operate storage and pipeline facilities. The pipeline consists of approximately 14.6 miles of pipeline, located in the State of Louisiana, more specifically in Iberia and Vermilion Parishes, Louisiana, and connects to the Jefferson Island Underground Gas Storage and Interchange Facility™ with several intrastate and interstate natural gas pipelines.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed with the Secretary of the Commission on or before February 19, 1999. This petition for rate approval is on file with the Commission and is available for public inspection at the Commission's Public Reference Office.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3214 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1690–000]

Maine Electric Power Company; Notice of Filing

February 4, 1999.

Take notice that on January 15, 1999, Maine Electric Power Company (MEPCO) tendered for filing its response to the Commission's December 16, 1998, Order regarding the North American Electric Reliability Council Transmission Loading Relief (TLR) Procedures.

MEPCO states that it will not be making a filing because MEPCO uses neither the TLR procedures nor an alternative procedure for parallel flows. Instead MEPCO follows transmission curtailment and priority provisions that are already contained in its open access tariff.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3178 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–150–001]

NorAm Gas Transmission Company; Notice of Amendment of Request Under Blanket Authorization

February 4, 1999.

Take notice that on January 27, 1999, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. C99–150–001 an amendment to the pending request filed on January 12, 1999, in Docket No. CP99–150–000, to reflect changes in the facilities originally proposed, under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposed in its original request to (1) abandon a 6-inch tap and relocate the existing skid mounted meter station located on Line LM–2 to a new location on Line BT–1; and (2) construct and operate a 2-inch tap on Line BT–1 and 380 feet of 4-inch diameter pipe (Line BT–20) to continue to provide reliable service to Reynolds Metals Company (Reynolds).

NGT states that subsequent to the original application that was noticed on January 19, 1999, Reynolds has requested that NGT construct a 4-inch tap on Line BT–1 and 380 feet of 6-inch diameter pipe (Line BT–20). NGT states the remainder of the application remains unchanged.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3210 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–036]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 4, 1999.

Take notice that on February 1, 1999, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective February 1, 1999:

Sixth Revised Sheet No. 7E.2
Fifth Revised Sheet No. 7E.3

NGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3215 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 935, 2071, 2111, and 2213]

PacificCorp (Public Utility District No. 1 of Cowlitz County); Notice of Request To Use Alternative Procedures in Filing License Applications, Defer Action on a Future License Application, and Accelerate a License Expiration Date

February 4, 1999.

By letters dated January 21, 1999, PacifiCorp and Public Utility District No. 1 of Cowlitz County (licensees) have asked to use an alternative procedure in filing applications for new licenses for PacifiCorp's Merwin Project No. 935, Yale Project No. 2071, Swift No. 1 Project No. 2111, and Cowlitz PUD's Swift No. 2 Project No. 2213. The projects are located in sequence on the North Fork Lewis River in Cowlitz, Clark, and Skamania Counties, Washington. License applications are due to be filed on: April 30, 1999 for the Yale Project; April 30, 2004, for the Swift No. 1 and No. 2 Projects; and December 11, 2007, for the Merwin Project.

The licensees are proposing to consolidate the relicensing of these projects under a single process which would involve accelerating the license expiration for the Merwin Project to April 30, 2006, and delaying action on the Yale Project application. An applicant-prepared environmental assessment would be filed on all four projects by April 30, 2004, when the Swift No. 1 and No. 2 applications are due.

The licensees have demonstrated that they've made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and have submitted a communication protocol governing how participants in the proposed process may communicate with each other. The licensees have also submitted several letters of support for their proposal, and it appears that the use of an alternative procedure may be appropriate in this case.

The purpose of this notice is to invite comments on the licensees' request to use alternative procedures, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[1] We are also interested in comments on the proposal to delay action on the Yale license application, and accelerate the termination date for the Merwin Project license. Additional notices seeking comments on specific project proposals, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here would combine the prefiling consultation process with the environmental review process, allowing the applicants to file an applicant-prepared Preliminary Draft Environmental Assessment (PDEA) in lieu of Exhibit E of the license applications. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative

[1] 81 FERC 61,103 (1997).

procedures are intended to reduce redundancies in the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedures can be tailored to the particular project under consideration.

Alternative Procedures and the Lewis River Projects

The licensees intend on preparing a PDEA for the projects to: consolidate and streamline the licensing process; provide for the early identification of environmental impacts; take into account cumulative project impacts and evaluate alternatives for addressing those impacts; and promote early, comprehensive settlement discussions. The licensees propose a watershed approach to studies of potential cumulative project-related environmental effects in the Lewis River Basin. The watershed studies would serve as the scientific basis for the PDEA, including prefiling consultation, and would facilitate scoping of environmental issues under the National Environmental Policy Act (NEPA). The studies would also provide scientific data and information to support the licensees' applications for individual new licenses for the projects and to facilitate comprehensive settlement negotiations.

The licensees plan on submitting a PDEA in lieu of Exhibit E in the project license applications. Each application would include a common multi-project PDEA adapted, as necessary, to each individual application.

Yale License Application and Interim Measures

PacifiCorp intends on submitting a license application for the Yale Project when it is due on April 30, 1999. The pre-filing consultation process for the Yale Project is currently at the draft application stage. The draft application calls for the near-term implementation of several environmental measures that are also listed in PacifiCorp's request to use the alternative procedures (Attachment 1). PacifiCorp proposes to implement those measures, and to consider reasonable proposals for other resource enhancement measures (i.e., measures to be implemented during the current license period and any subsequent annual licenses before issuance of a new project license) that relate to the Yale relicensing and do not ''prejudge'' the results of the watershed studies or comprehensive settlement discussions.

Merwin License Term

PacifiCorp's request includes an application to amend the Merwin Project license to accelerate the license expiration date from December 11, 2009 to April 30, 2006 to coordinate the Merwin license expiration with the expiration of the Swift No. 1 and No. 2 Project licenses. Therefore, applications for new licenses on all three projects would be due on April 30, 2004. PacifiCorp's application to accelerate the Merwin license is predicated on: (1) the Commission approving the licensees' request to use the alternative procedures; (2) the Commission deferring action on the Yale application until the Merwin, Swift No. 1 and Swift No. 2 applications are filed; and (3) the effective date of all four new licenses being no sooner than May 1, 2006.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on the licensees' proposal to use the alternative procedures to file applications for the Yale, Swift No. 1, Swift No. 2, and Merwin Projects, including the request to delay action on the Yale application, and accelerate the termination date for the Merwin license. The licensees request may be viewed on the web at www.ferc.fed.us. Call 202–208–2222 for assistance.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project names and numbers (Yale Hydroelectric Project, No. 2071, Swift No. 1 Hydroelectric Project, No. 2111, Swift No. 2 Hydroelectric Project, No. 2213, and the Merwin Hydroelectric Project, No. 935). For further information, please contact Vince Yearick at (202) 219–3073 or e-mail at vince.yearick@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3212 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–180–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

February 4, 1999.

Take notice that on January 28, 1999, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–180–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by reclaim facilities used for the receipt of transportation gas from Williams Field Services (WFS) at the Gate interconnect, located in Beaver County, Oklahoma, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams proposes to abandon a meter setting and appurtenant facilities used for the receipt of transportation gas from WFS at the Gate interconnect, located in Section 28, Township 5 North, Range 28 ECM, Beaver County, Oklahoma. The facilities were originally installed in 1995 to receive transportation gas from WFS.

Williams asserts that this setting has been blinded for some time and that WFS has agreed to the reclaim of facilities. Williams states that the cost to reclaim the meter setting and appurtenant facilities is $1,175.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3211 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Eliminate the Bulletin Board System

February 3, 1999.

The Federal Energy Regulatory Commission (the Commission), hereby gives notice that it intends to eliminate the Commission's Bulletin Board System (BBS) effective on or about April 9, 1999. The BBS currently consists of four parts, the Commission Issuance Posting System (CIPS), the Electric Power Data (EPD), the FERC Form No. 1 Forum, and the Gas Pipeline Data (GPD). As explained further below, the majority of the data from the BBS has been relocated to the Commission's internet site at http://www.ferc.fed.us. The Commission does not plan to move the remainder of the data.

With the advent of the Commission's internet site, use of the BBS has dropped dramatically. Registered users have declined from over 3000 to 395 in a continuing downward trend. Calls per day to the BBS have dropped from a high of 867 per day to less than 100 a day. This contrasts with the average number of user visits per day to the Commission's website of approximately 1590. The software used to operate the BBS is not year 2000 compliant. In view of the increasing popularity of the Commission's website and decline in use of the BBS, the Commission has decided to reduce duplication and costs by discontinuing the BBS.

The Commission will move files of continuing interest to the public from the BBS to the Commission's internet site. Specifically, the data being moved to the Commission's Internet site is listed in Appendix A of this notice and described below.

The internet version of CIPS, CIPS on the Web, became available on November 10, 1997. Based on input from users of CIPS on the Web, an upgrade was completed on January 6, 1999. The upgrade added new features such as the ability to do a combined search; to download multiple files; to find files loaded since the last time the user accessed the system; and improved Help screens. These new features provide much of the functionality available on CIPS.

All data available on the Electric Power Data portion of the BBS has been to the Commission's internet site. This data may be found on the portion of the internet site dedicated to the electric industry. The Form No. 1 data and submission software found in the FERC No. 1 may also be found at this location.

For this 1998 report to be filed in April 1999, the Commission is upgrading the submission software it provides electric utilities to complete Form No. 1. Details of this upgrade were provided in the notice issued in Docket No. RM93–20–000 on January 13, 1999 (64 Fed. Reg. 3074). The new submission software requires the data to be submitted in a new data format, a format consistent with the Commission's Form No. 1 database. To provide consistency and ease of use, the Commission plans to make available for viewing and printing the Form No. 1 data in its database via the Internet. Upon availability of the database, Form No. 1 data will no longer be made available by the Commission in the old format. The Commission does not have plans to maintain the old submission software used to view and print the historical data in the old format. Until the Form No. 1 database is available through the Internet, the data and submission software historically available for download from the BBS will be available on the Internet.

The majority of the data available on the GPD has been relocated to the Commission's internet site. Form No. 8, the Underground Gas Storage Report, will not be moved from the BBS to the internet site. By Order No. 581,[1] the Commission discontinued Form No. 8. No Form No. 8 data was filed after October 1995. While the electronic data collected in the form will not be available through the website, a paper version of the forms may be ordered from the Records Information Management System (RIMS). RIMS can be accessed from the Commission's website.

An area was established within the GPD for communications relating to the work being done by the working groups established pursuant to the orders issued in Docket Nos. RM95–3–000 [2] and RM95–4–000.[3] The tasks set for these working groups have been completed. The files found in this area will not be transferred to the Internet.

Some of the files which relate to reporting periods pre-dating January 1, 1996 relating to Form 2 and Form 11 will not be transferred to the Internet. These files are now obsolete, no longer supported, or in insufficient demand. These include the print software, user manual, edit check software, company contacts, and data in the SAS format.[4]

Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues in this notice. The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. [insert date 30 days after publication in the **Federal Register**]. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and should refer to Public Access to the Commission's Bulletin Board System.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Public Access to Commission's Bulletin Board System; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be sent to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify ''Public Access to Commission's Bulletin Board System'' In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at

[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 Fed. Reg. 53,019 (October 11, 1995), 72 FERC ¶ 61,301 (1995), order on reh'g, Order No. 581–A, 74 FERC ¶ 61,223 (1996).

[2] Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, Order No. 582, 60 Fed. Reg. 52,960 (October 11, 1995), 72 FERC ¶ 61,300 (1995), order on reh'g, Order No. 582–1, 61 Fed. Reg. 9613 (March 11, 1996), 74 FERC ¶ 61,224 (1996).

[3] *See,* n.1.

[4] SAS format is a proprietary format used by SAS, an integrated computer applications system, formerly used by the Commission to process selected electronic filings.

(202) 501–8145 or by e-mail at brooks.carter@ferc.fed.us.

Comments should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. RIMS user assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–3217 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–32–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. EL99–32–000]

Take notice that on January 27, 1999, Florida Power & Light Company (FPL) filed a petition for declaratory order. The petition asks the Commission to issue a declaratory order that clarifies (1) the minimum time period for which a resource can be designated as a network service by a customers, and the advance notice time for a designation; and (2) that a particular resource that Seminole Electric Cooperative (Seminole) has designated as a network resource does not qualify as a network resource.

Comment date: February 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Power Providers Inc., Morgan Stanley Capital Group Inc., DTE Energy Trading, Inc., Fina Energy Services Company, Engage Energy US, L.P., AC Power Corporation, PacifiCorp Power Marketing, Inc., British Columbia Power Exchange Corporation, and Avista Energy, Inc.

[Docket Nos. ER96–2303–010, ER94–1384–022, ER97–3834–005, ER97–2413–007, ER97–654–008, ER97–2867–006, ER95–1096–016, ER97–4024–007, and ER96–2408–011].

Take notice that on January 27, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. Cargill-Alliant, LLC, Exact Power Co., Inc., Union Electric Development Corporation, Enron Energy Services, Inc., and Coral Power, L.L.C.

[Docket Nos. ER97–4273–006, ER97–382–008, ER97–3663–006, ER98–13–008, and ER96–25–014]

Take notice that on January 28, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Con Edison Energy, Inc., The Utility-Trade Corp., TransCanada Power, Utility-2000 Energy Corp., Sunoco Power Marketing, L.L.C., Competitive Utility Services, Corp., Edison Source, Sempra Energy Trading Corp., Unitil Resources, Inc., Sonat Power Marketing Inc., Sonat Power Marketing Inc., Conoco Power Marketing Inc., and PG&E Energy Services, Energy Trading Corporation

[Docket No. ER98–2491–002, ER95–1382–016, ER96–692–016, ER95–187–016, ER97–870–008, ER97–1932–008, ER96–2150–012, ER94–1691–021, ER97–2462–007, ER95–1050–016, ER96–2343–010, ER95–1441–016, and ER95–1614–018]

Take notice that on January 28, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. ISO New England Inc.

[Docket No. ER98–3554–001]

Take notice that on January 29, 1999, ISO New England Inc., tendered for filing revisions to its Tariff for Transmission Dispatch and Power Administration Services in compliance with Commission's December 30, 1998 Order in this Docket.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. NYSEG Solutions, Inc.

[Docket No. ER99–220–001]

Take notice that on January 26, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. EME Homer City Generation L.P.

[Docket No. ER99–666–001]

Take notice that on January 28, 1999, EME Homer City Generation L.P. (EMEHCG), tendered for filing a revised Code of Conduct made in compliance with the Commission's order issued on January 13, 1999, in the above referenced docket.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. SEI Wisconsin, L.L.C.

[Docket No. ER99–669–001]

Take notice that on January 29, 1999, SEI Wisconsin, L.L.C., tendered for filing revised codes of conduct in compliance with the order issued by the Federal Energy Regulatory Commission on January 14, 1999, in the above-captioned docket. SEI Wisconsin L.L.C., 86 FERC ¶ 61,028 (1999).

Copies of this filing were served on all parties designated on the official service list.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. California Power Exchange Corporation

[Docket No. ER99–1426–000]

Take notice that on December 23, 1998, the California Power Exchange Corporation (CalPX) filed an informational filing. This filing shows the CalPX's budgeted costs for calendar year 1999 and the resulting charges derived from the formula rates contained in Schedule 1 of the CalPX's FERC Electric Service Tariff.

Comment date: February 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–1470–000]

Take notice that on January 26, 1999, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2 for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER99–1471–000]

On January 26, 1999 Florida Power & Light Company (FPL) filed its quarterly report for transactions during the calendar quarter ending December 31, 1998 under FPL's Market-Based Rate Tariff.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Westchester RESCO Company, L.P.

[Docket No. ER99–1472–000]

Take notice that on January 26, 1999, Westchester RESCO Company, L.P. filed a summary of activity under its market based rates tariff for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER99–1485–000]

Take notice that on January 27, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for its quarterly report for short-term transactions under Rate Schedule SP.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER99–1507–000]

Take notice that on January 27, 1999, Potomac Electric Power Company tendered for filing its Transaction Report for the quarter ending December 31, 1998, in compliance with Commission order issued October 2, 1998 in Docket No. ER98–4138–000.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Peco Energy Company

[Docket No. ER99–1508–000]

Take notice that on January 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, an Agreement dated December 23, 1998 with Allegheny Electric Cooperative, Inc. (Allegheny Electric Cooperative), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Electric Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER99–1509–000]

Take notice that on January 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, an Agreement dated December 23, 1998 with Allegheny Electric Cooperative, Inc. (Allegheny Electric Cooperative) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Electric Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER99–1510–000]

Take notice that on January 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, an Agreement dated December 23, 1998 with Allegheny Electric Cooperative, Inc. (Allegheny Electric Cooperative) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Electric Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER99–1513–000]

Take notice that on January 28, 1999, Niagara Mohawk tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Montaup Electric Company. This Transmission Service Agreement specifies that Montaup Electric Company has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Montaup Electric Company to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Montaup Electric Company as the parties may mutually agree.

Niagara Mohawk requests an effective date of January 22, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Montaup Electric Company.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

[Docket No. ER99–1514–000]

Take notice that on January 28, 1999, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, FirstEnergy), tendered for filing revised tariff sheets to amend the reserve

requirements applicable to the ancillary services offered in Schedules 3, 5 and 6 of FirstEnergy's open access transmission tariff (Tariff), in light of changes in reserve requirements approved in June 1998 by the Executive Board of the East Central Area Reliability Coordination Agreement (ECAR), First Energy's reliability council.

FirstEnergy requests that these tariff sheets be made effective as of the date the Commission issues an order approving FirstEnergy's September 25, 1998, Offer of Settlement in Docket Nos. ER97–412–000, ER97–413–000 and ER98–1932–000, which has been certified to the Commission by the presiding administrative law judge in those proceedings and awaits Commission approval.

FirstEnergy states that copies of its filing have been served on the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission and all customers under FirstEnergy's Tariff.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–1515–000]

Take notice that on January 28, 1999, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Constellation Energy Source, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cleco Corporation, Transmission Services

[Docket No. ER99–1516–000]

Take notice that on January 28, 1999, Cleco Corporation, Transmission Services (CLECO), tendered for filing a service agreement under which Cleco Corporation, Transmission Services will provide Long Term Firm point-to-point transmission service to Cleco Corporation, Merchant Energy Services under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Cleco Corporation, Merchant Energy Services.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Ameren Services Company

[Docket No. ER99–1520–000]

Take notice that on January 28, 1999, Ameren Service Company tendered for filing its quarterly report of sale transactions for the quarter ending December 31, 1998, pursuant to the Commission's order issued August 3, 1998 in Docket No. ER98–3285–000.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Bangor Hydro-Electric Company

[Docket No. ER99–1522–000]

Take notice that on January 28, 1999, Bangor Hydro-Electric Company (Bangor), tendered for filing pursuant to Rule 205 of the Commission's rules of practice and procedure, 18 CFR 385.205, an application for an order accepting its market-based rate schedule.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER99–1523–000]

Take notice that on January 28, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and the City Water and Light Plant of the City of Jonesboro, Arkansas.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Cataula Generation Company, L.P.

[Docket No. ER99–1534–000]

Take notice that on January 28, 1999, Cataula Generating Company, L.P. tendered for filing its Transaction Report for Quarter ending December 31, 1998, in compliance with Commission Order issued May 29, 1997 in Docket No. ER97–1686–000.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. PJM Interconnection, L.L.C.

[Docket No. ER99–1550–000]

Take notice that on January 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, LLC to enable customers to reserve monthly firm point-to-point service up to 17 months in advance of service, to specify times for reserving monthly point-to-point service, to modify default provisions, and to clarify termination and billing provisions.

Copies of this filing were served upon all PJM members and all state electric utility regulatory commissions in the PJM control area.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Company

[Docket No. ER99–1555–000]

Take notice that on January 29, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Cargill-Alliant, LLC. This umbrella service agreement provides for Southwestern's sale and Cargill-Alliant's purchase of power at market-based rates pursuant to Southwestern's market-based sales tariff.

Southwestern requests that this service agreement become effective on January 13, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Company

[Docket No. ER99–1559–000]

Take notice that on January 29, 1999, New England Power Company (NEP), tendered for filing an Amended Network Integration Transmission Service Agreement between NEP and Massachusetts Bay Transportation Authority under NEP's FERC Electric Tariff, Original Volume No. 9.

NEP requests waiver of the Commission's 60-day notice requirements and requests that this filing be made effective January 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. New England Power Pool

[Docket No. ER99–1560–000]

Take notice that on January 29, 1999, the New England Power Pool (NEPOOL or Pool), Executive Committee tendered for filing a request for termination of membership in NEPOOL, with an effective date of February 1, 1999, of EnergyVision. Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by EnergyVision. The New England Power Pool Agreement, as amended (the

NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of EnergyVision with an effective date of February 1, 1999, would relieve this entity, at EnergyVision's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove EnergyVision from membership in the Pool.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Pool

[Docket No. ER99–1561–000]

Take notice that on January 29, 1999, the New England Power Pool Executive Committee tender for filing for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by CinCap V, LLC (CinCap V). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of CinCap V's signature page would permit NEPOOL to expand its membership to include CinCap V. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make CinCap V a member in NEPOOL.

NEPOOL requests an effective date of February 1, 1999, for commencement of participation in NEPOOL by CinCap V.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Duquesne Light Company

[Docket No. ER99–1566–000]

Take notice that on January 29, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated January 1, 1999 with PECO Energy Co.—Power Team under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PECO Energy Co.—Power Team as a customer under the Tariff.

DLC requests an effective date of January 1, 1999, for the Service Agreement.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Rockingham Power, L.L.C.

[Docket No. ER99–1567–000]

Take notice that on January 29, 1999, Rockingham Power, L.L.C., tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to become effective as of the date that service commences at the Rockingham Power, L.L.C., Facility.

Rockingham Power, L.L.C., intends to sell electric power at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1, provides for the sale of electric energy and capacity at agreed prices.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Carolina Power & Light Company

[Docket No. ER99–1568–000]

Take notice that on January 29, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Columbia Energy Power Marketing Corporation. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of January 18, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. New England Power Company

[Docket No. ER99–1569–000]

Take notice that on January 29, 1999, New England Power Company (NEP), tendered amendments to its service agreements for Network Integration Transmission Service with Massachusetts Electric Company and Nantucket Electric Company, The Narragansett Electric Company and Granite State Electric Company. The service agreements are under NEP's Open Access FERC Electric Tariff, Original Volume No. 9.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Illinois Power Company

[Docket No. ER99–1571–000]

Take notice that on January 29, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Long Term Firm transmission service agreements under which Illinois Power Bulk Power Marketing will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Central Vermont Public Service Corporation and Connecticut Valley Electric Company Inc.

[Docket No. ER99–1572–000]

Take notice that on January 29, 1999, Central Vermont Public Service Corporation (CVPS)/Connecticut Valley Electric Company Inc. (CVEC), tendered for filing a signed Service Agreement For Network Integration Transmission Service, including a complete Specifications for Service page, and a signed Network Operating Agreement for service under Transmission Service Tariff No. 7 of CVPS/CVEC. The transmission service to be provided effective January 1, 1999 is over a specific portion of the transmission system of CVEC and replaces transmission service provided by CVEC under a transmission service agreement dated December 15, 1975.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Virginia Electric and Power Company

[Docket No. ER99–1573–000]

Take notice that on January 29, 1999, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing an unexecuted Long-Term Transaction Agreement between Virginia Power and the Town of Sharpsburg, North Carolina. Under the Transaction Agreement, Virginia Power will provide services to the Town of Sharpsburg, North Carolina under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff, Second Revised Volume No. 4, which was accepted by order of the Federal Energy Regulatory Commission dated August 13, 1998 in Docket No. ER98–3771–000. The Town of Sharpsburg, North Carolina is an Eligible Purchaser under the terms of the Tariff.

The Company requests waiver of notice for an effective date of December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Entergy Services, Inc.

[Docket No. ER99–1574–000]

Take notice that on January 29, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and the South Mississippi Electric Power Association.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Illinois Power Company

[Docket No. ER99–1575–000]

Take notice that on January 29, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Long Term Firm Transmission Service Agreements under which Illinois Power Bulk Power Marketing will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Baltimore Gas and Electric Company

[Docket No. ER99–1576–000]

Take notice that on January 29, 1999, Baltimore Gas and Electric Company (BGE), tendered for filing a Service Agreement with Tenaska Power Services Co., dated January 14, 1999, under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Tenaska Power Services Co., under the provisions of the Tariff.

BGE requests an effective date of January 14, 1999, for the Service Agreement.

BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. New England Power Company

[Docket No. ER99–1577–000]

Take notice that on January 29, 1999, New England Power Company (NEP), tendered for filing an amendment to Massachusetts Electric Company's service agreement under NEP's FERC Electric Tariff, Original Volume No. 1. The amendment would allow NEP to flow the proceeds from the sale of interruptible credits to Massachusetts Electric Company.

NEP requests an effective date of September 1, 1998, for the amendment.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Illinois Power Company

[Docket No. ER99–1578–000]

Take notice that on January 29, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Long Term Firm transmission service agreements under which Illinois Power Bulk Power Marketing will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. Detroit Edison Company

[Docket No. ER99–1579–000]

Take notice that on January 29, 1999, Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Cargill-Alliant, LLC, and between Detroit Edison and Tenaska Power Services Co.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

44. Detroit Edison Company

[Docket No. ER99–1580–000]

Take notice that on January 29, 1999, Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and Constellation Power Source, Inc., dated as of December 23, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

45. Entergy Services, Inc.

[Docket No. ER99–1581–000]

Take notice that on January 29, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Oglethorpe Power Corporation.

Entergy Services requests that the Transmission Service Agreement become effective as rate schedules no later than January 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

46. Public Service Electric and Gas Company

[Docket No. ER99–1582–000]

Take notice that on January 29, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Entergy Power Marketing Corp. (Entergy), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1998.

Copies of the filing have been served upon Entergy and the New Jersey Board of Public Utilities.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

47. Consumers Energy Company

[Docket No. ER99–1583–000]

Take notice that on January 29, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement with the Municipal Cooperative Coordinated Pool (MCCP) for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff, with an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the MCCP.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

48. Consumers Energy Company

[Docket No. ER99–1584–000]

Take notice that on January 29, 1999, Consumers Energy Company (Consumers), tendered for filing three transmission service agreements for Firm Point-to-Point Transmission Service (one with the City of Holland, Michigan Board of Public Works (Holland) and one with CMS Marketing, Services and Trading) and one service agreement for Non-Firm Point-to-Point Transmission Service with Holland. All three are pursuant to Consumers' Open Access Transmission Service Tariff filed on July 9, 1996.

The three service agreements all have effective dates of January 1, 1999.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Holland and CMS Marketing, Services and Trading.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

49. FirstEnergy System

[Docket No. ER99–1587–000]

Take notice that on January 29, 1999, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Columbia Energy Power Marketing Corporation, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under the Service Agreements is January 20, 1999, respectively, for the above mentioned Service Agreements in this filing.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

50. PP&L, Inc.

[Docket No. ER99–1598–000]

Take notice that on January 29, 1999, PP&L, Inc. (PP&L), tendered for filing with the Federal Energy Regulatory Commission a tariff sheet for inclusion in the PJM Open Access Transmission Tariff (PJM Tariff). The tariff sheet supplements Attachment H–8 of the PJM Tariff and sets forth rates for transmission service to wholesale customers utilizing PP&L's facilities at primary voltage levels of 12 kV through 23 kV.

PP&L requests an effective date of February 1, 1999, for the tariff sheet.

PP&L states that a copy of this filing has been provided to the Pennsylvania Public Utility Commission, the PJM Office of Interconnection and the wholesale customers to which the rate in the tariff sheet may apply.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

51. California Independent System Operator Corporation

[Docket No. ER99–1621–000]

Take notice that on January 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and PacifiCorp Power Marketing, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on PacifiCorp Power Marketing, Inc., and the California Public Utilities Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

52. Louisville Gas and Electric Co./ Kentucky Utilities Company

[Docket No. ER99–1623–000]

Take notice that on January 29, 1999, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (Utilities), tendered for filing a petition for an order approving amendments to their joint market-based sales service rate schedule (Rate MBSS) that will allow the Utilities to make market-based sales of energy and capacity to certain power marketing affiliates, and confirming the continued applicability of the waivers previously granted to the Utilities.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

53. Commonwealth Edison Company

[Docket No. ER99–1624–000]

Take notice that on January 29, 1999, Commonwealth Edison Company (ComEd), tendered for filing a revised Firm Service Agreement with Wisconsin Electric Power Company (WEPCO), under the terms of ComEd's Open Access Transmission Tariff (OATT) to correct an error in one of the terms of the agreement.

ComEd requests an effective date of June 9, 1998, for the revised service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on WEPCO.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

54. Duquesne Light Company

[Docket No. ER99–1627–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with DTE Edison America, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

55. Duquesne Light Company

[Docket No. ER99–1628–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with PSEG Energy Technologies, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

56. Duquesne Light Company

[Docket No. ER99–1629–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Penn Power Energy, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

57. Duquesne Light Company

[Docket No. ER99–1630–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's

pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with The Energy Cooperative Association of Pennsylvania (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

58. Duquesne Light Company

[Docket No. ER99–1631–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Tenaska Power Services Co. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

59. Duquesne Light Company

[Docket No. ER99–1632–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with First Energy Services Corp., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

60. Duquesne Light Company

[Docket No. ER99–1633–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Horizon Energy Company d/b/a Exelon Energy (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

61. Duquesne Light Company

[Docket No. ER99–1634–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Southern Company Energy Marketing, L.P., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

62. Duquesne Light Company

[Docket No. ER99–1635–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with CMS Marketing, Services and Trading Company (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

63. Duquesne Light Company

[Docket No. ER99–1636–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Constellation Power Source, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

64. Duquesne Light Company

[Docket No. ER99–1637–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Commonwealth Edison Company (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

65. Portland General Electric Co.

[Docket No. ER99–1638–000]

Take notice that on January 29, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 11 (Docket No. ER98–3671–000), an executed Service Agreement for Service at Market-Based Rates with Enron Power Marketing, Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective January 4, 1999.

A copy of this filing was caused to be served upon Enron Power Marketing, Inc.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3176 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2612–005, Maine]

Central Maine Power Company; Notice of Availability of Final Environmental Assessment

February 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Flagstaff Project, located in Somerset and Franklin Counties, Maine, and has prepared a Final Environmental Assessment (FEA) for the project. On December 17, 1997, the Commission staff issued and distributed to all parties a Draft Environmental Assessment (DEA) on the project, and requested that comments be filed with the Commission within 30 days. Comments were filed and are addressed in the FEA. The FEA contains staff's analysis of the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The EA may also be viewed on the web at www.ferc.fed.us. Please call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–3213 Filed 2–9–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6300–7]

Notice of Final Decision To Grant Waste Management of Ohio, Inc. a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on a request to modify an exemption from the hazardous and solid waste amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Waste Management of Ohio, Inc. (WMO) of Oakbrook, Illinois. This modification allows WMO to inject two (2) RCRA-regulated hazardous wastes which will be banned from land disposal on November 4, 1998, as a result of regulations promulgated in the **Federal Register** (FR) on May 4, 1998 (63 FR 24596) and subsequently corrected on June 29, 1998 (63 FR 35147), into four Class I injection wells at the Vickery, Ohio facility. As required by 40 CFR Part 148, WMO has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by WMO's waste disposal facility located near Vickery, Ohio, for as long as the newly exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

BACKGROUND: Chemical Waste Management (CWM), the parent company of WMO, submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional RCRA wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1995, at 60 FR 29592 et seq. On April 9, 1996, CWM submitted a petition to again modify the exemption to allow 91 additional RCRA waste codes. Region 5 reviewed documents supporting the request and granted the modification on the exemption on June 24, 1996. A notice of the modification appeared on July 15, 1996, at 61 FR 36880 et seq. Again on May 13, 1997, CWM submitted a request to add 11 waste codes to the list. Region 5 reviewed the evidence submitted by CWM and granted the request. Notice of the approval appeared on August 12, 1997 (63 FR 43109).

On August 28, 1998, in response to the Land Disposal Restrictions Rule published in the **Federal Register** at 63 FR 24596 et seq. on May 4, 1998, which set a ban date of November 4, 1998, for a number of hazardous waste codes, WMO submitted a request to add two (2) additional RCRA waste codes, K140 and U408, to its exemption. The diffusion rate of the underlying chemical, 2,4,6-Tribromophenol (2,4,6-TBP), represented by the codes to be banned has not yet been considered by Region 5. Therefore, WMO has submitted information demonstrating that 2,4,6-TBP will not diffuse so rapidly as the chloride ion.

The newly-promulgated rule bans codes K140 and U408 from deep injection after November 4, 1998, unless WMO makes a no-migration demonstration. WMO made a no-migration demonstration in 1990. After careful review of the material submitted, the USEPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that waste streams containing 2,4,6-TBP will behave hydraulically and chemically like wastes for which WMO was granted its original exemption and will not migrate from the injection zone in hazardous concentrations within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

As a result of this action, WMO may continue to inject wastes bearing the codes K140 and U408 after wastes denoted by these codes are banned from land disposal on November 4, 1998. These waste codes are added to the waste codes which have been previously exempted. The current listing of all codes approved for injection follows.

LIST OF APPROVED RCRA WASTE CODES FOR INJECTION

D001	F009	K033	K112	P022	P082	P204	U052	U107	U158	U214	U386
D002	F010	K034	K113	P023	P084	P205	U053	U108	U159	U215	U387
D003	F011	K035	K114	P024	P085	U001	U055	U109	U160	U216	U389
D004	F012	K036	K115	P026	P087	U002	U056	U110	U161	U217	U390
D005	F019	K037	K116	P027	P088	U003	U057	U111	U162	U218	U391
D006	F020	K038	K117	P028	P089	U004	U058	U112	U163	U219	U392
D007	F021	K039	K118	P029	P092	U005	U059	U113	U164	U220	U393
D008	F022	K040	K123	P030	P093	U006	U060	U114	U165	U221	U394
D009	F023	K041	K124	P031	P094	U007	U061	U115	U166	U222	U395
D010	F024	K042	K125	P033	P095	U008	U062	U116	U167	U223	U396
D011	F025	K043	K126	P034	P096	U009	U063	U117	U168	U225	U400
D012	F026	K044	K131	P036	P097	U010	U064	U118	U169	U226	U401
D013	F027	K045	K132	P037	P098	U011	U066	U119	U170	U227	U402
D014	F028	K046	K136	P038	P099	U012	U067	U120	U171	U228	U403
D015	F032	K047	K140	P039	P101	U014	U068	U121	U172	U234	U404
D016	F034	K048	K141	P040	P102	U015	U069	U122	U173	U235	U407
D017	F035	K049	K142	P041	P103	U016	U070	U123	U174	U236	U408
D018	F037	K050	K143	P042	P104	U017	U071	U124	U176	U237	U409
D019	F038	K051	K144	P043	P105	U018	U072	U125	U177	U238	U410
D020	F039	K052	K145	P044	P106	U019	U073	U126	U178	U239	U411
D021	K001	K060	K147	P045	P108	U020	U074	U127	U179	U240	
D022	K002	K061	K148	P046	P109	U021	U075	U128	U180	U243	
D023	K003	K062	K149	P047	P110	U022	U076	U129	U181	U244	
D024	K004	K069	K150	P048	P111	U023	U077	U130	U182	U246	
D025	K005	K071	K151	P049	P112	U024	U078	U131	U183	U247	
D026	K006	K073	K156	P050	P113	U025	U079	U132	U184	U248	
D027	K007	K083	K157	P051	P114	U026	U080	U133	U185	U249	
D028	K008	K084	K158	P054	P115	U027	U081	U134	U186	U271	
D029	K009	K085	K159	P056	P116	U028	U082	U135	U187	U277	
D030	K010	K086	K160	P057	P118	U029	U083	U136	U188	U278	
D031	K011	K087	K161	P058	P119	U030	U084	U137	U189	U279	
D032	K013	K088	P001	P059	P120	U031	U085	U138	U190	U280	
D033	K014	K093	P002	P060	P121	U032	U086	U139	U191	U328	
D034	K015	K094	P003	P062	P122	U033	U087	U140	U192	U353	
D035	K016	K095	P004	P063	P123	U034	U088	U141	U193	U359	
D036	K017	K096	P005	P064	P127	U035	U089	U142	U194	U364	
D037	K018	K097	P006	P065	P128	U036	U090	U143	U196	U365	
D038	K019	K098	P007	P066	P185	U037	U091	U144	U197	U366	
D039	K020	K099	P008	P067	P188	U038	U092	U145	U200	U367	
D040	K021	K100	P009	P068	P189	U039	U093	U146	U201	U372	
D041	K022	K101	P010	P069	P190	U041	U094	U147	U202	U373	
D042	K023	K102	P011	P070	P191	U042	U095	U148	U203	U375	
D043	K024	K103	P012	P071	P192	U043	U096	U149	U204	U376	
F001	K025	K104	P013	P072	P194	U044	U097	U150	U205	U377	
F002	K026	K105	P014	P073	P196	U045	U098	U151	U206	U378	
F003	K027	K106	P015	P074	P197	U046	U099	U152	U207	U379	
F004	K028	K107	P016	P075	P198	U047	U101	U153	U208	U381	
F005	K029	K108	P017	P076	P199	U048	U102	U154	U209	U382	
F006	K030	K109	P018	P077	P201	U049	U103	U155	U210	U383	
F007	K031	K110	P020	P078	P202	U050	U105	U156	U211	U384	
F008	K032	K111	P021	P081	P203	U051	U106	U157	U213	U385	

CONDITIONS: General conditions of this exemption are found at 40 CFR Part 148. The exemption granted to WMO on August 7, 1990, included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied. The results of the work carried out under these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

DATES: This action is effective as of January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–2939. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

Tinka G. Hyde,

Acting Director, Water Division.

[FR Doc. 99–3253 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6232–2]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The CAC meeting will be held on Monday, March 1, 1999, from 10:00 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the River House Conference Facility, Stennis Space Center, MS 39529–6000 (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: Gloria Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Update on GMP Activities, Overview of GMP Projects, Discussion of Coastal Sewage Initiative and Coastal Modeling Efforts, Communications Committee Report, and Symposium Update. The meeting is open to the public.

Dated: February 4, 1999.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99–3258 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6300–8]

Notice of Postponement of Fourth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting postponement.

SUMMARY: Postponement of the Fourth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force which was announced in the **Federal Register** on December 23, 1998 (63 FR 71122).

STATUS: The Fourth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Task Force) scheduled for February 18 at the Holiday Inn Select Downtown Hotel in Memphis, TN is postponed until June 1999. To accommodate the public and other parties who are unable to change their plans, members of the Coordination Committee to the Task Force will be available for a general update and discussion session from 10:00 a.m. until 12:00 p.m. on February 18.

PURPOSE: The Task Force consisting of Federal, State, and Tribal members, leads efforts to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

CONTACT PERSON FOR MORE INFORMATION: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone (202) 260–7061; Internet: belefski.mary@epa.gov.

Dated: February 4, 1999.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 99–3251 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50851; FRL–6058–4]

Receipt of an Application for an Experimental Use Permit of a Transgenic Plant-Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application (EUP No. 68467–EUP–E) from Mycogen Corporation requesting a crop destruct experimental use permit (EUP) for a transgenic plant-pesticide. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before March 12, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: (703) 308–8715, e-mail: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has received an application from Mycogen Corporation, 5501 Oberlin Drive, San Diego, California 92121 for an EUP. This EUP application is EUP No. 68467–EUP–E. The proposed experiment involves the field testing of the transgenic plant-pesticide *Bacillus thuringiensis* delta endotoxin as produced in corn by a *cry*1F gene and its controlling sequences as found on plasmid insert PHI8999. The primary insect pest is the European corn borer. Field testing will include the use of no more than a total of 1,596 acres in Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Puerto Rico, South Dakota, Tennessee, Texas, and Wisconsin. All corn will be grown under isolation. Plant material and seed produced will be destroyed or used for experimental purposes only. Following the review of the Mycogen application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–50851'' (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 Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–50851.'' Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 26, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–3145 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6300–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act: J C Pennco

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the J C Pennco Waste Oil Services Superfund Site in San Antonio, Texas, with the following settling parties referenced in the Supplementary Information portion of this Notice.

The settlement requires the settling *De Minimis* parties to pay $188,700 to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before March 12, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Dan Hochstetler, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6569. Comments should reference the J C Pennco Waste Oil Services Superfund Site in San Antonio, Texas, and EPA Docket Number 06–12–98, and should be addressed to Dan Hochstetler at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jim Costello, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8045.

SUPPLEMENTARY INFORMATION:

A & L Automotive Warehouse
A.J. Ploch Oil Co
A–Z Rents It
AAA Agency Rentals
Affordable Transmission
Alamo Heights Garage
Alamo Salvage Pool
Armored Transport of Texas
Asplundh Tree Expert Co.
Avery & Company
Banis Automotive Service
Baptist Memorial Hospital System
Bartlett Cocke, Inc
Baumann Tune Up Service
Beck and Duderstadt Foundation
Bexar Body Shop
Brady Green Clinic
Brake Check
Brandt Service
Briggs Weaver
Buckeye Auto
Buddy Storbeck's Garage
C & C Import Service
City of Live Oak
City of Universal City
Continental Airlines
Delton Mullins
Dixie Oil Co.
Dreyer Vibrator Co.
E. C. Technologies
Earl's Auto
Engine Components
Evergreen
EZ Bell Construction
Fisher Car Mart
Foreign Car Specialist
Frontier Meat and Food Svce
Ft Worth Carriers
Garden-Ville Fertilizer
German Auto Center
Glenn Johnson Air Conditioning
Goll Motor Service
Gonzales Automotive
Goodwill Industries
Grissom Road Automotive
H & H Crane Service
Hood Construction
Howard Campbell Co
Import Cars and Trucks
Industrial Chrome Plate
Joe Harrison Honda
John Marshall High School
Johnny's Garage
KLN Steel Products
Lancer Corporation
Leon Valley Auto
Lone Star Paint & Body
M & M Contracting of Texas
Marshall Distributing
MG Building Materials
MICA Corp
Miner and Associates
Monterrey Iron and Steel
Montgomery Elevator Co
Moran Trucking
Mort Roszell Co
Nayak Aviation
N & N Chainsaw
Northeast Baptist Hosp
Northside ISD
Owens Service Center
Parkway Automotive Center
Pioneer Flour Mills
R.C. Douglas
Redando Mfg
Renken & Kuentz Transportation
San Antonio Equipment
San Antonio Housing Authority
San Antonio Brake and Clutch
Schoenfeld Materials
Sea World of Texas
Sears Trucking Center
Sears Tire Center
Southeast Baptist Hosp
Southwest Sports Cars
Southwest Airlines
Strawn
Texas Auto Carriers
Texas Diesel Injection
Texas RV Supply
Thermonetics Co. (UTSA)
Tieken Auto Service
Trane company
United Parcel Service
Western Auto
Wright (Fizgerald auto)
Wright Flyers, Inc
Wynn's Automotive Service

Dated: February 2, 1999.

Pamela Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 99–3254 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6232–4; CWA–HQ–99–003]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Cellco Partnership and Its Affiliates Doing Business as Bell Atlantic Mobile or Cellular One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has filed a civil administrative complaint against Cellco Partnership and its affiliates doing business as Bell Atlantic Mobile or Cellular One (''Cellco'') for failure to prepare a Spill Prevention Control and Countermeasure (''SPCC'') plan for 13 facilities where it stored diesel oil in above ground tanks in violation of the Clean Water Act (''CWA'') and its implementing regulations. EPA, under CWA section 311, has assessed a civil penalty and provided notice to Cellco of its right to request a hearing. The Administrator, as required by CWA section 311, is providing public notice and opportunity for interested persons to comment on the complaint and the proposed final order.

DATES: Comments on this proposed order are due on or before March 12, 1999.

ADDRESSES: Mail written comments to Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–1999–004, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Enforcement & Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC. Comments may also be submitted electronically to: docket.oeca@.epa.gov. Comments may be submitted on disk in WordPerfect 8.0 or earlier version. Electronic comments on the complaint and the proposed order may be filed online at many Federal Depository Libraries.

The complaint, consent agreement, the proposed final order and public comments, if any, may be reviewed at the Enforcement & Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC. Persons interested in reviewing these materials must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

The public record of the administrative enforcement proceeding is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Milton, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 564–2235; fax (202) 564–0010; e-mail: milton.philip@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page under the link ''Laws and Regulations'' at the **Federal Register**—Environmental Documents entry (http://www.epa.gov/fedrgstr/).

I. Background

Cellco Partnership and its Affiliates doing business as Bell Atlantic Mobile or Cellular One (''Cellco''), 180 Washington Valley Road, Bedminster, New Jersey 07921, self-disclosed to EPA that it had failed to prepare Spill Prevention Control and Countermeasure (''SPCC'') plans for 13 facilities where it stored diesel oil in above ground storage tanks, in violation of the CWA and 40 CFR part 112. The disclosure was made pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 60 FR 66706 (December 22, 1995). EPA filed an administrative civil complaint against Cellco on February 5, 1999 (In the Matter of Cellco Partnership and its Affiliates doing business as Bell Atlantic Mobile or Cellular One, Docket No. CWA–HQ–99–003). The CWA administrative penalty proposed in the complaint is $129,068. EPA intends to settle this action under the Audit Policy. Using the criteria set forth in the policy, EPA intends to waive any gravity based penalty and to assess a penalty equivalent to the economic benefit gained by the Respondent because of delayed compliance with the SPCC regulations. The proposed settlement figure for this matter is $21,680. This settlement is subject to public notice and comment under CWA section 311, 33 U.S.C. 1321.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j) may be administratively assessed a civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

The procedures by which the public may submit written comments on the complaint and on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in 40 CFR 22.38. The deadline for submitting public comment on this proposed Class II order is March 12, 1999. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration and/or incorporation into the final order. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

In order to provide an opportunity for public comment, EPA will not take final action in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: February 5, 1999.

Melissa P. Marshall,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–3409 Filed 2–9–99; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 36]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) provides a variety of export credit insurance policies to exporters and institutions financing exports. The forms covering these policies are the applications for insurance which incorporate questionnaires and certificates. They provide information which allows the Bank to obtain legislatively required reasonable assurance of repayment and they fulfill other statutory requirements. The forms, with the exception of EIB Form 92–48, have no change in content or purpose; they require only a three-

year extension. EIB Form 92–48 is in the process of being revised to include Ex-Im Bank guidelines describing standards of creditworthiness for foreign obligors and, under certain circumstances, the new form will require demonstration that such standards are met. The revisions to EIB 92–48 will probably result in a longer response time.

DATES: Written comments should be received on or before April 12, 1999.

ADDRESSES: Direct all written comments or requests for additional information to Daniel Garcia, Export-Import Bank of the United States, Room 1021, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3335.

FOR FURTHER INFORMATION CONTACT: Daniel Garcia (202) 565–3335.

SUPPLEMENTARY INFORMATION: The following Ex-Im Bank forms (all with OMB Control Number 3048–0009) encompass a variety of export credit insurance policies. They affect all entities involved in the export of U.S. goods and services including exporters, banks, insurance brokers and non-profit or state and local governments acting as facilitators.

1. Application for Quotation Export Credit Insurance Commercial Bank Insureds, EIB 92–34
2. Application for Short-Term Single-Buyer Coverage Financial Institution Buyer Credit Policies, EIB 92–41
3. Financing or Operating Lease Coverage Explanation of Application Form for Export Credit Insurance, EIB 92–45
4. Application for Multibuyer Export Credit Insurance Policy, EIB 92–50
5. Application for Short-Term Single-Buyer Policy (For Exporters Only), EIB 92–64
6. Application for Export Credit Insurance Trade Association Policy, EIB 92–68
7. Application for Export Credit Insurance Umbrella Policy, EIB 92–72
8. Broker Registration Form, EIB 92–80
9. Application for Export Credit Medium Term Insurance (Capital Goods and Services Only), EIB 92–48

Burden Statement

Type of Request: Revision and/or extension of expiration date.

Annual Number of Respondents: 1,500.

Annual Burden Hours: 1,500.

Frequency of Reporting or Use: Applications submitted one time; renewals annually.

Dated: February 5, 1999.

Daniel A. Garcia,

Agency Clearance Officer.

[FR Doc. 99–3225 Filed 2–9–99; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Retail Credit Classification and Account Management Policy

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), collectively referred to as the Agencies, is publishing its revisions to the Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status (Uniform Retail Credit Classification Policy). The National Credit Union Administration (NCUA), also a member of FFIEC, does not plan to adopt the policy at this time.

The Uniform Retail Credit Classification and Account Management Policy is a supervisory policy used by the Agencies for uniform classification and treatment of retail credit loans in financial institutions.

DATES: Changes in this policy that involve manual adjustments to the institutions' policies and procedures should be implemented for reporting in the June 30, 1999 Call Report or Thrift Financial Report, as appropriate. Any policy changes involving programming resources, should be implemented for reporting in the December 31, 2000 Call Report or Thrift Financial Report, as appropriate.

FOR FURTHER INFORMATION CONTACT: *FRB:* William Coen, Supervisory Financial Analyst, (202) 452–5219, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: James Leitner, Examination Specialist, (202) 898–6790, Division of Supervision. For legal issues, Michael Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

OCC: Stephen Jackson, National Bank Examiner, Credit Risk Division, (202) 874–4473, or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OTS: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; or Vern McKinley, Senior Attorney, (202) 906–6241, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background Information

On June 30, 1980, the FRB, FDIC, and OCC adopted the FFIEC uniform policy for classification of open-end and closed-end credit (1980 policy). The Federal Home Loan Bank Board, the predecessor of the OTS, adopted the 1980 policy in 1987. The 1980 policy established uniform guidelines for classification of installment credit based on delinquency status and provided different charge-off time frames for open-end and closed-end credit. The 1980 policy recognized the statistical validity of determining losses based on past due status.

The Agencies undertook a review of the 1980 policy as part of their review of all written policies mandated by Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI). As noted in their September 23, 1996 Joint Report to Congress on CDRI review efforts,[1] the Agencies believe that the 1980 policy should be revised due to changes that have taken place within the industry.

In 1980, open-end credit consisted largely of credit card accounts with small lines of credit to the most creditworthy borrowers. Today, open-end credit generally includes accounts with much larger lines of credit to diverse borrowers with a variety of risk profiles. The change in those accounts and inconsistencies in reporting and charge-off practices of open-end accounts by financial institutions prompted the Agencies to consider several revisions to the 1980 policy. Specifically, the FFIEC had concerns

[1] Joint Report: Streamlining of Regulatory Requirements—*Section 303(a)(3) of the Riegle Community Development and Regulatory Improvement Act of 1994*, page I–41.

that a number of institutions were not following existing policy guidance for charging off open-end accounts based on past due status. Charge-off practices ranged from 120 days to 240 days. This range reflected, in part, differing interpretations by some institutions with regard to the policy's guidance to charge off open-end loans by the seventh zero billing cycle. In addition, the 1980 policy did not establish guidance for charging off fraudulent accounts, accounts of deceased persons, or accounts of borrowers in bankruptcy (accounts in bankruptcy), which currently account for a large portion of total charge-offs. Moreover, no classification guidance existed for residential and home equity loans—a significant amount of consumer credit. Finally, no uniform guidance existed for handling re-aging of open-end credit, or extensions, deferrals, renewals, or re-writes of closed-end credit.

As a result of these concerns, the FFIEC published two notices in the **Federal Register** on September 12, 1997 (1997 Notice) (62 FR 48089) and on July 6, 1998 (1998 Notice) (63 FR 36403) requesting comment on various proposed revisions to the 1980 policy. Comments received during both periods provided extremely useful guidance to the FFIEC. After careful consideration, the FFIEC has made several changes to its earlier proposals and adopted those changes in this final policy statement. While the comments proved extremely helpful, the FFIEC is mindful of the Agencies' missions to promote safety and soundness of the financial industry and to recommend regulatory policies and standards that further those missions. In keeping with the Agencies' goals of promoting safety and soundness, certain aspects of the final notice are a departure from what the majority of commenters suggested.

Comments Received

The FFIEC received a total of 128 comments in response to the 1998 Notice. They came from 25 banks and thrifts, 19 bank holding companies, 8 regulatory agencies, 13 trade groups, 33 consumer credit counseling services, and 30 other companies and individuals. The following is a summary.

1a. Charge-off Policy for Open-End and Closed-End Credit. The 1998 Notice proposed two options for charging off delinquent accounts. The first proposed that both closed-end and open-end credit be charged off at 150 days delinquency. The second option proposed to retain, but clarify existing policy; charge off closed-end credit at 120 days delinquency and charge off open-end credit at 180 days delinquency. Commenters were overwhelmingly in favor of retaining the existing 120/180 charge-off time frames. Commenters representing the credit card industry stated that shortening time frames to 150 days would cause a $2 billion dollar write-off initially, with further impact during implementation. Moreover, credit card companies and community groups and counseling services stated that they needed those extra 30 days in the period from 150 days delinquency to 180 days delinquency to work with troubled borrowers. Several lenders indicated that they can collect ten percent or more of accounts during that time period. After careful consideration, the FFIEC has decided not to pursue uniform charge-off time frames for open-end and closed-end credit at this time. Moreover, since the revision to the 1980 policy was initiated, the majority of institutions whose open-end charge-off policy exceeded 180 days have brought themselves into compliance. However, because of confusion over the terminology of ''seven zero billing cycles,'' the FFIEC decided to eliminate that language in the final policy. Additionally, the FFIEC is adopting re-aging guidance so that greater consistency and clarity in reporting among retail credit lenders will be achieved.

1b. Substandard classification policy.—The majority of the comments received in response to the 1997 Notice supported retention of classifying open-end and closed-end consumer credit at 90 days delinquency. No objections were received in response to the 1998 Notice. The FFIEC agrees with the commenters. It believes that when an account is 90 days past due, it displays weakness warranting classification. Therefore, open-end and closed-end accounts will continue to be classified Substandard at 90 days past due.

2. Bankruptcy, fraud and deceased accounts. Bankruptcy.—The 1998 Notice requested comment on two proposals relating to treatment of accounts in bankruptcy. First, the 1998 Notice asked whether unsecured loans in bankruptcy should be charged off by the end of the month in which a creditor is notified of the bankruptcy filing. Second, the 1998 Notice proposed that for secured and partially secured accounts in bankruptcy, the collateral should be evaluated and any deficiency balance charged off within 30 days of notification.

The majority of the commenters believed that revised bankruptcy legislation would pass in the second session of the 105th Congress and asked the FFIEC to defer a decision on this issue pending new legislation. The FFIEC was prepared to conform the final policy statement to any new legislation; however, no legislation was enacted. Because widespread inconsistencies in charge-off practices on accounts in bankruptcy continue to exist, the FFIEC is adopting guidance at this time. If and when bankruptcy legislation is enacted, the FFIEC will review the policy statement to determine if any revisions are needed.

Commenters objected to both of the proposed time frames on bankrupt accounts. Fifty commenters opposed the proposal for unsecured accounts in bankruptcy versus only ten who supported it. Twenty-two commenters opposed the proposed handling of secured and unsecured accounts in bankruptcy, while only 11 supported it. A number of creditors noted that an accurate determination of loss on accounts in bankruptcy realistically cannot be made until after the meeting with creditors. This may be anywhere from 10 to 45 days or more after the bankruptcy filing, depending upon the case load of the bankruptcy court. The FFIEC shares the concerns of these commenters. Consequently, the final policy statement has been revised, for unsecured, partially secured, and fully secured accounts in bankruptcy, to allow creditors up to 60 days from their receipt of the bankruptcy notice filing to charge off those amounts deemed unrecoverable. However, accounts should be charged off no later than the respective 120-day or 180-day time frames for closed-end and open-end credit.

Fraud.—The 1998 Notice proposed that accounts affected by fraud be charged off within 90 days of discovery of the fraud or within the general charge-off time frames established by this final policy statement, whichever is shorter. The majority of the commenters supported this proposal. While the FFIEC recognizes that a fraud investigation may last more than 30 days, it believes that 90 days provides an institution sufficient time to charge off an account affected by fraud. Therefore, this final policy statement adopts this provision as proposed.

Accounts of deceased persons.—The 1998 Notice proposed that accounts of deceased persons should be charged off when loss is determined or within the classification time frames adopted by this final policy statement. A majority of the commenters supported this proposal. As discussed in the 1998 Notice, the FFIEC agrees that determination of repayment potential on an account of a deceased person may

take months when working through a trustee or the family. However, the FFIEC believes the time frames established by this final policy statement provide adequate time to determine the amount of the loss and charge off that amount. For this reason, the final policy statement adopts this provision as proposed.

3. Partial payments.—The 1998 Notice proposed that in addition to the existing guidance that 90 percent of a contractual payment may be considered a full payment in computing delinquency, the FFIEC allows an institution to aggregate payments to give a borrower credit for partial payments. The proposal stated that only one method should be allowed throughout a loan portfolio. Some institutions stated that they were already using both methods. One recommendation made by the commenters and supported by the FFIEC was to eliminate the guidance that one method be used consistently throughout the portfolio. These commenters noted that these methods are used for different reasons. For instance, the 90 percent method may handle errors in check writing while the aggregate method enables institutions to work flexibly with troubled borrowers. The FFIEC agrees with these commenters. Therefore, this final policy statement has been revised to allow an institution to use both methods in dealing with partial payments.

4. Re-aging, extension, renewal, deferral, or rewrite policy.—The 1998 Notice proposed a number of criteria be established before a re-aging, extension, renewal, deferral, or rewrite of an account. A majority of commenters supported the criteria that the borrower should show a renewed willingness and ability to pay and that the account should meet agency and bank guidelines. However, many commenters generally opposed the following criteria:

- The borrower should make three minimum consecutive payments or lump sum equivalent before being re-aged.
- An account should not be re-aged, extended, renewed, deferred, or rewritten more than once within any twelve-month period.
- An account should be in existence for at least twelve months before it can be re-aged, extended, deferred, or rewritten.
- No more than two re-agings, extensions, renewals, deferrals, or rewrites should occur during the lifetime of the account.
- The re-aged balance should not exceed the predelinquency credit limit.

While the FFIEC appreciates concerns of these commenters that flexibility is required to work with troubled borrowers, it also recognizes this has the greatest potential for masking the delinquency status of accounts. Consistent guidelines are needed to ensure the integrity of financial records and prevent abuses (such as automated re-aging programs). In addition, the FFIEC believes that an account should show some performance before a re-aging is allowed. In response to commenters' concerns, the Agencies modified the proposed guidelines. For example, to provide flexibility for lenders to work with borrowers, but still maintain the integrity of asset quality reports, the Agencies changed the proposed re-aging guidelines to allow accounts to be re-aged not more than twice in a five-year period. Therefore, in considering the commenters' views and the Agencies' missions of ensuring safety and soundness of institutions' loan assets, the following criteria are being adopted:

- The borrower should show a renewed willingness and ability to repay.
- The account should meet agency and bank policy standards.
- The borrower should make three minimum consecutive monthly payments or the lump sum equivalent before an account is re-aged.
- The account should be in existence at least nine months.
- An account should not be re-aged, deferred, extended, renewed or rewritten more than once within any twelve-month period, and not more than twice in a five-year period.
- An over limit account may be re-aged at its outstanding balance (including the over limit balance, interest, and fees) but new credit should not be extended until the account balance is below its designated credit limit.

5. Residential and home equity loans.—The 1998 Notice proposed that institutions holding both one- to four-family and home equity loans to the same borrower that are delinquent 90 days or more with loan-to-value ratios greater than 60 percent be classified Substandard. In addition, the FFIEC proposed that a current evaluation of collateral be made by the time the loan is 120 or 180 days past due for a closed-end or open-end account, respectively.

Commenters were almost equally divided on this proposal during the 1998 Notice. However, in response to the 1997 Notice, the majority of the commenters supported classifying the loans Substandard when they are 90 days delinquent. Some commenters supported a different loan-to-value ratio. Exposure to loss increases as the loan-to-value ratio of a real estate loan increases. The agencies believe, however, that for one- to four-family residential loans with loan-to-value ratios of 60 percent or less, ample collateral support exists to satisfy the loan. Therefore the FFIEC believes that the classification of such loans is not necessary. This final policy statement adopts the provision as proposed.

In response to the 1998 Notice, the commenters opposed the collateral evaluation. In response to the 1997 Notice, the majority of the commenters supported the proposal that a collateral evaluation be obtained. However, from the comments it appears that the proposal was not clear because many commenters believed that a ''full'' appraisal was required. The FFIEC agrees that the policy indicating that a collateral evaluation be obtained was not intended to be burdensome and that a full appraisal is not required. The policy reaffirms the need to determine the amount of loss in the loan when delinquency reaches the time frames for charge-off for non-real estate loans.

Implementation Period

In the 1998 Notice, it said that if the Agencies retained the 120/180-day charge off time frames, the implementation period would begin January 1, 1999. However, the Agencies recognize that for some institutions, this may involve programming changes. The Agencies expect institutions to begin implementation of this policy upon publication. Manual changes should be implemented for reporting in the June 30, 1999 Call Report or Thrift Financial Report, as appropriate. Changes involving programming resources should be implemented for reporting in the December 31, 2000 Reports.

Final Policy Statement

After careful consideration of all the comments, the FFIEC adopts this final policy statement. In general, this final policy statement:

- Establishes a uniform charge-off policy for open-end credit at 180 days delinquency and closed-end credit at 120 days delinquency.
- Provides uniform guidance for loans affected by bankruptcy, fraud, and death.
- Establishes guidelines for re-aging, extending, deferring, or rewriting past due accounts.
- Classifies certain delinquent residential mortgage and home equity loans.
- Broadens recognition of partial payments that qualify as full payments.

The FFIEC considered the effect of generally accepted accounting

principles (GAAP) on this statement. GAAP requires prompt recognition of loss for assets or portions of assets deemed uncollectible. The FFIEC believes that because this final policy statement provides for prompt recognition of losses, it is fully consistent with GAAP.

The final statement is:

Uniform Retail Credit Classification and Account Management Policy [2]

Evidence of the quality of consumer credit soundness is indicated best by the repayment performance demonstrated by the borrower. Because retail credit generally is comprised of a large number of relatively small balance loans, evaluating the quality of the retail credit portfolio on a loan-by-loan basis is inefficient and burdensome for the institution being examined and examiners. Therefore, in general, retail credit should be classified based on the following criteria:

- Open-end and closed-end retail loans past due 90 cumulative days from the contractual due date should be classified Substandard.
- Closed-end retail loans that become past due 120 cumulative days and open-end retail loans that become past due 180 cumulative days from the contractual due date should be charged off. The charge-off should be taken by the end of the month in which the 120- or 180-day time period elapses.[3]
- Unless the institution can clearly demonstrate and document that repayment on accounts in bankruptcy is likely to occur, accounts in bankruptcy should be charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter. The charge off should be taken by the end of the month in which the applicable time period elapses. Any loan balance not charged off should be classified Substandard until the borrower re-establishes the ability and willingness to repay (with demonstrated payment performance for six months at a minimum) or there is a receipt of proceeds from liquidation of collateral.
- Fraudulent loans should be charged off within 90 days of discovery or within the time frames specified in this classification policy, whichever is shorter. The charge-off should be taken by the end of the month in which the applicable time period elapses.
- Loans of deceased persons should be charged off when the loss is determined or within the time frames adopted in this classification policy, whichever is shorter. The charge-off should be taken by the end of the month in which the applicable time period elapses.
- One- to four-family residential real estate loans and home equity loans that are delinquent 90 days or more with loan-to-value ratios greater than 60 percent, should be classified Substandard.
- When a residential or home equity loan is 120 days past due for closed-end credit and 180 days past due for open-end credit, a current assessment of value [4] should be made and any outstanding loan balance in excess of the fair value of the property, less cost to sell, should be classified Loss.

Properly secured residential real estate loans with loan-to-value ratios equal to or less than 60 percent are generally not classified based solely on delinquency status. Home equity loans to the same borrower at the same institution as the senior mortgage loan with a combined loan-to-value ratio equal to or less than 60 percent, should not be classified. However, home equity loans where the institution does not hold the senior mortgage, that are delinquent 90 days or more should be classified Substandard, even if the loan-to-value ratio is equal to, or less than, 60 percent.

Other Considerations for Classification

If an institution can clearly document that the delinquent loan is well secured and in the process of collection, such that collection will occur regardless of delinquency status, then the loan need not be classified. A *well secured loan* is collateralized by a perfected security interest in, or pledges of, real or personal property, including securities, with an estimated fair value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount. *In the process of collection* means that either a collection effort or legal action is proceeding and is reasonably expected to result in recovery of the loan balance or its restoration to a current status, generally within the next 90 days.

This policy does not preclude an institution from adopting an internal classification policy more conservative than the one detailed above. It also does not preclude a regulatory agency from using the Doubtful or Loss classification in certain situations if a rating more severe than Substandard is justified. Loss in retail credit should be recognized when the institution becomes aware of the loss, but in no case should the charge off exceed the time frames stated in this policy.

Partial Payments on Open-End and Closed-End Credit

Institutions should use one of two methods to recognize partial payments. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing delinquency. Alternatively, the institution may aggregate payments and give credit for any partial payment received. For example, if a regular installment payment is $300 and the borrower makes payments of only $150 per month for a six-month period, the loan would be $900 ($150 shortage times six payments), or three full months delinquent. An institution may use either or both methods in its portfolio, but may not use both methods simultaneously with a single loan.

[2] Retail Credit includes open-end and closed-end credit extended to individuals for household, family, and other personal expenditures. It includes consumer loans and credit cards. For the purpose of this policy, retail credit also includes loans to individuals secured by their personal residence, including home equity and home improvement loans.

The regulatory classifications used for retail credit are Substandard, Doubtful, and Loss. These are defined as follows: Substandard: An asset classified Substandard is protected inadequately by the current net worth and paying capacity of the obligor, or by the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Doubtful: An asset classified Doubtful has all the weaknesses inherent in one classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. Loss: An asset, or portion thereof, classified Loss is considered uncollectible, and of such little value that its continuance on the books is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value; rather, it is not practical or desirable to defer writing off an essentially worthless asset (or portion thereof), even though partial recovery may occur in the future.

Although the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Office of Thrift Supervision do not require institutions to adopt identical classification definitions, institutions should classify their assets using a system that can be easily reconciled with the regulatory classification system.

[3] Fixed payment open-end retail accounts that are placed on a closed-end repayment schedule should follow the closed-end charge-off time frames.

[4] Additional information about content requirements of evaluations can be found in the ''Interagency Appraisal and Evaluation Guidelines'', October 27, 1994. For example, under certain circumstances, evaluations could be derived from an automated collateral evaluation model, drive-by inspection by bank employee or contracted employee, and real estate market comparable sales similar to the institution's collateral.

Re-aging, Extensions, Deferrals, Renewals, or Rewrites [5]

Re-aging is the practice of bringing a delinquent account current after the borrower has demonstrated a renewed willingness and ability to repay the loan by making some, but not all, past due payments. Re-aging of open-end accounts, or extensions, deferrals, renewals, or rewrites of closed-end accounts should only be used to help borrowers overcome temporary financial difficulties, such as loss of job, medical emergency, or change in family circumstances like loss of a family member. A permissive policy on re-agings, extensions, deferrals, renewals, or rewrites can cloud the true performance and delinquency status of the portfolio. However, prudent use of a policy is acceptable when it is based on recent, satisfactory performance and the true improvement in a borrower's other credit factors, and when it is structured in accordance with the institution's internal policies.

The decision to re-age a loan, like any other modification of contractual terms, should be supported in the institution's management information systems. Adequate management information systems usually identify and document any loan that is extended, deferred, renewed, or rewritten, including the number of times such action has been taken. Documentation normally shows that institution personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower shows the ability to repay the loan.

Institutions that re-age open-end accounts should establish a reasonable written policy and adhere to it. An account eligible for re-aging, extension, deferral, renewal, or rewrite should exhibit the following:

- The borrower should show a renewed willingness and ability to repay the loan.
- The account should exist for at least nine months before allowing a re-aging, extension, renewal, referral, or rewrite.
- The borrower should make at least three minimum consecutive monthly payments or the equivalent lump sum payment before an account is re-aged. Funds may not be advanced by the institution for this purpose.
- No loan should be re-aged, extended, deferred, renewed, or rewritten more than once within any twelve month period; that is, at least twelve months must have elapsed since a prior re-aging. In addition, no loan should be re-aged, extended, deferred, renewed, or rewritten more than two times within any five-year period.
- For open-end credit, an over limit account may be re-aged at its outstanding balance (including the over limit balance, interest, and fees). No new credit may be extended to the borrower until the balance falls below the designated predelinquency credit limit.

[5] Certain advertising and marketing programs, like ''skip-a-payment'' and holiday payment deferral programs are not subject to this portion of the policy.

Examination Considerations

Examiners should ensure that institutions adhere to this policy. Nevertheless, there may be instances that warrant exceptions to the general classification policy. Loans need not be classified if the institution can document clearly that repayment will occur irrespective of delinquency status. Examples might include loans well secured by marketable collateral and in the process of collection, loans for which claims are filed against solvent estates, and loans supported by valid insurance claims.

The uniform classification and account management policy does not preclude examiners from reviewing and classifying individual large dollar retail credit loans that exhibit signs of credit weakness regardless of delinquency status.

In addition to reviewing loan classifications, the examiner should ensure that the institution's allowance for loan and lease loss provides adequate coverage for inherent losses. Sound risk and account management systems, including a prudent retail credit lending policy, measures to ensure and monitor adherence to stated policy, and detailed operating procedures, should also be implemented. Internal controls should be in place to ensure that the policy is followed. Institutions lacking sound policies or failing to implement or effectively follow established policies will be subject to criticism.

Implementation

Changes in this policy that involve manual adjustments to an institution's policies and procedures should be implemented for reporting in the June 30, 1999 Call Report or Thrift Financial Report, as appropriate. Any policy changes requiring programming resources should be implemented for reporting in the December 31, 2000 Call Report or Thrift Financial Report, as appropriate.

Dated: February 4, 1999.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 99–3181 Filed 2–9–99; 8:45 am]

BILLING CODES FRB: 6210–01–P (25%); FDIC: 6714–01–P (25%); OTS: 6720–01–P (25%); OCC: 4810–33–P (25%)

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Sterling Banks, Inc., Kennesaw, Georgia; to merge with Georgia Bancshares, Inc., Tucker, Georgia, and thereby indirectly acquire Community Bank of Georgia, Tucker, Georgia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First American Bank Group, LTD, Fort Dodge, Iowa; to acquire 100 percent of the voting shares of First American Bank, Sioux City, Iowa (in organization).

Board of Governors of the Federal Reserve System, February 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3296 Filed 2–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California, Norwest Mortgage, Inc., and Norwest Ventures, LLC, both of Des Moines, Iowa; to engage *de novo* in a joint venture through its subsidiary, South County Mortgage, Mission Viejo, California, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3297 Filed 2–9–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–143]

Availability of Draft Toxicological Profile

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the draft toxicological profile for polychlorinated biphenyls, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on this draft toxicological profile must be received on or before April 26, 1999. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profile should be sent to the attention of Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Comments regarding the draft toxicological profiles should be sent to the attention of Dr. Ganga Choudhary, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profile must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–143. Send one copy of all comments and three copies of all supporting documents to Dr. Ganga Choudhary at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on November 17, 1997 (62 FR 61332). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); and April 29, 1996 (61 FR 18744). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.]

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each

substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The draft toxicological profile was made available to the public on January 22, 1999.

Document	Hazardous substance	CAS No.
1	POLYCHLORINATED BIPHENYLS	001336–36–3
	AROCLOR 1016	012674–11–2
	AROCLOR 1221	011104–28–2
	AROCLOR 1232	011141–16–5
	AROCLOR 1242	053469–21–9
	AROCLOR 1248	012672–29–6
	AROCLOR 1254	011097–69–1
	AROCLOR 1260	011096–82–5
	AROCLOR 1262	037324–23–5
	AROCLOR 1268	011100–14–4

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: February 4, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–3190 Filed 2–9–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99039]

Community Partners for Healthy Farming Intervention; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Community Partners for Healthy Farming. This program addresses the ''Healthy People 2000'' priority areas of Community-Based Programs and Occupational Safety and Health. The purpose of this cooperative agreement is to utilize the special resources of researchers, workers, farm managers, local agricultural communities, and other stakeholders to evaluate farm safety and health interventions.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $850,000 is available in FY 1999 to fund five to seven awards. It is expected that the average award will be $145,000, ranging from $45,000 to $180,000. It is expected that the awards will begin on or about August 1, 1999, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Funding preferences may be given to applications from specific locations to achieve geographic distribution.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under 2. (CDC/NIOSH Activities).

1. Recipient Activities

a. Develop an intervention with a clear prevention effect, evidence of community support, and strategies or adoption by the community, and for sustainability.

b. Develop a research proposal which is predicated upon an active partnership between experienced researchers, communities, agricultural workers, management and other stakeholders in the planning, implementation, and evaluation of intervention known agricultural injuries, illness, or hazards. The evaluation component shall include both process and outcome evaluation. The study population and recruitment procedures should be described. A time line which includes post intervention analyses should be developed.

c. Implement, collect and analyze the evaluation data.

d. Identify and implement measures to maintain and extend the intervention.

2. CDC/NIOSH Activities

a. Provide technical assistance, through site visits and other communication, in all phases of the development, implementation and maintenance of these cooperative agreements.

b. Facilitate communication/coordination between recipients and other groups, organizations and agencies involved in agricultural research and outreach.

c. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½″ by 11″ paper, with at least 1″ margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. Appendices should have indexes and include (1) support letters (2) information on key personnel (3) other supporting documentation.

F. Submission and Deadline

Letter of Intent (LOI)

The letter of intent must be submitted on or before March 23, 1999, to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99039, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mail Stop E–13, Atlanta, Georgia 30341.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before April 23, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99039, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mail Stop E–13,Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications which are complete and responsive will be reviewed and evaluated by an Independent Special Emphasis Panel in accordance with the following criteria.

1. Background and Need (20 points total)

a. The extent to which the applicant understands the purpose and provides a comprehensive statement of the specific problem to be addressed. (2 points)

b. The extent to which the applicant presents data justifying the need for the intervention in terms of magnitude of the problem, and the intervention is theoretically justified and supported with epidemiologic, methodological, or behavior research. (9 points)

c. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group. Efficacy of adoption and sustainability of the intervention acknowledging potential strengths and barriers to adoption and sustainability, e.g. the impact of trends in agriculture, support by partners and stakeholders, costs of implementation, effects on production, and community norms. Identified participant population, including extension agents, farmers, farm workers, and farm safety and community organizations that have expressed an interest in supporting and extending the intervention beyond the current agreement. (9 points)

2. Goals and Objectives (20 points)

The extent to which specific research questions and/or hypotheses are described. The extent to which the applicant has included goals which are relevant to the purpose of reducing injuries, illnesses, and/or hazard exposure to agricultural workers and the specific problem addressed by the applicant.

The extent to which the applicant has included goals and objectives that are specific, measurable, time-phased, feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal.

The extent to which objectives include involving agricultural workers, communities, and other stakeholders in the planning, implementation and evaluation of the intervention.

3. Methods (25 points)

The extent to which the applicant provides a detailed description of overall design and methods selected for the intervention(s) including the designation of responsibility for each action undertaken.

The extent to which the target population and setting in which the intervention is to be implemented are clearly described and shown to be adequate for achieving the desired objectives.

The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the intervention in an unbiased fashion.

The extent to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

4. Staffing, Facilities and Resources (15 points total)

a. The extent to which organizational structure, job descriptions, proposed staffing, staff qualifications and experience, identified training needs or plan, and curricula vitea for both the proposed and current staff indicate the applicant's ability to carry out the objectives of the program. The extent to which the management staff and their working partners are clearly described, appropriately assigned and have pertinent skills and experiences, e.g. previous accomplishments in agricultural safety and health interventions. Time allocation of the professional staff to be assigned to this project. (8 points)

b. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented, e.g. support for proposed activities as well as commitment to participate from proposed partners (e.g. letters of support and/or memoranda of understanding). The extent to which the participants are clearly described and their qualifications for their component of the proposed work are explicitly

stated. The extent to which the applicant provides proof of the involvement of partners/stakeholders (e.g., agricultural workers, agricultural organizations, agribusiness) in the development of this proposal. (7 points)

5. Evaluation (20 points)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome. The extent to which an evaluation plan has been developed to determine both the success of the pilot intervention or demonstration project(s) and to determine its utility as a public health prevention strategy with broader application in other communities. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

6. Budget and Justification (not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

7. Human Subjects Review (not scored)

The applicant must clearly state what precautions exist to protect human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. annual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mail Stop E13, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970, [29 U.S.C. 669(a) and 671(e)(7)]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

Please refer to Program Announcement 99039 when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

See also the CDC home page on the Internet:

http://www.cdc.gov

If you have questions after reviewing the contents of all the documents, please contact: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99039, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mail Stop E–13,Atlanta, GA 30341, telephone (404) 842–6814, Email address SLH3@cdc.gov

For program technical assistance, contact Janet Ehlers, R.N., M.S.N., Occupational Health Nurse, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Division of Surveillance, Hazard Evaluations and Field Studies, 4676 Columbia Parkway, R–21, Cincinnati, OH 45226, Telephone (513) 841–4208, fax (513) 841–4489, e-mail: jje0@cdc.gov; or Teri Palermo R.N. Public Health Advisor, NIOSH/CDC, Division of Respiratory Disease Studies, Office of the Director, 1095 Willow dale Road, Mailstop 127 Morgantown, WV 26505–2888, telephone (304) 285–5836, fax (304)285–5861, e-mail: btp0@cdc.gov.

Dated: February 4, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health,Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–3197 Filed 2–9–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0383]

Guidance for Industry on Population Pharmacokinetics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Population Pharmacokinetics.'' This guidance provides recommendations to pharmaceutical industry scientists, who have long been interested in the application of population pharmacokinetics, during the new drug development, safety and efficacy evaluation, and approval processes.

DATES: Written comments on the guidance may be submitted at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies of ''Population Pharmacokinetics'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Copies of this guidance may also be obtained by fax from 1–888–CBERFAX or 301–827–3844 or by mail from the Voice Information System at 800–835–4709 or 301–827–1800. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

He Sun, Center for Drug Evaluation and Research (HFD–880), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2205, or

Martin D. Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville

Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled ''Population Pharmacokinetics.'' Pharmaceutical industry scientists and FDA have long been interested in the application of population pharmacokinetics and pharmacodynamics to the evaluation of drug safety and efficacy. Although several special data collection and analysis methodologies are available for use, this guidance provides recommendations regarding the use of population pharmacokinetics in new drug development and evaluation.

In addition to summarizing the scientific and regulatory issues that should be addressed when conducting population pharmacokinetic studies and analyses, the guidance: (1) Presents an overview of population methods, including when to perform a population study/analysis; (2) discusses how to design and execute a population pharmacokinetic study; (3) describes how to handle and analyze population pharmacokinetic data; (4) summarizes what model validation methods are available; and (5) explains how to provide appropriate documentation for population pharmacokinetic reports intended for submission to FDA. Although the information provided in this document focuses primarily on population pharmacokinetics, the principles discussed are equally applicable to population pharmacodynamic and toxicokinetic studies.

Because population analysis is a rapidly evolving area of drug development and regulation, frequent communication throughout the entire process between the sponsor and the FDA review staff is encouraged.

In the **Federal Register** of September 18, 1997 (62 FR 49016), FDA announced the availability of a draft version of this guidance entitled ''Population Pharmacokinetics.'' The September 18, 1997, document gave interested persons an opportunity to submit comments through November 17, 1997. All comments received have been carefully reviewed and incorporated, where appropriate, in this revised guidance.

This guidance is being issued as a Level 1 guidance consistent with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on population pharmacokinetics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3156 Filed 2–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–243]

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 collections 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: New Collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR, Section 417; *Form No.:* HCFA–R–243; *Use:* An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare 1833 agreement. The application is the collection form used to obtain information from an organization that would allow HCFA staff to determine compliance with the regulations. This form includes requests for information about: the management of the applicant organization; arrangements for providing health care to beneficiaries; meeting Medicare requirements for appeals, hearings, advance directives, health benefits; risk sharing with other entities; the fiscal soundness of the applicant; the cost budget, which forms the basis for HCFA payment; prevention of duplicate payment; and the applicant's marketing strategy. *Frequency:* Other (One time); *Affected Public:* Business or other for-profit institutions, Not-for-profit institutions, and State, Local or Tribal Governments.; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 1,125.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or 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 Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 1, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 99–3273 Filed 2–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–250]

Agency Information Collection Activities: Submission for OMB Review; 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, has submitted to the

Office of Management and Budget (OMB) the following proposal for the collection of information. 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: Skilled Nursing Facility (SNF) Resident Assessment MDS Data and Supporting Regulations in 42 CFR 413.343 and 424.32.

Form No.: HCFA–R–250 (OMB# 0938–0739).

Use: Skilled Nursing Facilities (SNF's) are required to submit Resident Assessment Data as described at 42 CFR, 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th and 60th days following admission, necessary to administer the payment rate methodology described in 413.337, is subject to the Paperwork Reduction Act.

Frequency: Monthly.

Affected Public: Business or other for-profit, and Not-for-profit.

Number of Respondents: 17,000.

Total Annual Responses: 204,000.

Total Annual Hours: 3,865,885.

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 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 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 11, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–3167 Filed 2–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–85]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. 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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. 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.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Sole Community Home Health Agencies (HHA) and Supporting Regulations in 42 CFR Section 424.22;

Form Nos.: HCFA–R–85 (OMB6# 0938–0489);

Use: These regulations implement the rules for participation of HHAs in Medicare and the establishment and review of plans of care for home health services. These regulations make it easier for certain HHAs to meet certification and plan of care requirements;

Frequency: Annually;

Affected Public: Business or other for-profit and not-for-profit institutions;

Number of Respondents: 20;

Total Annual Responses: 20;

Total Annual Hours: 40.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 14, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–3168 Filed 2–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Sample Survey of Registered Nurses, 2000—NEW

The National Sample Survey of Registered Nurses (NSSRN) is carried out to assist in fulfilling three Congressional mandates. (1) Section 951 of P.L. 94–63 requires gathering data on: (a) The number and distribution of nurses, by type of employment and location practice; (b) the number of nurses practicing full-time and part-time within the U.S. and within each State; (c) the average rate of compensation for nurses, by type of practice and location of practice; (d) the activity status of the total number of nurses with advanced training or graduate degrees in nursing, by specialty, including nurse practitioners, nurse clinicians, nurse researchers, nurse educators, and nurse supervisors and administrators; and (f) the number of nurses entering the U.S. annually from other nations. (2) Section 806(f) of P.L. 105–392 requires discipline workforce information and analytical activities for advanced nursing education, workforce diversity, and basic nursing education and practice. (3) Section 792 of Title VII of the Public Health Service Act calls for the collection and analysis of data on health professions.

The information from this survey will serve policy makers, legislative bodies, health professionals, and government agencies to inform workforce policies. Data collected in this survey will assist in determining the impact that changes in the health care system are having on employment status of Registered nurses and their employment settings.

The proposed survey design for the 2000 NSSRN follows that of the previous six surveys and the projected sample size is approximately 49,200 registered nurses, with a response rate of 80%. Each respondent will be asked to complete a self-administered mail questionnaire containing items on educational background, duties, employment status and setting, geographic mobility, and income.

Respondent burden is estimated as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Survey	39,360	1	[1] 20	13,120

[1] Minutes.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 4, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–3224 Filed 2–9–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March, 1999.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 3, 1999; 9:00 a.m.–5:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, March 3, from 9:00 a.m. to 5:00 p.m. Agenda items will include, but not be limited to: a presentation on several National Vaccine Injury Compensation Program cases, an Institute of Medicine Vaccine Safety update, an update on the National Vaccine Program Office, and reports from the Department of Justice and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on March 3, 1999. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Committee Management Assistant, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on March 3, 1999. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Shelia Tibbs at the above mentioned address.

Agenda items are subject to change as priorities dictate.

Dated: February 4, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–3223 Filed 2–9–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Special Volunteer and Guest Researcher Assignment

SUMMARY: In Compliance with the requirements of Section 3506(c)(2)(A), of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval

Proposed Collection: Title: Special Volunteer and Guest Researcher Assignment. *Type of Information Collection Request:* Revision of OMB No. 0925–0177, expiration 04/30/2000. *Need and Use of Information Collection:* Form NIH–590 records, names, address, employer, education, and other information on prospective Special Volunteers and Guest Researchers, and is used by the responsible NIH approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignments. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Guest Researcher and Special Volunteer candidates. The annual reporting burden is also as follows: *Estimated Number of*

Respondents: 1,630. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Per Response:* 0.1. *Estimated Total Annual Burden Hours Requested:* 163.

The annualized cost to respondents is estimated at:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Guest Researcher	400	1	0.1	40
Special Volunteer	1230	1	0.1	123
Total	1630	1	0.1	163

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Yetta L. Patterson, Personnel Management Specialist, Office of Human Resource Management, OD, NIH Building 31, Room 1C39, 31 Center Drive MSC 2272, Bethesda, MD 20892–2272.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Yetta L. Patterson, Personnel Management Specialist, Office of Human Resource Management, OD, NIH, Building 31, Room 1C39, 31 Center Drive MSC 2272, Bethesda, MD 20892–2272.

Dated: February 3, 1999.

Stephen C. Benowitz,

Director of Human Resources.

[FR Doc. 99–3236 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences: Opportunity for a Cooperative Research and Development Agreement (CRADA) for Development of Technology and Application Testing of Toxicological cDNA Microarrays

AGENCY: National Institute of Environmental Health Sciences, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) seeks an agreement with a company(s) which can pursue the development of technology and application testing of toxicological cDNA microarrays for analysis of exposed human and mouse biological samples. The National Institute of Environmental Health Sciences (NIEHS) is in the first phases of developing and testing this technology for application to human toxicology. A CRADA for the co-development of technology or testing of this new toxicology assay will be granted to the awardee(s).

DATES: Capability statements must be received by NIH on or before April 12, 1999.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. J. Carl Barrett, Scientific Director, NIEHS, Mail Drop C2–15, P.O. Box 12233, Research Triangle Park, NC 27709; Telephone (919) 541–2992; Fax (919) 541–7784; E-mail BARRETT@NIEHS.NIH.GOV

SUPPLEMENTARY INFORMATION: cDNA microarrays are tools that can be used to analyze changes in genome-wide patterns of gene expression. This technology may potentially revolutionize the way toxicological problems are investigated. The main challenges facing investigators in environmental health research is to assess exposures and identify hazards. Defining the mechanisms of action of environmental agents can greatly assist in hazard identification, species extrapolation, and risk assessment. Given that exposures to different classes of toxicants result in distinct patterns of altered gene expression, microarray technology can be utilized to categorize and classify these effects. In defined model systems, treatment with known agents, such as polycyclic aromatic hydrocarbons, dioxin-like compounds, peroxisome proliferators, oxidant stress, or estrogenic chemicals may provide a gene expression signature on a microarray which represents the cellular response to these agents. These same systems can then be treated with unknown, suspect agents to determine if one or more of these standard signatures is elicited. This approach will also help elucidate an agent's mechanism of action and may also be used to detect changes in exposed human populations, information essential for the risk assessment process. cDNA microarrays could also be used to potentially determine cross-talk between combinations of agents (i.e. dioxin and estrogen). Microarray technology could in the long run, provide a relatively inexpensive, quick way to screen for potential bio-reactive agents.

We are in the process of establishing cDNA microarray technology at the NIEHS. Currently, we are developing custom DNA chips that are human cDNA clone subarrays oriented toward the expression of genes involved in responses to toxic insult. These include xenobiotic metabolizing enzymes, cell

cycle components, oncogenes, tumor suppressor genes, DNA repair genes, estrogen-responsive genes, oxidative stress genes, and genes known to be involved in apoptotic cell death. This technology is in developmental stages at NIEHS, and we are interested in establishing relationships with CRADA partners to further our efforts on technology development and application toward toxicology research.

NIEHS seeks partnerships for collaboration in the development of arrayed cDNA libraries from various tissue sources, the development of toxicology models to test/validate the use of microarray technology in toxicology testing, and the development of bioinformatics support involving pattern recognition and classification.

Roles of NIEHS

1. Provide project coordination for overall project development and testing.
2. Establish various classes of toxicology gene expression arrays and subarrays based on existing data from toxicology studies or specific cDNA libraries.
3. To manufacture DNA chips from provided DNA sets and arrayed libraries, label and hybridize RNA probes to the expression arrays, and scan data and analyze and compile results.
4. To validate methods and expression array patterns using probes generated from established toxicology exposure models that have been developed by NIEHS or CRADA partner(s).

Role of the CRADA Partner(s)

1. Provide cDNA libraries from rodent and human sources that may be compatible for use to generate targets for use in synthesis of gene chips. May include custom cDNA library isolation from a variety of species and tissue sources.
2. Provide clone arrays from cDNA libraries from rodent and human sources, including arrays from custom, tissue-specific cDNA libraries. Also includes the sequence validation of arrayed clones.
3. Provide RNAs from traditional toxicology assays/models for use in validation testing of the use of microarray in toxicological identification/exposure assessment.
4. Provide bioinformatics/database support to subarray development and compilation and analysis of data, including pattern recognition from expression analyses experiments.

Selection criteria for choosing the CRADA partner(s) will include, but will not be limited to, the following:

1. Experience in the generation of high quality cDNA libraries, including custom and subtractive libraries. Ability to array cDNA libraries and provide resources to sequence-validate library clones.
2. Experience in toxicology testing models and ability to provide high quality and quantity RNA from these models.
3. Experience in database management and the development of software for the analysis of pattern recognition. May also include plasmid purification and PCR amplification of DNA from existing sub-arrayed library sets.

Dated: February 1, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–3237 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Method Of Using A β_2-Adrenergic Receptor Agonist That Selectively Activates G_s Proteins In The Treatment Of Cardiovascular Disease

Rui-Ping Xiao, Edward G Lakatta, Heping Cheng (NIA)
Serial No. 60/102,475 filed 30 Sep 98
Licensing Contact: Charles Maynard; 301/406–7735 ext. 243; *e-mail:* cm251n@nih.gov

This technology relates to a method of using β_2-adrenergic receptor agonist that selectively activates G_s proteins in the treatment of cardiovascular disease. In particular, this invention relates to a method of using fenoterol to activate selectively G_s proteins in the treatment of acute heart failure, chronic heart failure and aging heart. In the heart, β-adrenergic receptor (βAR) stimulation provides the primary regulatory mechanism on cardiac function. There are at least two βAR subtypes, namely β_1AR and β_2AR, that exist in the myocardium, although β_1AR predominates. While β_1AR couples to stimulatory G proteins (G_s), β_2AR elicits bifurcated signaling pathways mediated by G_s and G_i, resulting in functionally opposing effects on cardiac function. In failing and aged hearts, the overall response to βAR stimulation is markedly diminished due to the down-regulation of β_1AR and an up-regulation of G_i proteins.

This invention is predicated on the surprising and unexpected discovery that a β_2AR agonist can selectively activate G_s proteins, and is further predicated on the discovery that selective activation of G_s proteins by a β_2AR agonist can revive βAR contractile support in failing hearts.

An object of the present invention is to provide ligands (agonists and antagonists), and methods for the selective activation and inactivation of a subset of signaling pathways coupled to any given receptor of any cell or tissue type. It is another object of the present invention to provide ligands and methods for the selective activation and inactivation of a subset of signaling pathways involving G proteins. In particular, G_s and G_i proteins coupled to a cardiovascular receptor such as β_2 AR for the treatment of cardiovascular disease.

Aminohydroxylated Adenine Derivatives

KB Sharpless, DM Jerina, KR Dress, LJ Goossen, AS Pilcher, H Kroth, AR Ramesha (NIDDK)
Serial No. 60/091,900 filed 07 Jul 98
Licensing Contact: Charles Maynard; 301/496–7735 ext. 243; *e-mail:* cm251n@nih.gov

The invention herein describes a process for the addition of adenine and its derivatives to olefins to produce cis-vicinal aminoalcohols. The adenine moiety is contained in numerous drugs as well as plant growth regulators. In addition, adducts of purine bases in

DNA have been implicated in the transformation of normal cells to tumor cells. A key feature of the synthesis is that it provides a one-step high yield process for the production of adducts derived from the cis-opening of diol epoxide metabolites from polycyclic aromatic hydrocarbons. Previously such cis-opened adducts have not been readily accessible.

This technology provides compositions and synthetic methods for the preparation of important biologically active compounds. Typically, admixing adenine, olefin and ligand in the absence of oxygen with an appropriate catalyst produces the desired product for a wide range of substituted olefins and amino derivatives.

Mammalian Gene Insertion Libraries

X Zheng, CL Steward, SH Hughes, EV Barsov (NCI)
Serial No. 09/069,127 filed 28 Apr 98
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; *e-mail;* rr154z@nih.gov

Sequencing of the genomes of higher organisms is progressing rapidly, but only a fraction of the open reading frames and cDNAs whose sequence are known have functions associated with them. There is therefore a great need to assign functions to these open reading frames. One method of achieving this goal is insertional mutagenesis using transposable elements. An insertion into a gene not only alters the structure of the gene but also serves as a molecular marker for characterizing and cloning the targeted gene. While effective, this approach has been problematic in mammals due to the large size and complexity of mammalian genomes and the lack of appropriate mammalian transposable elements. The current invention provides a mammalian insertional mutation library in which each cell has one or more copies of a vector inserted into its genome at essentially random locations, and the library as a whole includes insertions in the majority of the genes of the genome. The cells used to create the libraries can be of a variety of types, including totipotent cells, and can be used to generate a whole animal. The unique vectors used to make the libraries are retrovirus-based, replication-deficient in mammalian cells and are efficiently produced in avian cells at high titers. This technology allows for the efficient creation of transgenic mice in which a detailed investigation of the cellular processes that are affected by the expression of mutated gene sequences can be performed as well as an analysis of the consequences on the physiology of the whole animal.

Preparation of Chiral 5-Aminocarbonyl-5H-Dibenzo[A,D]Cyclohepten-5,10-Imines by Optical Resolution

TH Jones, Kc Rice (NIDDK)
Serial No. 08/420,013 filed 11 Apr 95; U.S. Patent No. 5,686,414 issued 11 Nov 97
Licensing Contact: Leopold Luberecki, Jr.; 301/496–7735 ext. 223; e-mail: 1187a@nih.gov.

This case discloses a means for chiral separation of 5-Aminocarbonyl-5H-Dibenz0[A,D] Cyclohepten-5,10-Imines (ADCI), a compound under development by an exclusive licensee as a treatment for epilepsy and nervous system disorders. Approximately one percent of the American population suffers from epilepsy or related seizure disorders, and many of these patients do not respond to currently available antiseizure medications. It can be assumed that if one of the enantiomeric forms of ADCI is more active than the other, the U.S. Food and Drug Administration and its equivalent foreign counterparts will require use of that stereoisomeric form of the compound.

A Novel Mouse Model For Non-Insulin Dependent (TYPE II) Diabetes Mellitus

CR Kahn, JC Bruening, D Accili (NICHD)
DHHS Reference No. E–123–96/0 filed 07 Jun 96
Licensing Contact: Charles Maynard; 301/496–7735 ext. 243;
e-mail: cm251n@nih.gov.

This technology relates to animal models of polygenic insulin-related disorders and methods of using such animals. The invention features a ''genetically engineered'' non-human animal having a first and second mutation in genes important for insulin action. The double ''knockout'' animal is useful as a model of polygenic insulin-related disorders, e.g., type II diabetes. Non-insulin dependent (TYPE II) diabetes mellitus (NIDDM) is among the most common of all metabolic disorders, affecting 6–7% of the U.S. population. Currently no good animal models exist for NIDDM. The most frequently used models are models of genetic obesity. In these obesity models, there is gradual development of insulin resistance as the obesity increases. The Goto-Kitazak (GK) rat has been proposed as a non-obese model of NIDDM, although the diabetes in this case is quite mild and the pathogenesis is much less well understood. Thus, a need still exists to develop a novel mouse model that closely resembles human NIDDM disease.

Dated: February 1, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–3238 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licesning.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contracting John Fahner-Vihtelic at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057 ext. 270; *fax:* 301/402–0220; e-mail: jf36z@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A General Strategy And Specific Software For Maintaining Knowledgebases Consisting Of Diverse Categories

S Shaw (NCI)
DHHS Reference No. E–260–98/0 filed 30 Nov 98

The present disclosure describes a data management system and process for efficiently storing and retrieving data on a computer. This invention is designed to combine maximum data management flexibility and stability into a unified knowledgebase applications; as a result it has diverse functionality which can replace users' fragmented world of specialized applications such as contact manager, administrative database, bookmark keeper, fact finder. Some unique features of this software-based invention

are: (1) ability to handle any number of conceptually distinct categories of items (such as people, events, institutions, tasks, concepts, processes, document types); (2) tools for creating relationships between any two or more objects, with the ability to categorize types of relationships and decide which categories they apply to; (3) use of parent-child relationship as a singularly important relationship to organize, view and navigate information; (4) flexibility in adding diverse categories of objects and relationships, while maintaining a simple underlying data structure and programing environment; and (5) ability to view complex relationships in flexible and informative ways; (6) tools for managing names which are indispensable for finding the relevant objects; (7) efficient ways to search information and filter retrievals to limit to relevant information.

Fabrication And Characterization Of Novel Amperometric Biometric Sensors

ET Chen (FDA)

DHHS Reference No. E–177–98/0 filed 30 Nov 98

The present invention relates to the construction of an amperometric sensor using a catalytically active cyclodextrin as an enzyme biometric. The particular catalytically active cyclodextrin molecule that is disclosed is made by chemically modifying a cyclodextrin by the addition of one or more imidazole moieties. The cyclodextrin is deposited on the surface of an electrode and the resultant surface modified electrode is used as a biosensor to detect the presence of nitrophenyl acetate.

Method for Non-Invasive Identification of Individuals at Risk for Diabetes

AJ Durkin, MN Ediger, MV Chenault (FDA)

Serial No. 60/109,257 filed 19 Nov 98

The present disclosure describes a device and methods for screening individuals at risk for developing diabetes. It relies on a combination of optical spectroscopy and a multi-variate statistical analysis. In practice, the device compares and models spectra taken from a subject to control spectra taken from the same subject. This invention was designed to be a minimally/non-invasive, inexpensive, and highly sensitive system. In its simplest form, the invention will be developed as an adjunctive technique to current diabetes screening methods. As relevant clinical data becomes available from initial applications, a stand-alone device is likely to evolve from the present invention.

Fiber Optic Probe for Quantitative Optical Spectroscopy

AJ Durkin, S Matchette, M Ediger (FDA)

Serial No. 60/105,945 filed 28 Oct 98

The present disclosure describes a fiber optic probe assembly and methods of using said probe assembly for both medical diagnostic and industrial applications. This novel device consists of a single light delivery source in combination with an array of light detector fibers. In use, the assembly has the ability to simultaneously acquire data from a variety of source/detector separations. The entire data set is then in a convenient format, for use with an appropriate mathematical model of light transport, to deduce optical properties of the sample under test. The properties may be associated with the technique known as ''optical biopsy'' for diagnostic purposes. Industrial applications where a turbid mixture requires analysis can also employ the disclosed device and methods. Examples of some industrial uses would be manufacturing processes associated with pharmacology, food processing, and emulsion technology.

Determining the Hurst Exponent for Time Series Data

PB DePetrillo (NIAAA)

Serial No. 09/132,462 filed 11 Aug 98

The present application describes a method, an apparatus, and a computer-readable medium for calculating the Hurst coefficient of time-series data. Many biological constituents, such as the cardiovascular system, generate signals like the heart rate which exhibit chaotic behavior. The Hurst coefficient is a type of chaotic signature which correlates to signal complexity. Measures of cardiac signal complexity are known to be correlated with healthy physiological function. Therefore, this technology may be useful in a variety of diagnostic applications such as: (1) real-time analysis of EKGs in acute care units to help identify patients at risk of heart attack, (2) identifying previously unknown cardiovascular drug toxicities, and (3) screening analysis of EKGs in ambulatory patients.

Dated: February 2, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–3239 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: February 21–22, 1999.

Time: February 21, 1999, 7:00 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Time: February 22, 1999, 8:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joyce A. Hunter, PHD, NHLBI/DEA/Review Branch, Rockledge Building II, Room 7192, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0287.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: March 18, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey H. Hurst, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3232 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–RM

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee.

Date: March 5, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, Phs, Dhhs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3229 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 19, 1999.

Time: 8:30 to 5:00.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3230 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Maternal and Child Health Research Subcommittee.

Date: March 2, 1999.

Time: 9:00 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3231 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 12, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To provide concept review of proposed cooperative agreement.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Jean G. Noronha, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This meeting is being published less than 15 days prior to the meeting due to scheduling difficulties for the reviewers.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3233 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 25–26, 1999.

Time: February 25, 1999, 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: February 26, 1999, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mary J Stephens-Frazier, PhD., Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892. (301) 594–5971.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS).

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3234 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Conferences (R13) Grants.

Date: February 11, 1999.

Time: 10:00 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Patrick J. Mastin, PHD, Scientific Review Administrator, National Institute of Environmental Health Science, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541/4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Inhalation of PCBs as a Possible Human Health Hazard.

Date: February 14–16, 1999.

Time: Febraury 14, 1999, 7:00 pm to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn-Albany Airport, 800 Albany Shaker Rd., Albany, NY 12211.

Time: Febraury 15, 1999, 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn-Albany Airport, 800 Albany Shaker Rd., Albany, NY 12211.

Time: February 16, 1999, 8:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn-Albany Airport, 800 Albany Shaker Rd., Albany, NY 12211.

Contact Person: Patrick J. Mastin, PHD, Scientific Review Administrator, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing: 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3235 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 63 FR 8656, February 20, 1998, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to establish the substructure of the National Center for Complementary and Alternative Medicine (NCCAM).

Section N–B, Organization and Functions, under the heading National Center for Complementary and Alternative Medicine (ND, formerly HND), is amended by inserting the following:

Office of the Director (ND1, formerly HND1). (1) Plans, directs, coordinates,

and evaluates the development and progress of programs and activities of the Center; (2) develops major policies and program decisions based on an evaluation of the status of support and accomplishments of the Center's program areas; (3) coordinates with full-time institute liaisons to facilitate appropriate coordination and scientific input within NIH; (4) collaborates with other NIH Institutes and Centers in the identification of ongoing activities and planned new directions in complementary and alternative medicine research and research training as it relates to the overall NIH mission; (5) serves as the focal point for a program of complementary and alternative medicine intramural research carried out in NIH laboratories and clinics, including the sponsorship of intramural research trainees; (6) maintains requisite liaison with other government, voluntary, and private organizations and groups nationally; (7) promotes complementary and alternative medicine research by outreach and responsiveness to scientific and lay publics, including Congress, the media, and the general public, especially by managing the Center's information clearinghouse; (8) coordinates all aspects of committee management, including the activities of all Congressionally-mandated committees and advisory councils; and (9) coordinates all extramural and intramural training activities of the Center.

Office of Administrative Operations (ND12, formerly HND12). (1) Advises the Director, Deputy Director, and senior Center staff on administrative matters; (2) plans and directs management functions of the Center including financial management, personnel management, purchase and maintenance of equipment and supplies, and acquisition and management of space; (3) is responsible for execution of the research management and support and intramural budgets; (4) develops, implements, and supervises the Center's program planning and evaluation activities by initiating and conducting a wide variety of analytical studies that provide a rational basis for key policy and program decisions; and (5) has broad responsibility for the supervision of the Center's computer-related activities.

Office of Legislation, Policy and Analysis (ND13, formerly HND13). (1) Advises the Director, Deputy Director, and senior Center staff on policy matters and other relevant issues that may affect Center programs and initiatives; (2) develops and implements the program planning, analysis, and evaluation activities of the Center; (3) serves as liaison with the NIH legislative analysis community, keeping abreast of their policy and program developments; (4) conducts the Center's legislative liaison activities, including drafting testimony, reports, and memos concerning the Center's and NIH's complementary and alternative medicine-related activities, responding to Congressional requests for information, and analyzing and tracking legislation regarding complementary and alternative medicine; and (5) analyzes and tracks legislation affecting the mission of the Center, and makes recommendations to the Center Director for legislative proposals.

Office of Communications and Public Liaison (ND14, formerly HND14). (1) Represents the Center's Director for press and other public matters; (2) prepares reports, publications, press releases, exhibits, and education programs, and responds to inquiries from the press, professional organizations, scientists, and the general public about the complementary and alternative medicine research programs and policies of the NIH; (3) communicates the goals and results of NIH's complementary and alternative medicine-supported research and provides information about the Center's mission, programs, activities, and initiatives to the general public and specific target audiences, both directly and via intermediaries, such as the news media; (4) advises the Director, Deputy Director, and other Center staff on communication matters and, as appropriate, assists staff in meeting their communication needs; (5) assures compliance with NIH and Departmental procedures for the review and clearance of public materials, including manuscripts, speeches, and publicly available electronic documents; and (6) serves as the contact point for members of the public who wish to communicate with Center staff, and also facilitates collaborative relationships between the Center and the many individuals and organizations it serves.

Division of Extramural Research, Training and Review (ND2, formerly HND2). (1) Advises the Director, Deputy Director, and senior Center staff on matters pertaining to the development, promulgation and management of policies and procedures related to extramural (grant, cooperative agreement, and contract) research and training programs in complementary and alternative medicine; (2) represents the Center on numerous permanent and ad hoc NIH, Departmental, interagency, and non-governmental committees concerned with extramural program activities; (3) provides guidance in the development of Center policies and recommended procedures concerning peer review, extramural research programs, research training and career development programs; (4) facilitates and stimulates interaction and exchange of information on complementary and alternative medicine between NIH Institutes and Centers to promote understanding of the NIH's long-range plans; (5) interprets effect of proposals for long-term support on projected NIH Institute or Center plans regarding complementary and alternative medicine; (6) recommends budget allocations for the various complementary and alternative medicine-related programs; (7) acts as liaison between NIH Institutes and Centers for activities relating to complementary and alternative medicine grant application assignments, foreign travel, and foreign grants; (8) identifies complementary and alternative medicine research developments and determines where additional research and training efforts are required; and (9) arranges workshops, conferences, seminars, and meetings where appropriate to stimulate or facilitate research in complementary and alternative medicine.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this realignment and are consistent with this realignment shall continue in effect, pending further redelegation.

Dated: January 5, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–3240 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 63 FR 8656, February 20, 1998, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the establishment of the National Center for Complementary and Alternative

Medicine (NCCAM) by elevating and retitling the Office of Alternative Medicine (OAM) currently located within the Office of Disease Prevention, Office of the Director, NIH, pursuant to Title VI of P.L. 105–277. After the statement for the National Center for Research Resources (NR, formerly HNR) add the following:

National Center for Complementary and Alternative Medicine (ND, formerly HND). (1) Studies the integration of alternative treatment, diagnostic and prevention systems, modalities, and disciplines with the practice of conventional medicine and as a complement to such medicine and the integration of such alternatives into health care delivery systems in the United States; (2) ensures that scientists with appropriate expertise in research on complementary and alternative medicine are incorporated into the review, oversight, and management processes of all research projects and other activities funded by the Center; (3) coordinates efforts with other Institutes and Federal agencies to ensure appropriate scientific input and management; (4) identifies and evaluates alternative and complementary medical treatment, diagnostic and prevention modalities in each of the disciplines and systems with which the Center is concerned, including each discipline and system in which accreditation, national certification, or a State license is available; (5) conducts or supports the following activities: outcomes research and investigations, epidemiological studies, health services research, basic science research, clinical trials, and other appropriate research and investigational activities; (6) assists the NIH Director in designating specific personnel in each Institute to serve as full-time liaisons with the Center in facilitating appropriate coordination and scientific input; (7) establishes, updates, and makes publicly accessible a bibliographic system for the collection, storage, and retrieval of worldwide research relating to complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems; (8) establishes an information clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of alternative medical treatment, diagnostic and prevention practices by health professionals, patients, industry, and the public; and (9) supports the development and operation of multipurpose centers to conduct research and other activities with respect to complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems; the provision of support for the development and operation of such centers shall include accredited complementary and alternative medicine research and education facilities.

Under the heading Office of the Director (NA, formerly HNA), Office of Disease Prevention (NA2, formerly HNA2), the Office of Alternative Medicine (NA27, formerly HNA27) is deleted in its entirety.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this realignment and are consistent with this realignment shall continue in effect, pending further redelegation.

Dated: February 1, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 99–3241 Filed 2–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Tribal Self-Governance Notice of Availability of Self-Governance BIA Negotiation and Non-BIA Planning/ Negotiation Grants

AGENCY: Office of Self-Governance, Office of the Secretary, Interior.

ACTION: Notice of grants availability.

SUMMARY: In this notice, the Office of Self-Governance (OSG) announces the availability of fiscal year 1999 negotiation grants to negotiate BIA programs (up to 10 grants of no more than $20,000 each) and planning/ negotiation grants to plan for and negotiate DOI and non-BIA programs (up to 5 grants of no more than $20,000). The timeframes for application and selection are specified in this announcement.

DATES: Applications must be submitted by March 31, 1999.

ADDRESSES: Completed applications for grants should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Reinfeld, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW, Mail Stop 2548, Washington, DC 20240, 202–219–0240.

SUPPLEMENTARY INFORMATION: The tribal self-governance program is designed to promote self-determination by allowing tribes to assume more control through negotiated annual funding agreements of programs operated by the Department of the Interior. The Tribal Self-Governance Act of 1994 (Pub. L. 103–413) allows for negotiations to be conducted for programs operated by BIA and for programs operated by other bureaus and offices within the Department that are otherwise available to Indians or when there is an historical, cultural, or geographic connection to an Indian tribe.

The purpose of this notice is to announce the availability of BIA negotiation and non-BIA planning/ negotiation grants in accordance with the self-governance interim rule published in the **Federal Register** on April 23, 1996. The applicable interim rules were established at 25 CFR 1001.7, 1001.8, and 1001.10 and will be used to govern the application and selection process for tribes/consortia to receive fiscal year 1999 BIA negotiation and non-BIA negotiation/planning grants as specified in this notice. Applicants should be guided by the requirements in 25 CFR 1001.7, 1001.8, and 1010.10 in preparing their applications. Copies of the Interim rules published in the **Federal Register** on April 23, 1996, may be obtained from the information contact person identified in this notice.

Subject to the discretion of the Director, Office of Self-Governance, the following types of grants are available to tribes/consortia in 1999 with the deadlines as stated below:

(1) *Negotiation Grants to Negotiate BIA Programs:* Up to 10 grants of no more than $20,000 may be made available. As announced in the **Federal Register** published on December 1, 1998, the closing date for submitting completed applications to begin participation in tribal self-governance in fiscal year 2000 or calendar year 2000 is march 1, 1999. Applications requesting to be included in the applicant pool to begin participation in tribal self-governance may be submitted at any time. Tribes/consortia selected from the applicant pool to begin participation in tribal self-governance in fiscal year 2000 or calendar year 2000, may be eligible to receive a negotiation grant. Each selected tribe/consortium will be notified by March 17, 1999, and must submit a written application for a negotiation grant, no later than March 31, 1999, indicating its intention to

negotiate a BIA annual funding agreement for 2000.

(2) *Planning/Negotiation Grants to Plan for and Negotiate Non-BIA Programs:* Up to five grants of no more than $20,000 may be made available. The closing date for submitting applications to receive a negotiation/planning grant for existing self-governance tribes to negotiate for DOI non-BIA programs is March 31, 1999. No later than May 1, 1999, each applicant will be notified by letter from the Director, Office of Self-Governance whether it has been selected to receive a planning/negotiation grant to negotiate non-BIA programs.

In order to provide sufficient time for tribes/consortia to effectively use the negotiation grants and planning/negotiation grants for non-BIA programs, the following target dates have been established for the awarding of grants:

(1) *Negotiation Grants for BIA Programs:* Since agreements for the 2000 fiscal year need to be signed and submitted by July 1, 1999, to allow sufficient time to prepare for negotiations, new participating tribes will be selected and awarded negotiation grants by May 1, 1999.

(2) *Planning/Negotiation Grants for Non-BIA Programs:* Since agreements for the 2000 fiscal year need to be signed and submitted by July 1, 1999, to allow sufficient time for planning and negotiation of DOI non-BIA programs, planning/negotiation grants for non-BIA programs will be awarded by May 15, 1999.

Submitting Applications

(1) Applications must be submitted in accordance with the interim rule published in the **Federal Register** on April 23, 1996, and by the deadlines identified in this announcement.

(2) Applications which are mailed or hand-delivered.

(3) Applications which are mailed must be postmarked no later than the date given in this notice for the particular type of grant being applied for.

Dated: February 4, 1999.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 99–3154 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–02–M

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.*):

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, OH, PRT–007667.

The applicant requests a permit to import two male captive born pygmy chimpanzees (*Pan paniscus*) from the Leipzig Zoo, Germany, for the purpose of enhancement of the species through captive propagation.

Applicant: International Crane Foundation, Baraboo, WI, PRT–007659.

The applicant requests a permit to export up to 14 fertile eggs from captive bred Siberian cranes (*Grus leucogeranus*) to the Institute for Nature Conservation and Reserves, Russia, for the purpose of enhancement of the species through re-introduction back into the wild.

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 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications 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 to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 5, 1999.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–3299 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Oil Spill Restoration Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability

SUMMARY: The Fish and Wildlife Service, on behalf of the Department of the Interior, the National Oceanic and Atmospheric Administration (Administration), the State of Washington, and the Makah Tribe, announces the release for public review of the Draft Restoration Plan and Environmental Assessment for the *Tenyo Maru* Oil Spill (Plan/Assessment). The Plan/Assessment covers the Natural Resource Trustees' (Trustees) proposal to restore natural resources injured as a result of the 1991 *Tenyo Maru* fishing vessel oil spill.

DATES: Written comments must be submitted on or before April 12, 1999.

ADDRESSES: Requests for copies of the Plan/Assessment may be made to: Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503, Attn: Cindy M. Chaffee. The Plan/Assessment is also available for download at *http://www.r1.fws.gov.* and *http://www.darcnw.noaa.gov/tenyo.htm.* Written comments regarding the Plan/Assessment should be sent to the same mailing address as requests for copies of the Plan/Assessment.

FOR FURTHER INFORMATION CONTACT: Cindy M.Chaffee, Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503. Interested parties may also call (360) 753–4324.

SUPPLEMENTARY INFORMATION: On July 22, 1991, a Japanese fishing vessel (*Tenyo Maru*) and a Chinese freighter (*Tuo Hai*) collided about 20 miles northwest of Neah Bay, Washington, spilling at least 100,000 gallons of oil. Beaches were fouled with oil from Vancouver Island, British Columbia to northern Oregon. While impacts were scattered along the entire Washington State shoreline and the northern beaches of Oregon, the heaviest oiling occurred along the Makah Indian Reservation and the Olympic National Park shoreline. Seabirds, and to a lesser extent, kelp habitats, were demonstrated to have been injured by the spill. The trustees documented that common murres (*Uria aalge*) and federally threatened marbled murrelets (*Brachyramphus marmoratus*) were killed, as well as rhinoceros auklets

(*Cerorhinca moncerata*), tufted puffins (*Fratercula cirrhata*), Cassin's auklets (*Ptychoramphus aleuticus*) and pigeon guillemots (*Cepphus columba*). Oil was observed in many of the giant kelp (*Macrocystis*) and bull kelp (*Nereocystis*) dominated kelp beds from Cape Alava north to Tatoosh Island and from Tatoosh Island east to Waadah Island.

Claims for natural resource damages were settled by consent decree under the Oil Pollution Act of 1990 (Act), 33 U.S.C. § 2701 *et seq.* Under the consent decree, the defendants agreed to pay approximately $5.2 million to the natural resource trustees to compensate the public for the injury, destruction, and loss of natural resources resulting from the spill. The Plan/Assessment is presented to the public by the Trustees responsible for restoration implementation under the consent decree and is consistent with the Natural Resource Damage Assessment Regulations found at 15 CFR, Part 990. The Plan/Assessment describes the affected environment and illustrates potential restoration alternatives to restore, rehabilitate, replace, or acquire the equivalent of natural resources injured in the *Tenyo Maru* oil spill and their environmental consequences.

The preferred restoration alternative selected by the Trustees is an integrative restoration approach that restores populations of injured resources, provides quality habitat, and allows natural recovery. Proposed restoration efforts will include the combination of protection and enhancement activities that have the greatest potential to restore the injured natural resources, with particular emphasis on seabirds. The Plan/Assessment proposes to restore injured resources by: (1) Restoring common murre colonies within the Copalis National Wildlife Refuge; (2) contributing to an oiled wildlife rehabilitation center; (3) educating the general public on human disturbance of nesting seabird colonies; (4) reducing seabird by-catch in coastal set-net fisheries; (5) protecting marbled murrelet habitat; and (6) reducing siltation in rivers.

Interested members of the public are invited to review and comment on the Plan/Assessment. Copies of the plan are available for review at the Fish and Wildlife Service's Western Washington Office in Lacey, Washington (510 Desmond Drive SE, Suite 102); the Olympic Coast National Marine Sanctuary in Port Angeles, Washington (Federal Building, 138 West 1st Street, Suite 7) and; the Makah Tribe at Neah Bay, Washington (Old Air Force Building #15). Additionally the Plan/Assessment will be available for review at the Fish and Wildlife Service's web site *http://www.rl.fws.gov*, at Administration's web site *http://www.darcnw.noaa.gov/tenyo.htm*, and at public libraries in Clallam, Jefferson, Grays Harbor, and Pacific Counties.

Written comments will be considered and addressed in the final Restoration Plan and Environmental Assessment at the conclusion of the restoration planning process.

Dated: February 2, 1999.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–3198 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1430–01; CA 2221]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Kern County, California have been examined and found suitable for classification for conveyance to the County of Kern under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for conveyance until at least 60 days after publication of this Notice in the **Federal Register**.

Mount Diablo Meridian

T. 30 S., R. 33 E.
Section 15: S½NE¼SE¼SE¼SW¼, SE¼SE¼SE¼SW¼

Containing 3.99 acres.

AP# 179–320–02

The County of Kern has filed an application to purchase a 3.99-acre parcel of public land occupied by an existing solid waste transfer station. The transfer station handles nonhazardous solid waste from residential, commercial and industrial sources. Conveyance would include a buffer area around the transfer station site.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of patent issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, until March 29, 1999, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Field Office Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a transfer station and buffer areas. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a transfer station and buffer areas.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: January 27, 1999.

Ron Fellows,

Field Office Manager.

[FR Doc. 99–2647 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Modifications to the Bid Adequacy Procedures

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notification of procedural changes.

SUMMARY: The Minerals Management Service (MMS) is modifying one element of its existing bid adequacy procedures for ensuring receipt of fair market value on Outer Continental Shelf (OCS) oil and gas leases. The modification establishes a new criterion for acceptance under the number of bids rule for selected tracts in Phase 1. Specifically, for viable confirmed and wildcat (C&W) tracts receiving three or more qualified bids, where the third largest bid is within 50 percent of the high bid, acceptance under the number of bids rule will apply only to those viable C&W tracts having high bids that are in the top 75 percent of high bids on a per acre basis for all three-or-more-bid C&W tracts within designated water depth categories. Unless stated otherwise, usually in the final notice of sale, the designated categories in the Gulf of Mexico are: water depths of less than 800 meters and water depths of 800 meters or more.

This change has been made following a review of bidding activity in recent OCS sales. The new criterion for the number of bids rule was developed in part because in these sales a disproportionately large number of the three-bid confirmed and wildcat tracts with relatively low high bids were accepted in Phase 1, while tracts of this type with much larger high bids tended to be passed to Phase 2 in the evaluation process. Yet, in sales held without a number of bids rule for Phase 1 acceptance, it was found that of the set of tracts receiving three or more bids, the ones that tended to get rejected were those receiving relatively small high bids. Thus, this new criterion will allow the MMS to better ensure receipt of fair market value through more efficient targeting of its tract evaluation resources.

Another reason for the change is that the previous three-bid rule provided an incentive to submit lower bids. By doing so, a bidder could raise the chance that if it was the high bidder, the third largest bid would fall within the required 50 percent of its high bid. Under the proposed change, bidders would be discouraged from adopting this strategy because attempts to implement it would likely cause the potential high bid to fall below the new requirement that an acceptable high bid in Phase 1 must be in the top 75 percent of all high bids in the tract's class. Indeed, the 75 percent parameter was chosen, in part, because in recent sales, there were no cases in which a high bidder could have successfully implemented this strategy with the proposed change in the rule in place.

DATES: This modification is effective February 4, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: The following set of bid adequacy procedures incorporates the most recent changes. During the bid review process, MMS conducts evaluations in a two-phased process for bid adequacy determination. We also review the bid for legal sufficiency [1] and anomalies [2] to establish the set of qualified bids [3] to be evaluated.

Phase 1

The tracts receiving bids are partitioned into four general categories:

—Those tracts where competitive market forces can be relied upon to assure fair market value;

—Those tracts which the MMS identifies as being nonviable [4] based on adequate data and maps;

—Those tracts where the Government has the most detailed and reliable data;

—Those tracts where opportunities are greatest for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices.

Based on these categories, six Phase 1 rules are applied to all tracts receiving bids:

—Accept the highest qualified bid on viable confirmed and wildcat tracts receiving three or more qualified bids where the third largest such bid on the tract is at least 50 percent of the highest qualified bid and where the high bid per acre ranks in the top 75 percent of high bids for all three-or-more-bid confirmed and wildcat tracts that reside within a specified water depth category.[5]

—Accept the highest qualified bid on confirmed and wildcat tracts determined to be nonviable.

—Pass to Phase 2 all tracts that require additional information to make a determination on viability or tract type.

—Pass to Phase 2 all viable confirmed and wildcat tracts receiving one or two qualified bids.

—Pass to Phase 2 all viable confirmed and wildcat tracts receiving three or more qualified bids where either the third largest such bid is less than 50 percent of the highest qualified bid or where the high bid per acre ranks in the lowest 25 percent of high bids for all three-or-more-bid confirmed and wildcat tracts in the specified water depth category.

—Pass to Phase 2 all drainage and development tracts.

The percentile ranking of a tract's high bid is calculated by multiplying 100 times the ratio of the numerical ordering of the three-or-more-bid confirmed and wildcat tract's high bid to the total number of all viable and nonviable three-or-more-bid confirmed and wildcat tracts in the designated water depth. For example, suppose there are 21 total confirmed and wildcat tracts identified in Phase 1 as receiving three-or-more-bids in the designated water depth category of at least 800 meters. All viable tracts in this set having a high bid among the top 15 high bids would satisfy the 75% requirement; the 15th ranked high bid would represent the 71st percentile.

In ensuring the integrity of the bidding process, the Regional Director (RD) may identify an unusual bidding pattern [6] at any time during the bid

[1] Legal bids are those bids which comply with MMS regulations (30 CFR 256) and the Notice of Sale. Any illegal high bid will be returned to the bidder.

[2] Anomalous bids include all but the highest bid submitted for a tract by the same company, parent or subsidiary (bidding alone or jointly). Such bids are excluded when applying the number of bids rule or any bid adequacy measure.

[3] Qualified bids are those bids which are legal and not anomalous.

[4] Nonviable tracts or prospects are those geographic or geologic configurations of hydrocarbons whose risk weighted most probable resource size is below the minimum economic field size for the relevant cost regime and anticipated future prices. The risk used is below the lowest level anticipated for any tract or prospect in the same cost regime.

[5] The water depth categories usually will be specified in the final notice of sale.

[6] Within the context of our bid adequacy procedures, the term ''unusual bidding patterns'' typically refers to a situation in which there is an excessive amount of coincident bidding by different companies on a set of tracts in a sale. Other forms of unusual bidding patterns exist as well, and generally involve anti-competitive practices, e.g., when there is an uncommon absence of competition

Continued

review process, but before a tract is accepted. If the finding is documented, the RD has discretionary authority, after consultation with the Solicitor, to pass those tracts so identified to Phase 2 for further analysis. The RD may eliminate all but the largest of the unusual bids from consideration when applying any bid adequacy rule, may choose not to apply a bid adequacy rule, or may reject the tract's highest qualified bid.

All of these procedures are generally completed within 3 weeks of the bid opening, and the results are announced simultaneously at the end of this period.

Phase 2

The Phase 2 bid adequacy determinations are normally completed sequentially over a period ranging between 21 and 90 days after the sale. The total evaluation period can be extended, if needed, at the RD's discretion (61 FR 34730, July 3, 1996).

Activities designed to resolve bid adequacy assessments are undertaken by analyzing, partitioning, and evaluating tracts in two steps:

—Further mapping and/or analysis is done to review, modify, and finalize viability determinations and tract classifications.

—Tracts identified as being viable must undergo an evaluation to determine if fair market value has been received.

After completing these two steps, a series of rules and procedures are followed.

—Accept newly classified confirmed and wildcat tracts having three or more qualified bids if the third largest such bid is at least 50 percent of the highest qualified bid.

—Accept the highest qualified bid on all tracts determined to be nonviable.

—Determine whether any categorical fair market evaluation technique(s) will be used. If so:

—Evaluate, define, and identify the appropriate threshold measure(s).

—Accept all tracts whose individual measures of bid adequacy satisfy the threshold categorical requirements.

—Conduct a full-scale evaluation, which could include the use of MONTCAR,[7] on all remaining tracts [8] passed to Phase 2 and still awaiting an acceptance or rejection decision.

-Compare the highest qualified bid on each of these remaining tracts to two measures of bid adequacy: the Mean Range of Values (MROV) [9] and the Adjusted Delayed Value (ADV) [10].

-Accept the highest qualified bid for those tracts where such a bid equals or exceeds the tract's ADV.

-Reject the highest qualified bid on drainage and development tracts receiving three or more qualified bids where such a bid is less than one-sixth of the tract's MROV.

-Reject the highest qualified bid on drainage and development tracts receiving one or two qualified bids and on confirmed and wildcat tracts receiving only one qualified bid where the high bid is less than the tract's ADV.

At this stage of the process, the outstanding tracts consist of those having a highest qualified bid that is less than the MROV of the ADV, and are either (a) drainage or development tracts receiving three or more qualified bids with the highest such bid exceeding one-sixth of the tract's MROV, or (b) viable confirmed and wildcat tracts that receive two or more qualified bids.

From these outstanding tracts, MMS selects the following ones:

-Drainage and development tracts having three or more qualified bids with the third largest such bid being at least 25 percent of the highest qualified bid;

-Confirmed and wildcat tracts having two or more qualified bids with the second largest such bid being at least 25 percent of the highest qualified bid.

The MMS then compares the highest qualified bid on each of these selected, outstanding tracts to the tract's Revised Arithmetic Average Measure (RAM).[11] For all these tracts:

-Accept the highest qualified bid where such a bid equals or exceeds the tract's RAM.

-Reject the highest qualified bid where such a bid is less than the tract's RAM.

Finally, the MMS identifies those tracts that were in the ''outstanding'' set above but not selected for comparison to the RAM.

-Reject the high bid on all of these leftover tracts.

Dated: February 4, 1999.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 99–3228 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–MR–M

among companies active in a sale on a set of prospective tracts.

[7] MONTCAR is a probabilistic, cash flow computer simulation model designed to conduct a resource-economic evaluation that results in an estimate of the expected net present value of a tract (or prospect) along with other measures.

[8] These include tracts not accepted by a categorical rule that are classified as drainage and development tracts and those classified as confirmed and wildcat tracts that are viable and received (a) one or two qualified bids, or (b) three or more qualified bids where either the third largest such bid is less than 50 percent of the highest qualified bid or the high bid is in the bottom quartile of all three-or-more-bid confirmed and wildcat tracts for a designated water depth category.

[9] The MROV is a dollar measure of a tract's expected net present private value, given that the tract is leased in the current sale, allowing for exploration and economic risk, and including tax consequences including depletion of the cash bonus.

[10] The ADV is the minimum of the MROV and the Delayed MROV (DMROV). The DMROV is a measure used to determine the size of the high bid needed in the current sale to equalize it with the discounted sum of the bonus and royalties expected in the next sale, less the foregone royalties from the current sale. The bonus for the next sale is computed as the MROV associated with the delay in leasing under the projected economic, engineering, and geological leasing receipts conditions, including drainage. If the high bid exceeds the DMROV, then the leasing receipts from the current sale are expected to be greater than those from the next sale, even in cases where the MROV exceeds the high bid.

[11] The RAM is the arithmetic average of the MROV and all qualified bids on the tract that are equal to at least 25 percent of the high bid.

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 30, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 25, 1999.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Wilcox County

Dry Forks Plantation, E of AL 41. 5.5 mi. SW of Camden, Coy vicinity, 99000250

Furman Historic District, Roughly along Old Snow Hill Rd., Cty. Rd. 59, Burson Rd., and AL 21, Furman, 99000249

Pine Apple Historic District, Roughly along Old Depot, Cty. Rd. 59, 7 and 61, Broad St. Banana St. AL 10 and Adams Dr., Pine Apple, 99000248

ARKANSAS

Washington County

Johnson Switch Building, 3201 Main St., Johnson, 99000251

FLORIDA

Indian River County

Vero Beach Diesel Power Plant, 1246 19th St., Vero Beach, 99000252

IDAHO

Ada County

Idaho National Guard Armory (Tourtellotte and Hummel Architecture TR) 801 Reserve St., Boise, 99000253

ILLINOIS

Sangamon County

US ARMY Aircraft P–51D–25NA 44–73287, Capital Airport , 0.5 N of Jct. of IL 29 and Veterans Parkway, Springfield, 99000254

INDIANA

Elkhart County

State Street—Division Street Historic District, Roughly both sides of State and Division Sts. between Main and Monroe, Elkhart, 99000255

LOUISIANA

Richland Parish

Trio Plantation House, 312 Trio Rd., Rayville vicinity, 99000257

St. Tammany Parish

Fountainbleau State Park, 67825 US 190, Mandeville vicinity, 99000256

MASSACHUSETTS

Hampden County

Indian Orchard Branch Library, 44 Oak St., Springfield, 99000258

Worcester County

Bradley, J.D.C., House, 60 Sears Rd., Southborough, 99000260

Princeton Center Historic District, Jct. of Hubbardston and Mountain Rds., Princeton, 99000259

MONTANA

Madison County

Union City, Address Restricted, Virginia City vicinity, 99000261

VERMONT

Rutland County

East Clarendon Railroad Station, VT 103 and East Rd., Clarendon, 99000262

[FR Doc. 99–3192 Filed 2–9–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

Certain CD–ROM Controllers, and Products Containing Same-II; Notice of Commission Decision Not to Review an Initial Determination Adding Seven Respondents to the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 11) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation to add Actima Technology Corporation, ASUSTek Computer, Inc., Behavior Tech Computer Corporation, Delta Electronics, Inc., Momitsu Multi Media Technologies, Inc., Pan-International Industrial Corporation, and Ultima Electronics Corporation as respondents.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094.

SUPPLEMENTARY INFORMATION: This investigation was instituted on May 7, 1998, based on a complaint filed by Oak Technology Inc. (Oak). 63 Fed. Reg. 26625. The complaint alleges unlawful activities in violation of section 337 through the unlicensed importation and sale for importation of goods infringing claims 1–5 and 8–10 of U.S. Letters Patent 5,581,715.

On August 6, 1998, Oak filed a motion (Motion No. 409–7) to add the seven respondents listed above. Oak and the existing respondents had entered into a stipulation that the proposed respondents should be added. Counsel for the present respondents also represent the additional respondents. The Commission's Office of Unfair Import Investigations supported Oak's motion. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42(h)).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation, including the motion to add the seven respondents, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

By order of the Commission.

Issued: February 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–3270 Filed 2–9–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–383 (Final) and 731–TA–805 (Final)]

Elastic Rubber Tape From India

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–805 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from India of elastic rubber tape, provided for in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States.[1] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of elastic rubber tape from India, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–383 (Final) under section 705(b) of the Act (19 U.S.C. § 1671d(b)). The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination. If

[1] For purposes of these investigations, Commerce has defined the subject merchandise as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inch to 0.100 inch (0.15mm to 2.54mm) in thickness, and ⅛ inch to 1⅝ inches (3mm to 42mm) in width. Such product is generally used in swimwear and underwear.

Commerce makes a final negative countervailing duty determination, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. § 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Yost (202–205–3432), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of the antidumping investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of elastic rubber tape from India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The final phase of the countervailing duty investigation is being scheduled, under waiver of § 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in a petition filed on August 18, 1998, by counsel for Fulflex, Inc., Middletown, RI; and two subsidiaries of M–Tec Corp., Elastomer Technologies Group, Inc., Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC (together referred to as ''Elastotec'').

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 7, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on April 20, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 12, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 14, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is April 14, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 28, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 28, 1999. On May 17, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 19, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–3272 Filed 2–9–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–167 (Review)]

Pressure Sensitive Plastic Tape From Italy

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on September 1, 1998 (63 FR 46475), and determined on December 4, 1998, that it would conduct an expedited review (63 FR 70157, December 18, 1998). The views of the Commission are contained in USITC Publication 3157 (February 1999), entitled *Pressure Sensitive Plastic Tape from Italy: Investigation No. AA1921–167 (Review).*

By order of the Commission.

Issued: February 3, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–3271 Filed 2–9–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg and Commissioners Crawford and Askey dissenting.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 12, 1998, and published in the **Federal Register** on December 11, 1998, (63 FR 68473), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501) a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Celgene Corporation to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Celgene Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. 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 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 2, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3158 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 12, 1998, and published in the **Federal Register** on December 11, 1998, (63 FR 68473), Glaxo Welcome Inc., *Attn:* Jeffrey A. Weiss, 1011 North Arendell Avenue, P.O. Box 1217, Zebulon, North Carolina 27597–2309, made application to the Drug Enforcement Administration to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The remifentanil is being imported for the production of Ultiva dosage forms and for research and new product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Glaxo Welcome Inc. to import remifentanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Glaxo Welcome Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audit of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. 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 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 2, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3159 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 30, 1998, Isotec Inc., 3858 Benner Road, Miamisburg, Ohio 45342, 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
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methylamphetamine (7411)	I
Psilcoybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I

Drug	Schedule
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to use small quantities of the listed controlled substances to produce standards for analytical laboratories.

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 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 April 12, 1999.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3161 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 21, 1998, Lonza Riverside, 900 River Road, Conchohocken, Pennsylvania 19428, 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
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

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 Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register (CCR), and must be filed no later than April 12, 1999.

Dated: February 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3162 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 2, 1998, and published in the **Federal Register** on December 11, 1998, (63 FR 68474), Mallinckrodt Chemical Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt Chemical Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt Chemical Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. 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 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 2, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3160 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 10, 1998, and published in the **Federal Register** on September 25, 1998, (63 FR 51374), Pharmacia & Upjohn Company, 7000 Portage Road, 2000–41–109, Kalamazoo, Michigan 49001, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the listed controlled substance for distribution as bulk product to a customer.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the

registration of Pharmacia & Upjohn Company to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3157 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a currently approved collection; comment request

ACTION: Notice of Information Collection Under Review; Reinstatement with change, of a previously approved collection for which approval has expired.

Crime Victim Compensation State Certification Form

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 23, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until March 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additional, comments may be submitted to OMB via facsimile to 202/395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, suite 850, 1001 G Street, NW, Washington, DC 20530. Additional, comments may be submitted to DOJ via facsimile to 202/514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Crime Victim Compensation State Certification Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* The form number is 121–0170. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State Government.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia for the Victims of Crime Act (VOCA) formula grant program.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 52 respondents will complete an 1-hour annual report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the form is 52 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington, Center 1001 G Street, Washington, DC 20530.

Dated: February 4, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–3187 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–18–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Drug-Free Communities Support Program

AGENCY: Office of National Drug Control Policy, EOP, and Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of funding availability.

SUMMARY: Notice is hereby given that the Executive Office of the President, Office of National Drug Control Policy (ONDCP), and the Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of the Drug-Free Communities Act of 1997, June 27, 1997 (Pub. L. 105–20), are issuing a program announcement and solicitation for applications from community coalitions to increase citizen participation and strengthen community anti-drug coalition efforts to reduce substance abuse among youth in communities throughout the United States and, over time, to reduce substance abuse among adults.

This program is specifically designed to: (1) Reduce substance abuse among youth and, over time, to reduce substance abuse among adults; (2) enable community coalitions to strengthen collaboration among Federal,

State, regional, local, and tribal governments and within their representative communities; (3) enhance intergovernmental collaboration, cooperation, and coordination among all sectors and organizations within communities that demonstrate a long-term commitment to reducing substance abuse among youth and, over time, among adults; (4) enable communities to conduct data-driven, research-based prevention planning by providing accurate and timely information regarding state-of-the-art practices and initiatives that have proven to be effective in reducing substance abuse among youth; and (5) focus resources from the fiscal year (FY) 1999 Federal drug control budget to provide technical assistance, guidance, and financial support to communities.

Eligible applicants are community coalitions whose members have worked together on substance abuse reduction initiatives for a period of not less than 6 months. The coalition will use entities such as task forces, subcommittees, community boards, and any other community resource that will enhance the coalition's collaborative effort. With substantial participation from community volunteer leaders, the coalition will design substance abuse initiatives that target illegal drugs such as narcotics, depressants, stimulants, hallucinogens, cannabis, inhalants, alcohol, tobacco, or other related products that are prohibited by Federal, State, or local law. Community coalitions must implement multisector, multistrategy, long-term plans designed to reduce substance abuse among youth. Where applicable, proposed Drug-Free Communities Support Program activities should enhance ongoing plans and contribute to the achievement of long-range goals and objectives. Coalitions may be umbrella coalitions serving multicounty areas. However, no statewide grants will be awarded.

The Drug-Free Communities Act authorizes the following amounts to be appropriated to ONDCP for the Drug-Free Communities Support Program: FY 1998—$10 million; FY 1999—$20 million; FY 2000—$30 million; FY 2001—$40 million; and FY 2002—$43.5 million. In FY 1998, grant funds awarded to community coalitions totaled $8.7 million with an additional $1.3 million of those funds supporting evaluation, training and technical assistance, and administrative costs. In FY 1999, the Drug-Free Communities Support Program will provide an estimated $18.5 million to support community coalitions with an additional $1.5 million supporting evaluation, training and technical assistance, and administrative costs. The FY 1999 appropriation will provide continuation funding of up to approximately $6.6 million for existing grantees. The remaining funds, approximately $11.9 million, will fund an estimated 119 new coalitions with awards up to $100,000. These awards will be made available through a competitive grant process, to be administered by OJJDP through an interagency agreement with ONDCP. Funding formulas are detailed further in Section III.

DATES: Applications under this program must be received no later than 5 p.m. ET, April 12, 1999.

ADDRESSES: The Application Package is available through the ONDCP Clearinghouse at 800–666–3332 and the Juvenile Justice Clearinghouse at 800–638–8736. The Application Package can also be obtained online at the ONDCP, OJJDP, and National Clearinghouse for Alcohol and Drug Information (NCADI) Web sites at www.whitehousedrugpolicy.gov/prevent/drugfree.html; www.ncjrs.org/ojjdp/html/newinit.html#drugfree, and www.health.org.

FOR FURTHER INFORMATION, CONTACT: Lauren Ziegler, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 800 K Street, NW, Washington, D.C. 20531, 202–616–8988; e-mail: Zieglerl@ojp.usdoj.gov, or Mark Morgan, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 800 K Street, NW, Washington, D.C. 20531, 202–353–9243; e-mail: Morganm@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On June 27, 1997, the Drug-Free Communities Act (Act) was signed into law by President Clinton. This Act provides financial assistance and support to community coalitions to carry out the mission of reducing substance abuse among the Nation's youth. This Act responded to the doubling of substance abuse among youth in the 5-year period from 1991 to 1996, with substantial increases seen in the use of marijuana, inhalants, cocaine, methamphetamine, LSD, and heroin.

The U.S. General Accounting Office (GAO) found that research has identified promising collaborative efforts that use multiple societal institutions, including schools, families, media, and the community, working together, to carry out comprehensive, multicomponent approaches to substance abuse prevention involving school-age youth. GAO also found that these multisector collaborators effectively use multiple strategies, including information dissemination, skill building, alternative approaches to substance abuse reduction, social policy development, and environmental approaches, in their activities. The multisector, multistrategy approach, involving public and private agencies, organizations, and private citizens, is a necessary characteristic of any successful coalition.

The Drug-Free Communities Act builds on the documented success of community anti-drug coalitions in developing and implementing comprehensive, long-term strategies to reduce substance abuse among youth on a sustained basis. The Act recognizes the critical value of intergovernmental collaboration, cooperation, and coordination in facilitating the reduction of substance abuse among youth in communities throughout the Nation.

II. Definitions

Definitions are contained in the Drug-Free Communities Act. (The Act is available online at ONDCP's Web site at www.whitehousedrugpolicy.gov/prevent/drugfree.html and OJJDP's Web site at www.ncjrs.org/ojjdp/html/newinit.html#drugfree.) In addition, Section XXI, Glossary, defines key terms that are referenced in the Act.

III. Dollar Amount and Duration

In FY 1999, the Drug-Free Communities Support Program received an appropriation of $20 million. The program will provide $18.5 million to support community coalitions and $1.5 million for administrative costs, training and technical assistance, and evaluation. Up to $6.6 million will be awarded to existing grantees. The remaining approximately $11.9 million will fund an estimated 119 new coalitions nationwide through a competitive grant process.

Current Drug-Free Communities Support Program grantees will have the opportunity to apply for continuation funding through separate program guidelines that are expected to be released in May 1999 through ONDCP and OJJDP. Contingent on funding availability and successful reapplication, current recipients would receive a maximum grant award of $75,000 (a 25-percent reduction from the original award). Exceptions in declining levels of support beginning in FY 1999 will be made for grantees awarded $66,666 or less in FY 1998 (i.e., no grantee who received an award between $50,000 and $66,666 would receive less than a $50,000 award in any grant year). Any grantee who received

an award of $50,000 or less in FY 1998 will receive that amount throughout the life of the program, subject to performance and availability of funds.

For new applicants, FY 1999 Drug-Free Communities Support Program grants will be available for amounts up to $100,000 for the initial 12-month period. Drug-Free Communities Support Program grants require that applicants provide a dollar-for-dollar match. There are no guidelines as to how much of the match must be in-cash or in-kind. Please note that Federal pass-through funds cannot be used as the match unless specifically provided for by Federal law.

IV. Program Goals and Objectives

Goals

- Reduce substance abuse among youth and, over time, among adults, by addressing the factors in a community that serve to increase the risk of substance abuse and factors that serve to minimize the risk of substance abuse. These substances include narcotics, depressants, stimulants, hallucinogens, cannabis, inhalants, alcohol, and tobacco, where their use is prohibited by Federal, State, or local law.
- Establish and strengthen collaboration among communities; Federal, State, local, and tribal governments; and private nonprofit agencies to support community coalition efforts to prevent and reduce substance abuse among youth.

Objectives

- Serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community to reduce substance abuse among youth.
- Enhance community efforts to promote and deliver effective substance abuse prevention strategies among multiple sectors of the community.
- Assess the effectiveness of community substance abuse reduction initiatives directed toward youth.
- Provide information about effective substance abuse reduction initiatives for youth that can be replicated in other communities.

V. Project Strategy

A 4-year strategic plan must be included in the application. This plan must outline the mission, goals, objectives, activities, and expected outcomes of the applicant's Drug-Free Communities Support Program project. The plan must address the two major goals of the program listed above: (1) Reduce substance abuse among youth and, over time, among adults; and (2) establish and strengthen collaboration among communities; Federal, State, local, and tribal governments; and private nonprofit agencies to support community coalition efforts to prevent and reduce substance abuse among youth. The project plan must ensure that the coalition, its programs, and the activities operated by the partners in the coalition will become self-sustaining within 4 years. The plan must identify 4-year and 1-year goals, objectives, and expected outcomes. In addition, the applicant must include a 4-year and 1-year timeline outlining the tasks associated with achieving the program goals and objectives. The timeline must delineate all activities, identify the coalition members that conduct the activities, and show projected completion dates for proposed activities.

The applicant must describe how a Drug-Free Communities Support Program grant will enhance its ability to provide broader and more comprehensive prevention services. The discussion should include outcome-driven information on substance abuse reduction activities currently being conducted by the coalition or members of the coalition that enhance planning efforts to minimize duplication and inefficiencies while maximizing cooperation and collaboration. Applicants must include a description of new services and activities that would be established over the 4-year plan period. The plan must emphasize coalition building and maintenance as the mechanism that provides institutional support and access to a broad range of services available in the community.

VI. Project Evaluation

To assess the effectiveness of the project, the plan must provide for evaluation of local efforts designed to strengthen the coalition and reduce substance abuse. The coalition must also agree to participate in a national evaluation of the Drug-Free Communities Support Program by providing process and outcome data.

Process indicators allow grantees to answer the following questions: What was done? How was it done? To whom and for whom was it done? How were process indicators measured and quantified? Process indicators include the following:

- A description of the project, service, or activity. (What goes on?)
- Project, service, or activity location. (Where does it occur?)
- Hours of operation, days of the week, and hours of the day the activity occurs. (When does it occur?)
- Frequency of activity. (How often does it occur—hourly, daily, weekly, monthly?)
- Number of paid staff and volunteers. (Who carries out the activity?)
- Target population including ages, number of youth reached, and other defining characteristics. (Who receives the service?)

For example, if one of the applicant's project objectives is to delay the onset of youth usage of alcohol by 6 months and one activity to achieve this objective is to conduct three parent/youth skills-building classes per month in three local churches, the applicant must collect information describing the activity and documenting how often the activity occurred, how many youth participated in the activity, and how often the parent and youth attended the activity.

Outcome indicators help to determine if the program is achieving intended results. The applicant must identify the indicators of success and indicate how success will be measured and how data will be collected. Outcome indicators include the following:

- Change in youth substance abuse (describe the activity and document how often the activity that brought about the change occurred).
- Improvement in the level of collaboration among communities and Federal, State, local, and tribal governments (e.g., increased number of interagency agreements).
- Enhancement of intergovernmental cooperation and coordination on youth substance abuse issues (e.g., adoption and use of an integrated management information system to share data on youth substance abuse).
- Increase in citizen participation in substance abuse prevention efforts.
- Enhancement of prevention planning and prevention efforts (e.g., data-driven needs assessment and comprehensive, research-based strategies that address identified needs).
- Improvement in or enhancement of knowledge, skills, abilities, conditions, systems, or policies as a result of improved prevention efforts.
- Change in factors contributing to and reducing the risk of substance abuse including attitudes and perceptions.

Coalitions will be required to report data for community-specific measures and a common data set for the national evaluation.

VII. The National Evaluation

Grantees must collect and report community-specific, common process, and outcome indicators following evaluation protocols established by

ONDCP and OJJDP. Baseline and followup data needed for the national evaluation will be collected from grant applications, OJJDP's semiannual Categorical Assistance Progress Report, and onsite surveys of a sample of grantees.

Grantees may be required to confirm the accuracy of any data retrieved from grant applications for the national evaluation. In addition, all grantees are required to describe and provide baseline and followup data documenting the factors within their communities that increase the risk of substance abuse by youth and factors that work to minimize or reduce risk. Grantees also should provide data documenting the incidence/prevalence of substance abuse among youth in their communities. Baseline data must be representative of the targeted population as of the application deadline.

In addition to data specific to the coalitions and their communities, a small, common set of data profiling youth within the areas the coalitions serve will be required of all grantees. These measures include:

- Age of onset/initiation.
- Frequency of use in the past 30 days.
- Perception of risk of harm.
- Perception of disapproval of use by peers and adults.

Specific measures of age of onset/frequency of use will be consistent with indicators reported in the Substance Abuse and Mental Health Services Administration's *National Household Survey on Drug Abuse, Main Finding, 1995.* Specific measures of perception of harm of use and disapproval will be consistent with indicators reported in the National Institute on Drug Abuse's *National Survey Results on Drug Use from Monitoring the Future Study, 1975–1992,* Volume I, NIH Publication Number 93–3597. These documents are available from the National Clearinghouse for Alcohol and Drug Information by calling 800–729–6686.

A sample of grantees will be selected to participate in an indepth evaluation. Selected grantees will work with the national evaluation team to collect and report additional process and outcome data.

For the national evaluation, baseline data must be representative of the targeted population. The source of data, population surveyed, and date of the survey must be noted.

VIII. Eligibility Requirements

To be eligible to receive a grant, a coalition must:

- Be a nonprofit, charitable, or educational organization; a unit of local government; or part of or affiliated with an eligible organization or entity.
- Develop a 4-year strategic plan, or enhance an existing plan, to reduce substance abuse among youth using a multisector, multistrategy approach.
- Have as its principal mission the reduction of substance abuse among youth in a comprehensive and long-term manner.
- Demonstrate that community coalition members have worked together on substance abuse reduction initiatives, including initiatives that target the illegal use or abuse of a range of drugs, such as narcotics, depressants, stimulants, hallucinogens, cannabis, inhalants, alcohol, and tobacco, or other related products where such use is prohibited by Federal, State, or local law. The applicant must ensure that the project does not focus on only one specific drug.
- Describe and document the nature and extent of the substance abuse problem in the targeted community and identify the risk and protective factors existing in the community.
- Identify substance abuse programs and service gaps relating to the use and abuse of drugs.
- Demonstrate that a community coalition has been established and that the representatives of the community coalition have worked together for a period of not less than 6 months. The coalition must represent the targeted community and include at least one representative of each of the following groups: youth; parents; business community; media; schools; youth-serving organizations; law enforcement agencies; religious or fraternal organizations; civic and volunteer groups; health care professionals; State, local, or tribal governmental agencies with an expertise in the field of substance abuse (including, if applicable, the State authority with primary authority for substance abuse); and other organizations involved in reducing substance abuse. To demonstrate that the coalition meets the stated criteria, the applicant must submit examples or formal agreements such as memorandums of understanding (MOU's), previous newsletters/publications, or other examples of print media coverage that are dated within 6 months prior to application submittal.
- Ensure that a community coalition member is designated as a representative of no more than one of the required sector categories.
- Identify and describe the agencies, programs, projects, and initiatives (other than those represented by coalition members) that the coalition will collaborate and coordinate with to leverage services and resources to have the greatest impact.
- Ensure that there is a substantive community involvement effort, as demonstrated by the significant ongoing participation of community partners to build a consensus on priorities to combat substance abuse among youth.
- Ensure that the coalition will receive and expend cash or in-kind services equal to the amount of the Federal funds sought.
- Describe the strategic plan and funding plan to solicit substantial financial support from non-Federal sources to ensure that the coalition will be self-sustaining within 4 years.
- Submit local evaluation plans for assessing coalition efforts. In addition, the applicant must agree to participate in a national evaluation.
- Agree to collect and report both target population-specific and common process and outcome indicators following evaluation protocols established by ONDCP and OJJDP listed in Section VII.

Consideration will also be given to how the applicant incorporates strategies and services that increase cultural competency to reach and include minority populations.

IX. Selection Criteria

Applicants whose proposals meet all eligibility criteria and submission requirements will be evaluated and rated by a peer review panel according to the criteria outlined below.

Problems To Be Addressed (20 points)

The applicant must indicate how its coalition, through collaborative efforts, long-term strategic planning, and implementation efforts, will reduce substance abuse among youth and, over time, among adults.

The applicant also must provide a discussion of substance abuse in the target community. This discussion should address:

- The nature and extent of youth substance abuse, such as the use of narcotics, depressants, stimulants, hallucinogens, cannabis, inhalants, alcohol, and tobacco or other related products, where such use is prohibited by Federal, State, or local law in the target community.
- Risk factors that enable substance abuse and protective factors that act as deterrents to substance abuse in their community.

The discussion in this section should indicate the following: the incidence/prevalence of substance abuse among youth in the target community, the major drugs of abuse among youth, and the underlying risk factors associated

with substance abuse. The applicant must provide findings from recent school-based surveys or other local surveys of drug usage that document the nature and extent of juvenile substance abuse problems in the area served by the coalition. If such survey data are not available, the applicant must report other indicators that measure the extent of the problem. Other sources of local data include crime, justice, health, HIV/AIDS, economic, school, and other related statistics. The data will be used as the baseline against which the progress and effectiveness of coalition efforts to prevent and reduce substance abuse among youth can be measured.

Goals and Objectives (20 points)

The applicant must address the two major goals of the program: to reduce substance abuse and strengthen collaboration. Objectives and expected outcomes must be related to the goals, and they must be measurable, consistent with local data, achievable, and reflected in the timeline. The applicant must provide a clear discussion of how the proposed goals and objectives logically relate to the risk and protective factors.

The coalition should clearly state what it proposes to accomplish with a Drug-Free Communities Support Program grant. The applicant must describe the desired end result (the outcome). In defining the objectives, the applicant must describe, in concrete terms, who or what will change, how much it will change, over what period of time, and who (coalition member/s) will effect this change.

Program Design (25 points)

The applicant must provide a detailed description of the proposed program design to achieve the project goals and objectives specified in Section IV and explain how program activities address the problems associated with the risk and protective factors. Consideration will also be given to the cultural relevance of the proposed activities.

The program design must describe the logical links between project goals, objectives, activities, and expected outcomes. In describing these links, the applicant should consider which goals and objectives will be attained by which activities. The plan must include a description of the specific steps and provide a timeline outlining those steps associated with implementing the Drug-Free Communities Support Program.

The evaluation strategy must specifically address how the applicant will monitor progress toward achieving the project goals and objectives. The applicant must describe the data required, how it will collect information on the activities that are undertaken (process indicators) and what results are achieved (outcome indicators). The applicant must discuss its process for monitoring progress and determining if the project is meeting coalition and Federal requirements. Key elements of the applicant evaluation strategies are outlined in Section VI.

Management and Organizational Capability (25 points)

The applicant must describe who will lead the development and implementation of the strategic plan and its associated program activities and how the coalition will implement the drug abuse prevention strategies. The applicant must indicate all principal individuals and their positions in the project management design and include résumés or biographies of all key personnel. A roster must be completed containing the names of all coalition members, the sectors they represent, and their contributions to the work of the coalition. Members must include youth; parents; businesses; media; schools; organizations serving youth; law enforcement; religious or fraternal organizations; civic or volunteer groups; health care professionals; State, local, or tribal government agencies with expertise in the field of substance abuse; and other organizations involved in reducing substance abuse. This coalition list must also include a description of other public and private resources that will work in collaboration with the coalition to accomplish the overall goals of the Drug-Free Communities Support Program.

MOU's must be provided in the appendixes for all coalition members who will provide services to the coalition. MOU's demonstrate the intent of two or more entities to fulfill commitments that are critical to the implementation of the project. Letters of support should be solicited from corresponding agencies, service providers, organizations, or community leaders that are involved with the coalition but are not members. These letters demonstrate community support of the project and coalition. MOU's and letters of support should be signed originals that are current (within the previous year) and relevant to the grant application.

The applicant must demonstrate that staff involved in the project have the experience and knowledge necessary to successfully undertake the proposed project. The applicant must provide evidence of their ability to manage the collaborative effort among coalition members and collaborative partners to meet program goals. The applicant also should clearly indicate who will perform what function(s) and by when (based on the timeline deliverable). In an effort to demonstrate organizational capacity, applicants may include past performance information, including any outcome data from previous activities.

The applicant must include a one-page organizational chart with the management structure of staff and coalition members. If available, titles and names of individuals should be provided.

Consideration will be given to a coalition's ability to work effectively with all segments of the community, its associated collaborative partners, OJJDP and ONDCP, the evaluation team, and the training and technical assistance providers involved in this program. The applicant must describe how it will manage the non-Federal resources brought to the project.

Budget (10 points)

The applicant must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. A cost breakdown of both Federal and non-Federal costs and in-kind contributions must be included. Budgets must allow for required travel, including (1) one trip for two individuals to the annual grantee conference in Washington, D.C., and (2) one trip for two individuals to a training and technical assistance meeting within the applicant's region.

X. Awards

The ONDCP Director, Drug-Free Communities Support Program Administrator, Drug-Free Communities Support Program Advisory Commission, and the OJJDP Administrator are committed to ensuring individual project success across a range of urban, suburban, rural, and tribal communities. Therefore, in selecting applicants, consideration will be given to achieving representative equity in geographic and demographic distribution of grants and to funding a variety of effective, innovative programs with varying lengths of operational experience. Although peer review recommendations are given weight, they are advisory only, and final award decisions will be made by the ONDCP Director and the OJJDP Administrator. OJJDP will negotiate specific terms of the award with applicants being considered for award.

Award requests must not exceed $100,000 with a dollar-for dollar match, in-cash or in-kind, of the Federal amount requested. No community

coalition may submit more than one application for consideration.

XI. Application Requirements

Instructions on filling out the required application forms are contained in the Application Package available through the ONDCP Clearinghouse at 800–666–3332 and the Juvenile Justice Clearinghouse 800–638–8736.

To enhance intergovernmental collaboration, cooperation, and coordination among all sectors and organizations within communities, a letter of intent must be sent to the Alcohol and Drug State Authority. In addition, Executive Order 12372 requires applicants from State and local units of government or other organizations providing services to submit a copy of the application to the State Single Point of Contact, if one exists. These lists are provided in the Application Package.

XII. Bidders Conference

To provide assistance, training, and technical support in submitting applications for the Drug-Free Communities Support Program, five regional trainings will be scheduled in March of 1999. Dates and locations of these conferences can be obtained online at the ONDCP, OJJDP, and NCADI Web sites: www.whitehousedrugpolicy.gov/prevent/drugfree.html; www.ncjrs.org/ojjdp/html/newinit.html#drugfree, and www.health.org.

XIII. Format

The narrative portion of this application must not exceed 40 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½-x 11-inch paper, double-spaced on one side of the paper in a standard 12-point font. These standards are necessary to maintain a fair and uniform standard among all applicants. If the narrative does not conform to these standards, the application will be ineligible for consideration. Do not enclose the application in binders or specialized packaging. Please do not include videos, audiotapes, or other unsolicited information.

XIV. Award Period

The project will be funded initially for a 12-month budget period of a 48-month project period. Funding after the initial 12-month period depends on grantee performance, availability of funds, and other criteria established at the time of award.

XV. Award Amount

Up to $100,000 will be available for the initial 12-month budget period.

XVI. Catalog of Federal Domestic Assistance Number

For this program, the Catalog of Federal Domestic Assistance number, which is required on Standard Form 424, Application for Federal Assistance, is 16.729. This form is included in the Application Package.

XVII. Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose. This information should be included in the appendix.

''Related efforts'' is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

XVIII. Delivery Instructions

All applications should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, C/O Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, Maryland 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, you must clearly write ''Drug-Free Communities Support Program.'' Faxed or e-mailed applications will not be considered.

XIX. Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on April 12, 1999.

XX. Contact

For further information, contact Lauren Ziegler, Program Manager, Special Emphasis Division, 202–616–8988, or send an e-mail inquiry to zieglerl@ojp.usdoj.gov; or contact Mark Morgan, Program Manager, Special Emphasis Division, 202–353–9243, or send an e-mail inquiry to Morganm@ojp.usdoj.gov.

XXI. Glossary

Activities: Efforts to be conducted to achieve the identified objectives. A number of activities may be needed to achieve each objective (e.g., coordinate development and delivery of a multidisciplinary, multiagency program of parenting education for parents of elementary and middle school youth).

Allowable costs: Those costs identified in Office of Management and Budget (OMB) circulars on cost principles and in ONDCP legislation. In addition, costs must be reasonable, allocable, and necessary to the project and must comply with the funding statute requirements.

Coalition: Comprises one or more representatives of the following categories: youth; parents; businesses; media; schools; organizations serving youth; law enforcement; religious or fraternal organizations; civic or volunteer groups; health care professionals; State, local, or tribal government agencies with expertise in the field of substance abuse (including, if applicable, the State authority with primary authority for substance abuse); and other organizations involved in reducing substance abuse.

Community: People with a common interest living in a defined area. For the purposes of this grant, the coalition may define its community as a neighborhood, town, part of a county, county, or regional area.

Expected outcomes: The intended or anticipated results of carrying out these activities. There may be short-term, intermediate, and long-term outcomes.

Short term—Participation in the development and delivery by agency leaders.
Development of the multidisciplinary, multiagency program.
Delivery of the multidisciplinary, multiagency program.
Completion of the program by elementary and middle school youth.
Intermediate—Increase in understanding of risks of substance use.
Long term—Increase in understanding of risks of substance use.
Increase in perception of harm.
Delay in the onset of alcohol use among youth.

Goal: A broad statement of what the coalition project is intended to accomplish (e.g., delay in the onset of substance abuse among youth).

Impact: The ultimate desired results of efforts undertaken, manifesting as actual reductions in substance abuse among youth.

In-kind match: Something of value received other than money, such as donated services.

Multisector: More than one agency or institution working together.

Multistrategy: More than one prevention strategy, such as information dissemination, skill building, use of alternative approaches to substance abuse reduction, social policy development, and environmental approaches, working in combination with each other to produce a comprehensive plan.

Nonprofit: An organization described under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under 501(a) of the Internal Revenue code of 1986.

Objectives: What is to be accomplished during a specific period of time to move toward achievement of a goal, expressed in specific measurable terms. There may be numerous objectives for each goal identified (e.g., to increase the number of youth in elementary and middle school who perceive use of substances as a moderate or great risk by 20 percent within 3 years).

Protective factors: Those factors that increase an individual's ability to resist the use and abuse of drugs.

Resiliency factors: Personal traits that allow children to survive and grow into healthy, productive adults in spite of having experienced negative/traumatic experiences and high-risk environments.

Risk factors: Those factors that increase an individual's vulnerability to drug use and abuse.

Dated: February 3, 1999.

Janet Crist,

Chief of Staff, Office of National Drug Control Policy.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–3047 Filed 2–9–99; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy

Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 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: February 23, 1999, 10:00 a.m., U.S. Department of Labor, N–3437C, 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 19 U.S.C. 2155(f) 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, DC, this 1st day of February 1999.

Andrew James Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 99–3268 Filed 2–9–99; 8:45 am]

BILLING CODE 4510–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1999 Adverse Effect Wages Rates, Allowable Charges for Agricultural and Logging Workers' Meals, And Maximum Travel Subsistence Reimbursement

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 1999.

SUMMARY: The Director, U.S. Employment Service, announces 1999 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services, the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day, and the maximum travel subsistence reimbursement which a worker with receipts may claim in 1999.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expense. The minimum reimbursement is the charge for three daily meals as discussed above. The Director here announces the current maximum reimbursement for workers with receipts.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Beverly, III, Director, U.S. Employment Service, U.S. Department of Labor, Room N–4700, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone: 202–219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1999

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1999 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1999 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1999 AEWR
Alabama	$6.30
Arizona	6.42
Arkansas	6.21
California	7.23
Colorado	6.73
Connecticut	7.18
Delaware	6.84
Florida	7.13
Georgia	6.30
Hawaii	8.97
Idaho	6.48
Illinois	7.53
Indiana	7.53
Iowa	7.17
Kansas	7.12
Kentucky	6.28
Louisiana	6.21
Maine	7.18
Maryland	6.84
Massachusetts	7.18
Michigan	7.34
Minnesota	7.34
Mississippi	6.21
Missouri	7.17
Montana	6.48
Nebraska	7.12
Nevada	6.73
New Hampshire	7.18
New Jersey	6.84
New Mexico	6.42
New York	7.18
North Carolina	6.54
North Dakota	7.12
Ohio	7.53
Oklahoma	6.25
Oregon	7.34
Pennsylvania	6.84
Rhode Island	7.18
South Carolina	6.30
South Dakota	7.12
Tennessee	6.28
Texas	6.25
Utah	6.73
Vermont	7.18
Virginia	6.54
Washington	7.34
West Virginia	6.28
Wisconsin	7.34
Wyoming	6.48

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.11(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1998 rates were published in a notice on February 18, 1998 at 63 FR 8218.

DOL has determined the percentage change between December of 1997 and December of 1998 for the CPI–U for Food was 2.2 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1999 are as follows: (1) for 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $7.84 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $9.70 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is not $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the

appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00.

If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, D.C., this 4th day of February, 1999.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 99–3269 Filed 2–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL No. 13–99

To promote the employment of public assistance recipients, some States have considered or enacted legislation to ensure that employer experience rates are not adversely affected if these individuals subsequently become unemployed. For example, States have excluded from the employer's experience rating computations unemployment benefits paid to former employees who previously received public assistance. UIPL No. 13–99 advises State agencies of the Department of Labor's position that consideration of the receipt of public assistance or other pre-employment circumstances of employees (current or former) in employer experience rating determinations does not conform with Federal law requirements at Section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA). The Department takes this position for two reasons: (1) using these circumstances to a priori exclude wages earned by a worker ignores a portion of the employer's experience with respect to unemployment, inconsistent with Section 3303(a)(1), FUTA, and (2) the receipt of public assistance and other pre-employment circumstances are not directly related to the employer's experience with the impact of unemployment on his or her workers, as required by Section 3303(a)(1), FUTA. All situations where the consideration of pre-employment income or circumstances could be introduced into a State's experience rating system, including the noncharging of benefits, is inconsistent with Federal law.

Dated: February 3, 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210
Classification: UI
Correspondence Symbol: TEUL
Date: January 22, 1999
Directive: Unemployment Insurance Program Letter No. 13–99
To : All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: Consideration of Former Employees' Pre-employment Income or Circumstances In Experience Rating Computations

1. *Purpose.* To inform States of the Department of Labor's position regarding the use of former employees' pre-employment income or circumstances in determining employer experience rates.

2. *References.* Section 3303(a)(1), Federal Unemployment Tax Act (FUTA) and Unemployment Insurance Program Letter (UIPL) 29–83.

3. *Background.* In order to promote the employment of public assistance recipients, some States have considered or enacted legislation intended to ensure that employer experience rates are not adversely affected if these indi-viduals subsequently become unemployed. A method chosen by some States to prevent an adverse effect on experience rates has been to exclude from the employer's experience rating computations unemployment benefits paid to former employees who have previously received public assistance.
Rescissions: None
Expiration Date: Continuing

The Department of Labor considers efforts to encourage the employment of public assistance recipients laudable; however, it is the Department of Labor's position that consideration of the receipt of public assistance or other pre-employment circumstances of employees (current or former) in employer experience rating determinations does not conform with Federal law.

4. *Federal Law Requirements.* Section 3303(a)(1), FUTA, contains the Federal experience rating requirement for employers in a State to receive the additional credit against the FUTA tax. Additional credit is allowed to employers paying reduced rates of contributions, where the State law conforms with 3303(a)(1), FUTA. For FUTA tax credit purposes, these employers are treated as though they had paid contributions at the highest rate assigned based on experience, or 5.4 percent, whichever is lower. Section 3303(a)(1), FUTA, requires that State law provide that:

no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date; [1]

Although the term ''experience'' is often used as convenient shorthand, no State system directly measures experience with respect to unemployment. Instead, all States use a factor or combination of factors bearing a direct relation to unemployment risk. Since the unemployment risk of the worker is the basic phenomenon which is to be measured, the factors referred to in Section 3303(a)(1) are limited to those basic elements that measure an employer's experience with the impact of unemployment upon his or her workers. (See page 2 of the Attachment to UIPL 29–83.) In addition, the experience must be measured throughout a period of not less than 3 years preceding the computation date.

The use of public assistance status or other pre-employment circumstances of individual workers is not consistent with this interpretation of the requirements of Section 3303(a)(1), FUTA, for two reasons. First, using these circumstances to a priori exclude wages earned by a worker in determining experience is inconsistent with Federal law, since a portion of the employer's experience during the 3-year period will never be used.

Second, the receipt of public assistance and other pre-employment circumstances are not directly related to the employer's experience with the impact of unemployment on his or her workers. These circumstances are not directly related to the employer's need for services, the term of employment, or the reason for separation from employment. For example, during a lay-off, all workers are separated due to a lack of work. Whether the individual previously received public assistance has no bearing on the fact that a lack of work exists. As another example, if a worker is discharged for misconduct, the reason for the separation is the worker's misconduct, not pre-employment status.

In conclusion, all situations where the consideration of pre-employment income or circumstances could be introduced into a State's experience rating system, including the noncharging of benefits, is inconsistent

[1] Section 3303(a), FUTA, also makes provision for States to reduce the rate of contributions for new employers.

with Section 3303(a)(1), FUTA.[2] However, because the Department of Labor strongly supports endeavors to employ public assistance recipients, the Department is exploring legally permissible avenues that might benefit employers who hire welfare recipients. We will notify States of the findings upon completing the effort.

5. *Action.* State administrators are requested to take necessary action to assure that State law conforms with and is applied consistently with Section 3303(a)(1), FUTA, as interpreted in this UIPL.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 99–3266 Filed 2–9–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. Sec. 10), as amended, and section 401(k)(1) of the Job Training Partnership Act, as amended [29 U.S.C. 1671(k)(1)], notice is hereby given of a meeting of the Native American Employment and Training Council.

TIME AND DATE: The meeting will begin at 9:00 a.m. EST on Thursday, February 25, 1999, and continue until 5:00 p.m. EST that day. The meeting will reconvene at 9:00 a.m. EST on Friday, February 26, 1999, and adjourn at 4:00 p.m. EST on that day. The period from 3:00 p.m. to 5:00 p.m. EST on February 25 will be reserved for participation and presentation by members of the public.

PLACE: On Thursday, February 25, Room S–1011, and on Friday, February 26, Rooms N–5437 A, B, and C of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics: (1) status of the Program Year 1998 Partnership Plan; (2) progress of the evaluation of the section 401 program; (3) progress of the performance measures/standards workgroup; (4) status of technical assistance and training provision for Program Year 1998 and 1999; (5) status of FY 1999 Indian and Native American Welfare-to-Work program implementation; and (6) status of pending implementation of the Workforce Investment Act, including a report on the progress of the Regulations Work Group.

FOR FURTHER INFORMATION CONTACT: Ms. Anna W. Goddard, Director, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5500, ext 122 (VOICE), or (202) 326–2577 (TDD) (these are not toll-free numbers).

Signed at Washington, DC, this 4th day of February, 1999.

Anna W. Goddard,

Director, Office of National Programs.

[FR Doc. 99–3267 Filed 2–9–99; 8:45 am]

BILLING CODE 4510–30–M

[2] Although the Department of Labor has not developed a comprehensive noncharging policy, noncharging based on pre-employment income or circumstances is prohibited, because, as explained above, it is plainly inconsistent with Federal law.

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: February 17, 1999, 9:00 a.m.—Open Session.

PLACE: The G. Paul Getty Trust, 1200 Getty Center Drive, Getty Research Institute Lecture Hall, Los Angeles, CA 90049–1681.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, February 17, 1999

Open Session (9:00 a.m.–12:00 noon)

—Chairman's Report
—Director's Report
—Framework for Revising the NSF Strategic Plan
—Presentation: Demographic Considerations in Human Resources Development
—NSB Report on Achievement in Science and Mathematics Education
—Other Business

Open Session (2:30 p.m.–6:00 p.m.)

—Welcoming Remarks and Keynote Address
—Symposium on Environmental Research, Education and Assessment
—Session 1: Emerging Interdisciplinary Opportunities

Thursday, February 18, 1999

Open Session (8:30 a.m.–12:00 noon)

—Symposium on Environmental Research, Education and Assessment, continued
Session 2: New tools, Connections, Ways of Thinking
Session 3: Ethics and Equity

Open Session (1:30 p.m.–5:00 p.m.)

—Symposium on Environmental Research, Education and Assessment, continued
Session 4: From Reaction to Proaction
Session 5: Enabling Partnerships

Marta Cehelsky,

Executive Officer.

[FR Doc. 99–3408 Filed 2–8–99; 2:23 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the tendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 15, 1999, through January 29, 1999. The last biweekly notice was published on January 27, 1999 (64 FR 4152).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation

of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 12, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to preset evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the

Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 7, 1998.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) to permit a one-time only extension of the steam generator tube inspection interval for fuel cycle 14 and delete the requirement to have NRC staff concurrence of the steam generator examination program. Specifically, TS 4.13A.2.a would be revised with a footnote that states ''Examinations scheduled for 1999 only, shall be conducted during the 2000 Refueling Outage which will commence no later than June 3, 2000. The scheduled examinations will be completed prior to return to service from the 2000 Refueling Outage.'' In addition, TS 4.13C.1 would be revised to state ''The proposed steam generator examination program shall be submitted for NRC staff review at least 60 days prior to each scheduled examination.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 59.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical modifications to the plant or modification in the methods of plant operation which could increase the probability or consequences of previously evaluated accidents. The proposed change permits an extension of the current steam generator tube inservice inspection cycle. This extension would allow the steam generator tube examinations to be conducted during the 2000 refueling outage which will commence no later than June 3, 2000. The basis for acceptance of this increase in the technical specification limit is the ''non-operating'' steam generator time between the last examination and the upcoming examination. Extending the steam generator ''operating'' duration by 48 days would not significantly increase wear which might lead to tube failure. No appreciable steam generator tube wear or degradation is expected as a result of this extension. This change will not affect the scope, methodology, acceptance limits and corrective measures of the existing steam generator tube examination program. The probability and consequences of failure of the steam generators due to leaking or degraded tubes is not increased by the proposed change. Additionally the proposed administrative change to delete the requirement to receive NRC concurrence of the proposed steam generator examinations will have no bearing on the actual results of the steam generator examinations. Therefore, the probability and the consequence of a design basis accident are not being increased by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specification change. The proposed change permits the upcoming steam generator tube examination to be conducted during the 2000 refueling outage that will commence no later than June 3, 2000. There are no plant modifications or changes in methods of operation. This extension is based upon the ''non-operating'' steam generator time between the last examination and the upcoming examination. Extending the steam generator ''operating'' duration by an additional 48 days would not significantly increase wear which might lead to tube failure. The proposed extension will not increase the probability of occurrence of a tube rupture, increase the probability or consequences of an accident, or create any new accident precursor. Additionally the proposed administrative change to delete the requirement to receive NRC concurrence of the proposed steam generator examinations will have no bearing on the actual results of the steam generator examinations. Therefore, the possibility of an accident of a different type than was previously evaluated in the safety analysis report is not created by the proposed change to the Technical Specification.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to Technical specification section 4.13A.2.a will not reduce the margin of safety. This amendment involves an extension of the current steam generator tube inservice inspection cycle. The basis for acceptance of this increase in the technical specification limit is the ''non-operating'' steam generator time between the last examination and the upcoming examination. Extending the steam generator ''operating'' duration by an additional 48 days would not significantly increase wear which might lead to tube failure. No appreciable steam generator tube wear or degradation is expected as a result of this extension. Additionally the proposed administrative change to delete the requirement to receive NRC concurrence of the proposed steam generator examinations will have no bearing on the actual results of the steam generator examinations. Therefore, the accident analysis assumptions for design basis accidents are unaffected and the margin of safety is not decreased by the proposed Technical Specification change.

[* * *]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Director.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 30, 1998.

Description of amendment request: The proposed amendment revises the definition of quadrant power tilt to clearly allow the use of either the incore detectors or the excore detectors for determining quadrant power tilt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the quadrant power tilt (QPT) definition will not alter any Safety Analysis Report (SAR) assumptions established and implemented by the technical specifications. The proposed change will allow the use of either the incore detectors or the excore power range detectors for determining QPT. This change is consistent with the improved Standard Technical Specifications (STS) which has been previously approved by the NRC. QPT measured by incore detectors provides a more accurate indication of reactor core power distribution than the value determined from the excore detectors. The accident prevention and mitigation features of the plant are not affected by this proposed amendment.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the definition of QPT does not alter the ANO–1 SAR analysis or core operating limits report (COLR). The change will clearly permit the use of either the incore detectors or the excore detectors for monitoring QPT. The design and physical configuration of the plant are not affected by this change.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does not involve a significant reduction in the margin of safety.

The proposed change to the QPT definition incorporates the improved TS definition contained in NUREG–1430. The revised definition allows the use of either the incore detectors or the excore power range detectors for determination of QPT. The change does not vary or affect any of the plant's operating parameters. The COLR currently specifies acceptable QPT limits based upon the measurement techniques. These limits are based upon the unique measurement characteristics of the incore and excore power range detectors and assure the measurement independent limit is not violated.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 6, 1998.

Description of amendment request: The proposed amendment revises the minimum and the maximum concentration limits for the sodium hydroxide tank. The proposed change also revises the minimum specified tank volume to refer to the parameter used in the analysis with no allowance for instrument uncertainty and deletes the maximum specified tank volume.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Sodium hydroxide is not an accident initiator. It is, however, a contributor to the mitigation of the effects of a Loss-of-Coolant-Accident (LOCA). The proposed change in NaOH tank concentration results in changing the expected post-LOCA reactor building sump pH. The reduction in the lower value of sump pH, from 8.5 to 7.0, is acceptable based on guidance contained in NUREG–0800, Standard Review Plan, Section 6.5.2, ''Containment Spray as a Fission Product Cleanup System Review Responsibilities,'' Revision 2, December 1988. This guidance allows the assumption of long-term iodine retention when the equilibrium sump pH, after mixing and dilution with the primary coolant and ECCS injection, is above 7.0. Although the change allows the volume of the NaOH tank to be maintained at a lower volume, the proposed minimum volume bounds the analyses of concern.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does not create the possibility of a new or different kind of accident from any previously evaluated.

Sodum hydroxide is added for iodine removal and for pH adjustment of the borated water in the reactor building sump following a LOCA. The proposed changes in NaOH tank concentration and volume introduce no new mode of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does not involve a significant reduction in the margin of safety.

The proposed change in NaOH tank concentration results in changing the expected post-LOCA reactor building sump pH. This proposed change does involve an incremental reduction in the margin to safety since iodine retention is dependent on the pH of the sump/spray solution. However, this reduction is not considered significant in that the effect of the change in sump pH, from 8.5 to 7.0 has a relatively minor effect on iodine retention, as supported by Standard Review Plan (NUREG–0800), Section 6.5.2, Revision 2, dated December 1988. Although the change allows the volume of the NaOH tank to be maintained at a lower volume, the proposed minimum volume bounds the analyses of concern.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Entergy Operations, Inc., Et Al., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi and Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 12, 1999, superceding the amendment request in the letter of September 30, 1996, for both stations.

Description of amendment request: The proposed amendment would add an additional required action to the Limiting Condition for Operation (LCO) 3.9.1, ''Refueling Equipment Interlocks,'' of the Technical Specifications for both stations. The additional action would allow an alternative to the current action for one or more inoperable refueling equipment interlocks. The current action is to ''suspend in-vessel fuel movement with equipment associated with the inoperable interlock(s).'' The alternative action proposed is to (1) insert a control rod withdrawal block, and (2) verify all control rods are fully inserted in core cells containing one or more fuel assemblies. The proposed amendment would also revise the Bases for the LCO 3.9.1 actions to describe the proposed alternative actions. The previous **Federal Register** notice of the amendment request in the superceded letter of September 30, 1996, was issued on June 16, 1996, (61 FR 31178), for Grand Gulf Nuclear Station (GGNS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The refueling interlocks are explicitly assumed in the GGNS Updated Final Safety Analyses Report (UFSAR) and RBS Updated Safety Analyses Report (USAR) analysis of the control rod removal error or fuel loading error during refueling. This analysis evaluates the probability and consequences of control rod withdrawal during refueling. Criticality and, therefore, subsequent prompt reactivity excursions are prevented during

the insertion of fuel, provided all required control rods are fully inserted during the fuel insertion. The refueling interlocks accomplish this by preventing loading fuel into the core with any control rod withdrawn, or by preventing withdrawal of a rod from the core during fuel loading.

When the refueling interlocks are inoperable the current method of preventing the insertion of fuel when a control rod is withdrawn is to prevent fuel movement. This method is currently required by the Technical Specifications. An alternate method to ensure that fuel is not loaded into a cell with the control rod withdrawn is to prevent control rods from being withdrawn and verify that all control rods required to be inserted are fully inserted. The proposed actions will require that a control rod block be placed in effect thereby ensuring that control rods are not subsequently inappropriately withdrawn. Additionally, following placing the control rod withdrawal block in effect, the proposed actions will require that all required control rods be verified to be fully inserted. This verification is in addition to the requirements to periodically verify control rod position by other Technical Specification requirements. These proposed actions will ensure that control rods are not withdrawn and cannot be inappropriately withdrawn because an electrical or hydraulic block to control rod withdrawal is in place. Like the current requirements the proposed actions will ensure that unacceptable operations are blocked (e.g., loading fuel into a cell with a control rod withdrawn except following the requirements of LCO 3.10.6, ''Multiple Control Rod Removal—Refueling,'' which is unaffected by this change).

The proposed additional acceptable Required Actions provide an equivalent level of assurance that fuel will not be loaded into a core cell with a control rod withdrawn as the current Required Action or the Technical Specification Surveillance Requirement. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the Technical Specification requirements does not involve a change in plant design. The proposed requirements will continue to ensure that fuel is not loaded into the core when a control rod is withdrawn except following the requirements of LCO 3.10.6, ''Multiple Control Rod Removal-Refueling,'' which is unaffected by this change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

As discussed in the Bases for the affected Technical Specification requirements, inadvertent criticality is prevented during the insertion of fuel provided all required control rods are fully inserted during the fuel insertion. The refueling interlocks function to support the refueling procedures by preventing control rod withdrawal during fuel movement and the inadvertent loading of fuel when a control rod is withdrawn.

The proposed change will allow the refueling interlocks to be inoperable and fuel movement to continue only if a control rod withdrawal block is in effect and all required control rods are verified to be fully inserted. These proposed Required Actions provide an equivalent level of protection as the refueling interlocks by preventing a configuration which could lead to an inadvertent criticality event. The refueling procedures will continue to be supported by the proposed required actions because control rods cannot be withdrawn and as a result fuel cannot be inadvertently loaded when a control rod is withdrawn except following the requirements of LCO 3.10.6, ''Multiple Control Rod Removal—Refueling,'' which is unaffected by this change.

Therefore, the proposed changes do not cause a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120, for Grand Gulf Nuclear Station, and Government Documents Department, Louisiana State University, Baton Rouge, LA 70803, for River Bend Station.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502, for Grand Gulf Nuclear Station, and Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, for River Bend Station.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, Et Al., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: November 22, 1998.

Description of amendment request: The proposed amendment would revise the reactor thermal margin safety limit lines and flow rates stated in the technical specifications (TS). The amendment would also update the reference for dose conversion factors used in Dose Equivalent Iodine-131 calculations, and administrative changes to the criticality analysis uncertainty described in TS 5.6.1.a.1, update the analytical methods used in determining core operating limits listed in TS 6.9.1.11, and revise the TS bases for the steam generator pressure-low trip setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Replacement of the St. Lucie Unit 1 steam generators in 1997 resulted in an increase in RCS [reactor coolant system] flow. The proposed amendment would increase the values of design minimum reactor coolant flow and the low flow trip setpoint presently stated in the Technical Specifications (TS). These revisions are accompanied by a corresponding change to the Thermal Margin Safety Limit Lines of TS Figure 2.1–1. The RCS flow related revisions do not change the probability of any previously evaluated accident, as they do not impact any plant component, structure or system affecting the accident initiators. The proposed changes would continue to maintain adequate operational margin to TS limits for RCS flow and the low-flow trip setpoint.

The proposed changes to the thyroid dose conversion factors from TID–14844 to ICRP–30, fuel storage TS 5.6.1.a.1, the list of analytical methods in TS 6.9.1.11, and the Bases for Steam Generator Pressure-Low trip setting have no relevance to the accident initiators, and thus do not affect the frequency of occurrence of previously analyzed transients. Additionally, there are no changes to any active plant component due to these proposed changes.

The supporting evaluation of proposed TS changes demonstrates acceptable results for all the accidents previously analyzed, and it is concluded that the radiological consequences would remain within their established acceptance criteria when including the effects of increased RCS flow, increased low flow trip setpoint, and change to the thyroid dose conversion factors used in the determination of dose consequences. Proposed changes to the Bases for the Steam Generator Pressure-Low trip setpoint, fuel storage design features, and the list of analytical methods in TS 6.9.1.11 are administrative in nature and do not impact current safety analyses.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment revises limiting flow parameters to derive analysis benefits from increased RCS flow due to the replacement stream generators, while assuring safe plant operation commensurate with the proposed RCS flow and low flow

trip setpoint changes. These changes along with the proposed changes to the Bases for the Steam Generator Pressure-Low trip setpoint, dose conversion factors, the list of analytical methods in TS 6.9.1.11, and the fuel storage design features do not require modifications to the plant configuration, systems or components which would create new failure modes. There would be no change in the modes of operation of the plant. The design functions of all the safety systems remain unchanged. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment revises limiting flow parameters to derive analysis benefits from increased RCS flow due to the replacement steam generators, while assuring safe plant operation commensurate with the proposed design minimum RCS flow and low-flow trip setpoint changes. FPL has evaluated the impact of the proposed changes on available margin to the acceptance criteria for Specified Acceptable Fuel Design Limits (SAFDL), 10 CFR 50.46(b) requirements, primary and secondary over-pressurization, peak containment pressure, potential radioactive releases, and existing limiting conditions for operation. With the proposed changes to the design minimum RCS flow, low-flow trip setpoint, and dose conversion factors, FPL has concluded that there would be no adverse impact to the existing safety analyses. The proposed changes to the Bases for the Steam Generator Pressure-Low trip setpoint, the list of analytical methods in TS 6.9.1.11, and the fuel storage design features are administrative in nature. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Cecil O. Thomas.

Florida Power and Light Company, Et Al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 18, 1998.

Description of amendment request: The proposed amendment would revise the St. Lucie Unit 2 Plant Technical Specifications (TS) Index Page III; TS 1.10, Dose Equivalent I–131; TS 2.1.1.2, Linear Heat Rate; Bases 2.1.1, Reactor Core; Bases Figure B2.1–1, Axial Power Distributions for Thermal Margin Safety Limits; Bases 2.2.1, Reactor Trip Setpoints (Variable Power Level-High); TS 3.1.1.1/4.1.1.1.1, Shutdown Margin—Tavg Greater Than 200 °F; TS 3/4.1.1.2, Shutdown Margin—Tavg Less Than or Equal to 200 °F; TS 3.1.2.2, Boration Systems Flow Paths—Operating; TS 3.1.2.4, Charging Pumps—Operating; TS 3.1.2.6, Boric Acid Makeup Pumps—Operating; TS 3.1.2.8, Borated Water Sources—Operating; Bases 3/4.1.1.1 and 3/4.1.1.2, Shutdown Margin; Bases 3/4.1.2, Boration Systems; and TS 6.9.1.11, Core Operating Limits Report (COLR). The core operating limits for shutdown margin will be relocated to the St. Lucie Unit 2 COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the license has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment involves changes to the dose conversion factors used in the thyroid dose calculations and the relocation of the SHUTDOWN MARGIN requirements for Modes 1 through 5 from TS to the Core Operating Limits Report (COLR). Additionally, the peak linear heat rate value corresponding to centerline melt is deleted from the TS. The deletion of this TS remains consistent with the requirements of 10 CFR 50.36. Bases Figure B2.1–1 is replaced with a new figure, consistent with the input assumptions of the safety analysis report.

The proposed amendment addresses analytical methods changes such as the use of HERMIT code in one dimensional mode for spatial details, the rod bow penalty calculations using L^2/I dependence discussed in CEN–289 (A)–P, CEAW methodology change for crediting the delta-T power trip, and the methodology for core designs containing Gadolinia-Urania burnable absorbers (CENPD–275–P, Revision 1–P, Supplement 1–P). None of these changes is a contributor to the initiation of previously evaluated accidents. The changes to TS bases and the COLR methodology changes have no impact on the accident initiators. Accordingly, the probability of an accident previously evaluated is not significantly increased.

The proposed changes have been evaluated by Florida Power & Light (FPL) and Asea Brown Boveri—Combustion Engineering (ABB–CE). The safety analyses assumed bounding physics parameters, and satisfy all the applicable acceptance criteria. Although specification 2.1.1.2 is deleted from TS, the safety analyses continue to meet the same centerline melt acceptance criteria as before and from which the peak linear heat rate value is derived. Additionally, the peak linear heat rate value (corresponding to the centerline melt) does not meet the criteria specified in 10 CFR 50.36 for safety limits.

The changes to TS bases do not affect safety analysis results. The relocation of SHUTDOWN MARGIN requirements to COLR does not affect analysis results or consequences as the limits remain unchanged. Future changes to these limits will be controlled per Generic Letter 88–16 under the provisions of 10 CFR 50.59.

The use of HERMITE code in one dimension, for space-time loss-of-flow simulation, has been successfully applied for other ABB–CE plants. The use of HERMITE code in this mode, for St. Lucie Unit 2, is acceptable since there are no fundamental core and nuclear steam supply system (NSSS) differences between St. Lucie Unit 2 and these plants. The analyses presented in this submittal include the use of a supplement to the gadolinia-urania core design methodology topical report. The change in the rod bow penalty effects similar to that approved for another ABB–CE plant is justified for St. Lucie Unit 2 based on a comparative analysis of factors influencing the rod bow. The change in the CEAW analysis method removes unnecessary conservatisms as compared to the previous analysis method. The validity of results and conclusions of this evaluation are contingent upon NRC approval of these revised methods.

The radiological does consequences for applicable safety analyses, using the dose conversion factors from ICRP–30, Supplement to Part 1, satisfy the acceptance criteria established to ensure compliance with the 10 CFR 100 dose limits.

The COLR methodology changes proposed to be listed in TS are those previously approved for CE plants with changes as described above. The use of these methodologies remains consistent with their applicability for safety analyses.

Therefore, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment involves changes to the Technical Specifications for the dose conversion factors used in the thyroid dose calculations, the deletion of TS 2.1.1.2, the replacement of Bases Figure B2.1–1, and the relocation of SHUTDOWN MARGIN requirements to the COLR. Additionally, there are methodology changes related to the safety analyses reported in this submittal. The methodology changes include the use of HERMITE code in one dimensional mode for space-time loss-of-flow simulations, revised rod bow DNB penalty calculations, CEAW analysis methodology change including the use of delta-T power trip, and

a supplement to the methodology for core designs containing Gadolinia-Urania burnable absorbers (CENPD–275–P Revision I–P, Supplement I–P). None of these changes, including those of the TS bases, will affect the plant configuration and there will be no impact on any system performance.

Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications have been evaluated with respect to the safety analyses using either previously approved methodology or methodology currently under NRC review (CENPD–275–P, Revision I–P, Supplement I–P). The use of HERMITE code in one-dimensional mode for spatial details, for space-time loss-of-flow simulation, provides more accurate data for thermal margin calculations and has been used for similar applications at other plants. The calculations of rod bow DNB penalty using L^2/I dependence has been previously approved for another ABB–CE plant and is justified for St. Lucie Unit 2 based on an analysis of important factors influencing the rod bow. The CEAW methodology change showed acceptable analysis results after conservatively accounting for appropriate uncertainties.

The safety analyses performed with this methodology used bounding physics parameters to allow flexibility for future cycles core designs. The revised Bases Figure B2.1–1 is consistent with the attached safety analysis report. Deleting TS 2.1.1.2 is justified since the specified limit does not meet any of the criteria of 10 CFR 50.36, and the fuel centerline melt criteria applied to the Specified Acceptable Fuel Design Limit (SAFDL) is not changed. The setpoint analyses and safety analyses of all design basis accidents meet the applicable acceptance criteria with respect to the radiological consequences, SAFDLs, primary and secondary overpressurization, and 10 CFR 50.46 requirements. The proposed amendment, therefore, will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Cecil O. Thomas.

Florida Power and Light Company, Et Al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 16, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification 6.3, ''Unit Staff Qualifications,'' and add specific staff qualifications for a Multi-Discipline Supervisor position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature addressing personnel qualification issues. The Multi-Discipline Supervisor (MDS) position will be filled with personnel who are experienced in one or more technical disciplines (maintenance, operations, engineering, or other related technical discipline). Fundamental working knowledge of tasks being performed will be acquired through the MDS initial training program. The training concentrates on developing the skills and knowledge of an MDS to safely oversee tasks for multi-discipline work teams. Therefore, four years experience in any related technical discipline or disciplines combined with the MDS training program provide adequate technical knowledge for proper job oversight. These proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses the physical design and/or modes of plant operation defined in the facility operating license, or Technical Specifications that preserve safety analysis assumptions. These changes address qualification requirements for the MDS position. Since the proposed changes do not change the qualifications for those individuals responsible for the actual licensed operation of the facility, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The proposed changes to add the MDS position have management and administrative controls associated with the required qualification requirements. The St. Lucie Unit 1 and Unit 2 Technical Specifications will ensure that any individual filling the MDS position has the requisite education, experience, and training. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Direct: Cecil O. Thomas.

GPU Nuclear Inc. Et Al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 3, 1998.

Description of amendment request: The amendment would revise Technical Specifications 3.4.A.10.e and 3.5.a.2.e to incorporate a Condensate Storage Tank level of greater than 35 feet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not alter the design or function of any structures, systems or components and does not affect any of the parameters or conditions that could contribute to initiation of any accidents.

The proposed change eliminated an inconsistency between the noted tank level and required water volume and, thereby, ensures 360,000 gallons of water are available for use. The proposed change does not affect the volume of water required to be available, the conditions under which it must be available nor the manner in which it will be used. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Eliminating an inconsistency between the noted tank level and the required water volume does not alter the designs or function of any structures, systems or components. The proposed tank level requirement is within the design parameters of the tank and, as such, does not [ ] introduce any new mechanisms which could contribute to the creation of a new or different kind of accident than previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed change eliminates an inconsistency between the noted tank level and required water volume. The proposed change ensures that an adequate makeup source is available and, in addition, that sufficient water volume is available to support operation of the core spray system in the event of a reactor vessel leak. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William M. Dean.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1. (NMP1) Oswego County, New York

Date of amendment request: December 30, 1998.

Description of amendment request: The footnote of current Technical Specification (TS) Table 3.6.14–2, Radioactive Gaseous Effluent Monitoring Instrumentation, specifies that the requirement for the emergency condenser system to have one operable noble gas activity monitor per vent, is applicable during reactor power operating conditions. Note (h) of current TS Table 4.6.14–2 specifies that the requirement to perform a sensor check once per day of the emergency condenser system noble gas activity monitor is applicable during reactor power operating conditions. The proposed amendment would change the footnote of TS Table 3.6.14–2 and note (h) of TS Table 4.6.14–2 to extend the applicability of the channel operability and daily sensor check surveillance requirement from during reactor power operating conditions, to during power operation conditions and whenever the reactor coolant temperature is greater than 212 °F except for hydrostatic testing with the reactor not critical. The proposed changes would also correct a clerical error in TS 4.6.15.d. The clerical error cited an incorrect TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes extend the application of operability and daily sensor check for the Emergency Condenser Vent Noble Gas Activity Monitors to include, in addition to power operations, the condition when reactor coolant temperature is greater than 212 °F, except for hydrostatic testing. These changes will make the conditions for Emergency Condenser Vent Noble Gas Activity Monitor operability and daily sensor check surveillance performance consistent with the conditions for ECS [emergency cooling system] operability as indicated in LCO [Limiting Condition for Operation] 3.1.3.a.

The proposed changes to the Emergency Condenser Vent Noble Gas Activity Monitor operability and daily sensor check surveillance requirements will continue to provide assurance that the intent of the effluent monitoring requirements of 10 CFR 50 Appendix A, GDC [General Design Criterion] 64, is satisfied and the radiological effluents are maintained within the dose and dose rate limits specified in 10 CFR 50 Appendix I, 10 CFR 20, and the RETS [Radiological Effluent Technical Specifications]. The proposed changes will not effect the capability of the ECS to mitigate the consequences of an accident that results in a loss of feedwater or reactor isolation from the primary heat sink and aid the Core Spray System and Automatic Depressurization System in providing effective core cooling following non-limiting small breaks.

The proposed changes also correct a clerical error in the Uranium Fuel Cycle effluent monitoring SR [surveillance requirement]. The proposed correction simply restores the SR to the form that existed before the error was introduced. The clerical error did not affect the ODCM [Offsite Dose Calculation Manual] implementing procedures or plant operation. Thus, the cumulative dose contribution from Uranium Fuel Cycle sources will continue to be maintained within the limits of 40 CFR 190 and the RETS.

Based on the above analysis, the proposed changes do not result in any hardware changes or physical alteration of the plant, and the changes will have no impact on the design or function of any structure, system or component (SSC). As such, the SSC process variables, characteristics, and functional performance will be maintained consistent with the event initiator and the initial condition assumptions for the accident analyses. Moreover, the proposed changes will not eliminate any actions or adversely affect any SSCs required to prevent accidents or mitigate accident conditions, nor will the changes result in the degradation of any fission product barriers so as to increase the radiological consequences of an accident. It is, therefore, concluded that operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in any hardware changes or physical alteration of the plant, and the changes do not impact the design or function of any SSC. The proposed changes maintain the capability of the ECS to respond to accidents, including non-limiting small breaks, consistent with the current analyses. In addition, the proposed changes provide continued assurance that the radiological dose and dose rates will be maintained within limits. The proposed changes do not alter the process variables, characteristics, or functional performance of any SSC, do not eliminate any requirements, and do not impose any new requirements which could introduce new equipment failure modes or create new credible accidents. It is, therefore, concluded that operation in accordance with proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed

amendment, will not involve a significant reduction in a margin of safety.

The proposed changes do not affect the capability of the ECS to mitigate consequences of an accident that results in a loss of feedwater or reactor isolation from the primary heat sink, or affect the capability of the ECS to aid the Core Spray System and the Automatic Depressurization System in providing effective core cooling following non-limiting small breaks. Thus, there will be no impact on the post-accident radioactive material release analyses or a reduction in the margin to the associated 10 CFR 100 dose limits. In addition, the proposed changes provide continued assurance that the intent of the effluent monitoring requirements of 10 CFR 50 Appendix A, GDC 64, is satisfied and the dose and dose rates due to the radiological effluents are maintained within the limits specified in 10 CFR 50 Appendix I, 10 CFR 20, 40 CFR 190, and the RETS. Moreover, the proposed changes do not eliminate any requirements or responsibilities, nor impose new requirements or responsibilities, or alter any physical parameters which could reduce the margin to an acceptance limit. It is, therefore, concluded that operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa, Director.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 16, 1998.

Description of amendment request: The proposed editorial and administrative changes to the Technical Specifications would either revise references and statements that are inaccurate or provide relief from administrative controls which provide insignificant safety benefit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis accidents are not affected by the proposed editorial and administrative changes. The proposed changes do not change the level of programmatic controls or the procedural details currently in place. The proposed changes do not revise the station design, the response of the station to transients nor the manner in which the station is operated, therefore, these changes have no adverse affect to the safe operation of the station. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed changes. The proposed changes have no adverse affect on component or system interactions. The proposed changes are editorial and administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned technical specifications. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There are no changes being made to the Technical Specification safety limits or safety system settings that would adversely affect plant safety. The changes do not affect the operation of structures, systems or components nor do they introduce administrative changes to plant procedures that could affect operator response during normal, abnormal or emergency situations. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: William M. Dean.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 16, 1998.

Description of amendment request: The proposed change would relocate Technical Specifications (TS) 3/4.7.10, ''Area Temperature Monitoring,'' and associated TS Table 3.7–3, to the Seabrook Station Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed change does not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed change is administrative in nature and does not decrease the effectiveness of programmatic controls or the procedural details of assuring operation of the facility in a safe manner.

The provisions of TS 3/4.7.10 for area temperature monitoring of the referenced selected areas is neither part of an initial condition of a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier, nor is area temperature monitoring relied upon as a primary success path to mitigate such events. The provisions for area temperature monitoring is not related to events that are considered frequent or dominant contributors to plant risk. Area temperature monitoring is not considered a design feature or an operating restriction that is an initial condition of a design basis accident or transient analysis, nor does it provide a function or actuate any accident mitigation feature in order to mitigate the consequences of a design basis accident or transient.

Relocating TS 3/4.7.10 to the Technical Requirements Manual will still provide adequate controls for area temperature in those areas designated in TS Table 3.7–3. The relocated requirements of TS 3/4.7.10 to the Technical Requirements Manual will continue to be administratively controlled in accordance with TS Section 6.0, ''Administrative Controls.''

The Seabrook Station Technical Requirements Manual is a licensee-controlled

document which contains certain technical requirements and is the implementing manual for the Technical Specification Improvement Program. Changes to these requirements are reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7, and as outlined in the Technical Requirements Manual. Specifically, changes to the Technical Requirements require a 10 CFR 50.59 safety evaluation and are reviewed and approved by the Station Operations Review Committee (SORC) and the Nuclear Safety Audit Review Committee (NSARC) prior to implementation.

The proposed change will not degrade the ability of systems, structures and components important to safety to perform their safety function. The proposed change will not change the response of any system, structure or component important to safety as described in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). Since the plant response to an accident will not change, there is no change in the potential for an increase in the consequences of an accident previously analyzed. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed change. The proposed change has no adverse impact on component or system interactions. The proposed change will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). The proposed change is administrative in nature and does not change the level of programmatic controls and procedural details controls of assuring operation of the facility in a safe manner. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

Future changes to area temperature monitoring requirements will be reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7, and as outlined in the Technical Requirements Manual. Specifically, changes to the Technical Requirements require a 10 CFR 50.59 safety evaluation and are reviewed and approved by the Station Operations Review Committee (SORC) and the Nuclear Safety Audit Review Committee (NSARC) prior to implementation.

Since the plant response to an accident will not change, there is no change in the potential for an increase in the consequences of an accident previously analyzed, nor can it create the possibility of a new or different kind of accident from any previously evaluated.

Relocation of the area temperature monitoring requirements to the Technical Requirements Manual will not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change is administrative in nature and does not change the level of programmatic controls and procedural details associated with area temperature monitoring to ensure that environmentally qualified equipment will not be exposed to temperatures beyond that which they were originally qualified.

Future changes to the area temperature monitoring requirements will be reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7, and as outlined in the Technical Requirements Manual. Specifically, changes to the Technical Requirements require a 10 CFR 50.59 safety evaluation and are reviewed and approved by the Station Operations Review Committee (SORC) and the Nuclear Safety Audit Review Committee (NSARC) prior to implementation.

Relocation of the requirements contained in TS 3/4.7.10 to the Technical Requirements Manual does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company (NNECO), Et Al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 28, 1998.

Description of amendment request: NNECO is proposing to change Technical Specification 2.2.1, ''Limiting Safety System Settings—Reactor Trip Setpoints,'' and the associated Bases to reflect revised loss of normal feedwater (LONF) analyses. An additional Technical Specification Bases change to the floor value for the thermal margin low pressure reactor trip is also included. This proposed change is not related to the revised LONF analyses.

NNECO is also seeking NRC approval to incorporate changes to the Millstone Unit No. 2 Final Safety Analysis Report (FSAR). The proposed changes to the FSAR, except the floor value for thermal margin low pressure reactor trip, are associated with the revised LONF analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The analysis of a loss of normal feedwater (LONF) event, as described in the Millstone Unit No. 2 FSAR Chapters 10 and 14, has been revised. Certain key assumptions have been changed to ensure acceptable analysis results. An evaluation of the LONF analyses changes, and associated Technical Specification changes will be presented. In addition, an evaluation of an additional non LONF analyses related Technical Specification Bases and FSAR change is included.

LONF analyses changes. The LONF analyses, contained in FSAR Chapters 10 and 14, have been revised using a steam generator liquid inventory assumption, at the time of reactor trip on low steam generator water level, that is consistent with the design of the replacement steam generators. The revised Chapter 10 and 14 LONF analyses also incorporate a reduction in auxiliary feedwater delivery rates resulting from a recalculation of the Auxiliary Feedwater (AFW) System flows. The results of revised analyses indicate that the analytical limit for the low steam generator water level reactor trip must be raised to 43% narrow range level from the current 34% narrow range level. This will result in a change to the low steam generator water level reactor trip setpoint listed in Technical Specification 2.2.1.

The revised Chapter 14 LONF analysis will now take credit for automatic initiation of the motor driven auxiliary feedwater (MDAFW) pumps. The current Chapter 14 LONF analysis assumes auxiliary feedwater flow will be initiated 10 minutes after the event. The Chapter 10 LONF analysis assumption of

automatic initiation of one MDAFW pump within 4 minutes, after the low steam generator level AFW actuation setpoint is reached, has not changed.

To demonstrate that one MDAFW pump delivers sufficient flow to preclude steam generator dryout, the Chapter 10 LONF analysis will not take credit for the operation of the steam generator atmospheric dump valves, instead of the main steam safety valves as in the current analysis. This new assumption yields lower predicted steam generator pressures which result in an increase in the delivered AFW flows.

LONF analyses related technical specification changes. The trip setpoint and allowable value for the low steam generator water level reactor trip will be changed to be consistent with the revised LONF analyses. The revised analyses assume an analytical limit of 43% narrow range level, instead of the current analytical limit of 34% narrow range level. The calculation of the trip setpoint, which includes instrument uncertainty, has determined that the trip setpoint should be changed from [greater than or equal to] 36.0% to [greater than or equal to] 48.5%.

The increase in the low steam generator level Reactor Protection System (RPS) actuation setpoint from [greater than or equal to] 36% to [greater than or equal to] 48.5% will result in an increase in the probability of an RPS actuation on low steam generator water level since the difference between the proposed setpoint and the normal operating value of steam generator level will decrease. The proposed actuation setpoint is below the normal operating level of 60 to 75%. Steam generator level is not expected to approach the actuation setpoint during normal operation. An unexpected plant event (e.g., loss of main feedwater or difficulty controlling steam generator level at low power levels) would be necessary for steam generator level to approach the actuation setpoint. To provide the operators with advance notice of the steam generator low level condition, the existing RPS low steam generator water level pretrip alarm setpoint will be changed to provide approximately the same margin between pretrip and trip as currently exists (5%). This will ensure that the pretrip alarm is received prior to reaching the actual record trip setpoint. Therefore, even though the proposed change will decrease the margin between the normal operating steam generator level and the RPS actuation setpoint, this change will not significantly impact the probability of an RPS actuation on low steam generator level during normal plant operations. In addition, the proposed setpoint and allowable value change will ensure a reactor trip signal is generated at, or before the analytical limit used in the revised LONF analysis is reached. Therefore, the RPS will continue to function as designed to mitigate the consequences of the design basis accidents.

The basis for the steam generator level low reactor trip will be modified to be consistent with the revised LONF analyses. The discussion concerning available water inventory and time until auxiliary feedwater is required will be removed. The proposed change to the FSAR will include a discussion of the relationship between the LONF analysis and the need to automatically initiate auxiliary feedwater flow.

Non LONF analyses related technical specification bases and FSAR change. This Technical Specification Bases and FSAR change is not related to the revised LONF analyses.

The basis for the thermal margin low pressure (TMLP) reactor trip (Technical Specification 2.2.1 Bases) will be modified. The current basis states that the floor, or minimum value, for this trip function is set at 1850 psia pounds per square inch absolute]. This value will be changed to be consistent with instrument uncertainty calculations that have determined that the floor should be increased to 1865 psia. The increase in floor value is the result of greater instrument uncertainties when harsh containment environment conditions are included.

The increase in the TMLP floor (from 1850 psia to 1865 psia) could result in an increase in the probability of an RPS actuation on thermal margin low pressure since the difference between the proposed floor setpoint and the normal operating value of pressurizer pressure will decrease. However, the proposed actuation setpoint is significantly below the normal operating pressure of approximately 2250 psia. Pressurizer pressure is not expected to approach the actuation setpoint during normal operation. A significant plant event (e.g., loss of primary coolant) would be necessary for a rapid pressure excursion to approach the actuation setpoint. Since the setpoint change is small, it will not adversely impact the probability of an RPS actuation on low pressurizer pressure during normal plant operations. In addition the proposed change to the floor value will ensure a reactor trip signal is generated at, or before the analytical limit used in the respective accident analyses is reached. Therefore, the RPS will continue to function as designed to mitigate the consequences of the design basis accidents.

Conclusion. The results of the revised LONF analyses contained in FSAR Chapters 10 and 14 have concluded that the LONF event does not result in the violation of the Specified Acceptable Fuel Design Limits, that the peak pressurizer pressure does not exceed 110% of the design pressure, that liquid primary coolant is not expelled through the pressurizer safety valves, and that adequate cooling water is supplied by the AFW System to prevent steam generator dryout and allow a safe and orderly plant shutdown. By preventing steam generator dryout, sufficient removal of decay heat from the Reactor Coolant System (RCS) will occur, preventing excessive RCS heatup and pressurization. This will ensure the steam generator fatigue analysis remains valid, and excessive discharge of primary coolant through the pressurizer safety valves does not occur. Therefore, there will be no adverse effect on the consequences of a LONF event. This is consistent with the acceptance criteria contained in Standard Review Plan (SRP) 15.2.7, [''Loss of Normal Feedwater Flow,'' Rev. 1—July 1981]. (Millstone Unit No. 2 is not an SRP plant.)

The proposed changes do not alter the way any structure, system, or component functions. The changes in actuation setpoints and equipment used in the LONF analyses affect equipment important to the mitigation of design basis accidents. These changes do not affect any equipment that can cause a design basis accident to occur. Therefore, the proposed changes do not affect the probability of occurrence of a previously evaluated accident.

These proposed changes do not alter the way any structure, system, or component functions. There will be no adverse effect on any design basis accident previously evaluated, on any equipment important to safety, or on the radiological consequences of any design basis accident. Therefore, these proposed changes will not adversely affect the consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Results of the proposed LONF analyses have demonstrated that the Specified Acceptable Fuel Design Limits are not violated, that the peak pressurizer and steam generator pressures do not exceed 110% of the design pressure, that liquid primary coolant is not expelled through the pressurizer safety valves, and that adequate cooling water is supplied by the AFW System to prevent steam generator dryout and allow a safe and orderly plant shutdown. Therefore, there are no new or different types of failures of systems or equipment important to safety which could cause a new or different type of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The revised FSAR Chapter 14 analysis has concluded that the steam generator low water level reactor trip setpoint does not provide sufficient water inventory in the steam generators at the time of the reactor trip such that auxiliary feedwater flow will not be required for 10 minutes. This contradicts the current Technical Specification Basis (Technical Specification 2.2.1) for the steam generator low water level reactor trip setpoint. Therefore, the revised analysis reduces the margin of safety as defined in the Bases of the Millstone Unit No. 2 Technical Specifications. However, with the proposed changes to increase the low steam generator water level reactor trip setpoint and taking credit for automatic AFW System actuation, it has been shown that operation of these systems can mitigate the LONF event, and ensure plant response is within the acceptance criteria. Results of the proposed LONF analyses have demonstrated that the Specified Acceptable Fuel Design Limits are not violated, that the peak pressurizer and

steam generator pressures do not exceed 110% of the design pressure, that liquid primary coolant is not expelled through the pressurizer safety valves, and that adequate cooling water is supplied by the AFW System to prevent steam generator dryout and allow a safe and orderly plant shutdown. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The proposed change to the floor value for the TMLP reactor trip function is the result of a revision to the instrument loop uncertainty and setpoint calculations. The proposed change to the Technical Specification Basis will incorporate the RPS TMLP floor setpoint change. This change to the TMLP floor will not adversely affect this function. The TMLP reactor trip function will still operate as designed. The RPS will continue to function as designed to mitigate the consequences of design basis accidents. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are considered not likely to involve an SHC. The changes proposed herein are not enveloped by any specific example.

As described above, this License Amendment Request does not impact the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company (NNECO), Et Al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: January 18, 1999.

Description of amendment request: NNECO is proposing to change Technical Specification 3.6.1.2, ''Containment Systems—Containment Leakage.'' The Bases for this Technical Specification and the Final Safety Analysis Report (FSAR) will also be modified to address the proposed changes.

The limit for secondary containment bypass leakage specified in Technical Specification 3.6.1.2.c will be reduced from less than 0.017 L_a to less than 0.0072 L_a. This new limit is consistent with the value of secondary containment bypass leakage used in the revised off-site and control room dose calculations following a design basis loss-of-coolant accident (LOCA).

Technical Specification 3.6.1.2.c will be modified by replacing ''identified in Table 3.6–1 as'' with ''that are.'' This will allow Table 3.6–1 to be removed. The removal of this table from Technical Specifications and the proposed wording change are consistent with the guidance contained in Generic Letter (GL) 91–08. It is not necessary to maintain a list of the secondary containment bypass leakage paths in Technical Specifications. The Millstone Unit No. 2 FSAR (Section 5.3.4) provides the necessary information to determine the secondary containment bypass leakage paths that must be considered to ensure that the combined leakage rate limit contained in Technical Specification 3.6.1.2.c is met.

Technical Specification 3.6.1.2 Table 3.6–1, ''Secondary Containment Bypass Leakage Paths,'' will be removed and the phrase ''This Page Intentionally Deleted'' will be added to Page 3/4 6–5.

The Bases for Technical Specification 3.6.1.2 will be modified to indicate that the Millstone Unit No. 2 FSAR contains a list of the containment penetrations that have been identified as secondary containment bypass leakage paths.

FSAR Section 5.3.4, ''Through-Line Leakage Evaluation,'' will be changed to include the additional secondary containment bypass leakage paths that have been identified. The criteria used to determine the secondary containment bypass leakage paths will be modified to be consistent with the criteria used in the evaluation that identified the additional leakage paths.

The discussion of the use of a leakage rate of 11 cc/hr for the control room dose calculations will be modified. The revised control room dose calculations will assume a total secondary containment bypass leakage rate consistent with the proposed change to Technical Specification 3.6.1.2.

As a result of these proposed changes, the calculated off-site and control room doses following a design basis LOCA will change. The calculated doses are specified in FSAR Section 14.8.4, ''Radiological Consequences of the Design Basis Accident.'' A revision to this section of the FSAR has been submitted to the NRC by the letter dated September 28, 1998. This submittal will be revised to incorporate the proposed total secondary containment bypass leakage rate and the associated change to the calculated off-site and control room doses following a design basis LOCA.

Basis for proposed no significant hazards consideration determination: As required by 10 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to lower the limit for secondary containment bypass leakage, as specified in Technical Specification 3.6.1.2.c, from [less than] 0.017 L_a to [less than] 0.072 L_a will reduce the off-site doses associated with the design basis LOCA. The proposed change to raise the limit for secondary containment bypass leakage from 11 cc/hr to [less than] 0.0072 L_a will increase the dose to the Control Room Operators following a design basis LOCA. However, the revised off-site and control room dose calculations, using the proposed combined secondary containment bypass leakage limit, demonstrate that the limits of 10 CFR 100 and 10 CFR 50, Appendix A, General Design Criteria (GDC) 19 are met. In addition, these proposed changes will result in the use of the same limit for secondary containment bypass leakage when determining the radiological consequences of a design basis LOCA.

The proposed wording change to Technical Specification 3.6.1.2.c, and the associated removal of Table 3.6–1, will not change the requirement to verify total secondary containment bypass leakage is within the limit assumed in the determination of the radiological consequences of the design basis LOCA. Control of the penetrations that have been identified as secondary containment bypass leakage paths will be maintained by the process used to change the Millstone Unit No. 2 FSAR. This process ensures that appropriate changes to the FSAR are evaluated in accordance with 10 CFR 50.59 to determine if NRC approval is required prior to implementing the change. This process also ensures that the NRC is informed of FSAR changes via regular

updates to the FSAR. The removal of Table 3.6–1 from Technical Specifications and the proposed wording change are consistent with the guidance contained in GL 91–08.

The identification and addition of more secondary containment bypass leakage paths to the FSAR will have no impact on the calculated off-site and control room doses following a design basis LOCA since the combined leakage through all secondary containment bypass leakage paths is limited to the proposed value contained in Technical Specification 3.6.1.2. The addition of bypass leakage paths does not change the combined leakage limit, which is now used in the off-site and control room dose calculations.

The Bases for Technical Specification 3.6.1.2 will be modified to indicate that the Millstone Unit No. 2 FSAR contains a list of the containment penetrations that have been identified as secondary containment bypass leakage paths.

The proposed changes do not alter the way any structure, system, or component functions. These changes do not affect any equipment that can cause a design basis accident to occur. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. The reduction in the allowable secondary containment bypass leakage limit will result in a decrease in the calculated off-site doses associated with the design basis LOCA. The use of the proposed secondary containment bypass leakage limit will increase the calculated doses to the Control Room Operators following a design basis LOCA. However, the calculated doses meet the criteria of 10 CFR 100 and GDC 19. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is essentially unaffected by the change. The criteria used by the plant operators to terminate containment spray following a design basis LOCA will change from containment pressure to either time or pressure, whichever requires longer operation. This will ensure that containment spray remains in operation long enough to achieve the assumed iodine decontamination. However, the operator action to terminate containment spray will remain the same. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to lower the Technical Specification limit for secondary containment bypass leakage, to remove Table 3.6–1, and to add more secondary containment bypass leakage paths to the FSAR will have no adverse effect on equipment important to safety. The equipment will continue to function as assumed in the design basis accident analysis. These changes will ensure that the secondary containment bypass leakage paths are identified and tested to verify that the total secondary containment bypass leakage does not exceed the Technical Specification limit. This will ensure that the expected off-site and control room doses following a design basis LOCA are within the limits specified in 10 CFR 100 and GDC 19. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the Technical Specification affected by these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M, Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company (NNECO) Et Al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: January 18, 1999.

Description of amendment request: The proposed changes will remove the Technical Specification related to Hydrogen Purge System from the Millstone Unit No. 2 Technical Specifications. The proposed changes affect Technical Specifications 3/4.6.4.3, ''Containment Systems, Hydrogen Purge System.'' The Bases of the associated Technical Specification will be modified to address the proposed changes. The proposed changes will allow the licensee to downgrade the hydrogen purge system to a non-safety-related system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Hydrogen Purge System provides a backup means to manually control the hydrogen concentration in containment given the multiple failure of the redundant, Seismic Category I Hydrogen Recombiner System. The primary success path for hydr9gen control is the Hydrogen Recombiner System. The Hydrogen Recombiner System has redundant trains and is fully qualified to maintain hydrogen control following a design basis accident. FSAR [Final Safety Analysis Report] Section 14.8.3.5, ''Radiological Consequences of Purging'' is being removed from the FSAR since it is no longer required. Since the hydrogen recombiners are fully redundant, it is not necessary to postulate offsite doses for purge during a design basis accident. Thus, the deletion of consequences does not represent a change in the consequences of a design basis event. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Revision of Index Page VII is an administrative change. The proposed change to Bases section 3/4.6.4 by deleting reference to ''the purge system'' is required since Technical Specification 3/4.6.4.3 is being removed. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not alter how any structure, system, or component functions. There will be no effect on equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request does not impact the probability of an accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The purge system is a standby purge system which is not in service during normal operations as a hydrogen purge system (i.e., Charcoal Filter Heaters de-energized). Therefore, no new accident is created either by system unavailability or actuation. The FSAR will still address the use of the purge system as a backup to the recombiner system, Revision of Index Page VII is an administrative change. The proposed change to Bases section 3/4.6.4 by deleting reference to ''the purge system'' is required since Technical Specification 3/4.6.4.3 is being removed. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety is defined in the Bases 3/4.6.4 which states that the ''hydrogen control systems are consistent with the recommendations of Regulatory Guide 1.7 * * *''. Regulatory Guide 1.7 describes methods that would be acceptable in meeting the standards for a combustible gas control system, 10 CFR 50.44, ''Standards for combustible gas control systems in light-water-cooled power reactors.'' Regulatory Guide 1.7 acknowledges that purging is a means of reducing the hydrogen concentration but it should not be the primary means because of the release of radioactivity to the environment. The regulatory guide does advise that there be an ''installed capability for a controlled purge of the containment atmosphere to aid in cleanup.'' Removal of the Hydrogen Purge System Technical Specification is consistent with Regulatory Guide 1.7. Additionally, the capability to purge is still documented in the FSAR. Revision of Index Page VII is an administrative change. The proposed change to Bases section 3/4.6.4 by deleting reference to ''the purge system'' is required since Technical Specification 3/4.6.4.3 is being removed. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company (NNECO), Et Al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 18, 1999.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3/4.2.2 to be in accordance with NRC-approved Westinghouse methodologies for the heat flux hot channel factor—$F_Q(Z)$. In addition, the proposed amendment would make changes to the core operating limits and the analytical methods used to determine core operating limits contained in Section 6.9.1.6.a and b, respectively, by adding, modifying, or deleting references.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no signification hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve any Significant Hazards Considerations (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed Technical Specification revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

To determine any potential impact, the proposed changes to the TS are grouped into the following two categories.

(a) Changes to Technical Specification 3/4.2.2 ''Heat Flux Hot Channel Factor—$F_Q(Z)$''

(b) Changes that are not related to the Heat Flux Hot Channel Factor TS, and are administrative in nature. These include defining a new core operating limit and deleting, re-numbering, updating and adding references to analytical methods used to determine core operating limits in TS 6.9.1.6 ''Core Operating Limit Report (COLR).['']

With respect to item 1.a changes related to the Heat Flux Hot Channel Factor, $F_Q(Z)$, impact the initial conditions assumed in the accidents analyzed for MP3 [Millstone Unit 3]. These initial conditions are power distributions which are consistent with reactor operation as defined in the TS. The proposed changes to the Heat Flux Hot Channel Factor TS ensure that proper actions are taken to maintain peaking factors within the limits assumed in the MP3 accident analysis. The proposed changes are consistent with the NRC approved Westinghouse methodology for $F_Q(Z)$ surveillance. Changes to the SURVEILLANCE and ACTION statements will not change the probability of occurrence of any analyzed accidents. Furthermore, the consequences of analyzed accidents will not change since the power distribution assumptions will not be challenged by reactor operation allowed by the Technical Specifications.

With respect to item 1.b the administrative changes to the Technical Specifications do not affect existing or proposed Limiting Conditions for Operation (LCO) or SURVEILLANCE REQUIREMENTS. Therefore, there is no impact on the design basis accidents.

Thus it is concluded that the proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

(a) Proposed changes to the Heat Flux Hot Channel Factor, TS 3/4.2.2 ensure that proper actions are taken to maintain peaking factors within the limits assumed in the MP3 accident analysis. The proposed changes are consistent with the NRC approved Westinghouse methodology for $F_Q(Z)$ surveillance. Maintaining safety analysis assumptions on power distributions cannot be an initiating event for any design basis accidents and will not create the possibility of a different type of accident. Therefore the changes associated with the Heat Flux Hot Channel Factor limiting condition for operation do not represent a new unanalyzed accident.

(b) Since the administrative changes do not affect plant operation, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

Thus, this proposed revision does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction on the margin of safety.

(a) The proposed changes ensure that $F_Q(Z)$, will remain within the safety analysis assumptions. The LCO limits and SURVEILLANCE REQUIREMENTS are not altered. Therefore, the impact on the consequences on the protective boundaries is unchanged. Meeting the intent of the NRC approved Westinghouse methodology for $F_Q(Z)$, SURVEILLANCE ensures that power distributions assumed in the accident analysis will not be challenged by reactor operations allowed by the Technical Specifications. Therefore, verification of no change in the margin of safety is encompassed by meeting the power distribution limits assumed in analyzed accidents.

(b) Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

Thus it is concluded that the proposed revision does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve a Significant Hazard Consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 31, 1998.

Description of amendment request: The proposed amendment would revise the technical specification (TS) reactor pressure vessel (RPV) pressure-temperature (P–T) limit curves, delete completed RPV sample surveillance requirements, delete requirement to withdraw a specimen at next refueling outage, and remove the standby liquid control system (SBLC) relief valve setpoint. Associated administrative changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

RPV P–T curve changes. It is proposed that P–T curves be revised to accommodate the shift in RT_{NDT} determined using actual surveillance program data rather than generic data provided in Regulatory Guide [RG] 1.99 Revision 2 (Radiation Embrittlement of Reactor Vessel Materials). The new P–T curves will increase the margins provided in the P–T limit curves against non-ductile failure of the RPV. Regulatory Guide 1.99 Revision 2 encourages use of plant specific surveillance data as data becomes available.

Eliminating prescriptive requirements to remove a RPV test specimen sample at three fourths service life will result in an overall improvement in the RPV surveillance program since the limited number of remaining surveillance samples will be removed at optimum intervals. Therefore, proposed changes will neither significantly increase the probability or the consequences of an accident previously evaluated.

RPV surveillance requirements. Deleting completed, one time surveillance requirements [SRs] of SR section 4.6.B and incorporating a discussion of the results in the Bases is an administrative change and has no effect on probability or consequences of accidents.

SBLC relief valve setpoint testing. The testing requirements of TS section 4.4.A.2.c are enveloped by the current testing performed by Monticello's IST [inservice test] Program, which implements ASME [American Society of Mechanical Engineers] Code Section XI, approved by 10 CFR 50.55a. The IST program requires all relief valves to be tested to their nameplate data setpoints. Any modification to a relief valve's nameplate data is controlled by the plant's configuration control process which would ensure the requirements of ASME Section XI are invoked as required by TS section 3.15. The IST program required by TS 4.15 ensures the SBLC relief valves will be properly tested for operability. Therefore, revising section 4.4.A.2.c to remove specific setpoints does not increase the probability or consequences of an accident.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

RPV P–T curve change. Updated RPV P–T limit curves will not create the possibility of a new or different kind of accident nor alter operational standards. New limits continue a system of operating bounds which are in place to prevent damage to reactor vessels during normal operating conditions including hydrostatic pressure and leakage testing, and anticipated transients. The updated P–T curves incorporate the results of RPV surveillance specimen testing utilizing criteria defined in RG 1.99, Revision 2. No change is being made to the way the P–T limits provide plant protection. No new modes of operation are involved. The changes do not necessitate physical alteration of the plant.

RPV surveillance requirements. Deleting completed, one time surveillance requirements of section 4.6B and incorporating a discussion of the results in the Bases is an administrative change and therefore has no effect on previously analyzed accidents.

SBLC Relief Valve Setpoint Testing. The testing requirements of TS section 4.4.A.2.c are enveloped by the current testing performed by Monticello's IST Program, which implements ASME Code Section XI, approved by 10 CFR 50.55a. The IST program requires all relief valves to be tested to their nameplate data setpoints. Any modification to a relief valve's nameplate data is controlled by the plant's configuration control process which would ensure the requirements of ASME Section XI are invoked as required by TS section 3.15. The IST program required by TS 4.15 ensures the SBLC relief valves will be properly tested for operability. Therefore, revising section 4.4.A.2.c to remove specific setpoints does not create the possibility of a new or different kind of accident, from any accident previously analyzed.

The proposed amendment will not involve a significant reduction in the margin of safety.

RPV P–T curve change. The proposed RPV P–T curve changes are designed to maintain the recommended safety factors specified in the ASME Boiler and Pressure Vessel Code, Section III, Appendix G, and 10 CFR Part 50, Appendix G. The revised curves are based on current NRC guidelines utilizing actual RPV surveillance program tests results. The proposed changes shift the curves in a slightly more conservative direction thus maintaining or increasing the previous margins of safety.

RPV surveillance requirements. Deleting completed, one time surveillance requirements from Section 4.6.B and incorporating a discussion of the results in the Bases is an administrative change and has no effect on any margin of safety.

SBLC relief valve setpoint testing. The testing requirements of TS section 4.4.A.2.c are enveloped by the current testing performed by Monticello's IST Program, which implements ASME Code Section XI, approved by 10 CFR 50.55a. The IST program requires all relief valves to be tested to their nameplate data setpoints. Any modification to a relief valve's nameplate data is controlled by the plant's configuration control process which would ensure the requirements of ASME Section XI are invoked as required by TS section 3.15. The IST program required by TS 4.15 ensures the SBLC relief valves will be properly tested for operability. Therefore, revising section 4.4.A.2.c to remove specific setpoints will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: January 4, 1999.

Description of amendment request: PECO Energy Company (PECO Energy) is requesting Technical Specifications (TS) changes which will revise the Administrative Section of TS pertaining to controlled access to High Radiation Areas, and the reporting dates for the Annual Occupational Radiation Exposure Report and the Annual Radioactive Effluent Release Report.

The specific TS changes are as follows:

TS Section 6.12, 6.12.1, and 6.12.2 will be changed to: clarify requirements; incorporate additional monitoring options (to allow dosimetry and video monitoring) for entry into high radiation areas; add the requirement that all individuals entering a high radiation area have knowledge of the dose rates in the area; and add the requirement that locked high radiation controls apply to each individual entering the area.

TS Sections 6.9.1.4, 6.9.1.5(a), and 6.9.1.8 will be changed to: support changes to the NRC reporting dates;

reference 10 CFR 20.2206; delete current reporting dates, and correct a typographical error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are administrative in nature and do not impact the operation, physical configuration, or function of plant equipment or systems. The changes do not impact the initiators or assumptions, of analyzed events, nor do they impact mitigation of accidents on transient events. Therefore, these changes do not increase the probability of occurrence of consequences of an accident previously evaluated in the SAR [Safety Analysis Report].

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and do not alter plant configuration, require that new equipment be installed, alter assumptions made about accidents previously evaluated, or impact the operation or function of plant equipment. Therefore, these changes do not create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and do not impact any safety assumptions, or potentially reduce any margin of safety as described in the LGS TS basis. The proposed changes have no impact on any safety analysis assumptions. Therefore, these changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: William M. Dean.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 28, 1998.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to permit an increase in the allowable leak rate for the main steam isolation valves (MSIVs) and to delete the MSIV Sealing System. The main steam drain lines and the main condenser would be utilized as an alternate MSIV leakage treatment method.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS Section 3.6.1.2 do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report (UFSAR).

The proposed changes involve eliminating the Main Steam Isolation Valve (MSIV) Steam Sealing System requirements from the TS. As described in Section 6.7 of the UFSAR, the MSIV Steam Sealing System is manually initiated in about 20 minutes following a design basis Loss of Coolant Accident (LOCA). Since the MSIV Steam Sealing System is operated only after an accident has occurred, these proposed changes have no effect on the probability of an accident. Since MSIV leakage and operation of the MSIV Steam Sealing System are included in the radiological analysis for the design basis LOCA as described in Section 15.6.5 of the UFSAR, the proposed changes will not affect the precursors of other analyzed accidents. Analysis of the affects of the proposed changes do, however, result in acceptable radiological consequences for the design basis LOCA previously evaluated in Section 15.6.5 of the UFSAR.

Hope Creek has an inherent MSIV leakage treatment capability as discussed below. [Public Service Electric and Gas Company] PSE&G proposes to use the drain lines associated with the main steam lines and main turbine condenser as an alternative to the guidance in Regulatory Guide 1.96, ''Design of Main Steam Isolation Valve Leakage Control System For Boiling Water Nuclear Power Plants,'' Revision 0, May 1975, for MSIV leakage treatment. If approved, PSE&G will incorporate this alternative method in the appropriate operational procedures and Emergency Operating Procedures.

The Boiling Water Reactor Owner's Group (BWROG) has evaluated the availability of main steam system piping and main condenser alternate pathways for processing MSIV leakage, and has determined that the probability of a near coincident LOCA and a seismic event is much smaller than for other plant safety risks. Accordingly, this proposed MSIV leakage treatment pathway will be available during and after a LOCA. Nevertheless, the BWROG has also determined that the design requirements applied to the Hope Creek main steam system piping and main condenser contain substantial margin, based on the original design requirements.

In order to further justify the capability of the main steam piping and main condenser alternate treatment pathway, the BWROG has reviewed limited earthquake experience data on the performance of non-seismically designed piping and condensers during past earthquakes. As summarized in General Electric (GE) Report, ''BWROG Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems,'' NEDC–31858P, Revision 2, submitted to the [U.S. Nuclear Regulatory Commission] NRC by BWROG letter dated October 4, 1993, this study concluded that the possibility of a failure that could cause a loss of steam or condensate in Boiling Water Reactor (BWR) main steam piping or condensers in the event of a design basis (i.e., safe shutdown) earthquake is highly unlikely, and that such a failure would also be contrary to a large body of historical earthquake experience data, and thus unprecedented.

PSE&G has performed a verification of seismic adequacy of the Hope Creek main stream piping and main condenser consistent with the guidelines discussed in NEDC–31858P, Revision 2, to provide reasonable assurance of the structural integrity of these components. This evaluation, ''Hope Creek Nuclear Plant Main Steam Isolation System Alternate Leakage Treatment Pathway Seismic Evaluation,'' clearly demonstrates that the MSIV leakage treatment drain pathway meets the intent of 10 CFR 100 Appendix A, with regards to seismic qualification. Except for the requirement to establish a proper flow path from the MSIVs to the condenser, the proposed method is passive and does not require any additional logic control and interlocks. The method proposed for MSIV leakage treatment is consistent with the philosophy of protection by multiple barriers used in containment design for limiting fission product release to the environment.

A plant-specific radiological analysis has also been performed in accordance with NEDC–31858P, Revision 2, to assess the effects of the proposed increase to the allowable MSIV leakage rate in terms of Main Control Room (MCR) and off-site doses following a postulated design basis LOCA. This analysis utilizes the hold-up volumes of the main steam piping and condenser as an alternate method for treating the MSIV leakage. As discussed earlier, there is reasonable assurance that the main steam piping and condenser will remain intact following a design basis earthquake. The radiological analysis uses standard conservative assumptions for the radiological source term consistent with Regulatory Guide (RG) 1.3, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss-Of-Coolant Accident for Boiling Water Reactor,'' Revision 2, dated April 1974.

The analysis results demonstrate that dose contributions from the proposed MSIV leakage rate limit of 200 scfh per steam line, not to exceed a total of 400 scfh for all four

main steam lines, and from the proposed deletion of the MSIV Steam Sealing System, result in an acceptable increase to the LOCA doses previously evaluated against the regulatory limits for the off-site doses and MCR doses contained in 10 CFR 100 and 10 CFR 50, Appendix A, General Design Criterion (GDC) 19, respectively. However, the calculation methodology for the revised dose exposures were performed in a manner that included more conservative design basis assumptions (e.g., inclusion of system response times, and increased allowable leakage rates) than in the existing Hope Creek licensing basis.

The whole body doses at the low population zone (LPZ) outer boundary and MCR increase from about 0.2 rem to 0.6 rem and from 0.04 rem to 0.09 rem, respectively. These increases are not significant since the revised doses are small fractions of the regulatory limits of 25 rem and 5 rem, respectively. The associated whole body dose at the exclusion area outer boundary (EAB) increases from about 1.3 rem to 2.6 rem, which is well within the regulatory limit of 25 rem. The revised thyroid dose at the LPZ outer boundary increases from about 18 rem to 36 rem, which is well within the regulatory limit of 300 rem. The revised thyroid dose at the EAB decreases from about 175 rem to 121 rem (due to plate out on the steam piping and condenser), which is within the regulatory limit of 300 rem. However, the MCR thyroid dose increases from about 0.3 rem to 5.0 rem, which is well within the regulatory limit of 30 rem. Additionally, the MCR beta skin dose increases from about 0.9 rem to 1.6, which is well within the regulatory limit of 30 rem.

The resulting revised thyroid doses discussed above are dominated by the inorganic radioactive iodine fractions of the accident source term used in this analysis. More than 95% of the initial radioactive iodine inventory is assumed to be in the form of inorganic species in accordance with the guidance in Regulatory Guide 1.3. However, NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' identifies that at least 95% of the iodine entering containment would be in the form of particulate iodine. Accordingly, the calculated doses discussed above are considered to be highly conservative relative to realistic radiological source terms resulting from a postulated LOCA.

In summary, the proposed changes discussed above do not result in a significant increase in the radiological consequences of a LOCA when the same assumptions and methods specified in the UFSAR are used, recognizing that radiological consequences calculated in the UFSAR and for these proposed changes are significantly higher than those using more realistic assumptions and methods. Nevertheless, the calculated off-site and MCR doses resulting from a LOCA remain well below the regulatory limits. Although the revised LOCA doses are higher for low MSIV leakage rates, the effectiveness of the proposed alternate treatment method, even for leakage rates greater than the proposed increase in the MSIV allowable leak rate, ensures that off-site and MCR dose limits are not exceeded.

The proposed change to TS Table 3.6.3–1 involves the deletion of MSIV Steam Sealing valves and associated main steam line drain valves from the list of primary containment isolation valves. This proposed change is consistent with the proposed deletion of the MSIV Steam Sealing System. The MSIV Steam Sealing System lines and main steam line drain valves that are connected to the main steam piping will be welded and/or capped closed to assure primary containment integrity is maintained. The welding and post weld examination procedures will be in accordance with American Society of Mechanical Engineers (ASME) Code, Section III requirements. These welds and/or caps will be periodically tested as part of the Containment Integrated Leak Rate Test (CILRT). This proposed change does not involve an increase in the probability of equipment malfunction previously evaluated in the UFSAR. This proposed change has no effect on the consequences of an accident since the MSIV Steam Sealing lines and associated main steam line drain valves will be welded an/or cap closed, thus assuring that the containment integrity, isolation, and leak test capability are not compromised.

Therefore, as discussed above, the proposed changes do not involve a significant increase in the probability or consequences from any accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Although the proposed changes will introduce and take credit for a new level of operational performance for existing plant systems and components that have not been previously evaluated in the accident analysis, the affect on this equipment has been evaluated and found to provide an acceptable level of reliability that will provide the required level of protection. This conclusion is based on the evaluation performed in NEDC–31858P, Revision 2, and the seismic evaluation of the proposed MSIV leakage treatment pathway. Therefore, reliance on different equipment than previously assumed to mitigate the consequences of an accident does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The BWROG evaluated MSIV performance and concluded that MSIV leakage rates up to 200 scfh per line will not inhibit the capability and isolation performance of the MSIVs to effectively isolate the primary containment. Implementation of the proposed changes will not result in modifications that could adversely impact the operability of the MSIVs. The LOCA has been analyzed using the main steam piping and main condenser as a treatment method to process MSIV leakage at the proposed maximum rate of 200 scfh per main steam line, not to exceed 400 scfh total for all four main steam lines. Therefore, the proposed change to increase the allowed MSIV leakage rate does not create any new or different kind of accident from any accident previously evaluated.

The proposed change to eliminate the MSIV Steam Sealing System does not create the possibility of a new or different kind of accident from any accident previously evaluated because the removal of the MSIV Steam Sealing System does not affect any of the remaining Hope Creek systems, and the LOCA has been re-analyzed using the proposed alternate method to process MSIV leakage. The associated proposed change to delete the MSIV Steam Sealing isolation valves and associated main steam line drain valves from TS Table 3.6.3–1 does not create the possibility of a new or different kind of accident, since the affected main steam piping will be welded and/or capped closed to assure that the primary containment integrity, isolation, and leak testing capability are not compromised.

Therefore, as discussed above, the proposed changes do not create the possibility for any new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to TS Section 3.6.1.2 to increase the MSIV allowable leakage does not involve a significant reduction in the margin of safety. As discussed in the current Bases for TS Section 3/4.6.1.2, the allowable leak rate limit specified for the MSIVs is used to quantify a maximum amount of leakage assumed to bypass primary containment in the LOCA radiological analysis. Accordingly, results of the re-analysis supporting these proposed changes are evaluated against the dose limits contained in 10 CFR 100 for the off-site doses, and 10 CFR 50, Appendix A, GDC 19, for the MCR doses. As discussed above, sufficient margin relative to the regulatory limits is maintained even when assumptions and methods (e.g., RG 1.3) that are considered highly conservative relative to more realistic assumptions and methods, are used in the analysis.

Results of the radiological analysis demonstrate that the proposed changes do not involve a significant reduction in the margin of safety. The whole body doses, in terms of margin of safety, are insignificantly reduced by 1.6% at the LPZ, 1.0% in the MCR, and by 5.2% at the EAB. The margin of safety for thyroid doses is reduced by 6.13% at the LPZ and 15.7% in the MCR, but is actually increased by 17.3% at the EAB. The margin of safety for beta dose is insignificantly reduced by 2.4% in the MCR. These reductions in the margin of safety are not significant since the revised calculated doses are highly conservative yet remain well below the regulatory limits, and therefore a substantial margin to the regulatory limits is maintained.

Furthermore, while the proposed changes will result in a calculated reduction in the margin of safety, this reduction is not significant when considering the increased reliability and capability of the proposed MSIV leakage treatment system. The resulting revised thyroid doses discussed above are dominated by the inorganic radioactive iodine fractions of the accident source term used in this analysis. More than 95% of the initial radioactive iodine inventory is assumed to be in the form of inorganic species in accordance with the guidance in Regulatory Guide 1.3. However,

NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' identifies that at least 95% of the iodine entering containment would be in the form of particulate iodine. Accordingly, the calculated doses discussed above are considered to be highly conservative relative to realistic radiological source terms resulting from a postulated LOCA.

The proposed change to eliminate the MSIV Steam Sealing System from TS does not reduce the margin of safety. In fact, the overall margin of safety is increased. The function of this system for MSIV leakage treatment will be replaced by alternate main steam drain lines and condenser equipment. This treatment method is effective in reducing the dose consequences of MSIV leakage over an expanded operating range compared to the capability of the MSIV Steam Sealing System and will, thereby, resolve the safety concern that the MSIV Steam Sealing System will not function at MSIV leakage rates higher than the Steam Sealing System's design capacity. Except for the requirement to establish a proper flow path from the MSIVs to the condenser, the proposed method is passive and does not require any new logic control and interlocks. This proposed method is consistent with the philosophy of protection by multiple barriers used in containment design for limiting fission product release to the environment. Furthermore, as previously identified, based on the evaluations discussed in NEDC–31858P, Revision 2, and the seismic evaluation performed for Hope Creek, the design of the MSIV leakage treatment pathway meets the intent of the 10 CFR 100, Appendix A, requirement for seismic qualification. Therefore, the proposed method is highly reliable and effective for MSIV leakage treatment.

The revised calculated LOCA doses remain within the regulatory limits for the off-site and the MCR doses. Furthermore, the revised calculation shows that MSIV leakage rates greater than 200 scfh for all four main steam lines would not exceed the regulatory limits. Therefore, the proposed method maintains a margin of safety for mitigating the radiological consequences of MSIV leakage beyond the proposed TS leakage rate limit of 200 scfh per main steam line, not to exceed a total of 400 scfh for all four main steam lines.

The proposed change to delete MSIV Steam Sealing valves from TS Table 3.6–3–1 [3.6–3–1] does not reduce the margin of safety. Welded and/or capped closure of the MSIV Steam Sealing lines assures that the primary containment integrity and leak testing capability are not compromised. These welds and/or caps will be periodically leak tested as part of the CILRT. Therefore, the proposed deletion of the MSIV Steam Sealing System isolation valves does not involve a reduction in a margin of safety.

Accordingly, based on the above reasons, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: William M. Dean.

Public Service Electric & Gas Company, Docket Nos. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: January 15, 1999.

Description of amendment request: The proposed amendment would allow a one-time extension of the Technical Specification (TS) surveillance interval to the end of fuel cycle 13 for certain TS surveillance requirements (SRs). Specifically, (1) SR 4.3.2.1.3 requires the instrumentation response time and sequence testing of each engineered safety features actuation system (ESFAS) function at least once per 18 months, (2) SRs 4.8.2.3.2.f and 4.8.2.5.2.d require that the 125 volt DC and the 28 volt DC distribution system batteries, respectively, be capacity service tested at least once per 18 months, during shutdown, (3) SR 4.8.3.1.a.1.a and 4.8.3.1.a.1.b require a channel calibration and integrated system functional test for one 4.16 kilovolt reactor coolant pump circuit at least once per 18 months such that all circuits are tested at least once per 72 months, (4) SR 4.1.2.2.c requires testing to verify that each automatic valve in the reactivity control system flow path actuate on a safety injection (SI) test signal at least once per 18 months during shutdown, (50 SRs 4.3.1.1, Table 4.3–1, 4.3.2.1.1, Table 4.3–2, 4.3.3.5, Table 4.3–6, and 4.3.3.7, Table 4.3–11 require, in part, the channel calibration of pressurizer water level, pressurizer water level-high, and containment water level-wide range, the manual solid-state protection system (SSPS) functional input check, and the ESFAS manual initiation channel functional test every 18 months, (6) SR 4.5.1.d requires testing to verify each accumulator isolation valve opens automatically on an SI test signal at least once per 18 months, (7) SR 4.5.2.e.1 requires testing to verify that each automatic valve in the emergency core cooling system (ECCS) flow path actuates on an SI test signal at least once per 18 months, (8) SR 4.7.6.1.d.2 requires the control room emergency air conditioning system to automatically actuate in the pressurization mode on an SI test signal or control room intake high radiation test signal at least once per 18 months, (9) SR 4.7.10.b requires each automatic valve in the chilled water loop to actuate on an SI signal at least once per 18 months. Further, SR 4.8.1.1.2.d.7 requires a test to verify that each emergency diesel generator operates for at least 24 hours every 18 months, and SR 4.8.2.5.2.c.2 requires that the 125 volt DC battery connections be verified clean, tight, and coated with anti-corrosion material at least once per 18 months. Because of the length of the last outage and delays in restart, the SRs will be overdue prior to reaching the next refueling outage (1R13). The SRs are to be completed during the 1R13 outage, prior to returning the unit to Mode 4 (hot shutdown) upon outage completion. The proposed amendment also make some administrative and editorial changes on some of the pages that will be affected by above SR interval extensions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

4.3.2.1.3 (Instrumentation, Engineered Safety Feature Actuation System Instrumentation)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deferral of the surveillance requirement does not involve any physical changes to the plant nor does it change the way the plant is operated. Thus the proposal does not increase the probability of an accident previously evaluated.

The SEC [safeguard equipment control] automatic self-test feature, the monthly functional surveillance testing and the positive surveillance testing history provide sufficient assurance of the operability of the system. These features also provide assurance that a degraded condition, if it did occur, would be detected.

Thus, it is reasonable to conclude that this proposal represents no significant increase in the consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident form any accident previously evaluated.

Deferral of the surveillance requirement does not involve any physical changes to the plant nor does it change the way the plant is operated.

Thus, it can be concluded that deferring the surveillance requirement to the refueling outage cannot create the possibility of a different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Deferral of the surveillance requirement does not involve any physical changes to the plant nor does it change the way the plant is operated. The self-test feature and the monthly functional testing will provide reasonable assurance that the SECs will remain operable during the few weeks of deferral to the refueling outage. Also the ability to detect a degraded condition in the SEC will not be affected during the deferral period.

Therefore, the plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 1 Technical Specifications, on a one-time basis, to defer surveillance requirement 4.3.2.1.3 does not involve a significant reduction in any margin of safety.

4.8.2.3.2.f, (Electrical Power Systems, 125 Volt D.C. Distribution), and 4.8.2.5.2.c.2 and 4.8.2.5.2.d (Electrical Power Systems, 28 Volt D.C. Distribution)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deferral of the battery service tests to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Therefore, the probability of an accident previously evaluated is not increased.

Weekly and quarterly testing and performance monitoring by the system manager along with the current condition of the batteries (past test results demonstrating above 100% capacity) provide assurance that battery condition and performance will not deteriorate during the deferral period. Other positive industry experience for similar batteries on 24 month cycles also support this assurance. Therefore, the consequences of a loss of power accident will not be increased due to the deferral of the surveillance requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The deferral of the battery service tests to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. No new failure mechanisms will be introduced by the surveillance deferral. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The deferral of the battery service tests to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Continuing weekly and quarterly testing and performance monitoring along with the current condition of the batteries provides assurance that battery condition and performance will be acceptable during the deferral period and that any degradation that may occur will be detected. Therefore, the plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 1 Technical Specifications, on a one-time basis, to defer surveillance requirements 4.8.2.3.2.f, 4.8.2.5.2.c.2 and 4.8.2.5.2.d does not involve a significant reduction in any margin of safety.

4.8.3.1.a.l.a, 4.8.3.1.a.l.b (Electric Power Systems, Electrical Equipment Protective Devices)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deferral of inspection, calibration and meggering of 1A, 1B, 1C 460VAC transformer relays and current transformers (CT's); and inspection, calibration and meggering of 1F 4KV Bus Overload Relays to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Therefore, the probability of an accident previously evaluated is not increased.

The condition of the equipment as found for the three most recent completed surveillances (i.e. no failures or equipment problems found, no repair actions required, and test results satisfactory in all cases) provides assurance that equipment condition and performance will be acceptable during the deferral period. The subject equipment has performed well over the past several years and has demonstrated satisfactory stability and reliability. The plant's response to accident conditions during the period of deferral will not be affected. Therefore, the consequences of an accident previously evaluated will not be increased due to the deferral of the surveillance requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The deferral of inspection, calibration and meggering of 1A, 1B, 1C 460VAC transformer relays and current transformers (CT's); and inspection, calibration and meggering of 1F 4KV Bus Overload Relays to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. No new failure mechanisms will be introduced by the surveillance deferral. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The deferral of inspection, calibration and meggering of 1A, 1B, 1C 460VAC transformer relays and current transformers (CT's); and inspection, calibration and meggering of 1F 4KV Bus Overload Relays to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. The results of previous tests which demonstrate the reliable and stable operation of the equipment over recent years provides assurance that the equipment will operate as designed during the deferral period. The plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 1 Technical Specifications, on a one-time basis, to defer surveillance requirements 4.8.3.1.a.l.a and 4.8.3.1.a.l.b does not involve a significant reduction in any margin of safety.

4.1.2.2.c (Reactivity Control Systems, Flow Paths—Operating), 4.3.1.1.1, Table 4.3–1 (Reactor Trip System Instrumentation—Surveillance Requirements); 4.3.2.1.1, Table 4.3–2 (Engineered Safety Feature Actuation System Instrumentation—Surveillance Requirements); 4.5.1.d (Emergency Core Cooling Systems, Accumulators); 4.5.2.e.1 (Emergency Core Cooling Systems, ECCS Subsystems—Tave [greater than or equal to] 350 °F); 4.7.6.1.d.2 (Plan Systems, Control Room Emergency Air Conditioning System); and 4.7.10.b (Plant Systems, Chilled Water System—Auxiliary Building Subsystem)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deferral of the Manual Safety Injection (SI) surveillance test to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Therefore, the probability of an accident previously evaluated is not increased.

Other surveillance testing provides assurance that the equipment will be reliable during the short deferral period. This testing, in conjunction with successful previous SI test results assure that the equipment will function properly during the short deferral period. Therefore, the consequences of an accident previously evaluated will not be increased due to the deferral of the surveillance requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The deferral of the Manual Safety Injection (SI) surveillance test to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. No new failure mechanisms will be introduced by the surveillance deferral. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The deferral of the Manual Safety Injection (SI) surveillance test to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Other surveillance testing in conjunction with successful previous SI test results provides assurance that the equipment will be reliable during the short deferral period. The plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be concluded that this proposal to amend the Salem Unit 1 Technical Specifications, on a one-time basis, to defer surveillance requirements 4.1.2.2.c; 4.3.1.1.1, Table 4.3–1; 4.3.2.1.1, Table 4.3–2;

4.5.1.d; 4.5.2.e.1; 4.7.6.1.d.2; and 4.7.10.b does not involve a significant reduction in any margin of safety.

4.8.1.1.2.d.7 (Electrical Power Systems, A.C. Power Sources) Diesel Generator 24 Hour Endurance Run)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deferral of performance of the diesel generator 24 hour endurance runs to 1R13 does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Therefore, the probability of an accident previously evaluated is not increased.

Based of the favorable history for previous endurance runs for the six Sale Unit 1 & 2 emergency diesel generators, continued normal monthly surveillance testing and the trending of engine and generator parameters, diesel generator operability can be assured during the deferral period. Therefore, the consequences of an accident previously evaluated will not be increased due to the deferral of the surveillance requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deferral of performance of the diesel generator 24 hour endurance runs to 1R13. does not involve any physical changes to the power plant or to the manner in which the power plant is operated. No new failure mechanisms will be introduced by the surveillance deferral. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Deferral of performance of the diesel generator 24 hour endurance runs to 1R13 does not involve any physical changes to the power plant or other manner in which the power plant is operated. Satisfactory endurance run history, other surveillance testing and performance monitoring assures diesel generator operability during the deferral period.

The plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be conducted that this proposal to amend the Salem Unit 1 Technical Specifications, on a one-time basis, to defer surveillance requirement 4.8.1.1.2.d.7 does not involve a significant reduction in any margin of safety.

4.3.1.1.1, Table 4.3–1 (Reactor Trip System Instrumentation-Surveillance Requirements); 4.3.3.5, Table 4.3–6 (Remote Shutdown Monitoring Instrumentation Surveillance Requirements); 4.3.3.7, Table 4.3–11 (Surveillance Requirements for Accident Monitoring Instrumentation)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deferral of calibration of Pressurizer Level Channel 1, and the Containment Sump Level devices to 1R13 does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Therefore, the probability of an accident previously evaluated is not increased.

Review of trends of the level channels during the current operating cycle and continued monitoring of the channels provides reasonable assurance that the channels will perform their design function during the deferral period. Therefore, the consequences of an accident previously evaluated will not be increased due to the deferral of the surveillance requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deferral of calibration of Pressurizer Level Channel 1, and the Containment Sump Level devices to 1R13 does not involve any physical changes to the power plant or to the manner in which the power plant is operated. No new failure mechanisms will be introduced by the surveillance deferral. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Deferral of calibration of Pressurizer Level Channel 1, and the Containment Sump Level devices to 1R13 does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Review of trends of the level channels during the current operating cycle and continued monitoring provides reasonable assurance that the channels will perform their design function during the deferral period. There will be no effect on the response to accident conditions during the period of deferral.

Thus, it can be concluded that this proposal to amend the Salem Unit 1 Technical Specifications, one a one-time basis, to defer surveillance requirements 4.3.1.1.1, Table 4.3–1, item 11; 4.3.3.5, Table 4.3–6, item 2; and 4.3.3.7, Table 4.3–11, items 4 and 17 does not involve a significant reduction in any margin of safety.

Administrative and Editorial Change

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative or editorial and do not involve any physical changes to the plant. The administrative changes and editorial changes do not delete any existing surveillance requirements or delete any requirements from the Limiting Condition for Operations (LCOs) or Action Statements and therefore do not reduce the actions that are currently taken to demonstrate operability of plant structures, systems, or components (SSCs). The additional surveillance requirement that is being added including the new surveillance corrects a past administrative error and should have been incorporated within the Tech Specs as part of an approved Amendment. This change will provide additional assurance that SSCs perform their intended safety functions. Surveillance testing has been and is currently being performed for the surveillance requirement that should have been incorporated and is now administratively being added to the Tech Specs. Since these changes do not modify any SSCs or reduce the current requirements for demonstrating operability of these SSCs, the proposed changes to the Tech Specs do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Tech Specs are administrative and editorial corrections that do not affect the ability of the plant systems to meet their current Tech Spec requirements or design basis functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. These changes also do not involve any physical changes to plant SSCs. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial corrections that do not affect the ability of plant SSCs to perform their design basis accident functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: William M. Dean.

Southern California Edison Company, Et Al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: September 4, 1998 as modified December 7, 1998.

Description of amendment requests: The proposed amendment would modify the Technical Specifications (TS) to increase the allowed as-found pressurizer safety valve setpoint tolerance from +/−1 percent to +3/−2 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

All Updated Final Safety Analysis Report (UFSAR) Chapter 15 events have been evaluated to determine the impact of the increases in as found Pressurizer Safety Valve (PSV) tolerance from +1% and −1% to +3% and −2%. The events that result in challenging the opening of the PSVs are Loss of Condenser Vacuum With and Without Single Failure, Loss of Normal Feedwater Flow, Feedwater System Pipe Breaks, Total Loss of Reactor Coolant System (RCS) Flow, Uncontrolled Control Element Assembly (CEA) Withdrawal, CEA Ejection, Chemical and Volume Control System (CVCS) Malfunction With and Without Single Failure, Inadvertent Emergency Core Cooling System (ECCS) Actuation With and Without Single Failure, and Inadvertent Opening of a PSV. Of these, the limiting events are the Loss of Condenser Vacuum (LOCV), Loss of Condenser Vacuum With a Concurrent Single Failure of an Active Component (LOCVsf), CVCS Malfunction, CVCS Malfunction With a Concurrent Single Failure of an Active Component, and Feedwater System Pipe Breaks. These limiting events have been reanalyzed for the wider PSV tolerance. For all the reanalyzed events it is assumed that plant operation is maintained at a maximum pressurizer level of 57%. For the CVCS Malfunction With and Without Single Failure Events and the Inadvertent ECCS Actuation With and Without Single Failure Events, it is also assumed that the operator can respond within 15 minutes to mitigate the event.

The change in as found PSV tolerance from −1% to −2% results in the earlier opening of the PSVs for the analyzed events. To compensate for this earlier opening of the PSVs the high pressurizer pressure trip analysis setpoint was reduced from 2437 psia (non-harsh environment) and 2450 (harsh environment) to 2410 psia (non-harsh environment) and 2434 (harsh environment). These setpoint changes insure that the high pressurizer pressure trip is actuated sufficiently early before the opening of the PSVs such that no liquid is released through the PSVs. Therefore, the change to the PSV negative tolerance does not result in a significant increase in the probability or consequences of any previously evaluated accident.

The change in PSV as found tolerance from +1% to +3% results in later opening of the PSVs for the analyzed events. The PSV actuation to mitigate the consequences of the analyzed accidents are thus delayed. However, the lowering of the high pressurizer pressure trip setpoint, as discussed above, mitigates the increase in peak primary pressure and assures that no liquid is released through the PSVs. Therefore, this change to the PSV positive tolerance does not result in a significant increase in the probability or consequences of any previously analyzed design basis event.

There are no other changes to the plant equipment or operation which could create an increase in the probability or consequences of any event previously evaluated.

Therefore, operation in accordance with this proposed change will not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation in accordance with this proposed change will not involve any change to plant equipment or operation which could create a new or different kind of accident. The as-left PSV tolerance will continue to remain at +/−1%. The change in as-found tolerance of the PSVs to −2% and +3% will not introduce the possibility of a new or different kind of accident because evaluation of the design basis events shows that no water is expected to be released through the PSVs.

There are no other changes to the plant equipment or operation which could create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Operation in accordance with this proposed change will not change the manner in which safety limits, limiting safety settings, or limiting conditions for operation are determined. The acceptance criteria for all of the events reanalyzed include an appropriate margin of safety.

There are no changes to the acceptance criteria nor are the acceptance criteria exceeded for these events assuming plant operation at a maximum pressurizer level of 57% and operator response time of 15 minutes for the CVCS Malfunction With and Without Single Failure Events and the Inadvertent ECCS Actuation With and Without Single Failure Events.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 15, 1999 (TS 98–09).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Technical Specification (TS) requirements by relocating Section 3.3.3.3, ''Seismic Instrumentation,'' to the SQN Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of SQN Units 1 and 2, in accordance with the proposed change to the TS, does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. The proposed revision to the TS relocates the requirements for SQN seismic instrumentation without changing the current requirements. TVA does not consider the instrumentation to be the source of any accident; therefore, this administrative relocation of the requirements will not increase the possibility of an accident. The capability of the seismic instrumentation will continue to provide the same function of data collection. Changes to the relocated requirements will be processed, in accordance with 10 CFR 50.59, to ensure the seismic instrumentation functions will be properly maintained. Therefore, the proposed relocation of the seismic instrumentation requirements will not increase the consequences of an accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SQN seismic instrumentation is used to record data for use in evaluating the effect of a seismic event. This instrumentation is not associated with accident mitigation or previously evaluated accidents and would not be the initiator of any new or different kind of accident. The proposed change does not alter the current functions of SQN's seismic instrumentation; therefore, this proposed change will not create the possibility of a new or different kind of accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The requirements for SQN's seismic instrumentation are unchanged by the proposed relocation of the requirements to the SQN TRM. The function of the seismic instrumentation and SRs to ensure operability of the instrumentation remains unchanged. Any future changes to these requirements will be evaluated, in accordance with 10 CFR 50.59, to ensure acceptability and NRC review as required. Accordingly, the proposed change will not result in a reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Cecil O. Thomas.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: April 23, 1998.

Description of amendment request: The amendment request proposes changes to the existing requirements for the RHR Service Water (RHRSW), Station Service Water (SSW) and Alternate Cooling Tower Systems (ACS) as identified in Technical Specifications (TS) 4.5.C and 3/4.5.D.

Specifically, the changes proposed are as follows:

(1) Specifications 3.5.D.3 and 4.5.D.3: This requirement is revised to delete the existing allowance for 7 days of operation after both SSW subsystems are made or found to be inoperable.

(2) Specification 4.5.C.1 and Specification 4.5.D.1: These requirements have been revised to relocate testing information related to pump flow and pressure testing characteristics for the RHRSW and SSW Systems, respectively, to the TRM.

(3) Specifications 3.5.D.1, 3.5.D.2, 3.5.D.3, 4.5.D.2, 4.5.D.3 and associated Bases: All reference to SSW ''subsystem'' has been replaced by ''essential equipment cooling loop'' to more accurately reflect VYNPS design and operation. In addition, certain operability clarifications have been made to the Bases relative to affected Specifications.

(4) Bases for Specifications 3.5.D: The Bases have been revised to omit statements which imply that the ACS could provide adequate heat removal following a postulated accident. Other Bases additions have been made which include certain operability clarifications relative to affected Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

For change No. 1:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change deletes the existing allowance for 7 days of operation after both Station Service Water (SSW) subsystems are made or found to be inoperable. At least one subsystem of the SSW System is required to be operable to mitigate the consequences of a design basis accident. Therefore, with both subsystems inoperable, the unit is required to shut down. Current Technical Specifications (TS) erroneously allow 7 days of operation after both SSW subsystems are made or found to be inoperable before requiring that the reactor be placed in cold shutdown within 24 hours. This allowance is incorrectly based on the assumption that the Alternate Cooling Tower System (ACS) is able to fulfill the post-accident heat removal requirements when both SSW Subsystems are made or found to be inoperable. Since the ACS is not capable of fulfilling this backup role, the allowance for seven days of operation with both SSW Subsystems inoperable is removed, and a requirement to shutdown the unit is provided in its place. This proposed change deletes the allowance for 7 days of operation in this condition, and instead requires an orderly shutdown to be initiated and the reactor to be placed in cold shutdown within 24 hours. Since the same amount of time is allowed to conduct the required shutdown, this change will not significantly increase the consequences of any previously analyzed accident. In addition, the SSW system is not considered to be the initiator of any previously analyzed accident. Therefore, this change will not significantly increase the probability or consequences of any previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change will not physically alter the plant (no new or different types of equipment will be installed). The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This change deletes the existing allowance for 7 days of operation after both SSW subsystems are made or found to be inoperable. At least one subsystem of the SSW System is required to be operable to mitigate the consequences of a design basis accident. Therefore, with both subsystems inoperable, the unit is required to be shut down. Current TS requirements erroneously allow 7 days of operation after both the SSW subsystems are made or found to be inoperable before requiring that the reactor be placed in cold shutdown within 24 hours. This allowance is incorrectly based on the assumption that the ACS is able to fulfill the post-accident heat removal requirements when both SSW Subsystems are inoperable. Since the ACS is not capable of fulfilling this backup role, the allowance for seven days of operation with both SSW Subsystems inoperable is removed, and a requirement to shutdown the unit within 24 hours is provided in its place. Therefore, elimination of the allowance for 7 days of operation with both SSW Subsystems inoperable does not involve a significant reduction in a margin of safety.

For change No. 2:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates testing information details for the Residual Heat Removal Service Water (RHRSW) and Station Service Water (SSW) systems, respectively, to the Technical Requirements Manual (TRM) under the control of 10 CFR 50.59. These controls are adequate to ensure the required testing is performed to verify operability. As such, these relocated details are not required to be in the Technical Specifications to provide adequate protection of the public health and safety. Changes to these relocated requirements in the TRM will be controlled by 10 CFR 50.59. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose or eliminate any requirements and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because the simple relocation of testing details from the TS to the TRM has no impact on any safety analyses assumptions. Since any future changes to these requirements will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be allowed. Therefore, this change does not involve a significant reduction in the margin of safety.

For change No. 3:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change proposes to revise the wording of Station Service Water (SSW) Specifications to replace ''subsystem'' with

''essential equipment cooling loop'' to more accurately reflect VYNPS design and operation. At least two SSW pumps and one essential equipment cooling loop of the SSW System are required to be operable to mitigate the consequences of a design basis accident. Since this proposed change represents no change to existing requirements, this change will not significantly increase the consequences of any previously analyzed accident. In addition, SSW is not considered to be the initiator of any previously analyzed accident. Therefore, this change will not significantly increase the probability or consequences of any previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose or eliminate any requirements and adequate control of existing requirements will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change continues to provide the previous margin of safety regarding the capability to remove post-accident heat loads. At least two SSW pumps and one essential equipment cooling loop will be required to be operable or the unit will be required to be shutdown within 24 hours. Since this is the same basis both before and after the change, this change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Project Director: William M. Dean.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 2, 1998.

Description of amendment request: The licensee proposed to modify the Technical Specifications to more clearly describe the Emergency Core Cooling System Actuation Instrumentation—Low Pressure Coolant Injection (LPCI) System A/B Residual Heat Removal (RHR) Pump Start time delay requirements and the Core Spray System A/B Pump Start time delay requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Change #1: Deletion of the O second time delay for first RHR pump (A/D) start.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed change does not involve a change to the plant design or operation. The instantaneous relays installed under corrective actions of LER 96–027 were evaluated as being equivalent in meeting the plant design of a 0 second time delay (instantaneous start) and an improvement on the minimum 500 millisecond time delay relays previously installed. The intent is to get LPCI flow started as soon as possible within the limits of the emergency bus power supply. The instantaneous start provides for a faster flow initiation. The proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. Therefore, the proposed change cannot increase the probability of an accident previously evaluated.

The proposed change does not involve a change in the operation of the relay controlling the initial RHR pump start on a [loss of coolant accident] LOCA with normal AC power not available. The instantaneous logic sequence relay functions to start the initial RHR Pump within 35 milliseconds of re-energization of the associated Emergency Bus. This start time is consistent with the plant safety analysis and [emergency diesel generator] EDG load analysis, therefore, the proposed change does not significantly increase the consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated:

This proposed change will not involve any physical changes to plant structures, systems or components (SSC), or the manner in which these SSCs are operated or maintained. Deletion of the 0 second Time Delay Trip Function and associated calibration requirement will not affect initial RHR pump starting on a LOCA signal with normal AC power not available. The instantaneous logic sequence relay will still be tested under the Trip System Logic Functional Test at a frequency of once per operating cycle. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This proposed change to delete the 0 second Time Delay Trip Function and associated calibration requirement will not change operation of the initial RHR Pump start on a LOCA signal with normal power not available. The instantaneous logic sequence relay will function to initiate RHR Pump A/D start within 35 milliseconds of re-energization of the associated Emergency Bus, therefore, water will be delivered as designed. This RHR Pump start time is within the assumptions of the LOCA safety analysis of record. Therefore, this change does not involve a significant reduction in a margin of safety.

Change #2: Addition of a 3 second lower limit to the trip level setting for the second RHR pump (B/C) start time delay trip function.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed change does not involve a change to the plant design or operation. The proposed change is more restrictive than existing Technical Specifications for this function. The proposed change limits the low value Trip Level Setting of the time delay relay and thus provides for EDG recovery from the initial RHR Pump (A/D) start. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. The equipment will still start within the assumptions of the LOCA safety analysis of record. Thus, the proposed change cannot increase the probability of an accident previously evaluated.

The proposed change ensures that the EDG has sufficient time to recover from the loading of the first RHR pump (A/D) prior to the loading of the second RHR pump (B/C). This load sequencing is experienced during a LOCA with normal AC power not available, thus providing increased reliability. Therefore, the proposed change will not result in a significant change in the consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated:

This proposed change will not involve any physical changes to plant systems, structures or components (SSC), or the manner in which these SSCs are intended to be operated or maintained. Addition of the 3 second lower limit on the second RHR Pump (B/C) Start Time Delay Function will ensure that, on a LOCA signal with normal AC power not available, the EDG voltage and frequency will adequately recover prior to the second RHR pump start. The instantaneous logic sequence relay will still be tested under the Trip System Logic Functional Test each Operating Cycle. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This proposed change to include a 3 second lower limit to the second RHR Pump Start Time Delay Trip Function will not change operation of the second RHR Pump

start on a LOCA signal (without normal power available). The proposed change will ensure sufficient time is available for the EDG to recover from the initial RHR Pump (A/D) start. The proposed second RHR Pump Start Time Delay Trip Level Setting of 3 [less than or equal to] t [less than or equal to] 5 seconds is within the assumptions of the LOCA evaluation and analysis of FSAR Sections 6.5 and 8.5. Therefore, this change does not involve a significant reduction in a margin of safety.

Change #3: Addition of an 8 second lower limit to the trip level setting for the core spray pump (A/B) start time delay trip function.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed change does not involve a change to the plant design or operation. The proposed change is more restrictive than existing Technical Specifications for this function. The proposed change limits the low value Trip Level Setting of the time delay relay and thus provides for EDG recovery following the RHR B/C Pump start. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. The equipment will still start within the assumptions of the LOCA analysis of record. Thus, the proposed change cannot increase the probability of an accident previously evaluated.

The proposed change ensures that the EDG has sufficient time to recover following the loading of the B/C RHR pump and prior to the loading of the associated Core Spray pump. This load sequencing is experienced during a LOCA without normal power available, thus providing increased reliability. Therefore, the proposed change will not result in a significant change in the consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated:

This proposed change will not involve any physical changes to plant structures, systems or components (SSC), or the manner in which these SSCs are intended to be operated or maintained. Addition of the 8 second lower limit on the Core Spray Pump Start Time Delay Trip Function will ensure that, on a LOCA signal (with normal power not available) the EDG voltage and frequency will adequately recover prior to the Core Spray pump start. The Core Spray instantaneous logic sequence relays (normal AC available) and the CS Pump Start Time Delay relays will still be tested under the Trip System Logic Functional Test each Operating Cycle. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This proposed change to include an 8 second lower limit to the Core Spray Pump Start Time Delay Trip Function will not change operation of the Core Spray Pump start on a LOCA signal with normal AC power not available. The proposed change will ensure sufficient time is available for the EDG to recover from the previous RHR Pump start. The proposed Core Spray Pump Start Time Delay Trip Level Setting of 8 [less than or equal to] t [less than or equal to] 10 seconds is within the assumptions of the LOCA evaluation and analysis of FSAR Sections 6.5 and 8.5. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Project Director: William M. Dean.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 24, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to modify the testing requirements for the reactor trip bypass breakers. The current TS require the bypass breakers to be tested ''prior to being placed in service.'' The proposed changes will allow the bypass breakers to be tested immediately after placing the breaker in service, but prior to commencing Reactor Protection System testing or maintenance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(a) Operation and testing of the reactor trip bypass breakers does not increase the probability of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report.

The testing sequence will continue to ensure that the reactor trip system will be operable to mitigate the consequences of any unsafe or improper reactor operation during steady state or transient power operations. During the short period of time the breaker is closed before the undervoltage trip device test, the operability of the breaker is established based on satisfactory breaker testing conducted during the previous surveillance interval. Although the breaker is placed in service before it is tested, the breaker is tested as soon as practicable to verify operability prior to performing testing of the reactor trip system or required maintenance. Therefore, the proposed test sequence does not significantly increase the probability of occurrence or the consequences of any previously analyzed accident.

(b) The proposed Technical Specifications do not create the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report.

The proposed test sequence change does not alter the actual test performed to establish operability of the reactor trip bypass breakers. The bypass breakers will be proven operable prior to reactor trip system testing or required maintenance. During the short period of time the breaker is closed before the undervoltage trip device test, the operability of the breaker is established based on satisfactory breaker testing conducted during the previous surveillance interval. Although the breaker is placed in service before it is tested, the breaker is tested as soon as practicable to verify operability prior to performing testing of the reactor trip system or required maintenance. Therefore, it is concluded that no new or different kind of accident or malfunction from any previously evaluated has been created.

(c) The proposed Technical Specifications change does not result in a significant reduction in margin of safety.

The proposed change in the reactor trip bypass breaker test sequence provides assurance that the reactor trip system remains operable during normal operations or during reactor trip system testing and required maintenance to mitigate the consequences of any unsafe or improper reactor operation. Therefore, the proposed change in the test sequence for the reactor trip bypass breaker does not significantly reduce the margin of safety.

This analysis demonstrate that the proposed amendment to the Surry Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg. Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Corporation, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 7, 1998.

Description of amendment request: The proposed amendments would correct the lube oil inventory requirement from a range of 575–600 gallons to a range of 375–400 gallons.

*Date of publication of individual notice in **Federal Register**:* December 2, 1998 (63 FR 66591).

Expiration date of individual notice: January 4, 1999.

Local Public Document Room location: York County Library, 138 East Street, Rock Hill, South Carolina.

Northeast Nuclear Energy Company (NNECO), Et Al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: January 4, 1999.

Description of amendment request: The proposed amendment would change Technical Specifications (TSs) 3.5.2, ''Emergency Core Cooling Systems—ECCS Subsystems-Tavg [greater than or equal to] 300 [degrees Fahrenheit];'' 3.6.2.1, ''Containment Systems—Depressurization and Cooling Systems—Containment Spray and Cooling Systems;'' 3.7.1.2, ''Plant Systems—Auxiliary Feedwater Pumps;'' 3.7.3.1, ''Plant Systems—Reactor Building Closed Cooling Water System;'' and 3.7.4.1, ''Plant Systems—Service Water System.'' Changes to the acceptance criteria contained in these TSs are necessary based on revised hydraulic analyses and related accident analyses. Also, the bases of the associated TSs will be modified to address the proposed changes.

Date of publication of individual notice in **Federal Register:** January 14, 1999 (64 FR 2523).

Expiration date of individual notice: February 16, 1999.

Local Public Document Room: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, or the Waterford Public Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Duke Energy Corporation, Et Al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 7, 1998.

Brief description of amendments: The amendments revise Technical Specification Section 3.8.3 to correct the lube oil inventory requirement from a range of 575–600 gallons to a range of 375–400 gallons.

Date of issuance: January 15, 1999.

Effective date: As of the date of issuance to be implemented concurrently with implementation of Amendment Nos. 173 (Unit 1) and 165 (Unit 2).

Amendment Nos.: 175—Unit 1; 167—Unit 2.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1998 (63 FR 69328).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: June 29, 1998.

Brief description of amendment: The amendment revises the Applicability of Technical Specification (TS) 3.4.2, ''Reactor Coolant System—Safety Valves—Shutdown.'' An associated action is also revised and a footnote is removed. The amendment also revises TS 3.4.12, ''Reactor Coolant System—Overpressure Protection,'' allowing safety injection tanks to remain unisolated if they are pressurized to less than 300 psig and making some editorial changes. In addition, affected index and Bases pages are revised.

Date of issuance: January 19, 1999.

Effective date: The license amendment is effective as of its date of issuance with full implementation within 60 days.

Amendment No.: 199.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 21, 1998, (63 FR 56243).

The Commission's related evaluation of the amendments is contained in a

Safety Evaluation dated January 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 29, 1998.

Brief description of amendment: The amendment approves a change to the Technical Specifications (TS) Table 3.3–4, ''Engineered Safety Feature Actuation System Instrumentation,'' to provide a range of acceptable values for the 4 KV buss loss of voltage relays rather than a single value as currently recorded in the TS. In addition minor changes were made to the trip time delay.

Date of issuance: January 26, 1999.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented prior to the facility's restart from refueling outage 2R13.

Amendment No.: 200.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 21, 1998 (63 FR 56244).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 22, 1998.

Brief description of amendment: The amendment deleted license conditions associated with the River Bend Station (RBS) Transamerica Delaval, Inc. (TDI) emergency diesel generators (EDGs), which prescribed various inspection requirements following an EDG overload condition. The License Conditions were originally issued following the publication of NUREG 1216, which called for extensive periodic engine tear-downs as the major part of a maintenance and surveillance program for TDI engines. The removal of the aforementioned license conditions is consistent with the NRC's approval of Generic Topical Report TDI–EDG–001–A ''Basis for Modification to Inspection Requirements for Transamerica Delaval, Inc., Emergency Diesel Generators''. EOI will continue to inspect and maintains its EDGs in accordance with Technical Requirements Manual (TRM) surveillance requirement TSR 3.8.1.21. Periodicity of planned inspections and maintenance are based upon the manufacturer's recommendations for standby service.

Date of issuance: January 27, 1999.

Effective date: January 27, 1999.

Amendment No.: 102.

Facility Operating License No. NPF–47: The amendment revised the operating license.

Date of initial notice in ***Federal Register:*** November 4, 1998 (63 FR 59592).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 24, 1998, as supplemented November 20, 1998.

Brief description of amendment: The amendment approves operator action for meeting the ''ready-to-load'' requirement for the Division 3 diesel generator.

Date of issuance: January 19, 1999.

Effective date: January 19, 1999.

Amendment No.: 119.

Facility Operating License No. NPF–62: The amendment authorized revision of the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register.*** September 10, 1998 (63 FR 48529).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 31, 1998.

Brief description of amendment: The amendment clarifies requirements for diesel generator start voltage and frequency.

Date of issuance: January 20, 1999.

Effective date: January 20, 1999.

Amendment No.: 120.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 1998 (63 FR 53949).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

North Atlantic Energy Service Corporation, Et Al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 2, 1998.

Description of amendment request: The amendment changes the Technical Specifications by eliminating the emergency diesel generator accelerated testing and special reporting requirements of TS 4.8.1.1.2a, 4.8.1.1.3, Table 4.8–1 and 4.8.1.2 in accordance with Generic Letter 94–01.

Date of issuance: January 21, 1999.

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 59.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 22, 1998 (63 FR 19971). The Commission received comments which were addressed in the staff's Safety Evaluation dated January 21, 1999.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1999.

No significant hazards consideration comments received: Yes.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company (NNECO), Et Al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 28, 1998.

Brief description of amendment: The amendment approves the previously implemented revision to the Final Safety Analysis Report (FSAR) Section 8.7.3.1 that changed certain electrical separation requirements from 12 inches to 6 inches. The FSAR change was

previously implemented following an erroneous 10 CFR 50.59 evaluation.

Date of issuance: January 20, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 224.

Facility Operating License No. DPR–65: Amendment revised the FSAR.

Date of initial notice in **Federal Register**: November 4, 1998 (63 FR 59593).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, Et Al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 10, 1998.

Brief description of amendment: The amendment changes Technical Specifications 3.3.1.1, ''Reactor Protective Instrumentation,'' and 3.3.2.1, ''Engineered Safety Feature Actuation System Instrumentation,'' to restrict the time a reactor protection or engineered safety feature actuation channel can be in the bypass position for 48 hours, from an indefinite period of time.

Date of issuance: January 27, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 225.

Facility Operating License No. DPR–65: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69343).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: September 14, 1998.

Brief description of amendment: This amendment revised Limerick Generating Station, Unit 2, Technical Specification (TS) Table 4.4.6.1.3–1, ''Reactor Vessel Material Surveillance Program—Withdrawal Schedule.'' The revision changed the schedule for withdrawing the first surveillance capsule from 8 Effective Full Power Years (EFPY) to 15 EFPY, and the second surveillance capsule from 20 EFPY to 30 EFPY. A revision to the TS Surveillance Requirement (SR) has also been made. This revision removed the reference to flux wire removal and analysis that was originally required following the first cycle of operation. TS SR 4.4.6.1.4 was changed to refer to the flux wires that are located within the surveillance capsules, which will be removed and analyzed in accordance with the surveillance capsule removal schedule located in Table 4.4.6.1.3–1.

Date of issuance: January 12, 1999.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 94.

Facility Operating License No. NPF–85: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1998 (63 FR 56253).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: October 15, 1998.

Brief description of amendments: These amendments add a new Technical Specification (TS) section and TS Bases section to incorporate a special test exception to allow reactor coolant temperatures greater than 200 °F but less than or equal to 212 °F during inservice testing and hydrostatic testing.

Date of issuance: January 12, 1999.

Effective date: Both units, as of the date of issuance, to be implemented within 30 days.

Amendment Nos.: 133 and 95.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 18, 1998 (63 FR 64120).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Public Service Electric & Gas Company, Docket Nos. 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 10, 1996, as supplemented on March 19 and August 29, 1997.

Brief description of amendments: This amendment incorporates into the Technical Specifications the Margin Recovery portion of the Fuel Upgrade Margin Recovery Program and supports increased steam generator plugging, improved fuel reliability, reduced fuel costs, longer fuel cycles, reduced spent fuel storage, and enhanced reactor safety. In a letter dated November 26, 1997, the Commission issued the amendment for Salem Unit 1.

Date of issuance: January 8, 1999.

Effective Date: January 8, 1999.

Amendment Nos.: 197.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications and/or License.

Date of initial notice in ***Federal Register:*** July 3, 1996 (61 FR 34898).

The March 19, and August 29, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 1, 1998.

Brief description of amendment: The amendment revises Virgil C. Summer Nuclear Station Technical Specification Surveillance Requirement (SR) 4.7.7.e to

remove the ''during shutdown'' condition from the specified test interval. The amendment also makes administrative changes to SR 4.7.7.g, and BASES 3/4.2.2 and 3/4.2.3 to correct typographical errors.

Date of issuance: January 27, 1999.

Effective date: January 27, 1999.

Amendment No.: 141.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 1998 (63 FR 53955).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Southern Nuclear Operating Company, Inc., Et Al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: September 3, 1998, as supplemented by letter dated December 8, 1998.

Brief Description of amendments: The amendments change the Vogtle Electric Generating Plant, Units 1 and 2 Technical Specifications to: (1) Support the replacement of the Nuclear Instrumentation System Source Range and Intermediate Range Channels and Post-Accident Neutron Flux Monitoring System, and (2) delete the requirement for performing response time testing of the source range channels and power range detector plateau voltage determinations.

Date of issuance: January 22, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—104; Unit 2—82.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register***: October 7, 1998 (63 FR 53957).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 29, 1998.

Brief description of amendments: Relocates the Technical Specification 3/4.3.4 requirements for Turbine Overspeed Protection to the Technical Requirements Manual.

Date of issuance: January 21, 1999.

Effective date: The license amendment is effective as of its date of issuance, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 101; Unit 2—Amendment No. 88.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 16, 1998, (63 FR 69347). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit No. 2, and Docket No. 50–296, Browns Ferry Nuclear Plant, Unit No. 3, Limestone County, Alabama

Date of amendment request: March 3, 1998 as supplemented November 13, and December 15, 1998.

Description of amendment request: The amendments revise the pressure-temperature limit curves in the Technical Specifications (TS) for BFN Units 2 and 3 to 16 and 20 effective full power years, respectively.

Date of issuance: January 15, 1999.

Effective date: January 15, 1999.

Amendment Nos.: 257 and 217.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the TS.

Date of initial notice in ***Federal Register***: April 22, 1998 (63 FR 19979). The licensee's letters of November 13, and December 15, 1998, did not expand the scope of the application or affect the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: June 26, 1998, as supplemented November 6, 1998. (TS 98–06).

Brief description of amendment: The amendment authorizes the deletion of the power range neutron flux high negative rate reactor trip function based on the analysis provided in Westinghouse Electric Corporation WCAP–11394–A, ''Methodology for the Analysis of the Dropped Rod Event.''

Date of issuance: January 15, 1999.

Effective date: January 15, 1999.

Amendment No.: 18.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: July 29, 1998 (63 FR 40562). The November 5, 1998, letter contained clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 11, 1998.

Brief description of amendments: Revises core safety limit curve and Overtemperature N–16 reactor trip setpoints based on analysis of the core configuration and expected operation for the CPSES Unit 2, Cycle 5. The changes apply equally to CPSES Units 1 and 2 licenses since the Technical Specifications are combined.

Date of issuance: January 29, 1999.

Effective date: The license amendment is effective as of its date of issuance, to be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 63; Unit 2—Amendment No. 49.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 30, 1998 (63 FR 71974).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 24, 1998, as supplemented by letters dated May 27, June 25, August 25, September 3, November 3, and December 4, 1998.

Brief description of amendment: The amendment revised the technical specifications to allow an increase in the Callaway Plant, Unit 1 spent fuel pool storage capacity from 1344 fuel assemblies to 2363 fuel assemblies. The amendment also revises the technical specifications to allow storage of an additional 279 fuel assemblies in the cask loading pit.

Date of issuance: January 19, 1999.

Effective date: January 19, 1999, to be fully implemented no later than December 31, 1999, except that the racks in the cask loading pit may be installed at a future time after the completion of the next refueling outage.

Amendment No.: 129.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: July 13, 1998 (63 FR 37598).

The June 25, August 25, September 3, November 3, and December 4, 1998, supplemental letters provided additional clarifying information that did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Elmer Ellis Library, University of Missouri, Columbia Missouri 65201.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 3, 1998.

Brief description of amendment: The amendment makes administrative changes to the Technical Specifications to correct errors, add consistency within the Technical Specifications, and make nomenclature changes to support and enhance usability of the Technical Specifications.

Date of Issuance: January 5, 1999.

Effective date: January 5, 1999, to be implemented within 30 days.

Amendment No.: 164.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 2, 1998 (63 FR 66605).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 11, 1998.

Brief description of amendment: The amendment revises the Technical Specifications to allow manual containment isolation valves to be opened intermittently under administrative controls.

Date of Issuance: January 19, 1999.

Effective date: January 19, 1999, to be implemented within 30 days.

Amendment No.: 165.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 18, 1998 (63 FR 70168).

The Commission's related evaluation of this amendments is contained in a Safety Evaluation dated January 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: December 17, 1998, as supplemented by letter dated January 21, 1999.

Brief description of amendment: The amendment revised Technical Specification Surveillance Requirement 3.8.1.8 to remove the restriction on testing of the manual transfer between the startup and backup offsite power sources while in Mode 1 or 2.

Date of issuance: January 27, 1999.

Effective date: January 27, 1999, to be implemented within 30 days from the date of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 22, 1998 (63 FR 70807).

The January 21, 1999, supplemental letter provided additional clarifying information and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 3rd day of February 1999.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–3098 Filed 2–9–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.179, ''Standard Format and Content of License Termination Plans for Nuclear Power Reactors,'' has been developed to provide guidance on developing license termination plans for nuclear power reactor licensees who wish to terminate their licenses and release their sites.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of

Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301)415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 21st day of January 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–3201 Filed 2–9–99; 8:45 am]

BILLING CODE 7509–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Withdrawal

The Nuclear Regulatory Commission is withdrawing Regulatory Guide 10.10, ''Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Devices Containing Byproduct Material'' (issued March 1987), and Regulatory Guide 10.11, ''Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Sealed Sources Containing Byproduct Material'' (issued June 1987).

The information in Regulatory Guides 10.10 and 10.11 has been updated and incorporated into Volume 3 of NUREG–1556, ''Consolidated Guidance About Materials Licenses; Applications for Sealed Source and Device Evaluation and Registration,'' which was issued in July 1998. Since there is no longer a need for Regulatory Guides 10.10 and 10.11, they have been withdrawn. However, the withdrawal of Regulatory Guides 10.10 and 10.11 does not alter any prior or existing licensing commitments based on their use.

Comments and suggestions in connection with both guides currently being developed and published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of January, 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–3202 Filed 2–9–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

The White House

Washington

February 1, 1999.

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three rescissions of budget authority, totaling $35 million; one new deferral of $185 million of budget authority; and, two revised deferrals of budget authority, totaling $1.5 billion.

The proposed rescissions affect the programs of the Department of Interior, Unanticipated Needs for Natural Disasters, and International Assistance Programs. The proposed deferrals affect programs of the Department of State and International Assistance Programs.

Sincerely,

William J. Clinton.

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

The White House

Washington

February 1, 1999.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three rescissions of budget authority, totaling $35 million; one new deferral of $185 million of budget authority; and, two revised deferrals of budget authority, totaling $1.5 billion.

The proposed rescissions affect the programs of the Department of Interior, Unanticipated Needs for Natural Disasters, and International Assistance Programs. The proposed deferrals affect programs of the Department of State and International Assistance Programs.

Sincerely,

William J. Clinton.

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Rescission Proposal No. R99–1

Proposed Rescission of Budget Authority

Report Pursuant to Section 1012 of P.L. 93–344

Agency: Department of Interior.

Bureau: Bureau of Land Management.

Account: Management of Lands and Resources (14X1109).

New budget authority: $616,311,000
Other budgetary resources: $25,531,000
Total budgetary resources: $641,842,000
Amount proposed for rescission: $6,800,000

Proposed appropriations language: Of the funds made available under this heading in Public Law 105–83, $6,800,000 are rescinded.

Justification: The Automated Lands and Minerals Record System (ALMRS) provides for the development and bureau-wide implementation of the Automated Land and Mineral Record System. The proposal would rescind $6.8 million of funds appropriated in FY 1998 for ALMRS that exceed current requirements.

Estimated programmatic effect: As a result of the proposed rescission, net Federal outlays will decrease, as specified below.

EFFECT ON OUTLAYS

[In thousands of dollars]

Fiscal year:	
1999	−5,304
2000	−1,224
2001	−272
2002	.....
2004	.....
Total	−6,800

Rescission Proposal No. R99–2

Proposed Rescission of Budget Authority

Report Pursuant to Section 1012 of P.L. 93–344

Agency: Executive Office of the President.

Bureau: Unanticipated Needs.

Account: Unanticipated Needs for Natural Disasters (11X0033).

New budget authority: ____
Other budgetary resources: $15,845,375
Total budgetary resources: $15,845,375
Amount proposed for rescission: $10,000,000

Proposed appropriations language: From amounts made available in the Fiscal Year 1990 Dire Emergency Supplemental to Meet the Needs of Natural Disasters of National Significance (P.L. 101–130), $10,000,000 are rescinded.

Justification: The proposal would rescind $10 million of funds appropriated in FY 1990 to meet the needs of natural disasters of national significance. All of the funds were transferred to Departments and agencies to carry out necessary activities. Following completion of those activities, excess funds were transferred back to this account. These funds are no longer needed.

This account enables the President to meet unanticipated needs in furtherance of the national interest, security, or defense.

Estimated programmatic effect: None.

Rescission Proposal No. R99–3

Proposed Rescission of Budget Authority

Report Pursuant to Section 1012 of P.L. 93–344

Agency: International Assistance Programs.

Bureau: International Security Assistance.

Account: Foreign Military Financing Loan Program Account (11X1085).

New budget authority: $20,000,000.

Other budgetary resources: ____

Total budgetary resources: $20,000,000.

Amount proposed for rescission: $18,240,000.

Proposed appropriations language: Of the funds made available under this heading in Public Law 104–208, $18,240,000 are rescinded.

Justification: The proposal would rescind $18.2 million of obligated balances of foreign military financing loan program subsidy that was made available in FY 1997. These funds were obligated, but no loans were signed, and none are expected to be signed. Therefore, these funds are no longer needed.

As required by the Federal Credit Reform Act of 1990, this account records the subsidy costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

Estimated programmatic effect: As a result of the proposed rescission, net Federal outlays will decrease, as specified below.

EFFECT ON OUTLAYS
[in thousands of dollars]

Fiscal year:	
1999	−18,240
2000	.....
2001	.....
2002	.....
2004	.....
Total	−18,240

Deferral No. D99–1A

Supplemental Report

Report Pursuant to Section 1013 of P.L. 93–344

This report updates Deferral No. 99–1, which was transmitted to Congress on October 22, 1998.

This revision increases by $17,723,722 the previous deferral of $82,857,659 in the United States Emergency Refugee and Migration Assistance Fund, Department of State, resulting in a total deferral of $100,581,381. This increase results from the deferral of new budget authority for FY 1999, which will be withheld until the President determines assistance to be furnished and designates refugees to be assisted, and a correction to the estimated balances carried forward from FY 1998 to FY 1999.

Deferral No. D99–1A

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: Department of State.

Bureau: Other.

Account: United States emergency refugee and migration assistance fund [1] (11X0400).

New budget authority: *$30,000,000

Other budgetary resources: *83,108,288

Total budgetary resources: *113,108,288

Amount deferred for entire year: *100,581,381

Justification: This deferral withholds funds available for emergency refugee and migration assistance for which no determination has been made by the President to provide assistance as required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94–141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96–212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for emergency refugee and migration assistance to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

Estimated programmatic effect: None.

Deferral No. D99–2A

Supplemental Report

Report Pursuant to Section 1013 of P.L. 93–344

This report updates Deferral No. 99–2, which was transmitted to Congress on October 22, 1998.

This revision increases by $1,310,376,294 the previous deferral of $84,777,327 in the Economic Support Fund, International Assistance Programs, resulting in a total deferral of $1,395,153,621. This increase results from the deferral of new budget authority for FY 1999, which will be withheld pending the development of country-specific plans that assure aid is provided in an efficient manner, and a correction to the estimated balances carried forward from FY 1998 to FY 1999.

Deferral No. D99–2A

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: International Assistance Programs.

Bureau: International Security Assistance.

Account: Economic support fund [1] (72X1037, 728/91037, *729/01037).[2]

New budget authority: *$2,436,600,000

Other budgetary resources: *$220,961,461

Total budgetary resources: *$2,657,561,461

Amount deferred for entire year: [2] *$1,395,153,621

[1] This account was the subject of a similar deferral in FY 1998 (D98–7).

* Revised from previous report.

[1] This account was the subject of a similar deferral in FY 1998 (D98–1).

[2] The amounts deferred by account are:

72X1037	$30,771,075
*728/91037	54,013,546
*729/01037	1,310,369,000
*Total	1,395,153,621

Subsequent releases have reduced the amount deferred to $1,357,427,050.

*Revised from previous report.

Justification: This deferral withholds funds available for international assistance pending the development of country-specific plans that assure that aid is provided in an efficient manner. Funds also are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for the International Fund for Ireland.

Estimated programmatic effect: None.

Deferral No. D99–3

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: International Assistance Programs.

Bureau: Agency for International Development.

Account: International disaster assistance [1] (72X1035).

New budget authority: $200,000,000.
Other budgetary resources: $14,000,000.
Total budgetary resources: $214,000,000.
Amount deferred for entire year: [2] $185,000,000

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world.

These funds have been deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated programmatic effect: None.

[FR Doc. 99–3185 Filed 2–9–99; 8:45 am]

BILLING CODE 3110–01–P

[1] This account was the subject of a similar deferral in FY 1998 (D98–6).

[2] Subsequent releases have reduced the amount deferred to $92,000,000.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23679; 812–11056]

The Charles Schwab Family of Funds, et al.; Notice of Application

February 4, 1999.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of an application for an order pursuant to section 17(d) of the Investment Company Act of 1940 (''Act''') and rule 17d–1 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered management investment companies to deposit their uninvested cash balances, cash held for investment purposes, and cash collateral from securities lending transactions into one or more joint accounts to be used to enter into short-term investments.

APPLICANTS: The Charles Schwab Family of Funds (''Family of Funds''), Schwab Investments (''Investments''), Schwab Capital Trust (''Capital Trust''), and Schwab Annuity Portfolios (''Annuity Portfolios'') (each a ''Trust'' and collectively, the ''Trusts''); and Charles Schwab Investment Management, Inc. (''Investment Manager'').

FILING DATES: The application was filed on March 9, 1998 and was amended on October 16, 1998 and February 1, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1999 and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC. 20549. Applicants, Attn: Koji Felton, 101 Montgomery Street, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act. Each Trust currently offers multiple series (each a ''Fund'' and, collectively, the ''Funds''). The assets of the Funds are held by two bank custodians, neither of which is an affiliated person of any of the Funds or of the Investment Manager.

2. The Investment Manager is registered under the Investment Advisers Act of 1940 and serves as investment adviser for each of the Funds. The Investment Manager is a wholly-owned subsidiary of the Charles Schwab Corporation.

3. Applicants request that any relief granted pursuant to the application also apply to (i) future series of the Trusts and (ii) all other registered management investment companies for which the Investment Manager (or a person controlling, controlled by, or under common control with the Investment Manager) may now or in the future act as investment adviser (collectively, the ''Future Funds'').[1]

4. At the end of each trading day, each Fund has, or may have, uninvested cash balances representing proceeds from sales of portfolio securities and/or cash awaiting investment (''Cash Balances''). The Cash Balance of each Fund is invested by the Investment Manager in short-term investments authorized by the Fund's investment policies. Currently, the Investment Manager must make these investments separately on behalf of each Fund. Applicants assert that these separate purchases result in certain inefficiencies, a limitation on the return that some or all of the Funds could otherwise achieve, and higher costs.

5. Several of the Funds are authorized to engage in securities lending transactions, for which the Funds. custodians may serve as lending agent. In connection with these transactions, the Funds may receive collateral in the form of either cash (''Cash Collateral'') or certain securities. When Cash Collateral is received, it is expected to be invested in a manner consistent with (i) the Fund's investment objectives and

[1] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

restrictions and (ii) SEC and staff guidelines concerning the investment of Cash Collateral.

6. Applicants propose that the Funds establish joint accounts (''Joint Accounts'') with one or both of the Funds' custodians into which the Funds may deposit some or all of their Cash Balances and Cash Collateral. The daily balances in the Joint Accounts would be invested in: (1) Repurchase agreements ''collateralized fully,'' as defined in rule 2a–7 under the Act; (ii) interest-bearing or discounted commercial paper, including dollar-denominated commercial paper of foreign issuers; and (iii) any other short-term taxable or tax-exempt money market instruments, including variable rate demand notes, that constitute ''eligible securities,'' as defined in rule 2a–7 under the Act (collectively, ''Short-Term Investments'').

7. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983). The participating Funds will not enter into ''hold-in-custody'' repurchase agreements in which the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement except in instances when cash is received very late in the business day or would otherwise be unavailable for investment.

8. Applicants acknowledge that they have a continuing obligation to monitor the SEC's and the staff's published statements on repurchase agreements, and they represent that repurchase agreement transactions entered into through a Joint Account will comply with future positions of the SEC and the staff to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC or the staff sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Accounts will comply with those guidelines. All purchases through the Joint Accounts also will comply with all present and future SEC and staff positions concerning the investment of Cash Collateral in connection with securities lending activities.

9. Each Fund's decision to invest through a Joint Account would be based on the same factors as its decision to make any other short-term liquid investment consistent with its investment objectives, policies, and restrictions. The Joint Accounts will only be used to aggregate what otherwise would be one or more daily transactions by some or all participating Funds to manage their respective daily Cash Balances and Cash Collateral.

10. The Investment Manager will be responsible for investing the cash held in the Joint Accounts, establishing accounting and control procedures, and ensuring fair treatment of the participating Funds. The Investment manager will not charge any additional or separate fees for administering or advising the Joint Accounts and will have no monetary participation in the Joint Accounts.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the SEC has issued an order authorizing the arrangement. In determining whether the grant such an order, the SEC may consider whether to participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the arrangement.

2. Under section 2(a)(3)(C) of the Act, each Fund may be deemed to be an ''affiliated person'' of each other Fund if the Investment Manager were deemed to control each Fund. Applicants state that each Fund participating in a Joint Account and the Investment Manager, by managing that Joint Account, may be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. Applicants further state that each Joint Account may be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

3. Applicants assert that no Fund would be in a less favorable position than any other Fund as a result of its participation in one or more Joint Accounts. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Funds and the Investment Manager. Each Fund's liability on any Short-Term Investment invested in through the Joint Accounts will be limited to its interest in such Short-Term Investment.

4. Applicants state that operation of the Joint Accounts could result in certain benefits to the Fund. The Funds may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert, it is generally possible to negotiate a rate of return on larger investments that is higher than that available on smaller investments. Applicants also contend that the enhanced purchasing power available through a Joint Account may permit the Funds to enter into Short-Term Investments with a greater number of dealers and issuers and may reduce the possibility of the Funds' Cash Balances and Cash Collateral remaining uninvested. In addition, the Joint Accounts may result in certain administrative efficiencies and lessen the potential for error by reducing the number of trade tickets and cash wires that the counterparties to each Short-Term Investment, the Funds' custodians, and the Investment Manager must process.

5. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants state that although the Investment Manager may realize some benefit through administrative convenience and reduced clerical costs, the Funds would be the primary beneficiaries of the Joint Accounts.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. One or more Joint Accounts will be established on behalf of the Funds as separate cash accounts into which a Fund may deposit daily all or a portion of its uninvested Cash Balances and Cash Collateral. The Joint Accounts may be established with one or both custodians, and more than one Joint Account may be established with either custodian. The Joint Accounts will not be distinguishable from any other accounts maintained by the Funds at their custodians except that monies from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management by the Investment Manager of uninvested Cash Balances and Cash Collateral.

2. If a Fund wishes to participate in a Joint Account that will be maintained by a custodian other than its regular custodian, the Fund would appoint that custodian as its sub-custodian for the limited purpose of: (a) Receiving and disbursing cash; (b) holding any Short-Term Investments purchased by the

Joint Account; and (c) holding any collateral received from a transaction effected through the joint Account. Any Fund that appoints a sub-custodian will have taken all necessary actions to authorize that entity as its legal custodian, including all actions required under the Act.

3. Assets in the Joint Accounts will be invested in one or more of the following Short-Term Investments, as determined by the Investment Manager (or, in the case of Cash Collateral, the custodian, in its role as securities leading agent): (a) Repurchase agreements ''collateralized fully'' (as defined in rule 2a–7 under the Act); (b) interest-bearing or discounted commercial paper, including dollar-denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute ''eligible securities'' (as defined in rule 2a–7 under the Act). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act. No Fund will be permitted to invest in a Joint Account unless the Short-Term Investments in that Joint Account will comply with the investment policies and guidelines of that Fund.

4. All assets held by the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC or staff releases, rules, letters, or orders.

5. Each participating Fund valuing its net assets in reliance on rule 2a–7 under the Act will the average maturity of the instruments in the Joint Account in which the Fund has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

6. In order to ensure that there will be no opportunity for any Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason. Each Fund would be permitted to draw down its entire balance in a Joint Account at any time, provided that the Investment Manager determines that such draw-down would have no significant adverse impact on any other Fund participating in that Joint Account. Each Fund's decision to invest in a Joint Account would be solely at its option, and no Fund will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets invested in the Joint Account.

7. The Investment Manager will administer, manage, and invest the cash in the Joint Accounts in accordance with, and as part of, its duties under existing or future investment advisory contracts with the Trusts and/or the Funds and will not collect any additional or separate fee for advising any Joint Account.

8. The administration of the Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

9. The board of directors of each Fund will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of this application will be met. Each board of directors will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the board of directors of each Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will only permit a Fund to continue to participate therein if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

10. Each Fund will participate in a Joint Account on the same basis as any other Fund in conformity with its respective fundamental investment objectives, policies, and restrictions. Any Future Fund that participates in a Joint Account would be required to do so on the same terms and conditions as the existing Funds.

11. Any Short-Term Investments made through the Joint Account will satisfy the investment criteria of all Funds participating in that investment.

12. Each Fund's investment in a Joint Account will be documented daily on its books and on the books of its custodian. The Investment Manager and the custodian of each participating Fund will maintain records documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's *pro rata* share of each investment made through such Joint Account. The records for each such Fund shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

13. Every Fund participating in the Joint Accounts will not necessarily have its cash invested in every Short-Term Investment. However, to the extent that a Fund's case is applied to a particular Short-Term Investment, the Fund will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Fund.

14. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity unless: (a) The Investment Manager believes the investment no longer presents minimal credit risk; (b) the investment no longer satisfies the investment criteria of all Funds participating in the investment because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Investment Manager may, however, sell any Short-Term Investment (or a fractional portion thereof) on behalf of some or all participating Funds prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Funds and the transaction will not adversely affect other Funds participating in that Joint Account. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds in a particular Joint Account or otherwise adversely affect the other participating Funds. Each Fund participating in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

15. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and subject to the restriction that the Fund may not invest more than 15%, or in the case of a money market fund, more than 10% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Investment manager cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3175 Filed 2–9–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41016; File No. SR–AMEX–99–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, LLC To Change the Name of the NatWest Energy Index to the Deutsche Bank Energy Index

February 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 1999, the American Stock Exchange, LLC (''Amex'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rules 901C and 902C to change the name of the NatWest Energy Index to the Deutsche Bank Energy Index and to include Deutsche Bank in the disclaimer part of Rule 902C. 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 of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the purchase of the equity derivatives business conducted by NatWest Securities Corporation in the United States by Deutsche Bank AG,[3] the Exchange is amending its Rule 901C, Commentary .01, to reflect the change in the name of the NatWest Energy Index to the Deutsche Bank Energy Index. In addition, the Exchange is amending its Rule 902C to replace the disclaimer for NatWest with a disclaimer for Deutsche Bank. The disclaimer, identical in content to disclaimers currently in place for Standard & Poors Corporation, Morgan Stanley & Co. Incorporated and Inter@ctive Enterprises L.L.C.,[4] states that Deutsche Bank AG does not guarantee the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (e)(3) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Amex. All submissions should refer to File No. SR–Amex–99–02 and should be submitted by March 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3218 Filed 2–9–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 200.30–3(a)(12).

[3] The Exchange has represented to Commission staff that Deutsche Bank has adopted special procedures to prevent the potential misuse of material, non-public information by the research, sales, and trading divisions of the firm in connection with the maintenance of the Index. In addition, the Exchange has represented that Deutsche Bank will forward to the Commission a letter outlining these procedures. Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and David Sieradzki, Special Counsel, Commission on February 1, 1999.

[4] *See* Amex Rule 902C.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(e)(3).

[9] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41019; File No. SR–GSCC–98–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Establishment of a Cross-Margining Program

February 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1998, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, GSCC will establish a cross-margining arrangement initially with the Commodity Clearing Corporation (''CCC'') and thereafter with other futures clearing organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed cross-margining arrangement would be available to a GSCC member that is or that has an affiliate [3] that is a member of a participating futures clearing organization (''FCO'').[4] Any such common member (or pair of affiliated members) may elect to have its margin requirements at both clearing organizations calculated based upon the net risk of its cash and forward positions at GSCC and offsetting positions in related futures contracts carried at the FCO. As a result, the common member's or pair of affiliated members' margin requirement at each clearing organization could potentially be lowered. GSCC believes that this will provide the member firm with significant benefits such as greater liquidity, more efficient use of collateral, and reduced operational costs.

Margining based on the net risk of correlated positions will be made possible by an arrangement under which GSCC and the FCO agree, in effect, to share the proceeds from correlated positions and supporting collateral. Under the GSCC cross-margining proposal, each clearing organization will hold and manage its own collateral. The amount of collateral collected by each clearing organization may be reduced to reflect offsets between the cross-margining participant's (or its affiliate's) futures positions at the FCO and the cross-margining participant's positions at GSCC.

Each clearing organization will guaranty the cross-margining participant's (or its affiliate's) performance to the other clearing organization up to a specified maximum amount. In effect, therefore, each clearing organization will reduce its margin requirement in exchange for a guaranty from the other clearing organization. The amount of the margin reduction will ordinarily be equal to the amount of the guaranty. Each clearing organization's guaranty, in turn, will be backed by the positions and margin deposits of its cross-margining participant. Loss sharing between clearing organizations will be subject to a cap.

The GSCC proposal would involve a hub and spoke concept when more than one futures clearing organization is involved. A member's long or short position in government securities at GSCC would be apportioned pro rata among the member's offsetting short or long positions (if any) at each FCO. All possible offsets among positions carried by a cross-margining participant within a single clearing organization will be effected before any offsets between clearing organizations.

At least initially, the GSCC cross-margining arrangement will be applicable on the future side only to positions in a proprietary account of a cross-margining participant (or its affiliate) at an FCO. The arrangement will not apply to positions in a customer account at an FCO that would be subject to segregation requirements under the Commodity Exchange Act.

GSCC believes that the implementation of a cross-margining arrangement will enhance the overall safety and soundness of the settlement process for the government securities marketplace by: (1) Providing clearing organizations with more accurate data concerning the true risk of members' intermarket positions (which is especially valuable during stressed market conditions); (2) allowing for enhanced sharing of collateral resources; and (3) establishing coordinated liquidation processes for a joint participant, or a participant and its affiliate, in the event of an insolvency. GSCC further believes that cross-margining programs will benefit the clearing members that participate in them by providing members with more efficient use of their collateral. More important from a regulatory perspective, however, is that cross-margining programs have long been recognized as enhancing the safety and soundness of the clearing system itself. Studies of the October 1987 market crash gave support to the concept of cross-margining. For example, *The Report of the President's Task Force on Market Mechanisms* (January 1988) (known as the ''Brady Report'') noted that the absence of a cross-margining system for futures and securities options markets contributed to payment strains in October 1987. The *Interim Report of the President's Working Group on Financial Markets* (May 1988) also recommended that the Commission and the Commodity Futures Trading Commission facilitate cross-margining programs among clearing organizations. This support resulted in more urgent attention from the regulatory agencies, and the first

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Under the proposed agreement between GSCC and CCC, ''affiliate'' means a clearing member of one clearing organization that: (1) Directly or indirectly controls, (2) is directly or indirectly controlled by, or (3) is under common control with a clearing member of another clearing organization. Ownership of 10% or more of the common stock of an entity is deemed control of the entity under the definition.

[4] The term ''FCO'' would be defined in GSCC's Rules as a clearing organization for a board of trade designated as a contract member under Section 5 of the Commodity Exchange Act that has entered into a cross-margining agreement with GSCC. This would include CCC and any other futures clearing organization with which GSCC establishes a cross-margining arrangement.

cross-margining arrangement was approved in 1988.[5]

GSCC believes that a properly designed cross-margining program can reduce margin requirements for market participants and can enhance the safety and stability of clearing and settlement systems. When margin is held in the form of cash or cash equivalents to cover the risk of a market position whose liquidation cost may be highly volatile, there is always risk that the amount of margin held will be insufficient if the market moves beyond reasonably anticipated limits. In contrast, where an obligation is hedged by a position on the other side of the market based on the same or a similar underlying asset an increase in the cost of liquidating the obligation should be offset in whole or in part by a corresponding increase in the value of the hedge.

GSCC believes that cross-margining arrangements between or among clearing organizations enhance the effectiveness of intermarket hedge positions and therefore can reduce clearing system exposure in the event of market stress. By reducing the need for clearing organizations to call for large amounts of additional original margin in volatile markets, cross-margining reduces the risk of a liquidity crisis of the kind that threatened the clearing system in October 1987.

GSCC's proposed cross-margining program would be the first program for cross-margining positions in futures contracts with positions in the underlying securities (as opposed to cross-margining between futures and securities options). GSCC believes that the most efficient and appropriate approach for establishing these cross-margining links in the case of government securities related products is to do so on a multilateral basis with GSCC acting as the ''hub.''

GSCC's ''Hub'' Approach to Cross-Margining

Uniform treatment: Each FCO will be a party to a separate cross-margining agreement between the FCO and GSCC. It is anticipated, however, that each of these agreements will have essentially similar terms, and no preference will be given by GSCC to one FCO or its members over another.

Residual Margin Amounts Allocated Pro-Rata: In the case of each cross-margining participant, GSCC will offset the participant's residual margin amount at GSCC against the offsetting residual margin amounts of the participant (or its affiliate) at each FCO pro rata based upon the residual margin amount available at each.[6]

Pro Rata Guaranties and Loss Allocation: GSCC will issue a guaranty to each FCO with respect to a cross-margining participant (or its affiliate) in an amount determined on the basis of the pro rata allocation among the FCOs of the participant's residual margin amounts. Accordingly, in the event of a default and liquidation of a cross-margining participant, the loss sharing arrangements as between GSCC and each FCO will be based on the same pro rata shares.

Procedures for Members To Become Cross-Margining Participants

GSCC and each FCO will determine which of their members are eligible to participate in the cross-margining program. In order to be a cross-margining participant, a GSCC member must either: (a) Itself also be a member of an FCO or (b) have an affiliate that is a member of an FCO. The GSCC member must sign (together with its affiliate, if any) an appropriate agreement under which the member (and its affiliate, if there is one) agrees to be bound by the cross-margining agreement and which allows GSCC to apply the member's margin collateral to satisfy any obligation of GSCC to an FCO that results from the default of the member (or its affiliate) and vice versa in the case of an FCO.

Subject to the foregoing, GSCC and each FCO will determine which of their members are eligible to participate in the cross-margining program.

Summary of the Operation of the Cross-Margining Program

Data exchange: Within an agreed upon time frame, GSCC and each FCO will exchange daily position and margin data for each cross-margining participant with respect to each product eligible for cross-margining.

Collateral management: Margin collateral will be collected, maintained, valued, and returned separately by each clearing organization pursuant to its own rules and procedures. The proposed arrangement does not involve the pooling of collateral between clearing organizations. GSCC will not maintain cross-margining accounts for a cross-margining participant separate from its regular account at GSCC, and there will be no separate collateral pool at GSCC for cross-margining activity.

Unified margin calculation: GSCC will agree with each of the FCOs on the particular products cleared by each that are sufficiently price correlated to be eligible for cross-margining treatment (*e.g.,* cash positions in two-year Treasury notes and futures on two-year Treasury notes). Such products will be referred to as ''eligible products,'' and a cross-margining participant's long or short positions in eligible products will be called ''eligible positions.'' GSCC and each FCO will agree upon a common margin formula including the percentage of principal amount to be used as the base margin calculation each long or short position in each eligible product, the disallowance factors, if any, to be applied when offsetting long and short margin amounts in different eligible products, and the minimum charges for offsetting positions.[7]

Coordinated mark to market process: GSCC and each FCO will coordinate their daily mark to market and variation margin processes so that if a cross-margining participant does not pay its debit mark or make a required clearing fund or margin deposit to one clearing organization on a particular business day, the other will be so informed and will not pay out any credit mark or clearing fund or margin withdrawal relating to cross-margined activity to that participant.

Daily calculation of cross-margining reduction and cross-guaranties: On each business day, GSCC will complete its own internal margining process for buy-sell, repo, and Treasury auction transactions for each cross-margining participant (including the setting off or netting, to the extent permitted in GSCC's rules, of GCF repo transactions with other activity).[8] Each FCO will perform an equivalent internal process for each member, offsetting long margin amounts against short margin amounts for futures and options on futures

[5] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 [File No. SR–OCC–86–17] (order approving cross-margining program between The Options Clearing Corporation and the Intermarket Clearing Corporation).

[6] For example, if a cross-margining participant has a $9 million residual short margin amount at GSCC and residual long margin amounts in the same product of $8 million at FCO 1 and $4 million at FCO 2, GSCC will use two-thirds of the $9 million margin amount, or $6 million, for offset against the participant's FCO 1 activity and one-third of the $9 million margin amount, or $3 million, for offset against FCO 2 activity.

[7] According to GSCC, an appropriate conversion method will be agreed upon to equate size of futures and cash positions for offset purposes.

[8] The term ''GCF repo transaction'' is defined in GSCC's rules as ''a Repo Transaction involving Generic CUSIP Numbers the data on which are submitted to the Corporation on a Locked-In-Trade basis pursuant to the provisions of Rule 7, for netting and settlement by the Corporation pursuant to the provisions of Rule 20.'' *See also* Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 [File No. SR–GSCC–98–02] (order approving implementation of GSCC's GCF Repo service).

contracts that are eligible products to the extent specified in its rules.[9]

As a result of the internal margining process, each clearing organization may have ''residual'' long or short margin amounts for a member in various eligible products. The residual long or short margin amount is the amount of long or short margin (*i.e.*, margin with respect to a long position or a short position) that has not been ''used up'' in the internal offsetting process.[10]

Each FCO will provide information to GSCC for each cross-margining participant as to the residual long or short margin amount in each eligible product that the FCO intends to make available for cross-margining offsets on that day. GSCC then will determine for each cross-margining participant the amount, if any, of the long or short residual margin offered by each FCO that GSCC intends to use as an offset against the participant's short or long residual margin amounts at GSCC for purposes of determining the cross-margining reduction.[11] GSCC will inform each FCO of the cross-margining reduction as between GSCC and that FCO for each cross-margining participant. The cross-margin reduction is the amount by which GSCC and FCO may each appropriately reduce its cross-margining participant's margin requirement to reflect the cross-margining offset.[12]

Accordingly, the maximum cross-margining reduction that may be achieved by a cross-margining participant will be determined by the amount of residual taken by GSCC. For example, if an FCO offers $1 million in residual short margin for a particular member in 2-year note futures, and GSCC sets all of that amount off against a $2 million cash position in the 2-year note, then the cross-margin reduction amount is $1,000,000 for GSCC and $1,000,000 for the FCO, or $2 million in total. That is the anticipated amount of margin reduction that the cross-margining participant will enjoy.

Under the terms of the cross-margining agreement, GSCC will be deemed to have extended its ''guaranty'' of a cross-margining participant's (or its affiliate's) obligation to each FCO in a base amount equal to the cross-margining reduction as between GSCC and that FCO. Similarly, that FCO will be deemed to have extended its ''guaranty'' of the cross-margining participant's obligation to GSCC in the same base amount. The base amount of these ''cross-guaranties'' represents a cap on the amount of loss that either GSCC or the FCO could incur as the result of a default by a participating member (or its affiliate) to the other.[13] Thus, for example, if GSCC had a residual short margin amount in a product of $10 million and it was offset against an FCO's residual long margin amount of $4 million, then GSCC would collect only $6 million in margin, and the FCO would have guaranteed a maximum of $4 million or the amount of any net surplus held by the FCO after liquidating the participant. GSCC and each FCO will retain the right to reduce a cross-margining participant's clearing fund or margin requirement by less than the amount of the cross-margining reduction or not to reduce it at all.[14]

Each clearing organization will represent to the other that it will margin a cross-margining participant's positions such that the amount of margin is adequate to cover the cross-margining participant's obligations to that clearing organization, including the obligation to reimburse any payment under the guaranty. In addition, on any day that is a business day for an FCO and not for GSCC or vice versa, the cross-guaranties as they existed on the immediately preceding business day will remain in effect, and it shall be the responsibility of the clearing organization that is open for business on such day to adjust its margin requirements with respect to cross-margining participants to cover such cross-margining participants' obligations.[15]

Default of a cross-margining participant: liquidation and loss-sharing: If a cross-margining participant becomes insolvent and its eligible positions are liquidated by GSCC and the FCOs, each clearing organization will calculate its ''net loss'' or ''net surplus'' from the liquidation.[16] GSCC

[9] On each business day, GSCC and CCC each will calculate for each cross-margining participant an initial margin requirement with respect to eligible positions. This calculation will be done independently, based upon an agreed upon method, without the other clearing corporation's review. However, GSCC and CCC will review generally each other's margining process on a periodic basis, and each will have the obligation to inform the other of any material changes to its margining process.

[10] A margin amount may be ''used up'' whether or not there has been a full offset against it. For example, assume that a GSCC member has a $1 million gross margin requirement on a short position in the 10-year note (offset class F) that is offset against a $1 million gross margin requirement on a long position in the long bond (offset class G). Because there is a 20% disallowance on offsets between classes F and G, the member has a $200,000 margin requirement after the offset. However, both $1 million amounts have now been entirely used up, and nothing is available for further offset either within GSCC or for cross-margining with an FCO.

[11] The total amount used will be in GSCC's sole discretion. However, except in unusual circumstances the total amount used will be allocated pro rata among the participating FCOs as described above.

[12] If a cross-margining participant has eligible positions at more than one participating FCO, the participant's total margin reduction at GSCC will be the sum of the cross-margining reductions between GSCC and each FCO.

[13] For instance, if a cross-margining participant had a residual short margin amount of $10 million at GSCC and it was offset against a residual long margin amount of $4 million at an FCO, then the base amount of the cross-guaranties would be $4 million. As noted below, the ''maximum guaranty amount'' of GSCC or the FCO would exceed $4 million only to the extent that the paying clearing organization had funds of the participant remaining (*i.e.*, a ''net surplus'') after satisfying all other obligations of the participant to the paying clearing organization.

[14] The ''cross-margining reduction'' is determined by the residual margin amounts made available by an FCO and ''used'' by GSCC in determining the amount of the cross-guaranties. It does not depend upon the amount, if any, by which either GSCC or an FCO actually reduces a cross-margining participant's margin requirement. In other words, after an offer by an FCO of $1 million in residual margin and acceptance by GSCC of that amount for offset, the cross-margining reduction would be $1 million and the base amount of the cross-guaranties would be fixed at that amount. However, either clearing organization might nevertheless determine to reduce the cross-margining participant's clearing fund or margin requirement by less than $1 million or not at all, and the cross-margining reduction for all purposes under the cross-margining agreement would still be $1 million. The clearing organization would simply have made a determination to hold more collateral without affecting the amount of the guaranty it receives from the other clearing organization.

[15] This is necessary because the cross-margining participant's margin or clearing fund deposit will remain fixed at the clearing organization that is closed, and the closed clearing organization must therefore continue to rely on the guaranty based on the previous day's cross-margining reduction. On the other hand, the clearing organization that is open ordinarily will be able to assess and collect additional margin or clearing fund deposits if needed to reflect updated positions in the participant's account on its own books as well as the fixed guaranty obligation that is still outstanding to the other clearing organization.

[16] Under the proposed cross-margining agreement between GSCC and CCC, net surplus and net loss will be calculated as follows: In the event that (i) the sum of available margin and any proceeds of eligible positions realized by such clearing organization (including securities deliverable to and amounts receivable with respect to securities deliverable by such cross-margining participant in settlement of eligible positions) and any mark to market payments or other settlement amounts due from such clearing organization with respect to eligible positions exceeds (ii) the sum of the mark to market payments or other settlement amounts owed to such clearing organization with respect to or as a result of the closeout of eligible positions (including securities deliverable by or amounts payable with respect to securities deliverable to such cross-margining participant with respect to eligible positions) plus any interest expense, fees, commissions or other costs reasonably incurred in such closeout or otherwise arising from such eligible positions, then the amount of such excess shall be deemed to be the net surplus. In the event that the sum referred to in clause (i) of the preceding sentences is less than the amount referred to in clause (ii), the difference shall be the net loss.

''Available margin'' is defined as the amount of clearing fund deposits, margin, or other collateral remaining after satisfaction of all obligations of the

Continued

and each FCO will use their best efforts to coordinate the liquidation of eligible positions so that offsetting or hedged positions can be closed out simultaneously. GSCC and each FCO may unilaterally elect not to terminate or suspend and liquidate the eligible positions of its cross-margining participant. Any clearing organization that does so will remain liable to the other with respect to its guaranty. A clearing organization that has elected not to liquidate the eligible positions of a defaulting participant will be deemed to have no net loss and no net surplus.

If either GSCC or the FCO, after liquidation of a cross-margining participant, has a net loss and the other has a smaller net loss, no net loss, or a net surplus, then the one with the larger net loss (the ''worse-off party'') is entitled to receive a payment from the other (the ''better-off party'') that equalizes their losses. The amount of this equalizing payment will be capped at the least of: (1) The ''maximum guaranty amount'' of the better-off party; (2) if the better-off party has a net loss, an amount that together with its net loss equals its total cross-margining reduction (loss cap); or (3) the worse-off party's net loss. The ''maximum guaranty amount'' is the greater of the cross-margining reduction or the net surplus of the guarantor clearing organization.[17]

Thus, for example, if:

- GSCC had a net surplus of $5 million and the FCO had a net loss of $3 million, and if GSCC's applicable cap were $3 million or more, then it would give the FCO $3 million, and if its cap were under $3 million, it would give the FCO its cap amount.
- GSCC had a net surplus of $5 million and the FCO had a net loss of $10 million, GSCC would give the FCO $7.5 million, except that if its cap were under $7.5 million, then it would give the FCO the cap amount.
- GSCC had a net loss of $5 million and the FCO had a net loss of $10 million, if: (a) The applicable cap amount were $5 million or less, than GSCC would give the FCO nothing, (b) if the cap amount were $6 million, then GSCC would give the FCO $1 million, and (c) if the cap amount were $7.5 million or more, GSCC would give the FCO $2.5 million.
- GSCC had a net surplus of $5 million and the FCO had a net loss of $1 million and the loss cap is $5 million, GSCC would give the FCO $1 million.

Information Specific to the GSCC–CCC Cross-Margining Agreement

Participation in the program. Any netting member of GSCC other than an interdealer broker will be eligible to participate. Any clearing member of CCC will be eligible to participate.

Positions subject to cross-margining: The products that will initially be eligible for cross-margining are: for GSCC, its offset classes for the 2-year note, 5-year note, 10-year note, and 30-year bond; and for CCC, its 2-year note, 5-year note, 10-year note, and 30-year bond futures products. Initially, as a conservative measure, residual margin amounts will be applied only within the same ''offset class'' (*e.g.,* the 2-year note against the 2-year note future). All eligible positions maintained by a cross-margining participant in its account at GSCC and in its (or its affiliate's) proprietary account at CCC will be eligible for cross-margining.

Unified margin factors: The margin factors that GSCC and CCC will apply to eligible positions are GSCC's margin factors.

Daily procedures: On each business day by midnight, CCC will inform GSCC of the residual margin amounts it is making available. Thereafter, by 2:00 a.m., GSCC will inform CCC of how much, if any, of these residual margin amounts it will use.

GSCC Rule Changes

Required changes in the text of GSCC's rules are limited because cross-margining participants will be bound by the cross-margining agreement with CCC (and with each other FCO in the future), and these agreements will contain much of the substance of the cross-margining arrangements. Definitions relating to cross-margining will be added to GSCC Rule 1.[18] These definitions correspond generally to certain terms that are defined in the cross-margining agreement(s).

Section 2 of GSCC Rule 4 will be amended to provide that the required fund deposit otherwise calculated for a cross-margining participant will be further reduced in an amount not to exceed the sum of the cross-margin reductions calculated under the various cross-margining agreements. As provided in the cross-margining agreements, GSCC will receive a guaranty of the participant's obligations from each FCO, the sum of which will not be less than the total cross-margining reduction.

Sections 5 and 6 of Rule 4 will be amended to clarify the application of those provisions in the context of the cross-margining arrangements. Specifically, the amendments will provide that GSCC may set off a cross-margining participant's obligation to reimburse GSCC for the payment of a guaranty against any asset of the participant that GSCC holds as collateral and against any amounts due to the participant. Section 6 of Rule 4 will make clear that GSCC can apply a member's clearing fund deposits to satisfy a loss without necessarily treating the member as insolvent.

A provision will be added to Section 2 of Rule 22 to specify that GSCC may but is not required to consider a cross-margining participant to be insolvent if the member is declared to be insolvent by an FCO. GSCC believes that this is an appropriate provision because under the terms of the cross-margining agreement GSCC has credit exposure to a cross-margining participant as a result of its obligations to the FCO, and GSCC must be able to limit its exposure by closing out the positions of a cross-margining participant if the FCO does so.

New Rule 43 will set forth some basic provisions as to how a GSCC netting member may become a cross-margining participant. Section 3 of Rule 43 will provide explicitly that a cross-margining participant has the obligation to reimburse GSCC for any amount paid out by GSCC to an FCO on the participant's behalf under a cross-margining guaranty and will cross-reference the corresponding provisions of the cross-margining agreement. The effect will be that the participant's defaulted obligations to the FCO, if any, would be netted against any amounts held by or due to the participant as a

cross-margining participant to the clearing organization other than obligations arising from eligible positions.

[17] Where a cross-margining participant had eligible positions at more than one FCO, GSCC's net loss or net surplus for purposes of the cross-margining agreement between GSCC and any one FCO will be a portion of GSCC's aggregate net loss or net surplus from all eligible positions and available margin at GSCC that is equal to the portion of the residual margin at GSCC that was offset against the residual margin at that FCO. For example, assume that FCO 1 and FCO 2 each offer GSCC $2 million in residual short margin based on a $200 million short position in futures on the 10-year note that is haircut at 1%. If GSCC has only $2 million in residual long margin, it would ''take'' $1 million residual from each FCO for offset purposes. If GSCC incurs a $10 million loss in liquidating the $200 million futures position, GSCC's ''net loss'' for purposes of its agreement with FCO 1 would ordinarily be half of that or $5 million. However, the cross-margining agreements will also contain provisions permitting further contribution by FCO 1 if FCO 1's net surplus exceeds $5 million and FCO 2 contributes less than $5 million.

[18] The text of the proposed amendments to GSCC's rules is attached as an exhibit to GSCC's filing, which is available for inspection and copying at the Commission's Public Reference Room and through GSCC.

result of its positions at GSCC. As a result, the participant would be entitled to receive from the close out of its positions and margin at GSCC only the residual after netting out the sum of its obligations to GSCC and the FCOs. Section 4 of Rule 43 will provide that if a cross-margining participant or its affiliate defaults to an FCO (thus causing GSCC to make payment under its guaranty), the cross-margining participant must either immediately deposit the amount of the guaranty with GSCC or be declared insolvent itself.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments with respect to the proposed rule change have not been solicited or received. Members will be notified of the rule change filing, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 GSCC 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–98–04 and should be submitted by March 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3219 Filed 2–9–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2979]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 27, 1999 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in November 1998 and the announcement of gifts and loans of furnishings as well as financial contributions for calendar year 1998. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 22, 1999, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 6, 1999.

Gail F. Serfaty,

Vice Chairman, Fine Arts Committee.

[FR Doc. 99–3264 Filed 2–9–99; 8:45 am]

BILLING CODE 4710–38–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Partnership Council Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Wednesday, February 24, 1999, at 2:30 p.m., at the Air Traffic Control Tower, Ronald Reagan National Airport, Washington, DC 20001. The conference room is located in the North terminal.

TYPE OF MEETING: These meetings will be open to the public. Advance arrangements for attending must be made with the point of contact indicated below. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for addressing the role of the Council in providing assistance and support to labor-management groups throughout DOT; proposing methodology for a DOT labor-management assessment, Part II; addressing options and recommendations for the Council regarding 5 USC 7106(b)(1); and reporting on status on Life with Cancer Signature Project in memory of the late American Federation of Government Employees (AFGE) President John Sturdivant.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by February 22, 1999 in order to be considered at the February 24 meeting.

Issued in Washington, D.C., on February 4, 1999.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resource Leadership Division.

[FR Doc. 99–3207 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–62–P

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–04]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 3, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 5, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29368
Petitioner: North American Air Charter, Inc.
Section of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit North American Air Charter, Inc., pilots to accomplish a line operational evaluation in a level C or level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 29372
Petitioner: Helicopter Consutants, Inc.
Section of the FAR Affected: 14 CFR 135.163 and 135.181
Description of Relief Sought: To permit Helicopter Consultants, Inc., doing business as Aircraft Commercial Enterprise, Inc. (ACE), to conduct passenger-carrying operations in a single-engine aircraft in certain limited instrument flight rules conditions as were permitted previously by § 135.103. In addition, a grant of exemption would allow ACE to conduct such operations without equipping its aircraft with (1) two independent electrical power-generating sources, or a standby battery or, alternate source of electrical power; and (2) a redundant energy system for gyroscopic instruments.

Docket No.: 29385
Petitioner: Charity Airlift Incorporated
Section of the FAR Affected: 14 CFR 125.1(b)(2)
Description of Relief Sought: To allow Charity Airlift Incorporated to conduct noncommon carriage operations using a restricted category Lockheed C–130 Hercules aircraft carrying persons and/or cargo for compensation or hire under the provisions of part 125.

Docket No.: 29397
Petitioner: Japan Airlines Company, Ltd.
Section of the FAR Affected: 14 CFR 145.47(b)
Description of Relief Sought: To allow Japan Airlines Company, Ltd. to use the calibrations standards of Japan's National Research Laboratory of Metrology and Japan's Electrotechnical Laboratory in lieu of the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.

Docket No.: 29398
Petitioner: All Nippon Airways Co., Ltd.
Section of the FAR Affected: 14 CFR 145.47(b)
Description of Relief Sought: To permit All Nippon Airways Co., Ltd., to use the calibrations standards of Japan's National Research Laboratory of Metrology and Japan's Electrotechnical Laboratory in lieu of the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.

Docket No.: 29406
Petitioner: Flight Services Group, Inc.
Section of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To permit Flight Services Group, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 29411
Petitioner: Spirit Aviation Incorporated
Section of the FAR Affected: 14 CFR 135.225(g)
Description of Relief Sought: To permit Spirit Aviation Incorporated to conduct takeoffs in single-pilot, turbine-powered airplanes where takeoff visibility is one-half of a mile down to 1,800 feet runway visual range, subject to certain conditions and limitations.

Docket No.: 29413
Petitioner: Hiawatha Aviation of Rochester, Inc.
Section of the FAR Affected: 14 CFR 135.299(a)
Description of Relief Sought: To allow Hiawatha Aviation of Rochester, Inc., pilots to accomplish a line operation evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 29424
Petitioner: Ameriflight, Inc.
Section of the FAR Affected: 14 CFR 135.243(c)(2)
Description of Relief Sought: To permit Ameriflight, Inc., to allow its pilots in command to operate under instrument flight rules with a minimum of 800 hours of total flight time, including 400 hours of cross-country flight time and 75 hours of night flight time, in lieu of the flight-time requirements of § 135.243.

Dispositions of Petitions

Docket No.: 25024
Petitioner: University of Illinois at Urbana-Champaign Institute of Aviation
Sections of the FAR Affected: 14 CFR 141.55 (d) and (e) and 141.63(b)
Description of Relief Sought/ Disposition: To permit UI to hold

examining authority for FAA-approved training courses that do not specify the minimum ground and flight training time requirements of part 141. *Denial, 1/21/99, Exemption No. 6856.*

Docket No.: 27724
Petitioner: Academics of Flight
Section of the FAR Affected: 14 CFR 65.17(a)
Description of Relief Sought/ Disposition: To permit Academics of Flight to administer a school aircraft dispatcher written examination to graduates of its FAA-approved aircraft dispatcher program, in lieu of the FAA Aircraft Dispatcher written exam. *Denial, 1/13/99, Exemption No. 6851.*

Docket No.: 29184
Petitioner: Arctic Air Service, Inc.
Section of the FAR Affected: 14 CFR 135.152(a)
Description of Relief Sought/ Disposition: To allow Arctic Air Service, Inc., to operate its Sikorsky 76A helicopter (Registration No. N348AA, Serial No. 760006) without an approved digital flight data recorder installed. *Grant, 1/22/99, Exemption No. 6854.*

Docket No.: 29376
Petitioner: Mr. Allen Banen
Section of the FAR Affected: 14 CFR 91.109 (a) and (b)(3)
Description of Relief Sought/ Disposition: To allow Mr. Banen to conduct certain flight instruction and simulated instrument flight to meet recent instrument experience requirements in Beechcraft Baron and Bonanza airplanes equipped with a functioning thrower control wheel in place of functioning dual controls. *Grant, 1/29/99, Exemption No. 6857.*

Docket No.: 29395
Petitioner: Iowa City Flying Service, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Iowa City Flying Service, Inc., to operate its aircraft (Registration Nos. N71CF, N91CF, M11CF, and N117SK; Serial Nos. 27–7954092, 31–174, 31–7652105, and 414–0638, respectively) without a TSO–C112 (Mode S) transponder installed. *Grant, 1/20/99, Exemption No. 6852.*

Docket No.: 29448
Petitioner: American Airlines, Inc.
Sections of the FAR Affected: 14 CFR 25.791(a) and 121.317(a)
Description of Relief Sought/ Disposition: To allow American Airlines, Inc., to operate its Boeing 737 and 777 aircraft with ''No Smoking'' signs that always are illuminated. *Grant, 1/20/99, Exemption No. 6853.*

Docket No.: 25731
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 45.25 and 45.29
Description of Relief Sought/ Disposition: To permit Experimental Aircraft Association and Confederate Air Force members to continue to operate their historic military aircraft with 2-inch high nationality and registration marks located beneath the aircraft's horizontal stabilizer. *Grant, 1/22/99, Exemption No. 5019E.*

Docket No.: 28054
Petitioner: Air Vegas, Inc.
Sections of the FAR Affected: 14 CFR 121.345(c)(2) and 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Air Vegas, Inc., to continue to operate certain aircraft under part 121 or part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 2/1/99, Exemption No. 6588A.*

Docket No.: 29365
Petitioner: Montana By Air
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Montana By Air to operate its Maule M–4–220C aircraft without a TSO–C112 (Mode S) transponder installed. *Grant, 2/3/99, Exemption No. 6858.*

Docket No.: 26267
Petitioner: Ms. Jacqueline A. Julio
Section of the FAR Affected: 14 CFR 121.311(b)
Description of Relief Sought/ Disposition: To continue to permit Ms. Jacqueline A. Julio to be secured by a personal safety belt and held on her caregiver's lap while on board an aircraft although she has reached her second birthday. *Grant, 2/3/99, Exemption No. 5195D.*

Docket No.: 23465
Petitioner: Everts Air Fuel, Inc.
Section of the FAR Affected: 14 CFR 91.9(a)
Description of Relief Sought/ Disposition: To continue to allow Everts Air Fuel, Inc., to operate its McDonnell Douglas DC–6 aircraft at a 5–percent-increased zero fuel weight and landing weight for operating all-cargo aircraft. *Grant, 2/3/99, Exemption No. 4296G.*

Docket No.: 29306
Petitioner: Gulfstream Aerospace Corporation
Sections of the FAR Affected: 14 CFR 61.57(a) and (b) and 142.1
Description of Relief Sought/ Disposition: To allow Gulfstream Aerospace Corporation production and engineering flight test pilots to use any one of Gulfstream's GII, GIII, GIV, or GV airplanes or a Level B, C, and D simulator that represents one of the types of Gulfstream turboject airplanes to meet the recent takeoff and landing experience requirements of § 61.57, without Gulfstream holding a 14 CFR part 142 certificate. *Grant, 2/3/99, Exemption No. 6859.*

[FR Doc. 99–3283 Filed 2–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band 118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held February 23–26, 1999, Starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Tuesday, February 23: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda. 9:30 a.m. (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS, Continue Work on VDL Mode 3. Wednesday, February 24: (a.m.) (5) WG–2 Continues Work on VDL Mode 3; (p.m.) (6) WG–3, Review of VHF Digital Radio MOPS Document Progress and Furtherance of Work. Thursday, February 25: (7) WG–3 Continues Work. Friday, February 26 (a.m.) (8) Plenary Reconvenes at 9:00 a.m.: (9) Review Summary Minutes of Previous Plenary of SC–172; (10) Report on ICAO Aeronautical Mobile Communications Panel WG's B & D Meeting; (11) Reports from WG's 2 and 3 Activities; (12) EUROCAE WG–47 Report and Discussion of Schedule for Further Work with WG–3; (13) Review Issues List and Address Future Work; (14) Other Business; (15) Dates and Places of Future Meetings. Friday, February 26 (p.m.): (16) WG's Continues as Required.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue,

NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 3, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–3284 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Desha County, Arkansas and Bolivar County, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental draft environmental impact statement will be prepared for a proposed highway/rail crossing of the Mississippi River in the vicinity of Desha County, Arkansas and Bolivar County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Elizabeth Romero, Environmental Specialist, Arkansas Division, Federal Highway Administration, 700 West Capitol, 3130 Federal Building, Little Rock, Arkansas 72201–3298, Telephone: (501) 324–5625.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department and the Mississippi Department of Transportation, will prepare a supplemental draft environmental impact statement (SDEIS) for a proposal to construct a highway/rail crossing of the Mississippi River between Desha County, Arkansas and Bolivar County, Mississippi.

A Phase I feasibility study determined that a bridge in this vicinity would have a positive economic impact on this area of the lower Mississippi River delta region by providing regional mobility, promoting development, and providing both short and long term economic stimulus. The SDEIS is an amendment of a Draft EIS dated October, 1996.

The proposed action, including new roadway segments, would extend from a western terminus at U.S. 65 in the vicinity of Dumas, Winchester, and McGehee, Arkansas to an eastern terminus on State Highway 8 near Rosedale and Cleveland Mississippi. The total project distance is approximately 47.4–72.6 km (29.5–45 miles).

All alternatives contained in the 1996 Draft EIS are still under consideration and include: the ''No Build'' Alternative and Alternatives 1–4. Alternative 1 begins at U.S. 65 north of Dumas, Arkansas, proceeds east to cross Big Island and the Mississippi River, and ends at Mississippi Highway 8 east of Rosedale, Mississippi. Alternative 2 begins at U.S. 65 north of Dumas, Arkansas, proceeds east to cross the Mississippi River south of Big Island, and ends at Mississippi Highway 8 east of Rosedale Mississippi. Alternative 3 begins at U.S. 65 just north of Winchester, Arkansas, proceeds east to cross Big Island and the Mississippi River, and ends at Mississippi Highway 8 east of Rosedale Mississippi. Alternative 4 begins at U.S. 65 just north of Winchester, Arkansas, proceeds east to cross the Mississippi River south of Big Island, and ends at Mississippi Highway 8 east of Rosedale, Mississippi. The SDEIS will include a new Alternative that is proposed to extend from a western terminus at U.S. 65 in the vicinity of McGehee, Arkansas, cross the Mississippi River near Arkansas City, Arkansas, and continue to an eastern terminus on State Highway 8 near Rosedale and Cleveland Mississippi.

This SDEIS will also consider the secondary and cumulative effects that could result from a possible future decision to locate I–69/Corridor 18 selected Great River Bridge alignment in this area. However, this document will not determine the location of the proposed I–69 alignment and will not preclude the consideration of other Mississippi River crossings in future I–69/Corridor 18 studies.

The SDEIS is being prepared in response to comments from resource and regulatory agencies expressing concerns about the potential impacts to fish and wildlife, vegetation, water quality, the ''Big Woods'', and Wildlife Management Areas, and about the implications of I–69 using this proposed new route. To address these concerns, the SDEIS will study the new alternative described above that was recommended by several commentors as an alternative that may avoid many of the areas of concern and minimize impacts. Also noted above, the potential use of this route by I–69 will be studied for all alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations, including conservation groups and groups of individuals who have previously expressed interest in the project. A formal scoping meeting will be held with appropriate local, State, and Federal agencies. Public involvement sessions and public hearing(s) will be held. Public notice will be given of the time and place of the public involvement sessions and the public hearing(s). The SDEIS will be available for public and agency review and comment prior to the public hearing(s). To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Supplemental Draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Kenneth A. Perret,

Division Administrator, Federal Highway Administration, Little Rock, Arkansas.

[FR Doc. 99–3199 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Transportation Equity Act for the 21st Century; Implementation Guidance for the Interstate Highway Reconstruction/ Rehabilitation Pilot Program; Solicitation for Candidate Proposals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This document publishes implementation guidance for section 1216(b) of the Transportation Equity Act for the 21st Century (TEA–21). Section 1216(b) established a pilot program under which the Secretary may permit a State to convert a free highway, bridge, or tunnel on the Interstate System to a toll facility where reconstruction or rehabilitation of the facility could not happen without the collection of tolls. This document also calls for submission of proposals for consideration under the pilot program and describes eligible Interstate facilities, application requirements, selection criteria, and the submission process.

FOR FURTHER INFORMATION CONTACT: For pilot program: Mr. Jim Overton, HNG–10, Office of Engineering, (202) 366–4653; For legal issues: Mr. Steven

Rochlis, HCC–32, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. E.T., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's database at http://www.access.gpo.gov/nara.

Background

The TEA–21 (Pub. L. 105–178, 112 Stat. 107) implementation guidance published in this **Federal Register** notice is provided for informational purposes. Specific questions on any of the material published in this notice should be directed to the contact person named in the caption **FOR FURTHER INFORMATION CONTACT.**

Authority: 23 U.S.C. 315; sec. 1216(b), Pub. L. 105–178, 112 Stat. 107, 212 (1998); 49 CFR 1.48.

Issued on: February 3, 1999.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

The text of the FHWA memorandum reads as follows:

ACTION: Interstate Highway Reconstruction/Rehabilitation Pilot Program Section 1216(b) of TEA–21 Solicitation for Candidate Proposals (Reply Due: March 31, 1999)

December 24, 1998

Associate Administrator for Program Development

HNG–12

Division Administrators

Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA–21) establishes a new pilot program to allow conversion of a free Interstate highway to a toll facility in conjunction with needed reconstruction or rehabilitation of the Interstate highway that is only possible with the collection of tolls. The following is implementing guidance for this provision as well as a call for candidate proposals from the States for consideration under the pilot program.

The selection process and the accompanying submittal of required information for candidates under this pilot program will be conducted in two phases. In Phase 1, we are seeking candidates from the States for the Interstate toll pilot program. In submitting candidates, the States are required to submit general information on the candidate(s), as described below. A State may submit more than one candidate; however, any one State will not have more than one candidate selected in that State. Candidates are due to FHWA Headquarters by March 31, 1999. Based on the information submitted and the criteria outlined below, up to three pilot projects will be selected (to be called ''provisional'' acceptance) to proceed to Phase 2.

In Phase 2, a candidate project will be required to satisfy compliance with the National Environmental Policy Act (NEPA) process, as described below. Although no specific time limits are established for this phase, it is expected the States will accomplish this task in a timely manner. If this does not occur, a candidate's ''provisional'' acceptance may be withdrawn and offered to another candidate submitted during Phase 1.

General Pilot Program Provisions

- The purpose is to provide for the reconstruction or rehabilitation of Interstate highway corridors where estimated improvement costs exceed available funding sources, and work cannot be advanced without the collection of tolls.
- It is expected that candidate projects will involve tolling of sections of highways that, in general, have identified reconstruction or rehabilitation needs throughout the section proposed for tolling.
- The FHWA may select up to three candidate projects to participate in the pilot program. Each project selected must be in a different State.
- There is no special Federal funding specifically authorized for this program. Regular Federal-aid highway funds, except for Interstate Maintenance funds, may be used to fund improvements to a designated pilot project, subject to the normal eligibility requirements for these funds. Section 1216(b)(6) of TEA–21 specifically prohibits use of Interstate Maintenance funds on the Interstate facility covered by the pilot project during the period tolls are collected. In addition, an Interstate reconstruction/rehabilitation project may qualify for credit assistance under 23 U.S.C. 181–189.
- The State must execute an agreement with the FHWA specifying that toll revenues received from operation of the facility will be used in accordance with the requirements set forth in Section 1216(b)(5) of TEA–21. This requires that all toll revenues be used only for (1) debt service, (2) reasonable return on investment of any private person financing the project, and (3) any costs necessary for the improvement of and the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration and rehabilitation of the toll facility. Additionally, the agreement must include a provision that the State will conduct regular (annual suggested) audits to ensure compliance with the provisions regarding use of toll revenues, and the results of these audits will be transmitted to the FHWA.
- Toll collection must occur for at least 10 years. There is no maximum time limit concerning the duration of toll collection; however, tolls that are collected can only be used for the purposes set forth in the previous paragraph.
- The FHWA is concerned that the initiation of toll collection on a facility that is being converted from free use to tolls should not occur until it is evident to the traveling public that tolls will result in improvements to the facility. Accordingly, the earliest that tolls may be imposed on a pilot project is the date of award of a contract for the physical construction to reconstruct or rehabilitate a significant portion of the proposed toll facility.
- A pilot project, regardless of whether Federal-aid funds are to be used in subsequent reconstruction or rehabilitation activities, must satisfy the requirements of the NEPA process before final approval is given to the project. The analysis of the project must take into account not only the impacts of the proposed reconstruction or rehabilitation activities but also consider impacts associated with converting the free facility to a toll facility.

Eligible Interstate Facilities

Eligible Interstate routes under the pilot program are those included in the Interstate system as described in 23 U.S.C. 103(c). This is the originally designated Interstate system and includes those Interstate additions under former 23 U.S.C. 139(a).

Section 1216(b)(1) of TEA–21 permits the pilot program to include highways, bridges and tunnels on the Interstate system. Since existing 23 U.S.C. 129(a)(1)(C) already allows for the reconstruction or replacement of a free Interstate bridge or tunnel and its subsequent conversion to a toll bridge or tunnel, for the purposes of the Interstate pilot program we are only seeking candidates that involve reconstruction/rehabilitation of a free Interstate

''highway'' and its subsequent conversion to a toll facility. Bridges and/or tunnels may be included within the ''highway'' segment.

Phase 1—Application Requirements

An application from a State must address those items set forth in Section 1216(b)(3) of TEA–21, as follows:

- An identification of the facility on the Interstate system proposed to be a toll facility, including the age, condition, and intensity of use of the facility.
- In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under 23 U.S.C. 134 for the area has been consulted concerning the placement and amount of tolls on the facility.
- An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State's apportionments and allocations made available by the TEA–21, including amendments to the act, and from revenues for highways from any other source without toll revenues.
- A facility management plan that includes:
- A plan for implementing the imposition of tolls on the facility.
- A schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues.
- A description of the public transportation agency that will be responsible for implementation and administration of the pilot project.
- A description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route.

In addition, the application should:

- Show how the plan for implementing tolls takes into account the interests of local, regional and interstate travelers.
- Provide an environmental scoping analysis of the proposed project's impacts to the social, economic, and environmental resources located in the vicinity of the project. The analysis should show what effect the proposed construction, as well as the imposition of tolls, may have on such resources as:
- current or planned land uses,
- historic, cultural, natural, or recreational resources,
- economic or community resources,
- safety and livability,
- ambient light, noise, and air quality levels,
- sensitive receptors, and
- minority and low-income populations.

This scoping analysis should form the basis for the more detailed environmental evaluation done in Phase 2.

The States are also welcome to include with their application whatever additional information they feel would assist us in understanding the merits of their proposal.

Phase 1—Selection Criteria

In selecting up to three candidate projects, the criteria set forth in Section 1216(b)(4) of TEA–21 will be used to evaluate candidates. These criteria are:

- The State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments.
- The facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls.
- The State plan for implementing tolls on the facility takes into account the interests of local, regional and interstate travelers.
- The State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable.
- The State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate system.

In addition to the above, the environmental scoping analysis information submitted will be used in evaluating candidate projects. A candidate project perceived to have lesser environmental impacts may be given preference.

Phase 2

It is recognized that the NEPA impacts of a proposed pilot project under this program, not only involve those associated with the proposed reconstruction/rehabilitation activities themselves but also those associated with converting a free Interstate facility to a toll facility, such as potential changes in travel patterns, construction of toll collection facilities, and economic equity issues. The impacts associated with conversion from a free to toll facility as well as the impacts of the physical construction activities of the reconstruction/rehabilitation project need to be addressed before a candidate pilot project is given final approval as a pilot project.

Accordingly, in Phase 2 a State will be required to develop, for FHWA acceptance, appropriate NEPA documentation for the pilot project. Although no specific time limits are established for the NEPA process to be completed for a pilot project, it is expected a State will accomplish it in a timely manner. If this does not occur, a candidate's ''provisional'' acceptance may be withdrawn and offered to another candidate submitted during Phase 1.

Submission Process

A Phase 1 application from a State is to be submitted to the division office. Applications are to be received in Headquarters by March 31, 1999.

The division office is to ensure the application is complete and fully addresses the items noted above for a Phase 1 application. Incomplete applications received by Headquarters will be returned to the division office. In addition, the division office should review the application based on their knowledge of the proposed candidate project and the State's program and provide detailed comments for Headquarters consideration.

Phase 2 tasks will also be coordinated through the division office. We will provide additional guidance on this later.

Questions concerning this memorandum should be directed to Jim Overton (202–366–4653) of the Federal-Aid and Design Division.

Signed by,

Thomas J. Ptak.

[FR Doc. 99–3206 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4320; Notice 2]

Shelby American, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

We are granting the application by Shelby American, Inc., of Las Vegas, Nevada (''Shelby American''), for an exemption until January 1, 2001, from the automatic restraint provisions of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* (S4.1.5.3). Shelby American applied for an exemption on the basis that compliance would cause substantial economic hardship to a manufacturer that had tried in good faith to comply with the standard.

We published notice of receipt of the application on August 18, 1998 (63 FR 44302), affording 30 days for comment. However, no comments were received.

Shelby American is a Texas corporation, privately held and wholly

owned by Carroll Shelby. Its current business activities are conducted by three wholly owned subsidiaries. The first of these subsidiaries is Shelby Series One, Inc., the unit that will produce a new sports car which is the subject of the application for a temporary exemption. At the time the application was filed, these vehicles existed in prototype form only, and none had been produced. The second subsidiary is Shelby CSX4000, Inc., which produces ''a component vehicle sold without engine or transmission,'' to individuals who will install the power train of their choice. In 1997, 75 of these Cobra replica assemblies were sold. The third subsidiary is Shelby Original 427S/Cs, Inc., whose business is to assemble automobiles ''from certain new old stock parts surviving from the original 1965 Shelby Cobra production run * * * supplemented by newly manufactured parts utilizing original tooling.'' Two such vehicles have been assembled and sold as of the date of the application.

The Series I is a two-passenger open convertible sports car, powered by the Oldsmobile Aurora engine. The first prototypes were shown in early 1997. Shelby American has asked to be excused from compliance with the automatic restraint requirements of Standard No. 208, relating that it is working ''with many outside companies'' to complete the vehicle development and certification. Development of the Series I started in March 1995 (i.e., engineering tasks subsequent to initial design development). As of the filing of its application, Shelby American had spent an estimated total of 400 man hours and $75,000 related to air bag development. As with development of the engine and interior, the applicant must contract the air bag development to an outside company. This cost will total $4,643,500 over the period of time for which it has asked for an exemption. Additional expenditures of $546,000 will be necessary to cover the costs of testing, and integration of airbag wiring. In the interim, the Series I will be equipped with a three-point driver and passenger restraint system. The applicant is optimistic that it can sell 500 Series I cars in the period for which it has requested exemption. With these sales ''Shelby American will be able to support the estimated $216,229 monthly development expenditure necessary for implementation of the airbag at the end of the two year period.''

Shelby American had no material operations in 1995. Its unaudited consolidated balance sheet showed a net loss of $738,415 for 1996, and a net income of $147,904 for 1997.

The applicant argued that ''the production of the Shelby Series I is in the best interest of the public and the US economy.'' At the time of its application, the company planned to open a new 100,000 square foot facility in June 1998 in Las Vegas to produce the Series I. The new facility ''will provide direct employment to approximately 200 employees.'' In addition, ''there are approximately 25 development/partner companies working with Shelby American on the development of the Shelby Series I, providing indirect employment for those companies' personnel * * *'' The car will be sold through select Oldsmobile dealers * * * providing employment to many sales and service personnel at the dealership level.'' Most major components are produced in the United States, including the engine (Oldsmobile), tires (Goodyear), and transmission (ZF, from RBT, a US company). The Series I is technically advanced, combining ''an aluminum chassis with a carbon-fiber body, a new concept amongst production vehicles, which provides strength and durability while minimizing weight.'' Shelby American believes that ''the reduced weight achieved with this vehicle will translate into a new standard for improved emissions and fuel efficiency. Aside from Standard No. 208, the car will be certified as conforming to all applicable Federal motor vehicle safety standards.

As noted earlier, we received no comments on the application. However, several aspects of Shelby American's operations concerned us, and we commented on these in letters to the company on July 17, 1998, and October 15, 1998. The company responded to our concerns on November 25, 1998.

Shelby American's application informed us that its subsidiary, Shelby Original 427S/Cs, Inc., had assembled two vehicles, termed Continuation Cars, ''from certain new old stock parts surviving from the original 1965 Shelby Cobra production run * * * supplemented by newly manufactured parts utilizing original tooling.'' We informed the company that, in our opinion, vehicles produced under these facts must comply with all Federal motor vehicle safety standards in effect at the time of their assembly, and that its application had not covered these vehicles. The company replied that its Continuation Cars ''will only be sold as race cars, not as licensed vehicles for use on the public roads'' and that ''to the extent Shelby issues any statements of origin for these vehicles, it will be stated that the vehicles are not titled for highway use.''

We were also concerned about the operations of Shelby CSX4000, Inc., which produces ''a component vehicle sold without engine or transmission.'' We informed the company that we would regard it as the ''manufacturer'' and responsible for safety standard compliance certification if it offered an engine and transmission concurrently with the component vehicle or as part of the sales transaction. Shelby American responded that ''these are being sold by Shelby only as component vehicles, without engine and transmission, which are to be installed by the owner or at his or her direction. * * *'' While this falls short of a positive statement that the company is not furnishing an engine and transmission as part of the sales transaction, Shelby American's statement that the vehicles are sold only as component vehicles can reasonably be interpreted as meaning that it is not furnishing an engine and transmission for these vehicles.

Finally, we had been concerned with an article appearing in the September 21, 1998, issue of Business Week on the Shelby Series 1. This article, ''Road Rockets for the Jaded,'' stated that ''Shelbys are selling briskly. In Vegas, [the author] met one high roller who has bought five of them for resale.'' Shelby American has informed us that it has only taken deposits on the Series 1, and that ''no Series 1 vehicles, in whole or in part, have left the possession of Shelby American, Inc.'' ''No cars have been delivered, and no cars will be delivered'' unless and until we grant its application for exemption ''and all appropriate engine/emissions certifications are obtained and affixed to the vehicles.''

In order to grant Shelby American's application, 49 U.S.C. 30113 requires us to make two findings. The first is that compliance with Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The second finding is that a temporary exemption is consistent with the public interest and the objectives of 49 U.S.C. Chapter 301—Motor Vehicle Safety.

In determining the existence of hardship, we begin by balancing a small manufacturer's recent annual net income history against its estimates of costs to comply, and continue by considering intangibles such as loss of market if an exemption is not granted. Shelby had no material operations in 1995. Its net loss in 1996 was only slightly offset by its net income in 1997,

for a cumulative loss of $590,511. On the other hand, development and testing costs are estimated to exceed $5,000,000. We believe it manifest that to require immediate compliance with automatic protection specifications would cause Shelby ''substantial economic hardship'' within the meaning of the statute. We note that an exemption will allow sales generating to ''support the estimated $216,229 monthly development expenditure'' to comply with Standard No. 208 at the end of the exemption period.

In finding whether an applicant has tried to comply with a standard in good faith, we ask an applicant to provide a chronological outline of its efforts. In this case, development is said to have begun in March 1995, and the company has learned that it must use outside assistance to comply. We are informed that the company, as of the date of its application, had ''spent an estimated total of 400 man hours and $75,000 related to development.'' Given its limited resources, we believe that the company's effort shows the requisite good faith attempt to meet Standard No. 208.

Shelby supports its argument that an exemption is consistent with the public interest by citing that its new facility will create jobs for 200 people, that 25 other companies are helping it to produce the Series 1, that the Series 1 will be sold through Oldsmobile dealers, and that the vehicle employs new materials techniques that ''will translate into a new standard for improved emissions and fuel efficiency.'' We have frequently found in the past that the public interest is served by providing employment opportunities and technological advancement, cogent arguments here as well. Finally, in support of an argument that an exemption is consistent with objectives of motor vehicle safety, Shelby American confirms that the Series 1 will be certified as conforming to all Federal motor vehicle safety standards other than Standard No. 208, and will be fitted with a three-point driver and passenger restraint system. We note, also, that there will be only a very limited number of exempted vehicles on the roads, only 500 by July 1, 2001.

Therefore, in consideration of the foregoing, and as required by 49 U.S.C. 30113, I find that compliance with Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith, and that an exemption is consistent with the public interest and 49 U.S.C. Chapter 301—Motor Vehicle Safety. Accordingly, Shelby American, Inc., is hereby granted NHTSA Temporary Exemption No. 99–1, expiring January 1, 2001, from S4.1.5.3 Passenger cars manufactured on or after September 1, 1997, of 49 CFR 571.208 Standard No. 208, *Occupant Crash Protection*.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued: February 5, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–3293 Filed 2–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–68 (Sub-No. 3X)]

Lake Superior & Ishpeming Railroad Company—Abandonment Exemption—in Marquette County, MI

On January 21, 1999, Lake Superior & Ishpeming Railroad Company (LS&I) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 3.54-mile line of railroad located wholly within the city and county of Marquette, MI, extending from milepost 50.23, near the Highway 41/Hampton Street intersection, to milepost 53.77, near the Hawley Street crossing. The line traverses United States Postal Service Zip Code 49855 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co. Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 11, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 2, 1999. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–68 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Phillip B. Maxwell, Hackett & Maxwell, P.C., 888 W. Big Beaver, Suite 1470, Troy, MI 48084. Replies to the LS&I petition are due on or before March 2, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 4, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–3208 Filed 2–9–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form SS–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form SS–8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

DATES: Written comments should be received on or before April 12, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

OMB Number: 1545–0004.

Form Number: SS–8.

Abstract: Form SS–8 is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses the information on Form SS–8 to make the determination.

Current Actions: There are no changes being made to the Form SS–8 at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, Federal government, farms, and state, local or tribal governments.

Estimated Number of Respondents: 9,730.

Estimated Time Per Respondent: 35 hrs., 53 mins.

Estimated Total Annual Burden Hours: 349,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–3282 Filed 2–9–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Information on Impact To Discontinue Use of Magnetic Tape for Federal Tax Deposits

SUMMARY: This announcement requests current transmitters of tax payment information through the Federal Tax Deposit System on magnetic tape to send their comments to the Internal Revenue Service (IRS) on the impact of eliminating this program for tax periods beginning after December 31, 1999.

Background

The North American Free Trade Agreement Implementation Act (NAFTA) mandates that the Secretary of the Treasury (Secretary) phase-in the collection of a minimum percentage of certain types of depository taxes by electronic funds transfer (EFT) and develop and implement an EFT system for the collection of such taxes. The Secretary has delegated responsibility to the IRS for the former and to the Financial Management Service (FMS) for the latter. The IRS is responsible for identifying the actions necessary to reach the minimum percentage requirements. Elimination of magnetic tape for federal tax deposits is one of the steps needed to achieve those goals. Please submit your comments in writing to Melvyn S. Barkin by March 5, 1999, on the impact of discontinuing the submission of magnetic tape for federal tax deposits.

ADDRESSES: Questions or concerns should be directed to Melvyn S. Barkin at IRS, Electronic Tax Administration, Electronic Programs Operations Office, OP:ETA:O:F, New Carrollton Federal Building, 5000 Ellin Road, C4–353, Lanham, MD 20706 via E-mail at *mel.s.barkin@ccmail.irs.gov* or faxed to (202) 283–7434 ATTN: Melvyn S. Barkin.

Approved:

Terence H. Lutes,

National Director, Electronic Program Operations Office, Electronic Tax Administration.

[FR Doc. 99–3281 Filed 2–9–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of E.O. 10450. USIA has requested approval for a three-year extension of an information collection entitled ''Overseas Activities Data'', under OMB control number 3116–0014 which expires March 31, 1999. Estimated burden hours per response is thirty minutes.

DATE: Comments are due on or before March 12, 1999.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published December 16, 1998, volume 63, number 241. Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Overseas Activities Data.

Form Numbers: IAP–10.

Abstract: The form serves as a supplement to SF–86, ''Security Investigation Data for Sensitive Positions'' and is used to obtain names of persons currently in the United States, who have personal knowledge of the overseas activities of applicants for employment in the domestic or foreign service. The information is for security purposes only.

Proposed Frequency of Responses:

No. of Respondents—200
Recordkeeping Hours—.50
Total Annual Burden—100

Dated: February 2, 1999.

Rose Royal,

Federal Register Liaison.

[FR Doc. 99–2751 Filed 2–9–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a revision and three-year extension of an information collection entitled ''College and University Affiliations Program'', under OMB control number 3116–0179 which expires March 31, 1999. Estimated burden hours per response is thirty hours. Respondents will be required to respond only one time.

DATES: Comments are due on or before March 12, 1999.

Copies: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The 60-day **Federal Register** Notice soliciting comments on this collection of information was published on December 18, 1998, volume 63, no. 243.

Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0179) is estimated to average thirty hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Title: College and University Affiliations Program.

Form Numbers: None.

Abstract: Under the College and University Affiliations Program, USIA offers grants-in-aid to support the development or enhancement of institutional partnerships between U.S. and foreign colleges and universities. The program promotes mutual understanding, strengthens research and teaching capabilities, and improves the academic curricula.

Proposed Frequency of Responses:

No. of Respondents—86
Recordkeeping Hours—30
Total Annual Burden—2,580

Dated: February 2, 1999.

Rose Royal,

Federal Register Liaison.

[FR Doc. 99–2752 Filed 2–9–99; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Wednesday
February 10, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 180
Civil Penalties for Fair Housing Act Violations; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

[Docket No. FR–4302–I–02]

RIN 2529–AA83

Civil Penalties for Fair Housing Act Violations

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Interim rule.

SUMMARY: On December 18, 1997, HUD published for public comment a proposed rule that would amend HUD's regulations governing hearing procedures for civil rights matters to clarify that, in a given case, an Administrative Law Judge (ALJ) may, and in appropriate circumstances should, assess more than one civil penalty against a given respondent, where the respondent has committed separate and distinct acts of discrimination. The rule also proposed to amend these regulations to describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice. This interim rule makes effective the amendments in the December 18, 1997 proposed rule, takes into consideration the public comments received on the proposed rule, and solicits additional public comments on the rule. All public comments will be taken into consideration in the development of the final rule.

DATES: *Effective date:* March 12, 1999. *Comment due date:* Comments on the interim rule are due on or before: April 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Stephen I. Shaw, Office of Litigation and Fair Housing Enforcement, Room 10258, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1042 (this is not a toll-free telephone number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The December 18, 1997 Proposed Rule

On December 18, 1997 (62 FR 66488), HUD published for public comment a proposed rule that would interpret the Fair Housing Act (the Act) to allow Administrative Law Judges (ALJs) to assess a separate civil penalty for a series of acts involving housing discrimination. Under the Act, housing discrimination violations carry maximum civil penalties for first-, second-, and third-time offenders. A number of ALJs have interpreted the Act's provisions narrowly and assessed a single civil penalty against a violator, even where the violator committed more than one separate and distinct act of discrimination.

The December 18, 1997 proposed rule advised that it would amend HUD's regulations at 24 CFR part 180 (Hearing Procedures for Civil Rights Matters) to clarify that, in a given case, an ALJ may, and in appropriate circumstances should, assess more than one civil penalty against a given respondent, where the respondent has committed separate and distinct acts of discrimination. The December 18, 1997 proposed rule also advised it would amend part 180 to describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice.

In addition to the substantive amendments described above, the December 18, 1997 proposed rule advised of a clarifying change to 24 CFR part 180. Specifically, the December 18, 1997 rule proposed to move the provisions governing the assessment of civil penalties found at § 180.670(b)(3)(iii)(A), (B), and (C) to a new § 180.671. HUD also proposed to make changes to certain of these provisions for purposes of clarity.

This interim rule is applicable to all fair housing cases filed with HUD on or after the effective date of this rule. This rule, however, does not state to what degree it applies to pending administrative Fair Housing Act cases as of that date. HUD intends that the rule apply to any cases it charges on or after the effective date of the rule.

The December 18, 1997 proposed rule provided additional information on the amendments to 24 CFR part 180.

II. Differences Between the December 18, 1997 Proposed Rule and This Interim Rule

This interim rule makes effective the amendments in the December 18, 1997 proposed rule and takes into consideration the public comments received on the proposed rule. HUD is making two additional changes to the proposed rule in response to public comment. First, HUD has clarified the definition of ''separate and distinct housing practice'' in § 180.671(b) (see HUD's response to the comment entitled ''Definition of 'separate and distinct housing practice' is unclear'' in section III of this preamble for additional information regarding this change). HUD has also revised the definition of ''housing-related hate act'' in § 180.671(c)(2)(ii). This revision clarifies the distinction between discriminatory housing practices that violate section 818 of the Act but would not be housing-related hate acts, and such hate acts (see HUD's response to the comment entitled ''Definition of 'housing-related hate act' is confusing'' in section III of this preamble for additional details regarding this change).

This rulemaking is part of President Clinton's ''Make 'Em Pay'' initiative, which is designed to fight housing-related acts of hate violence and intimidation with increased enforcement and monetary penalties. In order to provide additional public participation in this rulemaking, HUD is soliciting comments on this interim rule. All public comments will be taken into consideration in the development of the final rule.

III. Discussion of Public Comments on the Proposed Rule

The public comment period on the proposed rule closed on January 20, 1998. Six public comments were received by HUD. This section of the preamble presents a summary of the significant issues raised by the public commenters on the December 18, 1997 proposed rule, and HUD's responses to these comments.

A. The Public Comments, Generally

Most of the commenters expressed reservations about HUD's proposed amendments to 24 CFR part 180. Generally, the comments can be divided into four broad categories: (1) Commenters that believe the proposed rule was unclear and request additional guidance; (2) commenters that express

concern about the impact of the proposed regulations; (3) commenters that question HUD's authority or justification for issuing the rule; and (4) commenters that question whether HUD complied with the necessary rulemaking requirements in issuing the proposed regulations.

B. Commenters that Believe the Proposed Rule Was Unclear

Comment: Definition of ''housing-related hate act'' is confusing. One commenter wrote that the definition of ''housing-related hate act'' in the proposed rule included most or all discriminatory practices prohibited by the Act. According to the commenter, the proposed rule marks a sharp break with HUD's traditional practices, because it is the first time that HUD has characterized any such discrimination as ''hate.'' The commenter wrote that the new interpretation would lead to confusion in HUD's fair housing enforcement process. The commenter described three possible areas of confusion:

1. *Definition may be applied too narrowly.* First, the commenter stated that the proposed definition may result in ALJs applying the standard too narrowly:

> ALJs may mistakenly believe that the word ''hate'' in the ''housing-related hate act'' standard requires that HUD must prove that ''hate''—rather than fear, financial self-interest, amusement, or any other factor—motivated a discriminatory housing act before an ALJ can apply that standard.

HUD Response. In response to the commenter's first point, the language of the definition of ''housing-related hate act'' found in new § 180.671(c)(2)(ii) does not imply the necessity to prove a motivational factor for such an act to fall within the definition. Rather, the definition describes the objective characteristics of the act that must be found for such an act to fall within the definition (i.e., the act is characterized by a threat or the actual carrying out of violence, intimidation, coercion, assault, bodily harm, and/or harm to property). Accordingly, HUD does not believe an ALJ applying this definition would be confused into thinking that the definition's inclusion of the term ''hate'' requires proof of a respondent's internal motivation before the ALJ could find that the respondent has committed a housing-related hate act. Therefore, HUD did not revise the proposed rule as a result of this comment.

2. *Definition may be applied too broadly.* The commenter also wrote that, although the use of ''hate'' in the proposed definition could narrow its application, the lack of clarity in the definition may result in ALJs applying the standard too broadly:

> [The proposed] definition of ''housing-related hate act'' includes discriminatory housing practices that also involve ''threat[s],'' ''intimidation,'' and ''coercion,'' among other characteristics. However, those terms describe most, if not all, discriminatory housing practices. Absent any further clarification, an ALJ could determine that most or all discriminatory housing practices are ''housing-related hate acts'' favoring the imposition of maximum penalties.

HUD Response. The commenter's second concern indicates that the commenter believes that HUD's proposed definition of housing-related hate act covers all forms of housing discrimination anywhere in the Act. The definition of housing-related hate act does not include all discriminatory housing practices. For example, racial steering (i.e., discouraging a person from renting or buying a dwelling in a particular area, or encouraging a person to rent or buy in a particular area, or assigning a person to housing in a particular area, on account of that person's race, *see* 24 CFR 100.70(c)), would ordinarily not include a threat of, or actual ''violence, intimidation, assault, bodily harm, and/or harm to property.'' (*See* 24 CFR 180.671(c)(2)(ii).) As another example, a difference in the terms and conditions of rental, such as charging a tenant of a particular ethnic, national, racial or religious background more rent than other tenants, would not include the elements that HUD has identified as necessary to constitute a housing-related hate act.

The commenter may have meant that HUD's proposed definition of housing-related hate act covers ''most, if not all'' of the conduct prohibited by section 818 of the Act (42 U.S.C. 3617). That provision makes it illegal for anyone to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of his or her fair housing rights, or on account of having aided another person in the exercise and enjoyment of his or her fair housing rights. Assuming that this is what the commenter meant, it seems to follow that the substance of the comment is that it is unnecessary for HUD to define housing-related hate act as being something apart from section 818 itself. In proposing and adopting this definition, HUD intends that the definition focus on (actual or threatened) violence, assault, bodily harm and property damage, as well as intimidation and coercion that contains those violent elements, so that the definition refers to the more heinous and violent acts among all the acts which violate section 818. HUD does not intend that the proposed definition of housing-related hate act include non-violent discriminatory acts which violate section 818.

HUD believes that there are clear distinctions between discriminatory housing practices that violate section 818 but would not be housing-related hate acts. In order to clarify this distinction, HUD has revised the definition of housing-related hate act in new § 180.671(c)(ii) to read as follows:

> For purposes of this section [§ 180.671], the term ''*housing-related hate act*'' means any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied by actual violence, assault, bodily harm, and/or harm to property; intimidation or coercion that has such elements; or the threat or commission of any action intended to assist or be a part of any such act.

The following examples demonstrate conduct which violates section 818, but which would not be within the meaning of the revised definition. One example of such conduct would be where the owner or manager of an apartment complex fired an employee because he or she rented apartments to African-American and Mexican-American applicants, contrary to the instructions of the owner or manager to discriminate against such applicants (*See Smith* v. *Stechel*, 510 F.2d 1162, 1164 (9th Cir. 1975)).

Another example of a discriminatory housing practice that violates section 818 but which HUD does not intend to include in the revised definition of housing-related hate act involves a local jurisdiction using a threat of criminal prosecution to deprive members of protected classes of their housing rights. In *People Helpers* v. *City of Richmond* 789 F.Supp. 725 (E.D. Va. 1992), plaintiff was a non-profit organization whose mission was to provide affordable housing for individuals with mental and physical handicaps. It purchased a building in Richmond, VA for the purpose of providing housing to such individuals. The City undertook a variety of investigations of the plaintiff's operations and the conditions in the building. Plaintiff sued, claiming the City's investigations were motivated by animus against plaintiff's disabled clients and interfered with the enjoyment of its fair housing rights. The court ruled that plaintiff's claims stated a viable cause of action, and it was entitled to try to prove that the City's investigations interfered with the organization's fair housing rights in violation of section 818. Because the

City's actions were non-violent, they would not be housing-related hate acts.

Further, retaliating against a person because he or she has made a fair housing complaint or otherwise assisted or participated in a proceeding under the Act would violate section 818 (24 CFR 100.400). This type of retaliation, such as raising a tenant's rent because the tenant had engaged in a protected activity, would not amount to a housing-related hate act as HUD has defined that term in this interim rule.

In addition, some types of harassment directed to preventing the enjoyment of fair housing rights can also constitute a section 818 violation without constituting a housing-related hate act as HUD has defined it. One example is found in *HUD* v. *Williams* (2A Fair Housing—Fair Lending ¶ 25,007 at 25,118–19 (HUD ALJ March 22, 1991)), in which a landlord's 6:00 a.m. telephone call to a tenant with HIV inquiring about the tenant's condition was found to violate section 818. Because this activity did not involve a threat of physical violence to the tenant or his property, this act was found not to constitute a housing-related hate act.

On the other hand, although hate acts, as defined, involve violence or a threat of violence, that does not mean that a respondent must have been convicted of a hate crime before an ALJ may find that respondent has committed a housing-related hate act. *See, e.g., HUD* v. *Simpson*, 2A Fair Housing—Fair Lending ¶ 25,082 (HUD ALJ Sept. 9, 1994) (neighbors found liable in HUD fair housing case for engaging in various forms of harassment and threat against neighbors of South American origin, violating Section 818 of the Act, 42 U.S.C. 3617).

3. *Definition may lead to inquiries about motivation.* Finally, the commenter wrote that the proposed standard may shift the focus of enforcement proceedings to the motivation of the respondent:

> [A] mistaken focus on ''hate'' [in the proposed standard] may prompt ALJs to allow unwarranted inquiries into motivation during enforcement proceedings. Thus, hearings that should properly focus on discrimination—regardless of any underlying motivation for that discrimination—could instead focus on why the respondent discriminated.

HUD Response. As HUD noted above, the definition in § 180.670(c)(2)(ii) is based on objective criteria that do not require an inquiry into motivation. An ALJ, however, properly may inquire into motivation in considering whether to assess a civil penalty, and, if so, how much. For instance, an ALJ may consider motivation under the factors of degree of culpability and nature and circumstances of the violation (*see, e.g., HUD* v. *Gutleben*, 2A Fair Housing—Fair Lending ¶ 25,103 (HUD ALJ Aug. 15, 1994) (ALJ expressly considered one respondent's degree of racial animus in assessing the maximum civil penalty against him, while giving credit to another respondent's minimal culpability in declining to assess any civil penalty against her)).

Comment: Recommended substitute language for proposed § 180.671(c)(2). One commenter recommended substitute language for proposed § 180.671(c)(2), which defines ''housing-related hate act.'' According to the commenter, the suggested language tracks the relevant portion of federal criminal civil rights legislation introduced by Senators Kennedy and Specter (S. 1529) and Congressmen Schumer and McCollum (H.R. 3081), which President Clinton and the Department of Justice have endorsed. The commenter believes that the substitute language sets clear evidentiary criteria for when an ALJ should maximize a civil penalty. The commenter also recommended the substitute language because an ALJ will be able to apply the revised standard only when particularly violent discriminatory housing practices occur. The substitute provision would read:

> Where the ALJ finds any respondent to have committed a discriminatory housing practice under section 818 of the Fair Housing Act that resulted in death or bodily injury to any person, or involved an attempt, through the use of fire, a firearm, or an explosive device to cause death or bodily injury to any person, the ALJ shall take this fact into account when considering the factors listed in paragraphs (c)(iii), (iv), (v), and (vi) of this section.

HUD Response. For the reasons discussed above, HUD does not agree that the definition of ''housing-related hate act'' in 180.670(c)(2)(ii) (as revised) is too narrow, too broad, or will lead to improper inquiries regarding motivation. Rather, the nature of the act involved in committing the discriminatory housing practice is the determining factor as to whether the discriminatory housing practice is a housing-related hate act. Furthermore, the commenter's proposed definition is under-inclusive. For example, a cross burning on a minority family's front lawn, bricks thrown through the windows of a minority family's house, and hate graffiti threatening violence sprayed on a minority family's house all would fall outside the commenter's proposed definition, because they neither attempt nor result in ''death or bodily injury.'' HUD believes that each of those acts is properly included within the definition of housing-related hate act in this interim rule.

Comment: HUD should provide additional guidance on the six factors ALJs must consider in determining the civil penalty amount. Proposed § 180.671(c) described the six factors that an ALJ must consider in determining the civil penalty amount for each separate and distinct discriminatory housing practice. Two commenters recommended that HUD revise the proposed rule to provide additional guidance on the six factors. One of the commenters saw two related benefits arising from the provision of the additional guidance:

> Providing this additional clarification to the six factors will allow the ALJ to impose the maximum civil penalties when they are needed, but will not penalize, with unnecessary severity, respondents who, for example, acted unintentionally or without malice. The additional guidance will also help to ensure greater consistency among ALJs in assessing appropriate penalties.

HUD Response. The six factors were first included as an instruction to ALJs in the House Report on the Fair Housing Act Amendments of 1988 (H. Rep. 100–711, 100th Cong., 2nd Sess. 37 (1988), 1988 U.S. Code Cong. & Admin. News 2198). The ALJs have applied the six factors consistently in their decisions (*see, e.g., HUD* v. *Kormoczy*, 2A Fair Housing—Fair Lending ¶ 25,071 at 25,664 (HUD ALJ May 16, 1994) (listing the six factors and specifically applying the degree of culpability to lower the civil penalty assessed); *HUD* v. *Pheasant Ridge Associates, Ltd.*, 2A Fair Housing—Fair Lending ¶ 25,123 at 26,052 (HUD ALJ Oct. 25, 1996) (focusing on degree of culpability and financial resources factors to raise the civil penalty assessed); *HUD* v. *Simpson*, 2A Fair Housing—Fair Lending ¶ 25,082 at 25,764 (HUD ALJ Sept. 9, 1994) (focusing on previous violations, nature and circumstances of the violation, the goal of deterrence, and respondent's financial circumstances factors to raise the civil penalty assessed); *HUD* v. *Murphy*, 2A Fair Housing—Fair Lending ¶ 25,002 at 25,058 (July 13, 1990) (applying all the factors to reduce the civil penalty assessed). In other words, HUD is codifying the legislative history and case law relating to the six factors. HUD, therefore, finds it unnecessary to clarify their application further through a rulemaking.

Comment: HUD should expand the list of factors to be considered by an ALJ in determining the civil penalty amount. One commenter recommended that HUD add five additional factors to the

list in proposed § 180.671(c). Specifically, the commenter suggested that the ALJ should also be required to consider whether the respondent has:

(1) Admitted guilt without the need for a hearing;

(2) Already made, or begun, restitution to the victims;

(3) Unintentionally or unknowingly committed the violation;

(4) Previously attended or agreed to adopt additional training or education; or

(5) Tried to mitigate the damage caused or undertaken corrective action prior to being charged with the violation.

The commenter also suggested that the first factor listed in proposed § 180.671(c) (''whether the respondent has previously been adjudged to have committed unlawful housing discrimination''), be revised to clearly distinguish between adjudication and consent agreements (where liability has been denied), as an encouragement to the latter.

HUD Response. As stated above, the six factors derive from the legislative history and have been consistently cited and utilized in case law. Two of the factors (''nature and circumstances of the violation'' and ''other matters as justice may require'') give ALJs particularly broad discretion to weigh any matters that appropriately might affect the amount of any civil penalty to be assessed. Further, in cases where a respondent unknowingly committed a violation or made restitution without the need for a hearing, ALJs have taken these facts into account to lower the amount of civil money penalty assessed (*see, e.g., HUD* v. *Wagner,* 2A Fair Housing—Fair Lending ¶ 25,032 at 25,339 (HUD ALJ June 22, 1992) (one respondent acknowledged her error in refusing to rent to families with children and, because of that admission, was assessed a lower civil penalty than the other respondents under the need for deterrence factor); *HUD* v. *Murphy,* 2A Fair Housing—Fair Lending ¶ 25,002 at 25,058–59 (July 13, 1990) (civil penalty reduced in familial status discrimination case where respondents were ill-informed of the law and, albeit erroneously, believed that they were correctly applying an exemption for housing for older persons); *HUD* v. *Gutleben,* 2A Fair Housing Fair Lending ¶ 25,078 at 25,731 (HUD ALJ Aug. 15, 1994) (ALJ did not assess civil penalty against one respondent where she immediately curtailed her wrongful acts by rescinding an eviction notice the day after she issued it).

Indeed, it would not be possible to list in a rule all the possible mitigating factors that might appropriately affect the assessment of a civil penalty. Since the six factors established by the Congress and which the ALJs consistently apply already allow for adjustments in the assessment of civil penalties based on the individual circumstances of the case, and since ALJs do in fact rely on those factors to make such adjustments, HUD declines to adopt the commenter's suggestion to add more factors.

In response to the commenter's second suggestion, the first factor refers to whether a respondent has been ''adjudged'' to have previously committed a discriminatory housing act. A consent agreement in which liability has been denied is not a judgment of liability, but rather a settlement enforceable by court order. Therefore, there is no possibility of confusion and no need to ''clearly distinguish'' between a respondent who has been ''adjudged'' in violation of the Act and one who signs a consent agreement denying liability. Therefore, HUD declines to modify the first factor as suggested.

Comment: Definition of ''separate and distinct discriminatory housing practice'' is unclear. Two commenters wrote that the definition of ''separate and distinct discriminatory housing practice'' in the proposed rule was unclear. One commenter stated that given the ''[v]ague definition * * * each ALJ would be left to make such determinations with little guidance.'' The other commenter did not believe that the definition could be clarified: ''[I]t is impossible to draft a definition which clearly identifies the standards for defining a single discriminatory practice.''

HUD Response. HUD agrees that the definition needs to be clarified. Accordingly, HUD has revised § 180.671(b) to express HUD's intention more clearly. The revised definition reads as follows:

Definition of separate and distinct discriminatory housing practice. A separate and distinct discriminatory housing practice is a single, continuous uninterrupted transaction or occurrence that violates section 804, 805, 806 or 818 of the Fair Housing Act. Even if such a transaction or occurrence violates more than one provision of the Fair Housing Act, violates a provision more than once, or violates the fair housing rights of more than one person, it constitutes only one separate and distinct discriminatory housing practice.

The following illustrative examples are designed to help the public and ALJs distinguish between cases involving only one single discriminatory housing practice and cases involving multiple such practices that are potentially subject to the assessment of multiple civil penalties.

Example 1: An African-American family of four visits a white landlord in order to rent an apartment from him. The landlord states that she does not rent to African-Americans.

The entire transaction occurred at a single time and constitutes a single, continuous transaction, even though it affected more than one person and violated two sections of the Act, namely 42 U.S.C. 3604(a) and (c) (refusal to rent due to race and a statement indicating discrimination based on race). Under the definition, the conduct constituted a single separate and distinct fair housing practice, and an ALJ could assess a maximum of a single civil penalty only.

Example 2: A man with a mental disability seeks to rent an apartment. Although the landlord has units available, he refuses to rent to this man because of the mental disability. A few weeks later, the man's sister, who also has a mental disability, applies to rent an apartment at the same development. Again, the landlord has a unit available, but he refuses to rent to her because of her mental disability. The brother and sister together file a single fair housing complaint.

By refusing to rent to either sibling on account of disability, the landlord violated 42 U.S.C. 3604(f)(1)(A). In this case, each attempt to rent was a single, continuous, uninterrupted transaction, separate and distinct from the other. Therefore, the landlord's conduct constituted two separate and distinct discriminatory housing practices. If otherwise appropriate, an ALJ could assess two separate civil penalties against the respondent.

Example 3: A Latino family moves into a neighborhood where no Latinos had lived before. A next-door neighbor begins organizing other neighbors into a campaign to force the Latino family out of the neighborhood. At one point, the neighbors, including the next-door neighbor, throw rocks through the Latino family's window. A few weeks later, a member of the Latino family steps outside to get her mail, at the same time the next-door neighbor is raking her garden. The next-door neighbor walks over to the Latino woman, and, with her rake in both hands, holds it near the Latino woman's face in a threatening manner, and says ''if you want to live to an old age, you'd better move out now.'' A few more weeks pass, and, one evening, the same group of neighbors that threw the rocks burns a cross on the Latino family's front lawn.

In this example, there are three acts that violate 42 U.S.C. 3617 that are not

continuous, because they are interrupted by the passage of time. The entire group of neighbors committed two separate and distinct acts, and the hostile neighbor committed three such acts. Therefore, they are multiple acts and an ALJ, if otherwise appropriate, could assess a separate civil penalty for each act.

Example 4: An African-American applies for a unit in a public housing authority's public housing system. Although there is an available unit of the appropriate bedroom size in a desirable section of the public housing system, the authority, because of the applicant's race, falsely states that no such unit is available and steers the applicant to a vacancy in a less desirable section, where crime, abandoned buildings and drug activity are rampant. The applicant accepts the unit but places her name on a list of tenants interested in transferring to the more desirable section, where there are fewer abandoned buildings, the crime rate is much lower, and ''open-air'' drug activity is nonexistent. After a few months, her name comes to the top of the transfer list. She learns through friends that a unit is available in the more desirable section. However, the management, again because of her race, falsely tells her that no such unit is available and denies her transfer.

In this example, the public housing authority violated 42 U.S.C. 3604(a) (refusal to rent a particular unit) and 3604(d) (falsely representing that a unit is unavailable) on each of the occasions mentioned in the example. The first incident, which was a form of racial steering, constituted a single discriminatory housing act under the definition, although the conduct violated two subsections of the Act. The second incident, a refusal to transfer, also constituted a single discriminatory housing practice that violated two subsections of the Act. The two incidents, however, were separate and distinct from each other and, therefore, under the definition, each constituted a separate and distinct discriminatory housing practice. Accordingly, the ALJ has the discretion to assess a civil penalty for each separate and distinct discriminatory housing practice, but not one for each of the two violations of the Act that occurred within each discriminatory housing practice (*see HUD* v. *Las Vegas Housing Authority*, 2A Fair Housing—Fair Lending ¶ 25,116 (HUD ALJ Nov. 6, 1995)).

Example 5: A group of people that objects to people of foreign national origin gathers at the home of a family that recently arrived from Russia and, over a 10-minute period, throws several rocks through the family's window in an attempt to intimidate them into moving. At the time of the rock throwing, there are four people in the house: a husband and wife and their two children. Each person who was home when this occurred was traumatized by the rock throwing. The husband was standing by the window and was struck by a rock. The wife was standing next to him and was cut by glass. The children suffered emotional harm.

In this example, each member of the group committed a single violation of 42 U.S.C. 3617, even though more than one rock was thrown and four people were affected, because the conduct was a single, continuous occurrence. The ALJ could at most assess one civil penalty against each respondent.

Comment: HUD should clarify its fair housing regulations and guidance before increasing the civil penalties for violating them. One commenter suggested that before HUD amends its fair housing civil penalty regulations, it should review its fair housing regulations and guidance for clarity. The commenter wrote that ''[s]imple notions of fairness should clearly indicate that it is unreasonable for the Department to subject housing providers to multiple civil penalties for violations of unclear or ambiguous fair housing regulations and guidance.''

HUD Response. During development of the December 18, 1997 proposed rule, HUD reviewed 24 CFR part 180 in its entirety for purposes of clarity. As a result of this review, the proposed rule included a clarifying amendment to part 180, which has been made effective by this rule. Specifically, this interim rule moves the lengthy provisions governing the assessment of civil penalties found at § 180.670(b)(3)(iii)(A), (B), and (C) to a new § 180.671. The transfer of these provisions to § 180.671 does not involve any substantive revisions to part 180, but is designed solely to make the part 180 regulations easier to understand.

Further, the public was afforded an opportunity to comment on the clarity of HUD's proposed amendments to part 180. HUD has made two clarifying changes to the proposed rule in response to public comment. First, HUD has clarified the definition of ''separate and distinct housing practice'' in § 180.671(b). HUD has also revised the definition of ''housing-related hate act'' in § 180.671(c)(2)(ii) to clarify the distinction between discriminatory housing practices that violate section 818 of the Act but would not be housing-related hate acts.

C. Commenters Expressing Concerns About Impact of Rule

Comment: Hate violence will not be stemmed by increasing civil penalties. One commenter doubted that increased civil penalties would deter housing-related acts of hate violence and intimidation. As the commenter wrote: ''Violence and other hate crimes carry criminal penalties. If these criminal penalties do not deter the crime, we fail to understand how an increase in a civil fine will deter these actions.''

HUD Response. The potential increase in civil money penalties to which the commenter refers applies to all multiple, separate acts of housing discrimination, not only to those with criminal penalties. Thus, criminal penalties will not necessarily be involved in these cases. Furthermore, not all potentially criminal violations of the Act are prosecuted as such. Finally, there is no rule of law requiring HUD to choose one form of deterrence over another. Some persons will be deterred by the threat of criminal prosecution, others may be more deterred by harm to the pocketbook. The President and the Secretary of HUD have determined to use all civil and criminal means at their disposal to deter housing discrimination.

Comment: The proposed rule threatens the balance between judicial and administrative enforcement of the Act. Two commenters wrote that the Act establishes a careful balance between the benefits of a timely administrative process and the rights of parties to have their cases heard in federal court before a jury. One of the commenters wrote that the standards for imposition of a civil penalty are lower than those for punitive damages in a federal district court, and therefore result in additional exposure for a respondent charged of discrimination. This commenter noted that the administrative civil penalties are capped to provide a level of certainty and to offset the additional exposure faced by respondents. The two commenters stated that, by authorizing increased civil penalties, the proposed rule would upset the balance between administrative and judicial enforcement of the Act. As one of the commenters wrote:

> If multiple penalties are available in the administrative process, we believe the majority of respondents would elect to go to federal court rather than subject themselves to the possibility of multiple civil penalties....Although defending a case in federal court is likely to be more costly and time consuming than defending the case in the administrative process, the lack of civil penalties in federal court will increase the

attractiveness of having the case defended in federal court by a jury of peers.

The second commenter wrote:

Any proposed change in administrative procedure should weight [sic] any effect it might have on whether it might encourage a party to elect [to have the action heard in federal court.] The proposed rule ignores any effect and should therefore be withdrawn.

HUD Response. Both commenters perceive that the Act established a ''balance'' between cases that proceed before ALJs and those in which one or more of the parties elects that the case be heard in federal court. In responding to this comment, some background may prove useful. Historically, either a complainant or respondent in a majority of fair housing cases in which HUD has issued a Determination of Reasonable Cause and a Charge have elected to have the case heard in federal court. For the period 1989 (when the Fair Housing Act Amendments of 1988 became effective) through 1997, the percentage of fair housing cases in which HUD found reasonable cause and where a respondent or complainant elected to have the case heard in federal court was 67%.

The first commenter's concern that a particular respondent may face higher monetary exposure to civil penalties under the proposed rule is not without basis. In administrative cases in which a respondent is charged with having committed more than one separate and distinct act of housing discrimination, there is a potential for a higher total monetary civil penalty assessment against that respondent as a result of HUD's interpretation explicitly allowing an ALJ to assess multiple civil penalties in an appropriate case. The commenter's further concerns, however (i.e., this exposure renders respondents' exposure ''uncertain'' where before it was ''capped,'' and that this uncertainty would upset the delicate balance between administrative and federal court adjudication), are unfounded.

With regard to the first concern, a respondent's potential total exposure to civil penalties still would be capped. This is so because HUD's Charge of Discrimination would set out the allegations as to the separate and distinct discriminatory housing practices, and, since there is a statutory cap on how large a civil penalty an ALJ can assess per discriminatory housing practice, the respondent would know its total possible civil penalty exposure. Therefore, the rule does not create the uncertainty about which the commenter expressed concern.

With regard to the second concern, since there is no uncertainty, that cannot be a basis to upset the delicate balance to which the commenter refers. On the other hand, since the total monetary cap on civil penalties in the administrative forum in cases alleging multiple discriminatory housing practices would be potentially higher, it is possible that difference might cause some respondents to elect to have their cases heard in federal court, where they might not have done so otherwise. This conclusion, however, is purely speculative.

Furthermore, there are countervailing factors that are likely to curtail a significant increase in respondents electing to have their cases heard in federal court. For example, civil penalties cannot be assessed in the typical federal court fair housing case (*But see* 42 U.S.C. 3614(d)(1)(C)). On the other hand, punitive damages are potentially available in federal court, but not in the administrative forum (*Compare* 42 U.S.C. 3612(o)(3) and 3613(c) *with* 42 U.S.C. 3612(g)(3)).

In addition, the only cases in which an ALJ may impose multiple civil penalties against a single respondent will be those in which the respondent is alleged to have committed multiple acts of discrimination. Thus, everything else being equal, these are likely to be more egregious cases—the same cases in which punitive damages are more likely to be awarded if heard in federal court. There seem to be no inherent reasons why respondents in these types of cases would choose to avoid the administrative forum only to face a possible award of punitive damages in federal court that has the potential of being much higher than the respondents' total civil penalty exposure in the administrative forum. Hence, HUD does not believe that the rule will necessarily affect the rate of respondents' electing to have their fair housing act cases heard in federal court.

In the final analysis, however, even if the commenters' speculation were to turn out to be correct, HUD believes that its interpretation of the Act's civil penalty provisions is correct and comports with Congressional intent. Therefore, even if some higher percentage of respondents were to choose to have their fair housing cases heard in federal court, that also would comport with Congressional intent.

Comment: Rule may unfairly penalize large housing providers. One commenter stated that the proposed rule would unfairly penalize large housing providers with many employees. These housing providers may be firmly committed to fair housing principles, but employ individuals who engage in discriminatory conduct. The commenter noted that a significant amount of time may elapse before the housing provider becomes aware of the discriminatory actions committed by an employee. If the employee committed several discriminatory acts within a short period of time, the housing provider would be assessed multiple penalties before it could take remedial action. The commenter wrote:

[W]e have a firm policy of not tolerating any discriminatory acts by our personnel and we provide on-going education and training to our personnel. However, we have over 500 employees that interact with the public. With the large number of employees, it is extremely difficult for us to be made immediately aware that one employee, out of hundreds, may be engaging in discriminatory practices. Multiple offenses could occur in a very short time frame before we were made aware of the discriminatory practice and before we could take the necessary corrective action.

HUD Response. Under the Act, an ALJ is not obligated to assess a civil penalty in an appropriate case (*see, e.g., HUD* v. *George,* 2A Fair Housing—Fair Lending ¶ 25,010 at 25,169 (HUD ALJ Aug. 16, 1991) (ALJ assessed civil penalty against company but not individual who was company's Secretary and part owner, because ''the evidence does not show that [he] was personally responsible in fact for the discriminatory conduct of [the company]. Rather, it appears he merely implemented company policy.'' *Id.*). The December 18, 1997 rule did not propose to change that. Moreover, while the rule made clear that the Act allows an ALJ to assess multiple civil penalties in appropriate circumstances, the rule did not, and could not have, proposed to mandate the assessment of multiple civil penalties whenever the ALJ finds multiple acts of discrimination in a single case, because the Act makes civil penalties discretionary (*see* 42 U.S.C. 3612(g)(3) (''Such order *may,* to vindicate the public interest, assess a civil penalty . . .'') (emphasis added)).

Thus, where an ALJ finds multiple discriminatory housing practices, under the six factors for determining civil penalties codified by this interim rule, ALJs will consider the nature and circumstances of the violation, each respondent's degree of culpability, and other factors as justice may require in determining the amount to assess for each violation. Accordingly, if a rogue employee in an otherwise law-abiding management firm were responsible for repeated fair housing violations unbeknownst to company officials and contrary to their instructions, the ALJ could take that fact into consideration when determining the number of civil penalties, if any, to be assessed against each respondent, and the amount of

each. Because firms have a duty to exercise supervision over their work force to ensure that its members do not violate the Act, an ALJ might assess some civil penalty against the company even in that situation (*see* the example in the response to the comment ''Proposed amendments may be abused by testers'').

Comment: Multiple penalties may unfairly penalize small housing providers. One commenter expressed concern that HUD's proposal to permit the assessment of multiple civil penalties would have an unfair impact on small housing providers. The commenter wrote that when a housing discrimination case involves multiple violations it is generally associated with a single property or individual. The commenter also wrote:

> [A]ccording to the 1990 U.S. Census, of the more than 40,455 firms that reported their business as ''operators of apartment buildings,'' 39,903, or 98% are small businesses. With small businesses one penalty is generally sufficient to change discriminatory housing behavior.

The commenter also questioned why the proposed rule did not address Subtitle B of the Small Business Regulatory Enforcement and Fairness Act of 1996 (Pub.L. 104–121, approved March 29, 1996; 5 U.S.C. 601 note *et seq.*) (SBREFA). Section 223, the only relevant substantive provision of Subtitle B, provides in part that:

> Each agency regulating the activities of small entities shall establish a policy or program . . . to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

HUD Response. First, the commenter provided no basis for its statement that ''with small businesses one penalty is generally sufficient to change discriminatory housing behavior.''

Second, whether a business is large or small, the Act prohibits it from committing housing discrimination not only on multiple occasions, but also single occasions. (*But see* Section 803(b) of the Act, 42 U.S.C. 3603(b), exempting from certain provisions of the Act specified small entities). Nevertheless, under the rule, ALJs are to consider six factors in assessing civil penalties, including the financial ability of respondent to pay, the nature and circumstances of the violation, and other factors as justice may require. HUD believes that the codification of these factors within the proposed rule provides assurance that the changes will not unfairly burden small housing providers with respect to the assessment of civil penalties against them. (*See, e.g., HUD* v. *Gaultney,* 2A Fair Housing—Fair Lending ¶ 25,013 (HUD ALJ Sept. 27, 1991) (in race discrimination case, respondent's civil penalty reduced due to consideration of his financial circumstances). On the other hand, ALJs have consistently held that a respondent has the legal burden of proving that its financial resources are inadequate to pay a civil penalty. *HUD* v. *Dellipoali,* 2A Fair Housing—Fair Lending ¶ 24,127 (HUD ALJ Jan. 7, 1997) at 26090. HUD does not intend to alter that burden by its codification of the six factors.

With regard to the commenter's second concern, SBREFA requires that an agency establish a policy regarding the reduction and, if appropriate, the waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity. Section 223(a) of SBREFA provides that, under appropriate circumstances, an agency may consider a small entity's ability to pay in determining the amount of any civil penalty to be assessed against it. In addition, section 223(b) of SBREFA specifically allows an agency to exclude from its civil penalty reduction/waiver policy entities that have been subject to multiple enforcement actions by the agency and those that have committed willful violations of law.

HUD believes the six factors that ALJs consider when assessing civil penalties, which this interim rule codifies, are consistent with these SBREFA provisions. Under the rule, ALJs may consider the financial ability of a respondent to pay when assessing a civil penalty. To the extent that a small entity may have less financial ability to pay a civil penalty than a large one, an ALJ may assess a lower civil penalty against a small entity, when to do so would otherwise be appropriate under this factor. (*See HUD* v. *Gaultney,* 2A Fair Housing—Fair Lending ¶ 25,013 at 25,195 (HUD ALJ Sept. 27, 1991). On the other hand, under SBREFA, an agency can exclude entities that have committed wilful violations of the law from its civil penalty reduction policy. In cases heard by ALJs, where an ALJ finds that a respondent wilfully committed a series of discriminatory housing practices, the ALJ, applying, inter alia, the culpability factor, would more likely assess multiple and higher penalties for such acts than otherwise. If the ALJ did so, that would not offend the civil penalty reduction/waiver provisions of the SBREFA. Likewise, an ALJ can assess a higher civil penalty against a respondent who has been adjudged previously to have committed discriminatory housing practices. Because the SBREFA allows for an exclusion for entities that have been subject to multiple enforcement actions by the agency, assessing a higher civil penalty against a prior bad actor also would not offend the civil penalty reduction/waiver provisions.

Comment: Proposed amendments may be abused by fair housing testers. One commenter stated that the proposed amendments might be abused by unscrupulous or overzealous fair housing testers:

> We are also concerned that testing organizations could target an individual employee and trap them into making multiple acts of discrimination in order to financially hurt an owner or manager who may be firmly committed to Fair Housing.

HUD Response. Fair housing testing has a long-standing history as a method of gathering evidence as to whether landlords, real estate agents, or others in the housing industry are discriminating on the basis of protected class. Such testing has been consistently upheld against challenge. (See, e.g., *Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 373–74 (1982) (''a tester who has been the object of a misrepresentation made unlawful under 804(d) has suffered an injury in precisely the form the statute was intended to guard against''); accord, *Chicago* v. *Matchmaker Real Estate Sales Center,* 982 F.2d 1086, 1095 (7th Cir. 1992).) Indeed, such testing is perhaps the best way, and sometimes the only way, to prove the existence of discrimination, because it directly compares a housing provider's treatment of similarly situated minority and non-minority applicants. A district court commenting on Havens made a similar observation (see *Independent Living Resources* v. *Oregon Arena Group,* 982 F.Supp. 698, 761 n.86 (D. Ore. 1997) (''Testing was the most effective method—and perhaps the only method—of enforcing the FHA'')).

The commenter's suggestion of a fair housing group ''targeting'' an employee of an apartment owner or manager who is ''firmly committed to Fair Housing'' does not withstand analysis. Nothing in the regulation would make such a scenario more likely to occur than before. First, multiple civil penalties against a respondent who committed multiple discriminatory housing practices were not prohibited by regulation previously, and, in fact, under some circumstances an ALJ would assess them. (See, e.g., *HUD* v. *Las Vegas Housing Authority,* 2A Fair Housing—Fair Lending ¶ 25,116 (HUD ALJ Nov. 6, 1995).) Second, due process before a neutral ALJ stands between the charges of discrimination HUD issues as a result of complaints a fair housing

organization (or any other complainant) files and an ALJ's assessment of any civil penalty. In this situation, if the evidence showed that a complaining testing organization conducted one or more of its tests improperly or unfairly, HUD, if it found such evidence during the investigation, would take that into account in making its determination of reasonable cause or no reasonable cause. If the cases proceeded to hearing and the ALJ determined that there was malfeasance by the testing organization, the ALJ would take that into account in deciding whether to find liability with respect to such tests, much less assess a penalty (and, if so, how large). Third, the hypothetical fair housing group that this commenter imagines, if it had a goal of wanting to hurt the owner or manager financially without the possibility of assessments of multiple civil penalties for multiple violations, alternatively, could bring a series of separate cases, each based on one of a series of multiple incidents, and seek not only to have a series of civil penalties assessed against them, but possibly to have the later ones enhanced pursuant to clauses 812(g)(3)(B) & (C) of the Act (42 U.S.C. 3612(g)(3)(B) and (C)). Accordingly, HUD does not believe that the rule presents the potential problem the commenter raises.

On the other hand, under the law, a business owner or other principal can be held vicariously liable for the acts of employees or agents in the scope of their employment, even if the owner did not know or approve of them; this regulation does nothing to alter that preexisting legal truism. (See, *Walker* v. *Crigler* 976 F.2d 900, 904 (4th Cir. 1992) (where owner did not know of gender discrimination by property manager, owner held liable because ''the duty of a property owner not to discriminate in the sale or leasing of that property is non-delegable'').) (See also, *Marr* v. *Rife,* 503 F.2d 735, 742 (6th Cir. 1974) (applying principals of respondeat superior liability to Fair Housing Act violation)). Therefore, it is the responsibility of apartment owners, managers, real estate brokers, lenders, etc. who are ''firmly committed to fair housing'' to supervise and train their employees properly so that they do not commit a single act of housing discrimination.

D. Commenters That Questioned HUD's Authority or Justification for Issuing the Proposed Rule

Comment: HUD's reliance on FBI statistics is questionable. The preamble to the proposed rule cited to FBI statistics indicating that 27% of hate crimes committed in 1996 were housing related (62 FR 66488). One commenter questioned these statistics. The commenter wrote that the FBI ''does not collect information on how many hate crimes involve housing discrimination, only on how many of these crimes are 'crimes against property' such as cross-burnings on the front lawn of a house or anti-Semitic graffiti on other property such as an automobile.'' The commenter went on to write:

> Interestingly, of the 3,330 crimes against property included in the 1996 FBI statistics, *only two* of those crimes reportedly implicated acts involving multiple bias. Of those two incidents covering all of 1996, one of the two was a car theft. Thus it appears from the most recent source of statistics of the type that were relied upon by HUD to explain the necessity of the new rule and to justify the exigency of acting on an expedited basis, that there was only *one* reported property incident in *the entire United States* that could have *possibly* involved the type of conduct that the proposed rule is intended to deter. (Emphasis in original.)

HUD Response. The commenter is correct in that the FBI's reported hate crime statistics do not have a category that equates precisely with discriminatory acts that violate the Act. Nevertheless, HUD believes there is a correlation between hate acts committed against someone's property which the FBI reports and discriminatory housing practices under the Act. Accordingly, the citation to those statistics in the preamble to the proposed rule provides some insight into the number of hate crimes reported to the FBI that violated the Act.

HUD assumes that the commenter does not suggest that the commenter's examples of burning a cross on someone's lawn or scrawling anti-Semitic graffiti on their automobile, if done for the purpose of forcing that person to move out of the neighborhood because of that person's membership in a protected class, would not violate section 818 of the Act (42 U.S.C. 3617), as such acts, indeed, would violate that section. (*See, e.g., Stackhouse* v. *DeSitter,* 620 F.Supp. 208, 210–211 (N. D. Ill. 1985) (firebombing of plaintiff's car for the purpose of driving him out of his home because of his race violates section 818); *Seaphus* v. *Lilly,* 691 F.Supp. 127, 131, 138–9 (N.D. Ill. 1988) (setting fire to African-American condominium owner's front door, slashing his tires, damaging the paint on his car, and barricading his door with heavy objects and other acts of vandalism designed to coerce the condominium owner to move because of his race violated section 818); *cf. HUD* v. *Lashley,* 2A Fair Housing—Fair Lending ¶ 25,039 (HUD ALJ Dec. 7, 1992) (respondent found liable under section 818 of the Act for placing a bottle containing a flammable liquid and wick under the home of an African-American family).)

The commenter also appears to believe that only those acts involving ''multiple bias'' would provide justification for an ALJ to assess multiple civil penalties under the proposed rule. This is not correct. It is the commission of multiple acts, not an act based on multiple bias, that would provide such justification.

Comment: The rule improperly proposed to broaden a penalty provision without express direction from the Congress. The preamble to the proposed rule stated that the Act and its legislative history are ambiguous with respect to the issue of whether an ALJ may assess multiple civil penalties for multiple discriminatory housing practices. The preamble stated that, under the United States Supreme Court decision in *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984), the interpretation of the agency in such cases of statutory ambiguity will be upheld if it is ''based on a permissible construction of the statute'' (62 FR 66488). One commenter questioned HUD's reliance on the *Chevron* decision. Specifically, the commenter cited case-law which appears to require that the civil penalty provisions of the Act be narrowly construed. The commenter wrote:

> HUD's approach fails to consider the well-settled principle of construction that ''penal statutes are to be construed strictly,'' *Commissioner* v. *Acker,* 361 U.S. 87, 91 (1959), and to temper its proposed approach to an expanded interpretation of the [Act] accordingly. In this regard, we note that the federal courts have made clear that the rule of narrow interpretation is not limited to criminal sanctions, but also is to be applied to penal provisions ''involving civil penalties.'' *First National Bank of Gordon* v. *Department of the Treasury,* 911 F.2d 57, 65 (8th Cir. 1990).

HUD Response. This commenter seeks to apply the rule of strict construction of penal statutes to resolve the statutory ambiguity HUD identified in the preamble to the proposed rule. The commenter invokes the maxim that an ambiguity in a penal statute should be resolved in the defendant's favor (often referred to as the ''rule of lenity'') to argue that HUD should resolve the statutory ambiguity against finding that an ALJ can assess multiple civil penalties against a single respondent when the ALJ has found that respondent committed multiple separate and distinct acts of housing discrimination

in a single case. The rule of lenity, however, does not apply in the manner that the commenter suggests.

''The rule of lenity . . . is not applicable unless there is an 'ambiguity or uncertainty in the language and structure of the Act,''' (*Chapman* v. *United States* 500 U.S. 453, 463, *citing Huddleston* v. *United States,* 415 U.S. 814, 831 (1974)). The rule of lenity is applied, if necessary, at the end of the process of statutory construction, not at the beginning i.e., after considering the traditional methods of statutory construction (language, structure, legislative history and motivating policies of the statute) to resolve the issue, and then only if these considerations have not been successful (*Chapman, supra; United States* v. *R.L.C.*, 503 U.S. 291, 305 (1992)). Where consideration of these other factors resolves the ambiguity, the rule of lenity does not apply as there is no reason to resort to it (*Chapman, supra,* at 464).

HUD has considered this commenter's arguments, and believes that the rule of lenity is inapplicable to the statutory ambiguity in question. This is so because consideration of the language, purpose, legislative history and structure of the civil penalty provisions of the Act resolves the statutory ambiguity in favor of HUD's interpretation.

First, the language itself is easily read to authorize the potential assessment of a civil penalty against a respondent for each separate and distinct discriminatory housing practice an ALJ finds that the respondent committed, rather than limiting an ALJ to a single civil penalty assessment for all such practices the ALJ finds the respondent committed:

> If the administrative law judge finds that a respondent has engaged or is about to engage in *a* discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent. * * * (42 U.S.C. 3617(g)(3) (emphasis added).)

The structure of the Act also supports HUD's interpretation. The Act, at 42 U.S.C. 3602(f), defines a ''discriminatory housing practice'' as a singular ''act'' that is unlawful under sections 804, 805, 806 of the Act (42 U.S.C. 3604, 3605, 3606, and 3617, respectively). Since a single case can involve more than one such ''act,'' it follows that a single case can involve more than one discriminatory housing practice. Applying the general statutory definition of ''discriminatory housing practice'' to the language of the civil penalty subsection supports the reading of that provision as authorizing ALJs to assess more than one civil penalty against a single respondent, where the ALJ has found that respondent to have committed more that one separate and distinct discriminatory housing practice.

The Act's purpose, as demonstrated in its legislative history, supports HUD's interpretation as well. The House Report stated, ''[t]wenty years after the passage of the Fair Housing Act, discrimination and segregation in housing continue to be pervasive'' (H.R. No. 100–711 at 15, 1988 U.S. Code Cong. & Admin. News 2176). Congress found that pervasive discrimination continued to exist because it perceived a ''void'' in fair housing enforcement. Congress attempted to fill that void, in part, by creating a more effective enforcement system (H.R. No. 100–711, 100th Cong., 2d Sess., at 13 (1988), 1988 U.S. Code Cong. & Admin. News 2174).

A principal component of the more effective mechanism that the Congress created was the administrative adjudication of fair housing cases, and an important aspect of that administrative process was authorizing ALJs to assess civil penalties where appropriate. In making this authorization, the Congress recognized that civil penalties serve to deter (H.R. No. 100–711 at 37, 1988 U.S. Code Cong. & Admin. News 2198 (deterrence one of the factors an ALJ to consider when assessing civil penalties)) (*See also Hudson* v. *United States,* 118 S.Ct. 488, 496 (1997) (imposition of civil penalties will deter others from emulating the conduct that gave rise to the penalties)).

HUD considers it intuitively obvious that the greater authority and flexibility ALJs have in assessing civil penalties increases the potential of deterring discriminatory housing practices. This rule is designed to ensure that the Act's civil penalty provisions will be applied, when appropriate, to reach more powerfully the repeat wrongdoer, and serve to deter even more effectively other potential wrongdoers. Thus, the Congressional goal of deterrence is enhanced by reading the Act's civil penalty provision to authorize ALJs to assess multiple civil penalties in cases involving multiple discriminatory housing practices. Since the standard methods of statutory construction resolve the identified statutory ambiguity in favor of the proposed rule, it is not appropriate to apply the ''rule of lenity.'' Accordingly, HUD declines to adopt this commenter's approach to construction of the Act.

Furthermore, the proposed rule is not accurately described as an ''expanded interpretation'' of the Act, as the commenter says. The proposed rule merely made explicit what some HUD ALJs have already construed the Act to mean. In *HUD* v. *Las Vegas Housing Authority* 2A Fair Housing—Fair Lending ¶ 25,116 (HUD ALJ Nov. 6, 1995), the respondent, for discriminatory reasons, first told the complainant that a particular housing unit was not available, and then, some months later, when complainant requested a transfer, refused to approve the transfer, also for discriminatory reasons. These two separate violations of the Act comprised a single case. The ALJ assessed two separate civil penalties against the respondent, one for each violation of the Act (*Id.* at 26,010–11). In *HUD* v. *Sams* (2A Fair Housing—Fair Lending 25,070 (HUD ALJ March 11, 1994), *aff'd on other grounds,* 76 F.3d 375 (4th Cir. 1996)), the ALJ implicitly acknowledged that the Act authorizes multiple civil penalty assessments against a single respondent for that respondent's commission of multiple separate and distinct discriminatory housing practices. The ALJ, however, declined to assess more than one in the case before him because the ALJ viewed each of the discriminatory acts involved as part of a series comprising a single transaction and, therefore, a single discriminatory housing practice for which the ALJ could only assess a single civil penalty. This construction is incorporated in HUD's definition of separate and distinct fair housing practice, which recognizes that a series of acts may constitute a single discriminatory housing practice, if they are continuing and part of the same transaction.

Comment: HUD's proposed interpretation contradicts the plain language of the Act. One commenter questioned HUD's proposed interpretation of the Act. The commenter wrote that HUD mistakenly relied on the definition of ''discriminatory housing practice'' in section 802 of the Act to justify the proposed amendments. According to the commenter, the proposed rule contradicts the plain meaning of section 812 of the Act (42 U.S.C. 3612). As the commenter wrote:

> The most obvious fault in HUD's analysis lies in 42 U.S.C. 3612(g)(3)(A) [section 812(g)(3)(A) of the Act] which HUD inadvertently did not quote in the proposed rule. HUD ignores the temporal aspect and ignores Congress' requirement that the respondent have been *adjudged* to have committed a prior discriminatory. The proper construction of the intent of Congress is

evident. In any one proceeding, a respondent who has not previously been found to have violated 42 U.S.C. 3604, 42 U.S.C. 3605, 42 U.S.C. 3606 and 42 U.S.C. 3617 [sections 804, 805, 806, 818 of the Act] cannot be fined more than $10,000. (Emphasis in original.)

HUD Response. Subparagraphs 812(g)(3)(A–C) of the Act (42 U.S.C. 3612(g)(3)(A–C)), state that the maximum civil penalty that an ALJ can assess can increase if the respondent has been adjudged to have previously committed one or two or more prior discriminatory housing practices within specified time frames. The commenter reads into this language additional language that is not there *i.e.*, the idea that ''in any one proceeding'' a respondent, who has not been previously adjudged to have committed a discriminatory housing practice, cannot be assessed a total of more than $10,000 in civil penalties, regardless of how many separate and distinct discriminatory housing practices the respondent committed in the case at hand. (Indeed, the commenter's phrase ''in any one proceeding'' is absent from the Act's civil penalty provisions.) Rather, the Act ties the assessment of a civil penalty to a respondent's commission of ''a discriminatory housing practice;'' and the Act places no explicit limitation on the number of such penalties that may be assessed ''in any one proceeding,'' if the number of separate and distinct discriminatory housing practices found to have been committed and the surrounding circumstances otherwise warrant (42 U.S.C. 3612(g)(3)). In other words, for a single discriminatory housing practice, an ALJ may assess a respondent without prior adjudicated violations a civil penalty up to $10,000; and if a similar respondent committed more than one separate and distinct discriminatory housing practice in a single case, the ALJ would have the discretion to assess against the respondent a civil penalty up to $10,000 for each such practice.

E. Commenters That Questioned HUD's Compliance With Rulemaking Requirements

Comment: HUD should extend the public comment period. One commenter wrote that given the importance of establishing effective fair housing enforcement procedures, HUD should have provided the customary 60-day public comment period for the proposed rule. The commenter recommended that HUD provide the public with an additional 30-days to comment on the proposed amendments. The commenter wrote:

> We . . . respectfully request that comment period be extended for a minimum additional period of thirty (30) days to permit a meaningful review of the current record and to provide adequate time for submission of comments that can be useful to HUD in more accurately assessing the scope of the perceived problem and measures appropriate to addressing it.

HUD Response. HUD recognizes the value and necessity of public comment in the regulatory process, and HUD is providing the public with an additional 60-days to comment on the amendments made by this interim rule. HUD welcomes public comment on this interim rule. All comments will be taken into consideration in the development of the final rule.

Comment: The preamble did not adequately explain proposed definition of ''separate and distinct discriminatory housing practice.'' One commenter wrote that the preamble to the proposed rule did not adequately explain the definition of ''separate and distinct discriminatory housing practice'' in the regulatory text. According to the commenter, HUD's failure to explain the definition violates the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA). The commenter wrote:

> [Proposed §]180.671(b) states that not only will a respondent be potentially liable for $10,000 [for] each separate practice, the number of complainants will also serve to multiply any potential fine, and the number of times that a separate violation occurs will multiply each potential fine. No explanation is given for this interpretation unless HUD's observation that such interpretation is not prohibited and HUD's conclusory statement that such an interpretation is reasonable is meant to show that the interpretation [is] a justified interpretation of the statute. If [this] is the case, HUD has misunderstood its legislative mandate and ignored its duty under [section 553 of the APA] to state the statutory basis for the rule and give a description of the subjects and issues involved.

HUD Response. HUD does not agree with the assertions made by the commenter. Specifically, HUD believes that the preamble to the December 18, 1997 proposed rule provided a thorough discussion of HUD's rationale and statutory basis for the proposed amendments to the regulations at 24 CFR part 180. Further, HUD believes that the December 18, 1997 proposed rule complied with all applicable statutory and regulatory rulemaking requirements.

IV. Findings and Certifications.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this interim rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule will have no federalism implications, and that the policies are not subject to review under the Order. The interim rule amends HUD's regulations governing the assessment of civil penalties for Fair Housing Act cases. The rule is exclusively concerned with the rules of practice and procedure applicable to administrative proceedings before an ALJ under the Fair Housing Act. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal government and State and local governments.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that the interim rule is not anticipated to have a significant economic impact on a substantial number of small entities. This interim rule explicitly interprets the Act to allow ALJs, where a respondent has been found to have committed separate and distinct acts of discrimination, to assess a separate civil penalty against the respondent for each such act. The rule also amends 24 CFR part 180 to describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice.

The rule will affect only those few small-entity housing providers who are respondents in cases where HUD determines that there is reasonable cause to believe that they committed multiple violations of the Fair Housing Act and whose cases are then heard before an ALJ, who may or may not then assess multiple civil penalties against them after a hearing comporting with due process requirements. To date, the number of entities who actually become respondents in Fair Housing Act cases before ALJs is extremely few. For example, in FY 1994, the year when the most administrative fair housing cases (through 1997) were docketed, of the 325 cases HUD charged, 220 elected to be heard in federal court, leaving only 115 to be heard by the ALJs. Of these

cases, civil penalties were only assessed against an even lesser number: after hearings in 15 cases, and as part of a consent order in another 12 cases, for a total of 27 cases, or 8.3% of the cases docketed. The average civil penalty was $3,727.77. Only a few of these cases involve multiple acts of housing discrimination.

Furthermore, ALJs have had the authority to assess multiple civil penalties in instances where respondents have been found to commit multiple discriminatory housing practices, and have done so in appropriate circumstances. Thus, the economic impact of the rule on small entities should not be substantially greater than that already inherent in the Fair Housing Act.

Finally, the rule will not have a significant economic impact on a substantial number of small entities because it requires ALJs to consider each respondent's ability to pay when assessing one or more civil penalties. Thus, everything else being equal, smaller entities with diminished ability to pay would be subject to lower penalties.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this interim rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.400.

List of Subjects in 24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 180 is amended as follows:

PART 180—HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

1. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

2. Section 180.670 is amended by revising paragraph (b)(3)(iii) introductory text to read as follows:

§ 180.670 Initial decision of ALJ.

* * * * *

(b) * * *

(3) * * *

(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with § 180.671.

* * * * *

3. Section 180.671 is added to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) *Amounts.* The ALJ may assess a civil penalty against any respondent under § 180.670(b)(3) for each separate and distinct discriminatory housing practice (as defined in paragraph (b) of this section) that the respondent committed, each civil penalty in an amount not to exceed:

(1) $11,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $27,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) $55,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(b) *Definition of separate and distinct discriminatory housing practice.* A separate and distinct discriminatory housing practice is a single, continuous uninterrupted transaction or occurrence that violates section 804, 805, 806 or 818 of the Fair Housing Act. Even if such a transaction or occurrence violates more than one provision of the Fair Housing Act, violates a provision more than once, or violates the fair housing rights of more than one person, it constitutes only one separate and distinct discriminatory housing practice.

(c) *Factors for consideration by ALJ.* (1) In determining the amount of the civil penalty to be assessed against any respondent for each separate and distinct discriminatory housing practice the respondent committed, the ALJ shall consider the following six (6) factors:

(i) Whether that respondent has previously been adjudged to have committed unlawful housing discrimination;

(ii) That respondent's financial resources;

(iii) The nature and circumstances of the violation;

(iv) The degree of that respondent's culpability;

(v) The goal of deterrence; and

(vi) Other matters as justice may require.

(2)(i) Where the ALJ finds any respondent to have committed a housing-related hate act, the ALJ shall take this fact into account in favor of imposing a maximum civil penalty under the factors listed in paragraphs (c)(1)(iii), (iv), (v), and (vi) of this section.

(ii) For purposes of this section, the term ''*housing-related hate act*'' means any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied or characterized by actual violence,

assault, bodily harm, and/or harm to property; intimidation or coercion that has such elements; or the threat or commission of any action intended to assist or be a part of any such act.

(iii) Nothing in this paragraph shall be construed to require an ALJ to assess any amount less than a maximum civil penalty in a non-hate act case, where the ALJ finds that the factors listed in paragraphs (c)(1)(i) through (vi) of this section warrant the assessment of a maximum civil penalty.

(d) *Persons previously adjudged to have committed a discriminatory housing practice.* If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods in paragraphs (a) (2) and (3) of this section do not apply.

(e) *Multiple discriminatory housing practices committed by the same respondent; multiple respondents.* (1) In a proceeding where a respondent has been determined to have engaged in, or is about to engage in, more than one separate and distinct discriminatory housing practice, a separate civil penalty may be assessed against the respondent for each separate and distinct discriminatory housing practice.

(2) In a proceeding involving two or more respondents who have been determined to have engaged in, or are about to engage in, one or more discriminatory housing practices, one or more civil penalties, as provided under this section, may be assessed against each respondent.

Dated: January 12, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99–3126 Filed 2–9–99; 8:45 am]

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Federal Register

Wednesday
February 10, 1999

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 32 and 52

Federal Acquisition Regulation: Progress Payments and Related Financing Policies; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 98–400]

RIN 9000–AI27

Federal Acquisition Regulation; Progress Payments and Related Financing Policies

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to reduce the burdens imposed on contractors and contracting officers by the progress payment type of financing; to permit the use of performance-based payments in contracts for research and development, and contracts awarded through competitive negotiation procedures; to expand the use of subcontractor performance-based or commercial financing payments; and to simplify and clarify related provisions.

DATES: Comments should be submitted on or before April 12, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–400@gsa.gov.

Please cite FAR case 98–400 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 98–400. For information on status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Director of Defense Procurement at the Department of Defense established a special interagency team to review existing policies and procedures related to progress payments, to make them easier to understand and to minimize the burdens imposed on contractors and contracting officers. Regulatory requirements pertaining to progress payments that were not required by statute, required to ensure adequately standardized Government business practices, or required to protect the public interest were considered for revision or elimination.

An advance notice of proposed rulemaking (ANPR) was published in the **Federal Register** on May 1, 1997 (62 FR 23740). The ANPR solicited comments from industry and Government personnel on how the FAR could be revised to result in a simplified and streamlined process of applying for and administering progress payments.

After reviewing progress payment policies and public comments received in response to the ANPR, the team identified potential changes to the FAR. A second ANPR was published in the **Federal Register** on March 5, 1998 (63 FR 11074), that solicited comments on the potential changes identified in the notice. The ANPR also announced a public meeting, that was subsequently held on April 23, 1998. After considering written comments received in response to the two notices, and verbal comments provided during the public meeting, the working group submitted a report including a draft proposed rule for consideration by the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council.

The councils have reviewed the report, and propose the following revisions to the FAR:

1. Increase Thresholds for Contract Financing and Establish a Threshold for Individual Progress Payment Requests

To reduce the administrative burden that small dollar actions place on the contract administration and payment process, the proposed rule:

(a) Raises the dollar threshold at FAR 32.104(d) for use of contract financing with large businesses, from $1 million to $2 million. This threshold applies to an individual contract or a group of contracts or orders that total $2 million or more;

(b) Revises FAR 32.104(d)(2), adds FAR 32.502–4(d), and adds Alternate III to the contract clause at FAR 52.232–16, Progress Payments, to indicate that, in calculating this $2 million threshold, only those groups of contracts or orders whose individual prices exceed the simplified acquisition threshold will be considered; and

(c) Adds, at FAR 32.503–1 and at FAR 52.232–16, a minimum dollar threshold of $2,500 for individual progress payment requests, unless a lower amount is authorized in accordance with agency procedures.

2. Elimination of the ''Paid Cost Rule''

Currently, a large business is required to pay a subcontractor before including the payment in its progress payment billings to the Government. This is referred to as the ''paid cost rule.'' The proposed FAR rule revises the contract clause at FAR 52.232–16, Progress Payments, to eliminate the ''paid cost rule.'' The revised clause allows a large business to include, in its progress payment billings, subcontract costs that it has incurred but not actually paid, provided the payment to the subcontractor will be made in the ordinary course of business. The proposed rule, likewise, amends the contract clauses at FAR 52.216–7, Allowable Cost and Payment, and at FAR 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts, to provide consistent treatment in all payment clauses. This proposed change affects large businesses only. The FAR currently permits a small business concern to include, in its progress payment billings, subcontract costs that it has incurred but not actually paid.

3. Permit Subcontractor Performance-based Payments or Commercial Financing Payments Under Prime Contracts That Have Progress Payments or Cost-reimbursement Type of Financing

The proposed rule amends FAR 32.504 and the contract clause at FAR 52.232–16, Progress Payments, and adds FAR 32.110, to permit prime contractors that receive progress payments or cost-reimbursement type of payments to use performance-based payments or commercial financing payments with their subcontractors, provided the subcontracts that include such payments meet the same criteria and use provisions substantially similar to those in the prime contractor's contract.

4. Elimination of the Limitation on General and Administrative Expenses

The proposed rule removes the limitation at FAR 32.503–7, which applies to only those contractors that have established an inventory suspense account under 48 CFR 9904.410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives. This provision dates from 1979 and currently applies to very few remaining contractors.

5. Elimination of the Contracting Officer Review of Quarterly Statements

The proposed rule removes the requirement at FAR 32.503–13 for the contractor to submit quarterly statements under price revision or redeterminable contracts. This requirement is unnecessary, as the Government's interests are protected adequately by the contracting officer that has the responsibility for administering progress payments.

6. Permit the Use of Performance-based Payments in Contracts for Research and Development, and in Contracts Awarded Through Competitive Negotiation Procedures

The proposed rule amends FAR 32.1000 by removing the prohibition against using performance-based payments type of financing in contracts for research and development and contracts awarded through competitive negotiation procedures. In addition, the rule adds a new subsection at FAR 32.1004–2 and a new solicitation provision at FAR 52.232–XX, Invitation to Propose Performance-Based Payments, for use in competitive solicitations when offerors are invited to propose performance-based payments.

However, the prohibition against using performance-based type of financing in contracts awarded using sealed bid procedures remains in FAR 32.1000. The evaluation process necessitates discussions when performance-based payments are proposed to ensure the payment events and payment amounts are reasonable, credible, and consistent with all other aspects of the offeror's proposal. Since sealed bid procedures are used when it is not necessary to conduct discussions with the responding offerors about their bids, sealed bid procedures cannot accommodate performance-based payments.

7. Ensure Consideration of Performance-based Payments

The proposed rule revises FAR 32.502–1 and 32.1004 to emphasize that performance-based payments are the preferred method of financing; their use should be considered and deemed impracticable by the contracting officer before a decision is made to provide customary progress payments; and each payment amount should represent what the contractor could reasonably be expected to incur to achieve the payment event rather than resemble an advance payment or a reward to the contractor for achieving performance levels over and above what is required for successful completion of the contract.

8. Other Changes

The proposed rule also revises FAR 32.503–6(f) to simplify and clarify that, on a loss contract, application of the loss ratio constitutes the adjustment that ensures progress payments do not exceed the value of work performed; amends FAR 32.501–1(a) to delete the authorization for the Department of Defense to establish customary progress payment rates for foreign military sales (FMS) and flexible progress payments that differ from the customary rates cited in the same paragraph (DoD no longer uses flexible progress payments and does not intend to establish alternate rates for FMS); and makes related editorial changes.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold, and, therefore, do not require the progress payment or performance-based payment type of financing. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR Case 98–400 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule contains information collection requirements.

1. Office of Management and Budget (OMB) Control Number 9000–0010 (Progress Payments)

The proposed rule decreases the collection requirements currently approved under OMB/Control Number 9000–0010, since the rule raises the threshold for permitting contract financing in the form of customary progress payments, and establishes a dollar threshold for contractor requests for progress payments. The estimated number of respondents per year: reduced from 27,000 to 18,090; yearly responses per respondent: 32 (unchanged); average per response: 33 minutes (unchanged); total yearly burden hours: from 475,000 to 318,384; frequency: as required. Accordingly, a request for amendment of information collection requirements will be submitted to OMB at the final rule stage.

2. OMB Control Number 9000–0138 (Contract Financing)

There is no net impact to the collection requirements currently approved under OMB Control Number 9000–0138. The increase in hours resulting from adding the provision at 52.232–XX, Invitation to Propose Performance-Based Payments, in competitive solicitations when the performance-based payment method of contract financing is used, is offset by the decrease in hours resulting from raising the contract dollar threshold for permitting performance-based payments.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under **ADDRESSES**. Please cite the corresponding OMB clearance numbers in all correspondence related to the estimate.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: February 4, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 32 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.104 is revised to read as follows:

32.104 Providing contract financing.

(a) Prudent contract financing can be a useful working tool in Government acquisition by expediting the performance of essential contracts. Government financing shall be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing and the probable impact on working capital of the pre-delivery expenditures and production lead times associated with the contract or groups of contracts or orders (*e.g.*, indefinite-delivery contracts, basic ordering agreements, or their equivalent). Contract financing shall be administered so as to aid, not impede, the acquisition. At the same time, the contracting officer shall avoid any undue risk of monetary loss to the Government through the financing. Include the form of contract financing deemed to be in the Government's best interest in the solicitation (see 32.106 and 32.113). The contractor's use of the contract financing provided and the contractor's financial status shall be monitored.

(b) If the contractor is a small business concern, the contracting officer shall give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

(c) Subject to specific agency regulations and paragraph (d) of this section, the contracting officer may provide customary contract financing in accordance with 32.113. Unusual contract financing shall not be provided except as authorized in 32.114.

(d) The contracting officer may provide contract financing in the form of performance-based payments (see 32.10) or customary progress payments (see 32.5)—

(1) For individual contracts when the contract price is $2 million or more (or for small business concerns, when the contract price exceeds the simplified acquisition threshold) if the contractor—

(i) Will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 4 months or more for small business concerns, and 6 months or more for others), and will make expenditures for contract performance during the pre-delivery period that have a significant impact on the contractor's working capital; or

(ii) Demonstrates actual financial need or the unavailability of private financing.

(2) For a group of contracts or orders that total $2 million or more. In calculating this threshold, only those contracts or orders whose prices exceed the simplified acquisition threshold will be considered.

3. Section 32.106 is amended by revising paragraph (b) to read as follows:

32.106 Order of preference.

* * * * *

(b) Customary contract financing other than loan guarantees and certain advance payments (see 32.113).

* * * * *

4. Section 32.110 is added to read as follows:

32.110 Payment of subcontractors under cost-reimbursement prime contracts.

If the contractor makes financing payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer shall accept the financing payments as reimbursable costs of the prime contract only under the following conditions—

(a) The payments are made under the criteria in subpart 32.5 for customary progress payments based on costs, 32.202–1 for commercial item purchase financing, or 32.1003 for performance-based payments, as applicable.

(b) If customary progress payments are made, the payments do not exceed the progress payment rate in 32.501–1, unless unusual progress payments to the subcontractor have been approved in accordance with 32.501–2.

(c) If customary progress payments are made, the subcontractor complies with the liquidation principles of 32.503–8, 32.503–9, and 32.503–10.

(d) If performance-based payments are made, the subcontractor complies with the liquidation principles of 32.1004–1(d).

(e) The subcontract contains financing payments terms as prescribed in this section.

5. Section 32.112 is amended by revising the section heading to read as follows:

32.112 Nonpayment of subcontractors under contracts for non-commercial items.

* * * * *

6. Section 32.113 is amended by revising paragraph (c); redesignating paragraphs (d) through (g) as (e) through (h), respectively; and adding a new paragraph (d) to read as follows:

32.113 Customary contract financing.

* * * * *

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with part 14 through progress payments based on costs in accordance with subpart 32.5;

(d) Financing of contracts for supplies or services awarded under the competitive negotiation method of procurement in accordance with part 15, through either progress payments based on costs in accordance with subpart 32.5, or performance-based payments in accordance with subpart 32.10 (but not both);

* * * * *

7. Section 32.205 is amended by revising the first sentence of paragraph (c)(4) to read as follows:

32.205 Procedures for offeror-proposed commercial contract financing.

* * * * *

(c) * * *

(4) The time value of proposal-specified contract financing arrangements shall be calculated using as the interest rate the Nominal Discount Rate specified in Appendix C of the Office of Management and Budget (OMB) Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'', appropriate to the period of contract financing. * * *

8. Section 32.500 is amended by revising paragraph (a) to read as follows:

32.500 Scope of subpart.

* * * * *

(a) Payments under cost-reimbursement contracts, but see 32.110 for progress payments made to subcontractors under cost-reimbursement prime contracts; or

* * * * *

9. Section 32.501–1 is amended in paragraph (a) by removing the last sentence; and in paragraph (d) by revising the first sentence to read as follows:

32.501–1 Customary progress payment rates.

* * * * *

(d) In accordance with 10 U.S.C. 2307(e)(2) and 41 U.S.C. 255, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. * * *

10. Section 32.502–1 is revised to read as follows:

32.502–1 Use of customary progress payments.

When the criteria for the use of performance-based payments are not met (see 32.1001(a) and 32.1003), the use of a progress payments clause in solicitations and resulting contracts may be considered in accordance with this subpart. Bids conditioned on progress payments when the solicitation did not provide for progress payments shall be rejected as nonresponsive.

11. Section 32.502–4 is amended by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

32.502–4 Contract clauses.

* * * * *

(d) If progress payments are authorized under an indefinite-delivery contract, the contracting officer shall use the clause with its Alternate III to make progress payments applicable only to orders that exceed the simplified acquisition threshold.

* * * * *

12. Section 32.503–1 is amended at the end of paragraph (b) by removing ''and''; in paragraph (c) by removing the period and adding ''; and''; and adding paragraph (d) to read as follows:

32.503–1 Contractor requests.

* * * * *

(d) Be $2,500 or more, unless a lower amount is authorized in accordance with agency procedures.

13. Section 32.503–5 is amended by revising paragraph (c) to read as follows:

32.503–5 Administration of progress payments.

* * * * *

(c) Progress payments made under indefinite-delivery contracts should be administered under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise.

14. Section 32.503–6 is amended by revising paragraphs (f) and (g)(4) to read as follows:

32.503–6 Suspension or reduction of payments.

* * * * *

(f) *Fair value of undelivered work.* Progress payments must be commensurate with the fair value of work accomplished in accordance with contract requirements. Governed by the principles of paragraphs (c) and (e) of this section, the contracting officer shall adjust progress payments when necessary to ensure that the fair value of undelivered work equals or exceeds the amount of unliquidated progress payments. On loss contracts, the application of a loss ratio as described in paragraph (g) of this section constitutes this adjustment.

(g) * * *

(4) The following is an example of the supplementary analysis required in paragraph (g)(3) of this section:

Section I	
Contract price	$2,850,000
Change orders and unpriced orders (to extent funds have been obligated)	150,000
Revised contract price	3,000,000
Section II	
Total costs incurred to date	2,700,000
Estimated additional costs to complete	900,000
Total costs to complete	3,600,000
Loss ratio factor $3,000,000 ÷ $3,600,000 = 83.3%	
Total costs eligible for progress payments	2,700,000
Loss ratio factor	× 83.3%
Recognized costs for progress payments	2,249,100
Progress payment rate	× 80.0%
Alternate amount to be used	1,799,280
Section III	
Factored costs of items delivered*	750,000
Recognized costs applicable to undelivered items ..... $2,249,100—$750,000	1,499,100

* This amount shall be the same as the contract price of the items delivered.

32.503–7 [Reserved]

15. Section 32.503–7 is removed and reserved.

16. Section 32.503–8 is revised to read as follows:

32.503–8 Liquidation rates—ordinary method.

Progress payments are recouped by the Government through the deduction of liquidations from payments that would otherwise be due to the contractor for completed contract items. To determine the amount of the liquidation, a liquidation rate is applied to the contract price of contract items delivered and accepted. The ordinary method is that the liquidation rate is the same as the progress payment rate; at the beginning of a contract, only this method may be used.

17. Section 32.503–10 is amended by revising paragraphs (b)(1) and (b)(3) to read as follows:

32.503–10 Establishing alternate liquidation rates.

* * * * *

(b) * * *

(1) The contracting officer shall compute the expected progress payments by multiplying the estimated cost of performing the contract by the progress payment rate.

* * * * *

(3) The following are examples of the computation. Assuming an estimated price of $2,200,000 and total estimated costs eligible for progress payments of $2,000,000:

(i) If the progress payment rate is 80 percent, the minimum liquidation rate should be 72.7 percent, computed as follows:

$$\frac{\$2{,}000{,}000 \times 80\%}{\$2{,}200{,}000} = 72.7\%$$

(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{\$2{,}000{,}000 \times 85\%}{\$2{,}200{,}000} = 77.3\%$$

* * * * *

32.503–13 [Reserved]

18. Section 32.503–13 is removed and reserved.

19. Section 32.504 is amended by revising the section heading and paragraphs (a) and (b); in the second sentence of paragraph (c) by revising ''(j)(4)'' to read ''(j)(6)''; in the first sentence of paragraph (d) by removing ''progress'' and adding ''financing'', and by revising the second sentence; in the introductory text of paragraph (e) by revising the first sentence; by revising paragraph (f); and by adding paragraph (g) to read as follows:

32.504 Subcontracts under prime contracts providing progress payments.

(a) Subcontracts may include either performance-based payments, provided they meet the criteria in 32.1003, or progress payments on terms that meet the criteria in subpart 32.5 for customary progress payments, but not both. Subcontracts for commercial purchases may include commercial item purchase financing terms, provided they meet the criteria in 32.202–1.

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to subcontractors, whether paid, or approved for current payment in the ordinary course of business, under the contract and subcontracts.

* * * * *

(d) * * * Although the contracting officer should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract, there is no special requirement for contracting officer review or consent merely because the subcontract includes financing payments, except as provided in paragraph (c) of this section. * * *

(e) When financing payments are in the form of progress payments, the subcontract terms shall include the substance of the Progress Payments clause in the prime contract, modified to indicate that the contractor, not the Government, awards the subcontract and administers the progress payments.

* * * * *

(f) When financing payments are in the form of performance-based payments, the subcontract terms shall include the substance of the Performance-Based Payments clause at 52.232–32, modified to indicate that the contractor, not the Government, awards the subcontract and administers the performance-based payments, and include appropriate wording modifications similar to those noted in paragraph (e) of this section.

(g) When financing payments are in the form of commercial item purchase financing, the subcontract shall include a contract financing clause structured in accordance with 32.206.

20. Section 32.1000 is amended at the end of paragraph (b) by adding ''or'' after the semicolon; removing paragraph (c) and redesignating paragraph (d) as (c), respectively; and revising newly designated (c) to read as follows:

32.1000 Scope of subpart.

* * * * *

(c) Contracts awarded through sealed bid procedures.

21. Section 32.1001 is amended by removing paragraph (e), redesignating paragraphs (a) through (d) as (b) through (e), respectively, and adding a new paragraph (a).

The added text reads as follows:

32.1001 Policy.

(a) Performance-based payments are the preferred financing method when the contracting officer finds them practical, and the contractor agrees to their use.

* * * * *

32.1004 [Amended] [Text redesignated as 32.1004–1]

22. Section 32.1004 is amended by revising the section heading to read as set forth below; and the text is redesignated as 32.1004–1 and revised. The revisions read as follows:

32.1004 Procedures.

32.1004–1 General.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of $1,000,000 each, has ten deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes, with a lot price of $10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (*e.g.*, milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment shall be an integral and necessary part of contract performance and shall be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions shall not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion shall be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following shall be included in the contract:

(i) The contract shall not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) Severable events or criteria shall be specifically identified in the contract.

(iii) The contract shall identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) Because performance-based payments are contract financing, events or criteria shall not serve as a vehicle to reward the contractor for completion of performance levels over and above what is required for successful completion of the contract.

(v) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion shall be part of the performance necessary for that deliverable item and shall be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* (1) The contracting officer shall establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification shall adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments shall—

(i) Reflect prudent contract financing provided only to the extent needed for contract performance (see 32.104(a)); and

(ii) Not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The amount of each performance-based payment shall be specifically stated either as a dollar amount or as a percentage of a specifically identified price (*e.g.*, contract price, or unit price

of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer shall ensure that—

(i) The total contract price is fair and reasonable, all factors (including the financing costs to the Treasury of the performance-based payments) considered; and

(ii) Performance-based payment amounts are commensurate with the value of the performance event or performance criterion, and will not result in an unreasonably low or negative level of contractor investment in the contract. Accordingly, contracting officers shall require that contractor proposals for performance-based payments include a profile showing projected cash flow and contractor investment in the contract.

(4) Performance-based payment amounts may be established on any rational basis determined by the contracting officer, or agency procedures, which may include (but are not limited to)—

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(5) When subsequent contract modifications are issued, the performance-based payment schedule shall be adjusted as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer shall provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer shall specify the liquidation rate or designated dollar amount in the contract. The method of liquidation shall ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation shall be by predesignated liquidation amounts or liquidation percentages.

23. Section 32.1004–2 is added to read as follows:

32.1004–2 Procedures for evaluating offeror-proposed performance-based payments for competitive solicitations.

Use the following procedures when offerors are invited to propose performance-based payments:

(a) *Solicitations.* The contracting officer shall specify, in section M of the solicitation, the interest rate to be used in the evaluation of financing proposals (see paragraph (b)(4) of this section).

(b) *Evaluation of proposals.* (1) Since performance-based payment terms will vary among offerors, the contracting officer shall—

(i) Review the proposed terms to ensure they comply with 32.1004–1; and

(ii) Adjust each proposed price for evaluation purposes to reflect the cost of providing the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing.

(2) The Government makes payments earlier when using the performance-based payments type of financing than it would if payments were not made until deliveries are accepted. In order to determine the cost to the Government of making payments earlier, the contracting officer shall compute the imputed cost of those performance-based payments and add it to the proposed price to determine the evaluated price for each offeror.

(3) The imputed cost of a single performance-based financing payment is the amount of the payment multiplied by the annual interest rate, multiplied by the number of years, including fraction thereof, between the projected performance-based payment (invoice) date and the date the amount would have been paid as a delivery payment. The imputed cost of financing is the sum of the imputed costs of each of the performance-based financing payments.

(4) The time value of offeror-proposed contract financing arrangements shall be calculated using as the interest rate the nominal discount rate specified in Appendix C of the Office of Management and Budget (OMB) Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'', appropriate to the period of contract financing. Where the period of proposed financing does not match the periods in the OMB Circular, the interest rate for the period closest to the finance period shall be used. Appendix C is updated yearly, and is available from the Office of Economic Policy in OMB.

24. Section 32.1005 is amended by revising the section heading and paragraph (a) to read as follows:

32.1005 Solicitation provision and contract clauses.

(a) If the contracting officer anticipates that performance-based contract financing may be provided in accordance with 32.1001, the contracting office shall insert the clause at 52.232–32, Performance-Based Payments, in the solicitation and contract with the description of the basis for payment and liquidation as required in 32.1004. Additionally, if the procedures at 32.1004–2 are used for competitive solicitations, the solicitation provision at 52.232–XX, Invitation to Propose Performance-Based Payments, shall be included.

* * * * *

32.1006 [Removed and Reserved]

25. Section 32.1006 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Section 52.216–7 is amended by revising the date of the clause; by redesignating paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(E) as (b)(1)(ii)(B) through (b)(1)(ii)(F), adding a new (b)(1)(ii)(A), and revising (b)(1)(iii), (b)(2), and (c) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Date)

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Supplies and services purchased directly for the contract;

* * * * *

(iii) The amount of progress and other payments that have been paid by cash, check or other form of payment, or approved for current payment in the ordinary course of business, to the Contractor's subcontractors under similar cost standards.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

* * * * *

(c) *Small business concerns.* A small business concern may be paid more often than every 2 weeks.

* * * * *

27. Section 52.232–7 is amended by revising the date of the clause, the fourth sentence of paragraph (b)(1) and the second sentence of paragraph (b)(2) to read as follows:

52.232–7 Payments Under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Date)

* * * * *

(b) *Materials and subcontracts.* (1) * * * The Contractor shall be reimbursed for items and services purchased directly for the contract only when payments of cash, checks, or other forms of actual payment have been made, or have been approved for current payment in the ordinary course of business, for such purchased items or services, provided the Contractor is not delinquent in paying such costs in the ordinary course of business. * * *

(2) * * * Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of actual payment have been made, or have been approved for current payment in the ordinary course of business, for such purchased items or services, provided the Contractor is not delinquent in paying such costs in the ordinary course of business. * * *

* * * * *

28. Section 52.232–16 is amended—

a. In paragraph (b) of the introductory text by removing ''paragraph (a)(1)'' and adding ''paragraphs (a)(1), (a)(5), and (b)'';

b. In paragraph (c) of the introductory text by revising ''(a)(4)'' to read ''(a)(1)'';

c. By removing paragraph (d) of the introductory text, and redesignating paragraph ''(e)'' as ''(d)'';

d. In newly redesignated paragraph (d) by revising ''(see 32.504(b)'' to read ''(see 32.504(c)''; and by revising ''subparagraph (j)(4)'' to read ''subparagraph (j)(6)'';

e. By revising the date of the clause;

f. In the introductory text of the clause by adding ''of $2,500 or more'' after ''amounts'';

g. By revising paragraphs (a)(1) and (a)(2) of the clause, and adding a new paragraph (a)(7);

h. By revising paragraph (j) of the clause;

i. By revising Alternate I and adding Alternate III to read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (Date)

* * * * *

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205–10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

* * * * *

(7) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than $2,500. Exceptions may be made by the Contracting Officer.

* * * * *

(j) *Financing payments to subcontractors.* The amounts mentioned in paragraph (a)(1) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to—

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause at 52.232–16, Progress Payments;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are substantially similar to the Performance-Based Payments clause at 52.232–32 and meet the criteria for, and definition of, performance-based payments in part 32 of the Federal Acquisition Regulation;

(ii) Are in conformance with the requirements of 32.504(f) of the Federal Acquisition Regulation; and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with 32.206(c) of the FAR and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in parts 2 and 12 of the Federal Acquisition Regulation;

(ii) Are in conformance with the requirements of 32.504(g) of the Federal Acquisition Regulation; and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(7) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) The Contractor shall pay the subcontractor's financing payment request under paragraphs (j)(1) through (5) of this clause, within a reasonable time after

receiving the Government progress payment covering those amounts.

(10) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in 32.113 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such financing payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

* * * * *

Alternate I (Date). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see 32.501–1).

* * * * *

Alternate III (Date). As prescribed in 32.502–4(d), add the following paragraph (l) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (n):

(l) The provisions of this clause shall not be applicable to individual orders at or below the simplified acquisition threshold.

29. Section 52.232–XX is added to read as follows:

52.232–XX Invitation to Propose Performance-Based Payments.

As prescribed in 32.1005, insert the following provision:

Invitation to Propose Performance-Based Payments (Date)

(a) The offeror is invited to propose terms under which the Government shall make performance-based contract financing payments during contract performance. The performance-based payment financing terms proposed by the offeror shall be a factor in the evaluation of the offeror's proposal. The financing terms of the successful offeror and the FAR clause at 52.232–32, Performance-Based Payments, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the FAR clause at 52.232–32, Performance-Based Payments, the terms of the clause at 52.232–32 shall govern.

(c) The offeror's proposed performance-based payment financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.

(2) The terms and conditions of the performance-based payments must comply with FAR 32.1004–1, be reasonable and consistent with all other technical and cost information included in the offeror's proposal, and their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The terms and conditions of the performance-based financing must be in the best interests of the United States.

(d) The offeror's proposal of performance-based payment financing shall include the following:

(1) The proposed contractual language describing the performance-based payments (see FAR 32.1004–1 for appropriate criteria for establishing performance bases and performance-based finance payment amounts).

(2) A listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

(3) A profile showing projected cash flow and contractor investment in the contract.

(e) Evaluation of the offeror's proposed prices and financing terms shall include the following—

(1) Whether the offeror's proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror's proposal.

(2) The cost to the United States of the proposal using the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

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Federal Register

Wednesday
February 10, 1999

Part IV

Department of Education

List of Correspondence; Office of Special Education and Rehabilitative Services; Notice

DEPARTMENT OF EDUCATION

List of Correspondence—Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of Correspondence from July 1, 1998 through September 30, 1998.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

The following list identifies correspondence from the Department issued between July 1, 1998 and September 30, 1998.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Other Health Impairments

- Letter dated August 19, 1998 to Mr. Robert Sterner, Parents' Place of Maryland, Inc., regarding eligibility of children with multiple chemical sensitivity under the ''other health impairment'' category.

Section 607—Requirements for Prescribing Regulations

Topic Addressed: Applicable Regulations

- Memorandum dated July 1, 1998 to Chief State School Officers and State Directors of Special Education and Memorandum dated July 1, 1998 to Directors of Parent Training Institutes, regarding which regulations apply until final regulations are published.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated August 21, 1998 to Kristin M. Reedy, Barre City Supervisory Union, regarding the responsibility of the State and its public agencies to ensure the provision of a free appropriate public education to a student with a disability placed by a State agency.
- Letter dated September 16, 1998 to Dr. Ellenmorris Tiegerman, School for Language and Communication Development, regarding when a State is responsible for paying tuition costs for integrated placements for preschool-aged children with disabilities.

Topic Addressed: Last Restrictive Environment

- Letter dated September 3, 1998 to Rodney J. Trahan, Member of Acadia Parish School Board, regarding distinctions between the term inclusion and the least restrictive environment provision in the Individuals with Disabilities Education Act Amendments of 1997.

Topic Addressed: Children in Private Schools

- Letter dated August 26, 1998 to U.S. Congressman Steven R. Rothman, regarding the requirements of the Individuals with Disabilities Education Act Amendments of 1997 that govern the participation of children with disabilities placed in private schools by their parents in programs assisted or carried out under Part B of the Act.

Topic Addressed: State Advisory Panel

- Letter dated September 29, 1998 to U.S. Congressman Stephen Horn, regarding absence of Federal requirements for membership on local advisory boards.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

- Letter dated September 29, 1998 to Leslie A. Collins, Esq., Pennsylvania State Education Association, regarding who may serve as the local educational agency representative on the Individualized Education Program Team.
- Letter dated September 29, 1998 to U.S. Congressman Jerry Kleczka, regarding the role of the Individualized Education Program Team in determining whether a child with disabilities who has not achieved the goals in his or her IEP receives extended school year services.

Section 615—Procedural Safeguards

Topic Addressed: Finality of Hearing Decisions

- Letter dated September 18, 1998 to Gene Lenz, Texas Education Agency, regarding timely implementation of final hearing decisions.
- Letter dated August 13, 1998, to Ms. Candy Von Ruden, Special Education Advocates of Nevada, regarding Federal requirements for reporting of final hearing decisions.

Topic Addressed: Independent Educational Evaluation

- Letter dated August 14, 1998, to Mr. Robert W. Runkel, Montana Office of Public Instruction, and letter dated August 14, 1998, to individual, (personally identifiable information redacted), regarding a public agency's responsibility to respond to a request for an independent educational evaluation at public expense within a reasonable period of time.

Topic Addressed: Student Discipline

- Letter dated July 2, 1998 to Dr. Gus G. Spiropulos, Camas County School District, and letter dated July 10, 1998 to individual, (personally identifiable information redacted), regarding the provision of continued educational services to properly suspended or expelled disabled students.
- Letter dated August 13, 1998 to Jim Surratt, Wake County Public School System, regarding procedures governing placements for students with disabilities who potentially threaten school safety.
- Letter dated August 20, 1998 to U.S. Congressman Roscoe G. Bartlett, regarding options available to school authorities in disciplining students with disabilities.

• Letter dated September 10, 1998 to Sue Gamm, Chicago Public Schools, regarding an expedited hearing.

• Letter dated September 29, 1998 to Dr. Linda B. Eldridge and Ms. Peggy Trivelas, Aiken County Public Schools, regarding conditions that apply to the use of multiple suspensions of students with disabilities in the same school year.

Section 619—Preschool Grants

Topic Addressed: Distribution of Preschool Grants Funds

• Letter dated September 16, 1998 to Dr. Martha Fields, National Association of State Directors of Special Education, Inc., regarding allocations of preschool grants funds to local educational agencies.

Part C—Infants and Toddlers With Disabilities [previously PART H]

Sections 631–641

Topic Addressed: State Allocation Formula

• Letter dated July 27, 1998 to Dr. Howard K. Koh, Massachusetts Department of Public Health, regarding population basis for calculating State allocations of Part C funds.

Topic Addressed: Implementation of a System of Payments

• Letter dated June 5, 1998 to Dr. James T. Howell, Secretary, Florida Department of Health, regarding imposition of a system of payments in a State that uses Part B funds to pay for early intervention services for infants and toddlers with disabilities.

Section 636—Individualized Family Service Plan

Topic Addressed: Natural Environments

• Letter dated July 17, 1998 to Ms. Mary Elder, Texas Interagency Council on Early Childhood Intervention, regarding use of Part C and State funds to provide early intervention services to a child with a disability in a setting which has been determined by the child's Individualized Family Service Team not to be the child's natural environment.

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Note: The official version of a document is the document published in the **Federal Register**.

Dated: February 4, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

[FR Doc. 99–3194 Filed 2–9–99; 8:45 am]

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Federal Register

Wednesday
February 10, 1999

Part V

The President

Presidential Determination No. 99–11 of January 28, 1999—Presidential Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as Contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277)

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 99–11 of January 28, 1999

Presidential Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as Contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277), I hereby certify that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest.

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

William J. Clinton

THE WHITE HOUSE,
Washington, January 28, 1999.

[FR Doc. 99–3460
Filed 2–9–99; 9:09 am]
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Federal Register

Wednesday
February 10, 1999

Part VI

The President

Proclamation 7167—Death of King Hussein

Federal Register
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Wednesday, February 10, 1999

Presidential Documents

Title 3—

The President

Proclamation 7167 of February 7, 1999

Death of King Hussein

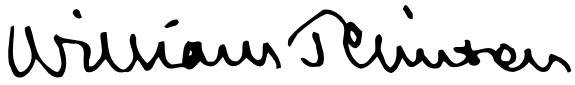
By the President of the United States of America

A Proclamation

Today the world mourns one of its great leaders. A man of principle, a powerful force for good, His Majesty King Hussein was the embodiment of courage, dignity, and wisdom. Steadfast in his support for Middle East peace, he was admired by Americans and beloved by his country. King Hussein was an extraordinary statesman and a true friend of the United States.

As a mark of respect for the memory of King Hussein, I hereby order, by the authority vested in me as President by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until his interment. I also direct that the flag shall be flown at half-staff during this same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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