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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG20

Changes to Quality Assurance Programs: Responses to Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Responses to comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) issued a direct final rule that amends the Commission's regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The NRC did not receive any significant adverse comments in response to an identical proposed rule that was concurrently published in the **Federal Register**. The public comments received, the NRC's reasons for determining that the comments are not significant adverse comments, and responses to questions raised in the comments are discussed in this document.

EFFECTIVE DATE: The direct final rule became effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone, 301–415–3092; e-mail, hst@nrc.gov or Richard P. MyIntre, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone, 301–415–3215; e-mail, rpm1@nrc.gov.

SUPPLEMENTARY INFORMATION: On February 23, 1999 (64 FR 9029), the NRC published a direct final rule in the **Federal Register** that amended its regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The NRC also concurrently published an identical proposed rule on February 23, 1999 (64 FR 9035). The direct final rule became effective on April 26, 1999, because no significant adverse comments were received by March 25, 1999. This direct final rule modifies 10 CFR 50.54(a) to provide six QA programmatic areas within which changes to the QA program will not be considered reductions in commitments and subject to prior NRC approval. Copies of the comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street, NW, Washington, DC.

The NRC received comments from six respondents, comprising three power reactor licensees, one industry group, and two anonymous sources. Three of the commenters either supported or had no objections to the direct final rule. Two commenters asked for a clarification or interpretation of the direct final rule, and did not explicitly object to the direct final rule. One commenter's issue pertained to sections of 10 CFR 50.54(a) that were not being changed by the direct final rule. The NRC does not consider any of the comments to be a significant adverse comment. Each of the NRC's responses to the questions in the comment, and the NRC's determination that the comment is not a significant adverse comment, are discussed below:

1. *Comment.* We endorse this rulemaking effort and support promulgation of the final rule .

Response. No response necessary.

2. *Comment.* This rule change represents a small step, but certainly in the correct direction. We have reviewed the comments submitted separately by the Nuclear Energy Institute (NEI) on behalf of the nuclear industry and endorse those comments. Therefore, we have no adverse comments on the direct final rule.

Response. No response necessary.

3. *Comment.* It is clear from the section-by-section analysis that 10 CFR 50.54(a)(3)(i) of the direct final rule is intended to apply to programmatic quality assurance standards, such as the American National Standards Institute (ANSI) standard N45.2 and its daughter standards, endorsed by NRC regulatory guides. However, a licensee may have referred to other national codes or standards in its QA program, either as primary references or approved alternatives, that contain specific QA guidance although they are not endorsed by regulatory guides. Are non-programmatic QA standards intended to come under the purview of 10 CFR 50.54(a)(3)(i) of the direct final rule if earlier editions are presently included by reference in a licensee's approved QA program?

Response. The comment does not directly or indirectly oppose the direct final rule (and therefore does not constitute a significant adverse comment), but rather asks a question. The NRC's position is that the direct final rule does not distinguish between ''programmatic'' and ''non-programmatic'' QA standards included by reference in the QA program described or referenced in the safety analysis report. Therefore, ''non-programmatic'' QA commitments contained in the approved QA program fall within the purview of 10 CFR 50.54(a)(3)(i) of the direct final rule. Under the direct final rule, revising an existing commitment to reference a ''non-programmatic'' QA standard approved by the NRC, which is more recent than the ''non-programmatic'' QA standard in the licensee's QA program at the time of the change, is not considered to be a reduction in commitment.

4. *Comment.* In 10 CFR 50.54(a)(3)(i) of the direct final rule, the Commission allows later editions of QA standards currently referenced in a licensee's QA program to be adopted by that licensee if they have been found to be acceptable by the NRC with respect to the requirements of 10 CFR part 50, Appendix B. Does inclusion of a later edition by reference in a licensee's approved licensing bases constitute acceptance by the NRC for adoption by another licensee under the direct final rule 10 CFR 50.54(a)(3)(i)?

Response. The comment does not directly or indirectly oppose the direct final rule (and therefore does not constitute a significant adverse comment), but rather asks a question. The NRC's position is that under § 50.54(a)(3)(i), a licensee may use later editions of QA standards under § 50.54(a)(3)(i) only if the NRC explicitly approved the later edition of the QA

standard. NRC approval consists of: (1) Endorsement in a regulatory guide; (2) approval of a plant-specific or topical report by the issuance of a safety evaluation report (SER), in which case the limitations and conditions stated in the plant-specific or topical report must be followed; and (3) approval by issuance of an SER for a license amendment changing the QA program, in which case the limitations and conditions stated in the SER must be followed.

By contrast, there is no NRC approval if a licensee unilaterally changes its QA program to use a later standard under § 50.54(a)(3) on the basis that the change did not constitute a ''reduction in commitment.'' Accordingly, a second licensee could not use the later edition of a QA standard under § 50.54(a)(3)(i). Nor could that licensee use the later standard under § 50.54(a)(3)(ii) because the first licensee's change did not involve an NRC safety evaluation and approval.

5. *Comment.* The first and only page of a self-described two-page submittal was received from a commenter stating, ''My main issues deal with not having the rule to address the use of old safety evaluations that may be general in nature as some were written in the 1970s and 1980s, and (2) the other public comments provided in early March at the information conference [Regulatory Information Conference in March 1999] addresses my other issues.''

Response. The envelope containing the letter, which was addressed to the ''Chief, Quality Assurance and Vendor Inspection,'' did not have a name or a return address. Therefore, the NRC is unable to contact the commenter to inquire about the substance of the comments. Based on the information submitted, it is unclear whether the commenter was simply asking if the rule permits the use of older QA standards approved by the NRC. However, assuming that the submittal was suggesting that the direct final rule should be modified to prohibit licensees from using an SER issued in the 1970s when a facility received its original license, the NRC disagrees with the comment. Section 50.54(a)(3)(ii) allows licensees to adopt any QA alternative or exception approved by an NRC safety evaluation, provided that the bases of the NRC approval are applicable to the licensee's facility. Licensees may use alternatives or exceptions approved for a facility during issuance of the operating licenses, provided that the bases of the NRC approval are applicable. Alternatives and exceptions approved in SERs were approved in the context of the entire QA program. In all cases, it is the licensee's responsibility to ensure that the QA program as revised contains all elements that formed the bases of the NRC approval of alternatives or exceptions so that compliance with Appendix B to 10 CFR part 50 is maintained. Therefore, the NRC does not consider this a significant adverse comment.

6. *Comment.* The NRC should consider clarifying or correcting the direct final rule, 10 CFR 50.54(a)(4)(ii), with respect to the required content of submitted letters requesting NRC review of proposed reductions in QA program descriptions. Although the comment may not be directly related to the specific changes that are proposed, it is directly related to the correct functioning of the rule being changed.

Response. The comment is not directly related to the specific changes that are proposed, as recognized by the commenter. Therefore, the NRC does not consider this to be a significant adverse comment on the direct final rule and will not take any action at this time to address this issue. However, the NRC is attempting to develop a performance-based option to 10 CFR 50.54(a). During the development of the performance-based option, the NRC will carefully consider this issue.

Dated at Rockville, MD, this 2nd day of August, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–20267 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–42–AD; Amendment 39–11248; AD 99–16–13]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. (MDHI) Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to MDHI Model MD–900 helicopters, that currently requires applying specified serial numbers and establishing life limits for certain parts. This amendment is prompted by additional analysis that supports an increase in the life limit of certain parts. The actions specified by this AD are intended to increase the life limits for various parts.

DATES: Effective September 10, 1999.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 10, 1997 (62 FR 34163).

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5231, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–13–09, Amendment 39–10056 (62 FR 34163, June 25, 1997), which is applicable to MDHI Model MD–900 helicopters, was published in the **Federal Register** on April 28, 1999 (64 FR 22818). That action proposed to require increasing the life limit of various parts and correcting an incorrect part number that was listed in AD 97–13–09. That action also proposed to require, as in AD 97–13–09, applying serial numbers to certain parts and establishing a life limit for the vertical stabilizer control system bellcrank assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed. However, since the publication of the Notice of Proposed Rulemaking, the name of the type certificate holder has changed from ''McDonnell Douglas Helicopter Systems'' to ''MD Helicopter, Inc.'' This final rule reflects that change; the FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 27 helicopters will be affected by this AD, that it will take approximately 2.5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,050.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10056 (62 FR 34163, June 25, 1997), and by adding a new airworthiness directive (AD), Amendment 39–11248, to read as follows:

AD 99–16–13 MD HELICOPTERS, INC.: Amendment 39–11248. Docket No. 98–SW–42–AD. Supersedes AD 97–13–09, Amendment 39–10056, Docket No. 96–SW–35–AD.

Applicability: MD–900 helicopters, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To establish appropriate life limits for various parts, accomplish the following:

(a) On or before attaining the following life limits, remove from service:

(1) The nonrotating swashplate assembly, part number (P/N) 900C2010192–105, –107, –109, or –111, on or before 1,800 hours time-in-service (TIS).

(2) The collective drive link assembly, P/N 900C2010207–101, on or before 3,307 hours TIS.

(3) The self-aligning, spherical/slider main rotor bearing, P/N 900C3010042–103, on or before 2,030 hours TIS.

(4) The vertical stabilizer control system (VSCS) bellcrank assembly, P/N 900FP341712–103, and bellcrank arm, P/N 900F2341712–101, on or before 2,700 hours TIS.

(b) On or before 100 hours TIS after July 10, 1997, or before October 31, 1999, whichever occurs first:

(1) For Model MD–900 helicopters with serial numbers (S/N) 900–00002 through 900–00012, apply the appropriate S/N to the mid-forward truss assembly, P/N 900F2401200–102, and the forward and aft deck-fitting assemblies, P/N 900F2401500–103 and 900F2401600–103.

(2) For Model MD–900 helicopters with S/N 900–00002 through 900–00048, apply S/N to the left and right VSCS bellcrank assemblies, P/N 900F2341712–101 and 900FP341712–103, and the mid-aft truss strut assembly, P/N 900F2401300–103.

(3) Apply the S/N as specified in paragraphs (b)(1) and (b)(2) of this AD adjacent to the existing P/N in accordance with the Accomplishment Instructions of MDHS Service Bulletin No. 900–039, Revision 2, dated March 12, 1997.

(c) This AD revises the Airworthiness Limitations Section of the MD–900 Maintenance Manual by increasing the retirement lives for certain parts.

Note 2: The Airworthiness Limitations Section of the MD–900 Rotorcraft Maintenance Manual, Reissue 1, Revision 2, dated July 24, 1998, pertains to the subject of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

(f) The application of the serial numbers shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Helicopter Systems Service Bulletin No. 900–039, Revision 2, dated March 12, 1997. This incorporation by reference of that document was previously approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of July 10, 1997 (62 FR 34163). Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 10, 1999.

Issued in Fort Worth, Texas, on July 28, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20182 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 990407088–9199–02; I.D. 030999A]

RIN 0648–AK69

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that amends regulations implementing the License Limitation Program (LLP) by adding an application process and a transfer process for LLP licenses. This action is necessary to complete final implementation of the LLP, and is intended to further the objectives of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, the FMP for Groundfish of the Gulf of Alaska, and the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands.

DATES: Effective September 7, 1999.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this final rule should be sent to Susan J. Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the exclusive economic zone (EEZ) are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The commercial king crab and Tanner crab fisheries in the Bering Sea and the Aleutian Islands Area are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the North Pacific Fishery Management Council (Council), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq*., and are implemented by regulations at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

Fishing under the LLP for the commercial groundfish fisheries in the EEZ of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the EEZ of the Bering Sea and the Aleutian Islands Area is scheduled to begin January 1, 2000. The LLP replaces the Vessel Moratorium Program, which expires on December 31, 1999 (64 FR 3651, January 25, 1999).

This rule establishes the application and transfer processes for LLP licenses. The proposed rule, on which this rule is based, was published April 19, 1999 (64 FR 19113). Further information on the purpose of and eligibility criteria for the LLP can be found in the preamble to the final rule implementing Amendment 39 to the FMP for the Groundfish Fishery of the BSAI, Amendment 41 to the FMP for Groundfish of GOA, and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (63 FR 52642, October 1, 1998).

Application Process for LLP Licenses

This rule provides that a limited application period of no less than 90 days will be specified by notification in the *Federal Register*. A limited application period means that an applicant will have a specific time period to apply for an LLP license. An application for an LLP license postmarked after the ending date of the application period will be denied. NMFS anticipates that this application period will begin in August or September 1999.

NMFS currently is compiling a database containing information on vessels that participated in the groundfish and crab fisheries during the qualifying periods for LLP licenses. Sources of information for this database include weekly production reports and observer reports from NMFS and fish tickets, processor annual reports, and vessel registration information from the State of Alaska. NMFS will create the official LLP record from only complete and verifiable information from the database. The official LLP record will be presumed to be correct for the purpose of determining eligibility. An applicant that includes information in an application that is inconsistent with information in the official LLP record will have the burden of proving that the information submitted in the application is correct.

NMFS will develop a summary of qualifications from the official LLP record for each person who appears to be eligible for an LLP license. NMFS will send a copy of the summary of qualifications along with an application form to these persons. Applications also will be provided to persons on request. An applicant who agrees with the summary of qualifications may include that information in his or her application. Using the information from the summary of qualifications will expedite application processing because the information will be consistent with information in the official LLP record.

An applicant may include information in the application other than that contained in the summary of qualifications if an applicant disagrees with the information provided in the summary of qualifications or if that information is incomplete. However, the applicant must prove that the information submitted in the application that is inconsistent with, or in addition to, information provided in the summary of qualifications is correct.

An applicant can meet this burden of proof by submitting evidence along with the application to verify the inconsistent or additional information provided on the application form. Information provided on the application form that cannot be verified with this evidence will not be accepted. The applicant will be notified that the information provided in the application cannot be verified and will be provided with a 60-day evidentiary period to submit further evidence to prove the information contained in the application is correct. This 60-day period will also be provided for an applicant to provide further information if the information provided on his or her application form is incomplete. Only one 60-day period will be provided for each applicant.

Examples of evidence that can be used to verify information inconsistent with or in addition to information provided in the summary of qualifications are: (1) State fish tickets or weekly production reports to verify documented harvests not found in the official LLP record, (2) an abstract of title or sales contract to verify vessel ownership, and (3) a written contract transferring or retaining the fishing history of a qualified vessel. Other forms of evidence will be accepted if that evidence verifies submitted information.

Information provided on an application form that cannot be verified at the conclusion of the 60-day evidentiary period will not be accepted, and claims based on that information

will be denied. At that time, NMFS will issue an initial administrative determination (IAD) indicating why those claims are denied. An applicant may appeal the IAD pursuant to the provisions of § 679.43.

An applicant who held a license the previous year will be eligible for a non-transferable license pending the final resolution of his or her claims pursuant to the license renewal provisions of 5 U.S.C. 558. This non-transferable license will be issued to an applicant in the IAD, will authorize the applicant to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the license, and will have specific endorsements and designations based on verified and unverified claims of the applicant. The non-transferable license will be effective until final agency action.

If any of an applicant's claims are in dispute, the entire license received by the applicant will be non-transferable until final resolution of all the disputed claims, including portions of the license that are based on claims that can be verified. This will prevent an applicant from transferring away the portion of the license that was based on verified claims and keeping the non-transferable portion based on disputed claims. Such transfer activity could lead to additional participants in the affected fisheries. A non-transferable license expires on final agency action. At that time, the person who appealed will either receive a transferable license, or no license at all, depending on the final agency action.

Transfer Process for LLP Licenses

The transfer process for LLP licenses will enable a license holder to request a transfer of an LLP license to any person that meets the eligibility requirements. The following requirements must be met for eligibility: The designated transferee must meet the U.S. Citizenship requirements of Chapter 121, Title 46, U.S.C., the parties to the transfer cannot have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and the transfer cannot cause the designated transferee to exceed the license cap in § 679.7(i)(1).

A complete transfer application must be submitted to the Administrator, Alaska Region, NMFS (Regional Administrator), for approval before a transfer can occur. Transfer application forms will be available on request. An incomplete application will be returned to the applicant with identification of specific information that is necessary to make the application complete. Specific information for a transfer application includes (1) identification information for all parties to the transfer, (2) evidence of the eligibility of the designated transferee to document a fishing vessel, (3) a copy of the contract or sales agreement for the transfer, (4) the signatures of the parties to the transfer, and (5) identification information for the vessel to be deployed based on the transferred license. A transferee may choose not to designate a vessel at the time of transfer, in which case the license will be transferred but it cannot be used to deploy a vessel until one is designated. A designated vessel means any vessel named on the license, including the same vessel that was named on the license before the transfer.

The rule also provides for transfer requests by court order, by operation of law, or as part of a security agreement. This provision will accommodate a transfer that is not voluntarily requested by the permit holder. Under those circumstances, the Regional Administrator will review the information in the transfer application or other documents and determine whether the requested transfer conflicts with other provisions of the LLP regulations or other applicable law (e.g., transfer to a person who could not document a fishing vessel under Chapter 121, Title 46, U.S.C.). If the Regional Administrator determines that the transfer (1) is not in conflict with other provisions of the LLP and (2) is not voluntary, the transfer will be allowed notwithstanding the annual limit on LLP license transfers explained here.

A request to change the vessel designated on the license is closely related to a transfer of a license between two persons. A license holder may deploy only the vessel designated on the license; therefore, a person must request a change of that designated vessel if the license holder plans to deploy a vessel other than the one currently designated on the license. A request to change the vessel designated on the license can be done at the same time and on the same form as the license transfer. Alternatively, the transferee may choose to retain the vessel designated on the license before the transfer. These designations are considered part of the transfer and will not count separately towards the annual transfer limit explained here. If the transferee chooses not to designate a vessel at time of transfer (i.e., specifies ''none'' on the transfer form), the license cannot be used until a vessel is designated. The vessel designation that occurs after a transfer in which a person designates no vessel will not count separately towards the annual limit on transfers. Otherwise, a request to change the vessel designated on the license will be counted towards the annual limit on transfers.

Finally, a license holder is limited to one voluntary license transfer (or one designated vessel change not accompanying a transfer) per calendar year. This limit is designed to restrict the incidence of intraseason movement of licenses among operators and vessels. Intraseason movement of licenses was identified by the Council as behavior that could significantly contribute to overcapacity and excess effort in the affected fisheries.

Comments on and Changes to the Proposed Rule

NMFS received no comments on the proposed rule and made only non-substantive changes to the regulatory text as proposed. Besides changes for clarity and readability, a provision was added at § 679.4(k)(7)(v) indicating the transfer process must be used to change a vessel designated on an LLP license. The preamble to the proposed rule indicated that the transfer process would have to be used to change the vessel designated on the license. This activity, under both the proposed and final rules, would count toward the voluntary transfer limit.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0334 for § 679.4(k)(6) and (k)(7).

Under NOAA Administrative Order 25–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register.**

Classification

The Regional Administrator has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and the Commercial king and Tanner crab fisheries in the Bering Sea and the Aleutian Islands and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

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

The Chief Counsel for Regulation, Department of Commerce, certified to

the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This revision has approved by OMB under control number 0648–0334. The public reporting burden for this collection of information is estimated to average 2.5 hours per response for an application for initial issuance, 1 hour per response for an application for transfer, and 4 hours per response for an appeal. These response times include 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 these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS, P.O. Box 21668, Juneau, AK 99802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). OMB approved the original collection of information requirement for the LLP under OMB control number 0648–0334. Please refer to this number in any correspondence regarding this request.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 30, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control (all numbers begin with 0648)
* * * * *	
50 CFR	
* * * * *	
679.4(k)(6)(iii)	–0334
679.4(k)(6)iv)	–0334
679.4(k)(7)(iii)	–0334
* * * * *	

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

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

2. In § 679.2, the definition for ''Official LLP record'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Official LLP record means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish and crab fisheries during the qualifying peiods for the License Limitation Program (LLP). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving that information submitted in an application that is inconsistent with the official LLP record is correct.

* * * * *

3. In § 679.4, reserved paragraphs (k)(6) and (k)(7) are added to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(6) *Application for a groundfish license or a crab species license.* (i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in paragraph (k) of this section. An application that is postmarked or delivered after the ending date for the application period for the License Limitation Program specified in the *Federal Register* will be denied. An application form will be sent to the last known address of a person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application period.* An application period of no less than 90 days will be specified by notification in the *Federal Register* and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a groundfish license or a crab species license must be signed by the applicant, or the individual representing the applicant, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the applicant;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid evidence of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid evidence of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license, except if that

vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed and valid evidence of when reconstruction began and ended;

(F) Valid evidence of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed, and valid evidence of when reconstruction began and ended;

(G) Valid evidence to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid evidence of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid evidence must be the USCG Abstract of Title), or if eligibility is based on a fishing history that has been separated from a vessel, valid evidence of ownership of the fishing history being used as the basis of eligibility for a license; and

(I) Valid evidence of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license.

(iv) *Other information required for special circumstances.*

(A) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(*1*) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

(*2*) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement.* If an applicant is applying for a crab species license endorsement for Norton Sound and if the applicant is a person, an application, to be complete, must contain valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994. If the applicant is a corporation, an application, to be complete, must contain valid evidence that the corporation owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period.* If an applicant is applying for a license based on meeting the general qualification period requirements of paragraph (k)(4)(i)(A)(*2*) or (k)(4)(i)(B)(*2*) of this section, the application, to be complete, must indicate which single endorsement area the applicant has selected for license. A license cannot be endorsed for more than one area, notwithstanding the fact that the applicant may have the documented harvests to qualify for more than one endorsement area.

(D) *Unavoidable circumstances.* If an applicant is applying for a license based on an unavoidable circumstance pursuant to paragraph (k)(8)(iv) of this section, an application, to be complete, must contain the information required by that paragraph and valid evidence of the date the vessel on which the application is based was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made from the replacement vessel.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application is correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (k)(6)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on

consistent information in the application.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant on issuance of an IAD if required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(7) *Transfer of a groundfish license or a crab species license*—(i) *General.* The Regional Administrator will transfer a groundfish license or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license or crab species license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license caps in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of application.* To be complete, an application for a groundfish license transfer or a crab species license transfer must be signed by the license holder and the designated transferee, or the individuals representing them, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the license holder and the designated transferee;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license (i.e., the designated vessel) after the transfer is approved;

(C) Valid evidence that the designated transferee is a person eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer, and the signature of the license holder and the designated transferee; and

(E) Information regarding whether a broker was used for the transaction, whether the license was collateralized, and other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (k)(7) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved.

(vii) *Request to change the designated vessel.* A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

* * * * *

[FR Doc. 99–20206 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Food and Drug Administration

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to include a limitation in the approval of Pliva d.d.'s abbreviated new animal drug application (ANADA). The regulation did not state that use of Pliva d.d.'s oxytetracycline injection in cattle is limited to use in nonlactating dairy cattle. At this time, the regulation is amended to reflect the limitation.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1999 (64 FR 23186), FDA published a document reflecting approval of Pliva d.d.'s ANADA 200–232 for use of Geomycin 200 (oxytetracycline injection) in cattle and swine. The amendment to the regulation did not state that the product is not for use in lactating dairy cattle. At this time, the regulations in 21 CFR 522.1660(d)(1)(iii) are amended to reflect the limitation in the approval.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) by adding in the eighth sentence the number ''011722,'' after the number ''000010,''.

Dated: June 29, 1999.

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–20257 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Nystatin, Neomycin, Thiostrepton, and Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of nystatin, neomycin, thiostrepton, and triamcinolone acetonide vanishing cream base ointment for topical management of dermatologic disorders of dogs and cats.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–245 that provides for veterinary prescription use of Derma-Vet Cream (nystatin, neomycin, thiostrepton, and triamcinolone acetonide) for topical management of dermatologic disorders in dogs and cats characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections.

Med-Pharmex's ANADA 200–245 is approved as a generic copy of Solvay's NADA 96–676 for Panalog® Cream. The ANADA is approved as of June 7, 1999. The basis for approval is discussed in the freedom of information summary.

The regulation in § 524.1600a (21 CFR 524.1600a) does not designate which approvals are for petrolatum base products (ointments) and which are for vanishing cream base products (creams). The regulation in § 524.1600a(b) is amended at this time to designate the base of each sponsor's product and to reflect this approval.

In addition, due to enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988, the footnote concerning the National Academy of Sciences/National Research Council review is outdated. At this time, the footnote and the footnote references are removed.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1600a is amended by revising paragraph (b) and by removing the footnote of paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(2)(i), and (c)(2)(ii) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment.

* * * * *

(b) *Sponsors.* For petrolatum base ointments see 000031, 000069, 000332, 025463, 051259, and 053501 in § 510.600(c) of this chapter. For vanishing cream base ointments see 051259 and 053501.

* * * * *

Dated: June 29, 1999

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–20254 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8832]

RIN 1545–AT56

Exception From Supplemental Annuity Tax on Railroad Employers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to employers covered by the Railroad Retirement Tax Act. The Railroad Retirement Tax Act imposes a supplemental tax on those employers, at a rate determined by the Railroad Retirement Board, to fund the Railroad Retirement Board's supplemental annuity benefit. These regulations provide rules for applying the exception from the supplemental annuity tax with respect to employees covered by a supplemental pension plan established pursuant to a collective bargaining agreement and for applying a related excise tax with respect to employees for whom the exception applies.

DATES: *Effective Date:* These regulations are effective August 6, 1999.

Applicability Date: These regulations generally apply beginning on October 1, 1998, except as provided in § 31.3221–4(e)(2).

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3221(d). On September 23, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 50819) under section 3221(d). The proposed

regulations provide guidance regarding the section 3221(d) exception from the tax imposed under section 3221(c) with respect to employees covered by a supplemental pension plan of the employer established pursuant to an agreement reached through collective bargaining. Two written comments were received on the proposed regulations. A public hearing was held on the proposed regulations on January 20, 1999. After consideration of the comments, the proposed regulations under section 3221(d) are adopted as revised by this Treasury decision.

Under the Railroad Retirement Act of 1974, as amended, codified at 45 U.S.C. 231 *et seq.*, if an employee has performed at least 25 years of covered service with the railroad industry, including service with the railroad industry before October 1, 1981, the Railroad Retirement Board (RRB) will pay the employee a supplemental annuity at retirement. The monthly amount of the supplemental annuity ranges from $23 to $43, based on the employee's number of years of service. See 45 U.S.C. 231b(e). Under 45 U.S.C. 231a(h)(2), the employee's supplemental annuity is reduced by the amount of payments received by the employee from any plan determined by the RRB to be a supplemental pension plan of the employer, to the extent those payments are derived from employer contributions.

Section 3221(c) imposes a tax on each railroad employer to fund the supplemental annuity benefits payable by the RRB. The tax imposed under section 3221(c) is based on work-hours for which compensation is paid. The RRB establishes the rate of tax under section 3221(c) quarterly, and calculates the rate to generate sufficient tax revenue to fund the RRB's current supplemental annuity obligations.

Under section 3221(d), the tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan established pursuant to an agreement reached through collective bargaining between the employer and employees. However, if an employee for whom the employer is relieved of any tax under the section 3221(d) exception becomes entitled to a supplemental annuity from the RRB, the employer is subject to an excise tax equal to the amount of the supplemental annuity paid to the employee (plus a percentage determined by the RRB to be sufficient to cover administrative costs attributable to those supplemental annuity payments).

Section 3221(d) was enacted by Public Law 91–215, 84 Stat. 70, which amended the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act. The legislative history to Public Law 91–215 indicates that the exception under section 3221(d) from the tax imposed under section 3221(c) was ''directed primarily at the situation existing on certain short-line railroads which are owned by the steel companies. The employees of these lines are, for the most part, covered by other supplemental pension plans established pursuant to collective bargaining agreements between the steel companies and the unions representing the majority of their employees. * * * [T]hese railroads will no longer be required to pay a tax to finance the supplemental annuity fund, but will be required to reimburse the Railroad Retirement Board for any supplemental annuities that their employees may be paid upon retirement.'' S. Rep. 91–650, 91st Cong., 2d Sess. 6 (February 3, 1970).

Explanation of Provisions

These regulations retain the rules set forth in the proposed regulations for determining whether a plan is a supplemental pension plan established pursuant to an agreement reached through collective bargaining. Under these regulations, a plan is a supplemental pension plan only if the plan is a pension plan within the meaning of § 1.401–1(b)(1)(i). Under this definition, a plan is a pension plan only if the plan is established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. Thus, for example, a plan generally is not a supplemental pension plan if distributions from the plan that are attributable to employer contributions may be made prior to a participant's death, disability, or termination of employment. See Rev. Rul. 74–254 (1974–1 C.B. 90); Rev. Rul. 56–693 (1956–2 C.B. 282). A pension plan that is tax-qualified under section 401(a) is subject to special rules with respect to joint and survivor benefits under sections 401(a)(11) and 417.

One commentator requested clarification that these regulations do not preclude a plan from being a supplemental pension plan merely because the plan provides for a single sum distribution form (in addition to providing for periodic payments as described above). A plan is not precluded from being a pension plan within the meaning of § 1.401–1(b)(1)(i) merely because it provides for a single sum distribution form in addition to providing for the required periodic payment forms. See section 417(e)(1) and (2). Thus, the availability of a single sum distribution form (offered in addition to the periodic payment form or forms described above) does not preclude a plan from being a supplemental pension plan under these regulations.

Another commentator requested clarification that a plan in which the employer contribution is discretionary or conditioned on contributions made at the election of employees pursuant to a qualified cash or deferred arrangement described in section 401(k)(2) could not qualify as a supplemental pension plan under section 3221(d) and the regulations. A plan that provides for discretionary employer contributions cannot be a pension plan under § 1.401(b)–1(b)(1)(i) because it does not provide for the payment of definitely determinable benefits. Under section 401(k)(1), a qualified cash or deferred arrangement under section 401(k) must be part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan. Thus, a plan that provides for a section 401(k) qualified cash or deferred arrangement with employer matching contributions cannot be a pension plan under § 1.401(b)–1(b)(1)(i) (unless the plan is a pre-ERISA money purchase plan or a rural cooperative plan). Thus, apart from these narrow exceptions for certain pre-ERISA and rural cooperative plans, neither of the types of plans noted by the commentator could qualify as supplemental pension plans under section 3221(d) and these regulations.

As provided in the proposed regulations, these regulations also require that the RRB determine that a plan is a private pension under its regulations in order for the plan to be a supplemental pension plan under section 3221(d) and these regulations. This requirement is included because the section 3221(d) exception to the section 3221(c) tax is based on the assumption that any participant for whom the exception applies will receive a reduced supplemental annuity because of the supplemental pension plan on account of which the section 3221(c) tax is eliminated.

These regulations also retain the rules set forth in the proposed regulations for determining whether a plan is established pursuant to a collective bargaining agreement with respect to an employee. These rules generally follow the rules applicable to qualified plans for this purpose. Under these regulations, a plan is established pursuant to a collective bargaining agreement with respect to an employee

only if the employee is included in the collective bargaining unit covered by the collective bargaining agreement.

One commentator maintained that employers should also be exempted from supplemental annuity tax with respect to nonbargaining unit employees covered by a plan that is the subject of collective bargaining. The IRS and Treasury Department have determined that it is inappropriate to extend the exception to nonbargaining unit employees. This determination is consistent with the RRB's administrative rulings. As noted below, the final regulations include a delayed effective date for this requirement.

Section 3221(d) imposes an excise tax equal to the amount of the supplemental annuity paid to any employee with respect to whom the employer has been excepted from the section 3221(c) excise tax under the section 3221(d) exception. These regulations retain the rules set forth in the proposed regulations for applying this excise tax under section 3221(d).

Effective Date

These regulations generally apply beginning on October 1, 1998, as provided in the proposed regulations. However, the IRS and Treasury have determined that it is appropriate to provide a delayed applicability date with respect to the portion of the final regulations clarifying what constitutes a plan established pursuant to a collective bargaining agreement with respect to an employee for purposes of section 3221(d). Accordingly, the final regulations provide that the definition in § 31.3221–4(c) applies beginning on January 1, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3221–4 is added under the undesignated center heading ''Tax on Employers'' to read as follows:

§ 31.3221–4 Exception from supplemental tax.

(a) *General rule.* Section 3221(d) provides an exception from the excise tax imposed by section 3221(c). Under this exception, the excise tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan, as defined in paragraph (b) of this section, that is established pursuant to an agreement reached through collective bargaining between the employer and employees, within the meaning of paragraph (c) of this section.

(b) *Definition of supplemental pension plan*—(1) *In general.* A plan is a supplemental pension plan covered by the section 3221(d) exception described in paragraph (a) of this section only if it meets the requirements of paragraphs (b)(2) through (b)(4) of this section.

(2) *Pension benefit requirement.* A plan is a supplemental pension plan within the meaning of this section only if the plan is a pension plan within the meaning of § 1.401–1(b)(1)(i) of this chapter. Thus, a plan is a supplemental pension plan only if the plan provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. A plan need not be funded through a qualified trust that meets the requirements of section 401(a) or an annuity contract that meets the requirements of section 403(a) in order to meet the requirements of this paragraph (b)(2). A plan that is a profit-sharing plan within the meaning of § 1.401–1(b)(1)(ii) of this chapter or a stock bonus plan within the meaning of § 1.401–1(b)(1)(iii) of this chapter is not a supplemental pension plan within the meaning of this paragraph (b).

(3) *Railroad Retirement Board determination with respect to the plan.* A plan is a supplemental pension plan within the meaning of this paragraph (b) with respect to an employee only during any period for which the Railroad Retirement Board has made a determination under 20 CFR 216.42(d) that the plan is a private pension, the payments from which will result in a reduction in the employee's supplemental annuity payable under 45 U.S.C. 231a(b). A plan is not a supplemental pension plan for any time period before the Railroad Retirement Board has made such a determination, or after that determination is no longer in force.

(4) *Other requirements.* [Reserved]

(c) *Collective bargaining agreement.* A plan is established pursuant to a collective bargaining agreement with respect to an employee only if, in accordance with the rules of § 1.410(b)–6(d)(2) of this chapter, the employee is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers.

(d) *Substitute section 3221(d) excise tax.* Section 3221(d) imposes an excise tax on any employer who has been excepted from the excise tax imposed under section 3221(c) by the application of section 3221(d) and paragraph (a) of this section with respect to an employee. The excise tax is equal to the amount of the supplemental annuity paid to that employee under 45 U.S.C. 231a(b), plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under 45 U.S.C. 231a(b).

(e) *Effective date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies beginning on October 1, 1998.

(2) *Delayed effective date for collective bargaining agreement*

provisions. Paragraph (c) of this section applies beginning on January 1, 2000.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–19936 Filed 8–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

[TD 8830]

RIN 1545–AW80

Establishment of a Balanced Measurement System

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the adoption by the IRS of a balanced system to measure organizational performance within the IRS. These regulations further prescribe rules relating to the measurement of employee performance and implement requirements that all employees be evaluated on whether they provided fair and equitable treatment to taxpayers and bar use of records of tax enforcement results to evaluate or to impose or suggest goals for any employee of the IRS. These regulations implement sections 1201 and 1204 of the Internal Revenue Restructuring and Reform Act of 1998. These regulations affect internal operations of the IRS and the systems that agency employs to evaluate the performance of organizations within IRS and individuals employed by IRS.

DATES: These regulations are effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael G. Gallagher, 202–283–7900 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the IRS published in the **Federal Register** (64 FR 457) a notice of proposed rulemaking regarding the establishment of a balanced system of measures for the IRS. Comments were received and a public hearing on the proposed regulations was held on May 13, 1999.

This document adopts, with modifications, the proposed regulations as final regulations.

Explanation of Revisions and Summary of Comments

A commentator suggested that certain organizational changes might add clarity to the regulation. We have adopted this suggestion and have reorganized the regulation to contain separate sections that describe the system for measuring organizational performance and the system for measuring employee performance. Consistent with the suggestion of the commentator, we have revised the heading on the latter performance measurement system to make it clear that it relates to measuring ''employee'' performance. The organizational changes required incidental reordering within the regulation, as well as the renumbering of additional sections.

A commentator suggested that the discussion of the performance criteria applicable to Senior Executive Service (SES) employees make explicit reference to 5 U.S.C. 4313, which contains certain performance criteria. We have adopted this suggestion and included references to 5 U.S.C. 4313 in section 801.3. The same commentator also suggested that the regulation be modified to provide that SES and managerial employees of the IRS will be evaluated on the basis of organizational performance, as measured under the balanced measurement system for organizational performance. While the IRS will modify the performance criteria for all employees to ensure that they support the organizational measures adopted in this regulation, it will evaluate employees on the basis of the performance criteria made applicable to the positions those employees occupy. Accordingly, this suggestion was not adopted.

A commentator suggested that, while it would be appropriate to gather data regarding customer and employee satisfaction via ''questionnaires, surveys and other types of information gathering mechanisms'' and a ''questionnaire,'' respectively, as the proposed regulation provides, the IRS might in the future find other appropriate means to gather such data and should not be confined by the regulation from adopting such other information gathering techniques. Although the IRS intends in the near term to gather such customer and employee satisfaction data via questionnaires and surveys, it may in the future determine that other methods of information gathering can provide accurate data. Accordingly, we have adopted the commentator's suggestion and made it clear that questionnaires and surveys are only examples of the information gathering techniques the IRS may employ to measure customer and employee satisfaction. Sections 801.4 and 801.5 of the regulations reflect the changes. A commentator suggested that since certain organizations within the IRS provide service to customers other than taxpayers, the final regulation should make clear that information gathered from persons other than taxpayers could be used in measuring customer satisfaction. We have adopted this suggestion and modified § 801.5.

A commentator suggested that the quantity element of the business results measure be eliminated because, in an attempt to improve organizational performance with respect to that quantity element, managers might exert pressure upon employees to dispose of taxpayer cases too quickly or without regard to merits of the issues presented. The fundamental premise of the balanced system of organizational measures is that the presence of measures that evaluate the quality of the work done by the unit, the satisfaction of customers served by the unit (including taxpayers), and the satisfaction of employees working in the unit will obviate the risk that managers place undue emphasis upon the quantity of work completed. The absolute prohibitions (1) on the use of tax enforcement results and (2) on the use of quantity data to evaluate non-supervisory employees who exercise judgment with respect to tax enforcement results operate as effective checks against the overzealous use of enforcement authority. Accordingly, we have not adopted this suggestion. We have slightly modified the description of the quantity measure to include customer education, assistance and outreach efforts.

A commentator suggested that taxpayers against whom collection actions have been taken would be unable to provide objective information regarding their interactions with IRS personnel and therefore should not be included among the taxpayers requested to provide information regarding customer satisfaction. IRS experience with customer satisfaction surveys, including those taken at Problem Solving Day events, indicates that this commentator's comments are not well founded. Accordingly, the suggestion was not adopted.

Finally, a commentator suggested that IRS should limit the authority delegated to lower-level employees. This suggestion was beyond the scope of the current regulation and was not adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael G. Gallagher, Office of the Assistant Chief Counsel (General Legal Services). However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 801

Government employees, Organization and functions (Government agencies).

Amendments to the Regulations

Accordingly, 26 CFR Chapter I is amended by adding part 801 to Subchapter H to read as follows:

PART 801—BALANCED SYSTEM FOR MEASURING ORGANIZATIONAL AND EMPLOYEE PERFORMANCE WITHIN THE INTERNAL REVENUE SERVICE

Sec.

801.1 Balanced performance measurement system; in general.
801.2 Measuring organizational performance.
801.3 Measuring employee performance.
801.4 Customer satisfaction measures.
801.5 Employee satisfaction measures.
801.6 Business results measures.

Authority: 5 U.S.C 9501 *et seq.*; secs. 1201, 1204, Pub. L. 105–206, 112 Stat. 685, 715–716, 722 (26 U.S.C. 7804 note).

§ 801.1 Balanced performance measurement system; in general.

(a) *In general*—(1) The regulations in this part 801 implement the provisions of sections 1201 and 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–106, 112 Stat. 685, 715–716, 722) and provide rules relating to the establishment by the Internal Revenue Service of a balanced performance measurement system.

(2) Modern management practice and various statutory and regulatory provisions require the IRS to set performance goals for organizational units and to measure the results achieved by those organizations with respect to those goals. To fulfill these requirements, the IRS has established a balanced performance measurement system, composed of three elements: Customer Satisfaction Measures; Employee Satisfaction Measures; and Business Results Measures. The IRS is likewise required to establish a performance evaluation system for individual employees.

(b) *Effective date.* This part 801 is effective September 7, 1999.

§ 801.2 Measuring organizational performance.

(a) *In general.* The performance measures that comprise the balanced measurement system will, to the maximum extent possible, be stated in objective, quantifiable and measurable terms and, subject to the limitation set forth in paragraph (b) of this section, will be used to measure the overall performance of various operational units within the IRS. In addition to implementing the requirements of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685), the measures described here will, where appropriate, be used in performance goals and performance evaluations established, inter alia, under Division E, National Defense Authorization Act for Fiscal Year 1996 (the Clinger-Cohen Act of 1996) (Public Law 104–106, 110 Stat. 186, 679); the Government Performance and Results Act of 1993 (Public Law 103–62, 107 Stat. 285); and the Chief Financial Officers Act of 1990 (Public Law 101–576, 108 Stat. 2838).

(b) *Limitation.* Quantity measures (as described in § 801.6) will not be used to evaluate the performance of or to impose or suggest production goals for any organizational unit with employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6) except in conjunction with an evaluation or goals based also upon Customer Satisfaction Measures, Employee Satisfaction Measures, and Quality Measures.

§ 801.3 Measuring employee performance.

(a) *In general.* All employees of the IRS will be evaluated according to the critical elements and standards or such other performance criteria as may be established for their positions. In accordance with the requirements of 5 U.S.C. 4312, 4313 and 9508 and section 1201 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685) (as is appropriate to the employee's position), the performance criteria for each position will be composed of elements that support the organizational measures of Customer Satisfaction, Employee Satisfaction and Business Results; however, such organizational measures will not directly determine the evaluation of individual employees.

(b) *Fair and equitable treatment of taxpayers.* In addition to all other criteria required to be used in the evaluation of employee performance, all employees of the IRS will be evaluated on whether they provided fair and equitable treatment to taxpayers.

(c) *Senior Executive Service and special positions.* Employees in the Senior Executive Service will be rated in accordance with the requirements of 5 U.S.C. 4312 and 4313 and employees selected to fill positions under 5 U.S.C. 9503 will be evaluated pursuant to workplans, employment agreements, performance agreements or similar documents entered into between the Internal Revenue Service and the employee.

(d) *General workforce.* The performance evaluation system for all other employees will:

(1) Establish one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance—

(i) Require periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

(ii) Require that action be taken, in accordance with applicable laws and regulations, with respect to employees whose performance does not meet the established retention standards.

(2) Establish goals or objectives for individual performance consistent with the IRS's performance planning procedures—

(i) Use such goals and objectives to make performance distinctions among employees or groups of employees; and

(ii) Use performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

(e) *Limitations.* (1) No employee of the Internal Revenue Service may use records of tax enforcement results (as defined in § 801.6) to evaluate any other employee or to impose or suggest production quotas or goals for any employee.

(i) For purposes of the limitation contained in this paragraph (e), employee has the meaning as defined in 5 U.S.C. 2105(a).

(ii) For purposes of the limitation contained in this paragraph (e), evaluate includes any process used to appraise or measure an employee's performance for purposes of providing the following:

(A) Any required or requested performance rating.

(B) A recommendation for an award covered by Chapter 45 of Title 5; 5 U.S.C. 5384; or section 1201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, (Public Law 105–206, 112 Stat. 685, 713–716).

(C) An assessment of an employee's qualifications for promotion, reassignment or other change in duties.

(D) An assessment of an employee's eligibility for incentives, allowances or bonuses.

(E) Ranking of employees for release/recall and reductions in force.

(2) Employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6) in cases concerning one or more taxpayers may be evaluated with respect to work done on such cases only on the basis of information derived from a review of the work done on the taxpayer cases handled by such employee.

(3) Performance measures based in whole or in part on Quantity Measures (as described in § 801.6) will not be used to evaluate the performance of or to impose or suggest goals for any non-supervisory employee who is responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6).

§ 801.4 Customer satisfaction measures.

The customer satisfaction goals and accomplishments of operating units within the Internal Revenue Service will be determined on the basis of information gathered via various methods. For example, questionnaires, surveys and other types of information gathering mechanisms may be employed to gather data regarding customer satisfaction. Information to measure customer satisfaction for a particular work unit will be gathered from a statistically valid sample of the customers served by that operating unit and will be used to measure, among other things, whether those customers believe that they received courteous, timely and professional treatment by the Internal Revenue Service personnel with whom they dealt. Customers will be permitted to provide information requested for these purposes under conditions that guarantee them anonymity. For purposes of this section, customers may include individual taxpayers, organizational units or employees within Internal Revenue Service and external groups affected by the services performed by the Internal Revenue Service operating unit.

§ 801.5 Employee satisfaction measures.

The employee satisfaction numerical ratings to be given operating units within the Internal Revenue Service will be determined on the basis of information gathered via various methods. For example, questionnaires, surveys and other information gathering mechanisms may be employed to gather data regarding employee satisfaction. The information gathered will be used to measure, among other factors bearing upon employee satisfaction, the quality of supervision and the adequacy of training and support services. All employees of an operating unit will have an opportunity to provide information regarding employee satisfaction within the operating unit under conditions that guarantee them anonymity.

§ 801.6 Business results measures.

(a) *In general.* The business results measures will consist of numerical scores determined under the Quality Measures and the Quantity Measures described elsewhere in this section.

(b) *Quality measures.* The quality measure will be determined on the basis of a review by a specially dedicated staff within the Internal Revenue Service of a statistically valid sample of work items handled by certain functions or organizational units determined by the Commissioner or his delegate such as the following:

(1) *Examination and Collection units and Automated Collection System units (ACS).* The quality review of the handling of cases involving particular taxpayers will focus on such factors as whether Internal Revenue Service personnel devoted an appropriate amount of time to a matter, properly analyzed the issues presented, developed the facts regarding those issues, correctly applied the law to the facts, and complied with statutory, regulatory and Internal Revenue Service procedures, including timeliness, adequacy of notifications and required contacts with taxpayers.

(2) *Toll-free telephone sites.* The quality review of telephone services will focus on such factors as whether Internal Revenue Service personnel provided accurate tax law and account information.

(3) *Other workunits.* The quality review of other workunits will be determined according to criteria prescribed by the Commissioner or his delegate.

(c) *Quantity measures.* The quantity measures will consist of outcome-neutral production and resource data, such as the number of cases closed, work items completed, customer education, assistance and outreach efforts undertaken, hours expended and similar inventory, workload and staffing information, that does not contain information regarding the tax enforcement result reached in any case involving particular taxpayers.

(d) *Definitions*—(1) *Tax enforcement result.* A *tax enforcement result* is the outcome produced by an Internal Revenue Service employee's exercise of judgment recommending or determining whether or how the Internal Revenue Service should pursue enforcement of the tax laws.

(i) *Examples of tax enforcement results.* The following are examples of a tax enforcement result: a lien filed; a levy served; a seizure executed; the amount assessed; the amount collected; and a fraud referral.

(ii) *Examples of data that are not tax enforcement results.* The following are examples of data that are not tax enforcement results: case closures; time per case; direct examination time/out of office time; cycle time; number or percentage of overage cases; inventory information; toll-free level of access; talk time; number and type of customer education, assistance and outreach efforts completed; and data derived from a quality review or from a review of an employee's or a work unit's work on a case, such as the number or percentage of cases in which correct examination adjustments were proposed or appropriate lien determinations were made.

(2) *Records of tax enforcement results. Records of tax enforcement results* are data, statistics, compilations of information or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases, but do not include tax enforcement results of individual cases when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case.

(e) *Permitted uses of records of tax enforcement results.* Records of tax enforcement results may be used for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria.

(f) *Examples.* The following examples illustrate the rules of this section:

Example 1. In conducting a performance evaluation, a supervisor may take into consideration information showing that the employee had failed to propose an appropriate adjustment to tax liability in one of the cases the employee examined, provided that information is derived from a review of the work done on the case. All information derived from such a review of individual cases handled by an employee, including time expended, issues raised, and enforcement outcomes reached may be considered in evaluating the employee.

Example 2. When assigning a case, a supervisor may discuss with the employee the merits, issues and development of techniques of the case based upon a review of the case file.

Example 3. A supervisor may not establish a goal for proposed adjustments in a future examination, based upon the tax enforcement results achieved in other cases.

Example 4. A headquarters unit may use records of tax enforcement results to develop methodologies and algorithms for use in selecting tax returns to audit.

Approved: July 22, 1999.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Dated: July 22, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–19769 Filed 8–5–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

34 CFR Part 611

RIN 1840–AC67

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Final regulations

SUMMARY: The Assistant Secretary for Postsecondary Education (Assistant Secretary) issues regulations that apply the eight percent (8%) indirect cost limitation for the Department's educational training grants to all funds that States and local educational agencies receive under the Teacher Quality Enhancement Grants Program for States and Partnerships authorized by sections 201–205 of the Higher Education Act (HEA), as amended by the Higher Education Amendments of 1998. These regulations would ensure that the limited funding available to support program activities is concentrated on direct support for improvements in teacher licensing, certification, preparation, and recruitment, rather than for recipient ''overhead.''

DATES: These regulations are effective on September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, 400 Maryland Ave. SW., Portals Building, Room 6234, Washington, D.C. 20202–5131: Telephone: (202) 708–8847, or by FAX to: (202) 260–9272. Inquiries also may be sent by e-mail to: Louis__Venuto@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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 person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

The Nation faces an immediate need for significant improvements in teacher licensure, certification, preparation, and recruitment. America's schools will need to hire 2.2 million teachers over the next decade, more than half of whom will be first-time teachers. As classrooms grow more challenging and diverse, these teachers will need to be well prepared to teach all students to the highest standards. Contemporary classrooms and social conditions confront teachers with a range of complex challenges previously unknown in the profession. New education goals and tougher standards, more rigorous assessments, site-based management, greater interest in parental involvement, the continuing importance of safety and discipline, and expanded use of technology increase the knowledge and skills that teaching demands.

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). Title II of this law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the HEA, Teacher Quality Enhancement Grants for States and Partnerships.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation and recruitment, (2) the Partnership Grants for Improving Teacher Preparation Program, which is designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs) and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom, and (3) the Teacher Recruitment Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. For Fiscal Year 1999, Congress appropriated $75 million for grants to States and partnerships to implement activities under these programs.

These three programs are designed to increase student achievement by implementing comprehensive approaches to improving teacher quality. They collectively provide an historic opportunity to make positive change in the recruitment, preparation, licensing, and on-going support of teachers in America. As such, the success of these programs is critical to the Nation's ability to succeed in increasing student achievement for all students. However, to achieve success those awarded Teacher Quality Enhancement Grants must ensure that they focus their grant funds on costs that are directly associated with securing needed improvements in teaching and the teaching profession. For this reason, on May 19, 1999, the Assistant Secretary published a Notice of Proposed Rulemaking (NPRM) for this program in the **Federal Register** (64 FR 27403) that proposed a limit of eight percent (8%) on the indirect cost rate that States and LEAs receiving Teacher Quality Program funds could use to pay for their overhead and other expenses that they could charge as ''indirect costs.'' This eight-percent rate is the same maximum rate that the Department, under 34 CFR 75.562(a), now permits institutions of higher education (IHEs) and nonprofit agencies to use in charging indirect costs to education training grants. As the May 18, 1999 NPRM explained, by establishing this maximum eight-percent indirect cost for States and LEAs, these recipients will have the same limitation on their indirect costs as do those IHEs and nonprofit organizations that receive funds awarded under the programs' initial competitions. See the Notice Inviting Applications for New Awards and Final Procedures and Requirements for FY 1999 Competitions Under the Teacher Quality Enhancement Grant Programs, 64 FR 6139, 6145–46 (February 8, 1999). Therefore, this regulation will have all

recipients of program funds subject to the same maximum indirect cost rate.

The NPRM recognized that, absent a limitation of this kind, §§ 75.560–75.564 and 80.22 of the Education Department's General Administrative Regulations (EDGAR), which incorporate Federal cost principles developed by the Office of Management and Budget (OMB), permit grantees to claim these costs. However, it also explained that the best data available to the Department indicate that over 20 States have indirect cost rates of over 15 percent; two States have an indirect cost rates of 34 percent. Absent the establishment, through program regulations, of a limitation on recipient indirect cost rates, States with these indirect cost rates that are awarded State or Teacher Recruitment Program grants could devote 15 percent or more of their grant awards to support their overall overhead expenses and other indirect costs rather than the direct costs of improving teacher quality.

The Secretary continues to believe that allowing States, LEAs, and other Teacher Quality Enhancement grant recipients to use program funds to compensate themselves for these very high general overhead and related expenses is inconsistent with the vital purpose of the programs and the expectations that Congress and the Nation have for their success. Accordingly, for reasons explained more fully in the NPRM, given (1) the pivotal significance of the Teacher Quality Enhancement Grant programs, (2) the national need that these programs have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that these programs are competitive, the Secretary issues 34 CFR 611.41 (renumbered from proposed § 611.30 in the NPRM). Section 611.41 establishes a maximum indirect cost rate that a State or LEA receiving funds under any of the Teacher Quality Enhancement Grant Programs may use in charging program funds as indirect costs. Under this regulation, a State or LEA may charge Teacher Quality Enhancement Grants Program funds for indirect costs at a rate that is limited to eight percent or its negotiated rate, whichever is less.

Section 611.41 will apply to any funding that States and LEAs receive under the three Teacher Quality Enhancement Grant programs, both under the initial and any subsequent program. As explained above, the Department previously established this limitation for IHEs and nonprofit organizations that receive program funds awarded in the initial 1999 grant competitions. In proposed regulations that the Secretary will develop to govern future competitions under the three Teacher Quality Enhancement Grant programs, the Secretary intends to propose that this eight-percent limitation for IHEs and nonprofit organizations apply to future competitions as well. This proposal, if finalized, would make the eight-percent maximum indirect cost rate applicable to all grant funds awarded under all grant competitions held under these programs, regardless of the recipient.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulation. An analysis of the comment and of the changes in the regulations since publication of the NPRM follows.

Comment: The commenter noted that the cost principles in OMB Circular A–87, which govern Federal grants to State and local governments, authorize grantees to recover indirect costs that are otherwise allowable. The commenter, a State official, acknowledged that the proposed rule for the Teacher Quality programs would itself have minimal impact on his state. However, the commenter expressed concern about what appeared to be a trend on the part of Federal programs to cap administrative costs, and thus create an ''unfunded mandate.''

Discussion: The three new Teacher Quality Enhancement Grant programs offer an opportunity to improve teacher quality in America by effectively addressing the immediate need for significant improvements in teacher licensure, certification, preparation, and recruitment. However, success will depend upon how well we use the resources that Congress provides to make sustained and meaningful improvements in teacher licensure, certification, preparation, and recruitment. For fiscal year 1999, Congress appropriated $75 million for these three component programs. If these funds, and funds that Congress will appropriate for use in future years, are to achieve their purposes, we need to ensure that they are used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that Title II grant recipients may use to reimburse themselves for the ''indirect costs'' of program activities.

Doing so does not create, as the commenter suggests, an unfunded mandate. Rather, § 611.41 strikes a reasonable balance between the need to focus as much funding for the Teacher Quality Enhancement Grant programs as possible on direct services to improve teacher licensure, certification, preparation, and recruitment, and the reality that, to do so, recipients will encounter some indirect costs. In this regard, the Secretary continues to believe that States and LEAs receiving Teacher Quality Enhancement Grant funds do not need to apply high general indirect cost rates in order to fairly compensate themselves for the overhead and other indirect costs associated with activities they will conduct.

Moreover, because these programs are competitive, States and LEAs (as well as IHEs and nonprofit agencies) that believe that they need additional indirect costs to implement these needed grant activities simply need not apply or accept grant awards. Therefore, this regulation does not impose any non-reimbursed indirect costs on unwilling recipients, and so does not establish an unfunded mandate.

The Department has no plans to apply this limitation on State and LEA indirect cost rates to other grant programs. However, any decision to propose doing so would come only after the Department weighs State and LEA interests in charging indirect costs authorized in both EDGAR regulations and OMB cost principles against the Nation's need to maximize the amount of grant funds supporting direct program services. In weighing these relative interests, one consideration must be whether a proposal to limit indirect cost rates can be expected to discourage submission of high-quality applications. In this regard, we note that the Department announced in the application packages used for the initial Teacher Quality Enhancement grant competitions its intent to propose the eight-percent limitation on State and LEA indirect cost rates. Nonetheless, 40 States applied for the State Program grants, and large numbers of LEAs are included as partners in the 220 partnerships that applied for the Partnership Program grants. Also relevant here is the fact that no State applicant for 1999 grant competitions requested an indirect cost reimbursement in excess of eight percent.

State and Teacher Recruitment grant awards have yet to be announced. However, the Secretary is pleased with the number of high-quality applications, and believes that this outpouring of interest in the new Teacher Quality Enhancement Grants Program demonstrates that the limitation on indirect costs has not discouraged high-quality applications for these important awards.

Change: None.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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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 (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of the document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

List of Subjects in 34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: August 2, 1999.

Claudio F. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends Chapter VI of title 34 of the Code of Federal Regulations by adding a new part 611 to read as follows:

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

Sec.

Subpart A–D

Subpart E—Other Grant Conditions

611.41 What is the maximum indirect cost rate for States and local educational agencies?

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

Subpart A–D—[Reserved]

Subpart E—Other Grant Conditions

§ 611.41 What is the maximum indirect cost rate for States and local educational agencies?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that a State or local educational agency receiving funding under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

[FR Doc. 99–20156 Filed 8–5–99; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300897; FRL–6091–9]

RIN 2070–AB78

N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on wheat grain, wheat forage, wheat hay, wheat straw, and meat, fat, meat byproducts, and kidney of cattle, goats, horses, hogs, and sheep. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. This regulation establishes a maximum permissible level for residues of *N*-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in this food commodity 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 July 31, 2001.

DATES: This regulation is effective August 6, 1999. Objections and requests for hearings must be received by EPA on or before October 5, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300897], 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–300897], 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–300897]. 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: Barbara Madden, 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. 284, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463; e-mail: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine, in or on wheat grain at 1 part per million (ppm), wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm. These tolerances will expire and are revoked on July 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 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 preeamble 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 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on Wheat and FFDCA Tolerances

Italian ryegrass or annual ryegrass is one of the most difficult to control weeds in wheat. It is extremely competitive with wheat; as few as 20 plants per square meter can reduce wheat yield by 30%. Ryegrass is not a new species to the Pacific Northwest. It has been effectively controlled in past years by herbicides such as diclofop. However, resistance to diclofop was first identified in Oregon in the early 1980s. Diclofop is now ineffectual against controlling annual ryegrass in wheat. Other registered pesticides do not always provide adequate control of annual ryegrass. EPA has authorized under FIFRA section 18 the use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat in Idaho, Oregon, and Washington. After having reviewed these submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in or on wheat. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances 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 these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in these tolerances remaining in or on wheat grain, wheat, forage, wheat hay, wheat, straw, and meat, fat, meat byproducts, and kidney of cattle, goats, horses, hogs, 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 these tolerances at the time of that application. 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.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide meets EPA's registration requirements for use on wheat or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Idaho, Oregon, and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, 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 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine on wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these 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 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. An acute reference dose (aRfD) has been identified. The lowest observed adverse effect level (LOAEL) of 75 milligrams/kilograms/day (mg/kg/day) lowest dose tested (LDT) from an acute neurotoxicity study was selected for acute dietary risk assessment. At the LOAEL, the males displayed decreased motor activity. An uncertainty factor (UF) of (300 10x for interspecies extrapolation, 10x for intraspecies variability, and 3x for the lack of a no observed adverse effect level (NOAEL)) is appropriate. The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children as required by FFDCA 408(b)(2)(C) was reduced to 3x for acute exposures. The acute Population Adjusted Dose (aPAD) is a modification of the aRfD to accommodate the FQPA Safety Factor. The aPAD is equal to the aRfD divided by the FQPA Safety Factor. Therefore, the dietary aPAD is 0.075 mg/kg/day. The dietary aPAD applies to all population subgroups, since the endpoint of concern neurotoxicity is a systemic effect.

2. *Short- and intermediate-term toxicity*. The systemic NOAEL of 20 mg/kg/day, based on the increased liver weight and decreased T3 and T4 at the LOAEL of 150 mg/kg/day in a 21–day dermal toxicity study in rats was identified as the short- and intermediate-term endpoints.

3. *Chronic toxicity*. EPA has established the chronic RfD (cRFD) for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide at 0.004 mg/kg/day. This RfD is based on the LOAEL of 1.2 mg/kg/day (LDT) in chronic toxicity/carcinogenicity study. At the LOAEL, the effects were methemoglobinemia and systemic effects in various organs. An UF of 300 (10x for interspecies extrapolation, 10x for intraspecies variability, and 3x for the lack of a NOAEL) is appropriate. The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children as required by FFDCA 408(b)(2)(C) is not applicable because the endpoint used in deriving the cRfD is based on methemoglobinemia and multi-organ effects (not developmental or neurotoxic effects) in adult rats after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children. The chronic Population Adjusted Dose (cPAD) is a modification of the cRfD to accommodate the FQPA Safety Factor. The cPAD is equal to the cRfD divided by the FQPA Safety Factor. Hence for chronic exposures, the cPAD and cRfD are the same (0.004 mg/kg/day).

4. *Carcinogenicity*. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide was classified as a ''not likely'' human carcinogen.

C. Exposures and Risks

1. Tolerances have been established (40 CFR 180.527) for the combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety, in or on field corn forage, grain, stover, and soybean seed. Time-limited tolerances have also been established for indirect or inadvertent residues for alfalfa, clover, crop group 15 (cereal grains), crop group 16 (forage, stover, and hay of cereal grains), and crop group 17 (grass forage, and grass hay). Risk assessments were conducted by EPA to assess dietary exposures and risks from *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide 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 Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. At the 95th percentile exposure level, assuming

100% crop treated and tolerance level residues for all commodities, 10% of the aPAD was utilized for the U.S. Population and 16% of the aPAD was utilized for children (1–6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide is below the Agency's level of concern.

ii. *Chronic exposure and risk*. In conducting this chronic dietary risk assessment, the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide CSFII and accumulated exposure to the chemical for each commodity. Assuming tolerance level residues for all commodities and percent crop treated (PCT) values of 16% for corn, 26% for soybeans and 26% for cereal grains, 18% of the cPAD was utilized for the U.S. Population and 41% of the cPAD was utilized for children (1–6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide is below the Agency's level of concern.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue, that the exposure estimate does not under estimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: PCT values of 16% for corn, 26% for soybeans and 26% for cereal grains.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be under estimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations, including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group, and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide may be applied in a particular area.

2. *From drinking water*. The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Based on the GENEEC and SCI-GROW models the acute drinking water concentration values are estimated to be 12 parts per billion (ppb) for surface water, and 0.12 ppb for ground water. The chronic drinking water concentration values are estimated to be 2.7 ppb for surface water and 0.12 pbb for ground water.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure*. *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure from the use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide.

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

EPA does not have, at this time, available data to determine whether *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide 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, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-

(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide 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 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide 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 exposure assumptions of 100 PCT and tolerance level residues for all commodities, at the 95th percentile, 10% of the aPAD was utilized 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 aPAD. Despite the potential for exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (2,400 ppb) for the U.S. population and comparing it to conservative model estimates of acute concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (12 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions of tolerance level residues for all commodities and PCT values of 16% for corn, 26% for soybeans and 26% for cereal grains, EPA has concluded that aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide from food will utilize less than 18% of the cPAD 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 cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (120 ppb) for the U.S. population and comparing it to conservative model estimates of concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (2.7 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus other indoor and outdoor non-occupational exposure. Since there are no non-dietary, non-occupational exposures expected from the use of this chemical, no short- and intermediate-term risk assessments were conducted.

4. *Aggregate cancer risk for U.S. population*. *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide has been classified as a ''Not Likely'' carcinogen therefore, a cancer risk assessment was not conducted.

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 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide 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 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, EPA considered data from developmental toxicity studies in the rat and rabbit, and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies*. In the developmental study in rats, the maternal NOAEL is 25 mg/kg/day based on decreased body-weight gain initially at 125 mg/kg/day (LOAEL). The developmental NOAEL is 25 mg/kg/day based on decreased fetal body weight, delayed development mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages, and an increase in the incidence of extra ribs at 125 mg/kg/day (LOAEL).

In a developmental toxicity study in rabbits, the maternal NOAEL is 5 mg/kg/day based on histopathological findings in the liver at 25 mg/kg/day (LOAEL). The NOAEL for developmental toxicity is 25 mg/kg/day based on increased skeletal variations at 125 mg/kg/day (LOAEL).

iii. *Reproductive toxicity study*. In a 2–generation reproductive study in the rats, the NOAEL for maternal/paternal toxicity is 1.4 mg/kg/day based on increased liver weight absolute and relative in F1 females and hepatocytomegaly in F1 males at 7.4 and 8.2 mg/kg/day, respectively (LOAEL). The reproductive NOAEL is 1.3 mg/kg/day based on increased pup death in early lactation (including cannibalism) for F1 litters at 6.9 mg/kg/day (LOAEL).

iv. *Prenatal and postnatal sensitivity*. The Agency has determined that there is no indication of additional sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in the developmental and reproductive toxicity studies. However, the Agency is concerned that there was no assessment of susceptibility of the offspring in functional/neurological development.

v. *Conclusion*. There is a complete toxicity data base for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and exposure data are complete or is estimated based on data that reasonably accounts for potential exposures. Although the data indicate

that there is no additional sensitivity to young rats or rabbits, following prenatal and/or postnatal exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in the developmental and reproductive toxicity studies, the Agency has determined that the FQPA Safety Factor should not be removed, instead reduced because:

a. There was no assessment of susceptibility of the offspring in functional/neurological development in the developmental and reproductive studies.

b. There is evidence of neurotoxicity in mice, rats and dogs.

c. There is concern for endocrine (thyroid hormone) disruption as evidenced in several species (mice, rats, dogs and rabbits).

2. *Acute risk*. Using the exposure assumptions of 100% PCT and tolerance level residues for all commodities, at the 95th percentile, 16% of the aPAD was utilized for children, 1–6 years old, the major identifiable subgroup with the highest aggregate exposure. EPA generally has no concern for exposures below 100% of the aPAD. Despite the potential for exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (630 ppb) for children, 1–6 years old and comparing it to conservative model estimates of acute concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (12 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

3. *Chronic risk*. Using the exposure assumptions of tolerance level residues for all commodities and PCT treated values of 16% for corn, 26% for soybeans and 26% for cereal grains, EPA has concluded that aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide from food will utilize less than 41% of the cPAD for children, 1–6 years old, the major identifiable subgroup with the highest aggregate exposure. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (24 ppb) for children, 1–6 years old and comparing it to conservative model estimates of concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (2.7 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk*. There are no non-dietary, non-occupational exposures expected from the use of this chemical. Therefore, no short- and intermediate-term risk assessments were conducted.

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 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and livestock has been adequately defined for this section 18. In plants, metabolism data are available for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on corn and soybeans. For both crops, the residues of concern are parent *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. In livestock, metabolism data are available for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in goats and hens. The residues of concern in ruminants and poultry are parent *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety.

B. Analytical Enforcement Methodology

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

C. Magnitude of Residues

N-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and the metabolites FOE oxalate, FOE sulfonic acid (as its sodium salt, monohydrate), and FOE thioglycolate sulfoxide were tested through the FDA multi-residue methods B, C, D, and E. Testing through multi-residue method A is not required because *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites do not contain the *N*-methylcarbamate structure. FDA will review the multi-residue methods data to determine sufficiency.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat.

E. Rotational Crop Restrictions

A field accumulation in rotational crops study has been reviewed and found to support the plant-back intervals of 1 and 4 months for potatoes and carrots, respectively. No plant-back interval is needed for corn, soybeans, alfalfa, clover, cereal grains, and grasses since they already have temporary tolerances. No other crops may be rotated.

V. Conclusion

Therefore, tolerances are established for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat byproducts (other than kidney) at 0.10 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 October 5, 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.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300897] (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 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 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 in 40 CFR Part 180

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

Dated: July 28, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.527, by adding paragraph (b) to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromehtyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following food commodities.

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.05	7/31/01
Cattle, kidney	0.50	7/31/01
Cattle, meat	0.05	7/31/01
Cattle, meat by-products	0.10	7/31/01
Goats, fat	0.05	7/31/01
Goats, kidney	0.50	7/31/01
Goats, meat	0.05	7/31/01
Goats, meat by-products	0.10	7/31/01
Hogs, fat	0.05	7/31/01
Hogs, kidney	0.50	7/31/01
Hogs, meat	0.05	7/31/01
Hogs, meat by-products	0.10	7/31/01
Horses, fat	0.05	7/31/01
Horses, kidney	0.50	7/31/01
Horses, meat	0.05	7/31/01
Horses, meat by-products	0.10	7/31/01
Sheep, fat	0.05	7/31/01
Sheep, kidney	0.50	7/31/01
Sheep, meat	0.05	7/31/01
Sheep, meat by-products	0.10	7/31/01
Wheat, forage	10.0	7/31/01
Wheat, grain	1.0	7/31/01
Wheat, hay	2.0	7/31/01
Wheat, straw	0.50	7/31/01

* * * * *

[FR Doc. 99–20317 Filed 8–5–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300895; FRL–6091–6]

RIN 2070–AB78

Sodium Chlorate; Extension of Exemption from Requirement of a Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the desiccant sodium chlorate in or on wheat for an additional 1½-year period. This exemption from the requirement of a tolerance will expire and is revoked on July 31, 2001. This action is in connection with a crisis exemption declared under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on wheat. 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 authorized under FIFRA section 18.

DATES: This regulation becomes effective August 6, 1999. Objections and requests for hearings must be received by EPA, on or before October 5, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300895], 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–300895], must also be submitted to:

Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2,) 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may 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–300895]. 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: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1), which announced that on its own initiative under 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) (Public Law 104–170) it established a time-limited exemption from the requirement of a tolerance for the residues of sodium chlorate in or on wheat, with an expiration date of July 31, 1998. EPA extended the expiration date of this exemption to January 31, 2000 in a **Federal Register** notice published July 1, 1998 (63 FR 35844) (FRL–5795–8). EPA established the exemption from the requirement of a 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 sodium chlorate on wheat for this year's growing season due to the need for a harvest aid to desiccate winter weeds which developed in thin stands of an already diminished wheat crop.

EPA assessed the potential risks presented by residues of sodium chlorate in or on wheat. 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 December 3, 1997 (62 FR 63858). Based on that data and information considered, the Agency reaffirms that extension of the time-limited exemption from the requirement of a tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited exemption from the requirement of a tolerance is extended for an additional 1½-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this exemption from the requirement of a tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide remaining in or on wheat 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 exemption from the requirement of a tolerance. EPA will take action to revoke this exemption from the requirement 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 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 October 5, 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, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300895] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

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

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

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the requirement of 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) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the 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: July 26, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.1020 [Amended]

2. In § 180.1020, by amending paragraph (b) by changing the date ''1/31/00'' to read ''7/31/01''.

[FR Doc. 99–20318 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62128C; FRL–6097–5]

RIN 2070–AC64

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Certification Requirements and Work Practice Standards for Individuals and Firms; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the procedural requirements for training and certification of workers involved in lead-based paint activities in target housing and child-occupied facilities by extending the effective dates for certification of individuals and firms and use of work practice standards that are contained in the final regulations promulgated under section 402 of the Toxic Substances Control Act (TSCA). The extension applies only in those States and Indian Tribes where EPA is operating the Federal lead-based paint program. EPA is extending these effective dates in order to provide additional time for individuals to become trained and certified to conduct lead-based paint activities safely, reliably, and effectively. EPA believes that the extension of the effective dates will result in successful implementation of the Federal program and ensure the availability of a well-qualified workforce to perform risk assessments, abatements, and other lead-based paint activities.

DATES: This action is effective on August 6, 1999.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Ellie Clark, National Program Chemicals Division, Office of Pollution Prevention and Toxics (7404), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 202–260–3402; fax number: 202–260–0770; e-mail address: clark.ellie@epa.gov.

For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a professional, individual, or firm who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226. Potentially affected categories and entities may include, but are not limited to:

Type of Entity	SIC Code	Examples of Entities
Lead abatement professionals	1799, 8734	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities. Firms engaged in lead-based paint activities.
Training programs	1799, 8331, 8742, 8748	Training programs providing training services in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The Standard Industrial Classification (SIC) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business are affected by this action, you should carefully examine this action and the applicability provisions in 40 CFR part 745, subpart L. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

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

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register-- Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–62128B. The official record consists of the documents specifically referenced in this action and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. What Does this Amendment Do?

A. Background

In 1996, EPA published the final TSCA section 402/404 rule for training and certification of workers, accreditation of training programs, and model State programs for lead-based paint activities in target housing and child-occupied facilities (61 FR 45778, August 29, 1996) (FRL–5389–9). At that time, the implementation of the Federal program was delayed until August 29, 1998, to allow States and Indian Tribes to apply and receive authorization to run their own EPA-approved lead-based paint programs based on the model program.

The final rule provided for an additional phase-in period to allow the regulated community to come into compliance after the Federal program became effective in non-authorized States and Tribes on August 29, 1998. After March 1, 1999, training programs could no longer provide, offer, or claim to provide training or refresher training for lead-based paint activities defined at § 745.223 without being accredited by EPA according to the requirements of § 745.225. The rule also stated that after August 30, 1999, no individuals or firms could perform, offer, or claim to perform lead-based paint activities as defined at § 745.223 without certification from EPA under § 745.226 to conduct those activities. A special provision at § 745.226(d) was effective only until August 30, 1999, and allowed individuals to seek certification based on prior training and completion of a refresher course and a certification exam (if applicable). Additionally, after August 30, 1999, all lead-based paint activities were to be performed according to the work practice standards at § 745.227.

The Federal program under part 745, subpart L became effective August 31, 1998, in all non-authorized States and Tribes. The accreditation requirements at § 745.225 became effective March 1, 1999, and all training providers must now be accredited by EPA to offer lead-based paint activities courses in the Federal program.

B. Program Implementation

Although EPA has been reviewing applications for accreditation, there have been several unavoidable delays which have slowed the process of approving a sufficient number of training providers to accommodate the number of individuals seeking certification prior to the August 30, 1999 date. Two important items, the model training courses and the fee schedule, were not made available by EPA to training providers in a sufficiently timely fashion to allow them to prepare their application packages well in advance of the deadlines.

In the preamble to the final rule, EPA indicated that it would make model training courses available in advance for training providers to use in developing their programs (61 FR 45778, at 45783). Under § 745.225(b)(1)(iii), training providers who used EPA model training materials may submit an abbreviated application package for accreditation and thus potentially accelerate the accreditation process. However, EPA was unable to make all model training materials immediately available to training providers. The updating of some of these courses to reflect the course curricula in § 745.225(d) was initially delayed. The development of a new model course for the project designer discipline has not yet been completed. EPA has also changed distributors for the model training course materials. The course materials were not available to the regulated community while a new distributor was being sought and contract arrangements finalized.

EPA was also delayed in promulgating the final fee rule setting out the fee schedule for accreditation of training providers and certification of contractors. The final fee rule was effective June 11, 1999 (64 FR 31092, June 9, 1999) (FRL–6058–6). Prior to its publication, training providers were unsure as to the fee structure and may have delayed preparing accreditation applications while waiting for the fee rule to be finalized.

Because of these delays, some areas of the U.S. where EPA is running the Federal program have insufficient training courses currently available for the number of individuals seeking certification. In some areas this is due to a lack of training provider applicants to provide training. In other areas, this is due to a backlog of training provider applications needing review by EPA. Despite the fact that the August 30 deadline is nearing, EPA has received only a few certification applications because of the difficulty for many individuals to take the courses needed prior to applying for certification. The lack of refresher courses has been a particular problem for those who wish to use the certification based on prior training provisions at § 745.226(d) that require completion of an EPA-accredited refresher course. Additionally, EPA has not made the certification exam available for inspectors, risk assessors, and supervisors who are required by § 745.226(b)(1)(ii) to pass a certification exam after completing the training courses. Although EPA expects to start offering the exam before the August 30, 1999 deadline, there would not be adequate time before August 30 to accommodate the many individuals who must take the exam prior to certification.

C. Extension Necessary

EPA believes that it is necessary to extend the effective dates for certification and work practice standards to March 1, 2000, to allow for successful implementation of the Federal program. This will allow EPA time to accredit sufficient training providers to accommodate the many individuals who must be certified. In particular, EPA wishes to accommodate those individuals who have years of experience conducting lead-based paint activities and choose to use the certification based on prior training provisions at § 745.226(d), which would also be extended until March 1, 2000. These individuals must take refresher courses, which EPA expects to be available in greater numbers with the extended effective date. Once individuals take the appropriate courses, inspectors, risk assessors, and supervisors must also complete the appropriate certification exams. EPA will have those exams in place and available for all those who seek to take the exams prior to the March 1, 2000 deadline. This extension only applies in States and Tribes where EPA is operating the Federal lead-based paint program under part 745, subpart L. It does not affect States and Tribes operating EPA-authorized programs under part 745, subpart Q. Additionally, in the Federal program, the extension for use of work practice standards does not apply once an individual is certified by EPA, because § 745.226(a)(4) states that individuals who have received EPA certification must conduct lead-based paint activities in compliance with the appropriate work practice standards in § 745.227.

Without the extension of the effective dates, EPA does not believe that it is currently possible to have effective implementation of the Federal lead-based paint program and ensure that individuals are well-trained in conducting lead-based paint activities in target housing and child-occupied facilities. EPA is concerned that under the original deadline, individuals who could not be certified, because of the lack of available training courses and/or certification exams, would not be able to legally perform lead-based paint activities after August 30, 1999. This

would reduce the availability of a well-qualified workforce to conduct lead-based paint activities. EPA believes that it is more appropriate to extend the effective dates to allow an appropriate amount of time for individuals to complete the necessary prerequisites and receive certification. EPA will work to assist the regulated community in coming into compliance by the March 1, 2000 deadline.

IV. Why is this Amendment Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is impracticable, unnecessary and would be contrary to the public interest. EPA finds that there is good cause to issue a final rule, without utilizing all of the notice and public comment procedures in section 553(b) of the Administrative Procedure Act (APA). It is impracticable to utilize the full-scale notice and comment proceedings in section 553(b), because such proceedings would unnecesarily extend the rulemaking process beyond the August 30, 1999 effective date, and would further delay the implementation of certification requirements and work practice standards. Congress clearly intended that EPA act expeditiously to promulgate training and certification requirements for lead-based paint activities, and even established a deadline for their promulgation. EPA did not meet the deadline because of the time-consuming process that was necessary to develop the Federal accreditation, training and certification processes and the State and Tribal authorization program. If EPA were to develop and publish a notice of proposed rulemaking pursuant to section 553(b), the full implementation of the Federal training and certification requirements would be even further delayed. As explained above, the amendments contained in this action will only extend the effective dates for the Federal program certification requirements and work practice standards to March 1, 2000. EPA is not making any changes to the substantive requirements of the current part 745, subpart L provisions. EPA is extending these effective dates in order to provide additional time for individuals to become trained and certified to conduct lead-based paint activities safely, reliably, and effectively. EPA therefore finds that there is ''good cause'' under section 553(b)(3)(B) of the APA (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only extends effective dates that are contained in the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice and comment requirements under the APA, or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the preamble for the final rule (61 FR 45778, at 45808).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. EPA has made such a good cause finding for this final rule, and established an effective date of August 6, 1999. Pursuant to 5 U.S.C 808(2), this determination is supported by the brief statement in Unit IV. of this preamble. 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 is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and reporting requirements.

Dated: July 29, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 745 is amended as follows:

PART 745 [AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. In § 745.226, by revising paragraphs (a)(5), (d)(2), and (f)(1) to read as follows:

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities; target housing and child-occupied facilities.

(a) * * *

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in § 745.227 after March 1, 2000, if that individual has not been certified by EPA pursuant to this section to do so.

* * * * *

(d) * * *

(2) Individuals shall have until March 1, 2000, to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is being sought.

* * * * *

(f) * * *

(1) All firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 after March 1, 2000, shall be certified by EPA.

3. In § 745.227, by revising paragraph (a)(1) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(a) * * *

(1) Beginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

* * * * *

4. In § 745.239, by revising paragraphs (b) and (c) to read as follows:

§ 745.239 Effective dates.

* * * * *

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after March 1, 2000.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after March 1, 2000.

[FR Doc. 99–20372 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7718]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia: Madison, city of, Morgan County	130224	June 7, 1999	February 21, 1975
Maine: Pembroke, town of, Washington County	230143	June 9, 1999	October 29, 1976
Missouri: Airport Drive, village of, Jasper County	290761	.....do	February 14, 1975
Ohio: Clarksville, village of, Clinton County	390820	.....do	November 10, 1978
Michigan: Gun Plain, township of, Allegan County.	260614	June 23, 1999	
Minnesota: Lonsdale, city of, Rice County	270445	.....do	

State/location	Community No.	Effective date of eligibility	Current effective map date
Missouri: McDonald County, unincorporated areas.	290817	June 30, 1999	November 2, 1983
New Eligibles—Regular Program			
Ohio: Riverlea, village of, Franklin County	390692	June 9, 1999	April 21, 1999
California: El Monte, city of, Los Angeles County	060658	June 16, 1999	NFSHA
Missouri: Newton County, unincorporated areas	290820	June 30, 1999	April 17, 1985
Withdrawn			
Ohio: South Zanesville, village of, Muskingum County.	390860	June 9, 1999	October 20, 1978
Reinstatements			
Ohio: Dublin, city of, Delaware and Franklin Counties.	390673	June 21, 1974, Emerg.;June 4, 1980 Reg.; April 21, 1999 Susp.; June 15, 1999 Rein.	April 21, 1999
Missouri: Cobalt, village of, Madison County	290601	February 12, 1985 Emerg.; July 2, 1987 Reg.; March 5, 1990 Susp.; June 30, 1999 Rein.	July 2, 1987
Regular Program Conversions			
Region I			
Massachusetts: Wilmington, town of, Middlesex County.	250227	June 2, 1999; Suspension Withdrawn	June 2, 1999
Region II			
New Jersey: Point Pleasant Beach, borough of, Ocean County.	340388	.....do	Do.
New York:			
Deerfield, town of, Oneida County	360526	.....do	Do.
Newport, town of, Herkimer County	361111	.....do	Do.
Poland, village of, Herkimer County	360316	.....do	Do.
Russia, town of, Herkimer County	361121	.....do	Do.
Sylvan Beach, village of, Oneida County	361042	.....do	Do.
Puerto Rico:			
Bayamon (Municipality)	720100	.....do	Do.
Puerto Rico (Commonwealth)	720000	.....do	Do.
Region III			
West Virginia: Matewan, town of, Mingo County	545538	.....do	Do.
Region IV			
North Carolina: Bogue, town of, Carteret County	370491	.....do	Do.
Region V			
Michigan: Delta, charter township, Eaton County	260066	.....do	Do.
Minnesota: Centerville, city of, Anoka County	270008	.....do	Do.
Region VI			
Louisiana:			
LeCompte, town of, Rapides Parish	220150	.....do	Do.
Rapides Parish, unincorporated areas	220145	.....do	Do.
Region VIII			
North Dakota: Dickinson, city of, Stark County	380117	.....do	Do.
Region IX			
California: Palo Alto, city of, Santa Clara County	060348	.....do	Do.
Region X			
Oregon:			
Coburg, city of, Lane County	410119	.....do	Do.
Cottage Grove, city of, Lane County	410120	.....do	Do.
Creswell, city of, Lane County	410121	.....do	Do.
Dunes City, city of, Lane County	410262	.....do	Do.
Eugene, city of, Lane County	410122	.....do	Do.
Florence, city of, Lane County	410123	.....do	Do.
Junction City, city of, Lane County	410124	.....do	Do.
Lane County, unincorporated areas	415591	.....do	Do.
Lowell, city of, Lane County	410125	.....do	Do.
Oakridge, city of, Lane County	410126	.....do	Do.
Springfield, city of, Lane County	415592	.....do	Do.
Veneta, city of, Lane County	410128	.....do	Do.
Westfir, city of, Lane County	410289	.....do	Do.
Region VI			
Texas:			
Austin County, unincorporated areas	480704	June 16, 1999; suspension withdrawn	June 16, 1999.
Sealy, city of, Austin County	480017	.....do	Do.
Region VII			
Missouri:			
Alexandria, city of, Clark County	290080	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Warren County, unincorporated areas	290443	.....do	Do.
Region IX			
California:			
San Diego, city of, San Diego County	060295	.....do	Do.
San Diego County, unincorporated areas	060284	.....do	Do.
Shasta Lake, city of, Shasta County	060758	.....do	Do.
Shasta County, unincorporated areas	060358	.....do	Do.
Vista, city of, San Diego County	060297	.....do	Do.
Region X			
Oregon:			
Clatsop County, unincorporated areas	410027	.....do	Do.
Gearhart, city of, Clatsop County	410030	.....do	Do.
Washington:			
Ferry County, unincorporated areas	530041	.....do	Do.
Thurston County, unincorporated areas	530188	.....do	Do.
Yelm County, unincorporated areas	530310	.....do	Do.
Region I			
Connecticut:			
East Lyme, town of, New London County	090096	June 30, 1999; Suspension Withdrawn.	June 30, 1999
Westport, town of, Fairfield County	090019	.....do	Do.
Massachusetts: Rowley, town of, Essex County	250101	.....do	Do.
Region II			
New Jersey:			
Galloway, township of, Atlantic County	340008	.....do	Do.
Little Egg Harbor, township of, Ocean County.	340380	.....do	Do.
Region IV			
Florida:			
Cedar Key, city of, Levy County	120373	.....do	Do.
Hillsborough County, unincorporated areas	120112	.....do	Do.
Manatee County, unincorporated areas	120153	.....do	Do.
Martin County, unincorporated areas	120161	.....do	Do.
Okaloosa County, unincorporated areas	120173	.....do	Do.
St. Lucie County, unincorporated areas	120285	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: July 23, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–20347 Filed 8–5–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–200; DA 99–1491]

Assessment and Collection of Regulatory Fees For Fiscal Year 1999

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revised its Schedule of Regulatory Fees on June 11, 1999, in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1999. *See Report and Order in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* MD Docket 98–200, FCC 99–146, released June 18, 1999, 64 FR 35831 (July 1, 1999). The attached *Order* establishes the dates when these regulatory fees must be paid.

DATES: September 13, 1999, through September 22, 1999, for all annual fee payors. Beginning on September 13, 1999, for applicants who pay fees in advance in combination with their application fee for new, renewal and reinstatement authorizations in the private wireless services.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: August 2, 1999.
Released: August 2, 1999.

1. The Managing Director has determined the dates for collection of the fees adopted in the above-captioned proceeding. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* FCC 98–200, released June 18, 1999, 64 FR 35831 (July 1, 1999). We are establishing collection dates as indicated in paragraphs 2 and 3.

2. Annual regulatory fees for regulatees in the cable television, common carrier, international, mass media, and commercial wireless services are due during the period beginning *September 13, 1999,* and ending *September 22, 1999.* Parties paying these fees electronically must ensure that payment is received by Mellon Bank no later than *September 21, 1999,* however they are requested to submit them on *September 13th* or *September 14th* to facilitate their receipt and recording in a timely fashion.

3. Applicants for new, renewal and reinstatement licenses in the private wireless private mobile radio (PMRS) and the microwave radio services, which pay annual fees of $13.00 in advance for each year of their license term in combination with the appropriate application fee, are to begin paying the new fee on *September 13, 1999.* For private wireless licensees in the aviation, marine, general mobile (GMRS), and other land mobile radio services paying $7.00 in advance for

each year of their license term in combination with the appropriate application fee, they also are to begin paying the new fee on *September 13, 1999.* Applicants for amateur vanity call signs paying $1.40 in advance for each year of their license term in combination with the appropriate application fee, they too are to begin paying the new fee on *September 13, 1999.*

4. Since the time for collecting fees is extremely limited, we are unable to offer installment payments for fiscal year 1999.

5. Accordingly, It is ordered that the dates for collection of fiscal year 1999 regulatory fees are as provided in paragraphs 2 and 3. This action is taken under delegated authority pursuant to § 0.231(a) and § 1.1157(b)(1) of the Commission's rules. 47 U.S.C. 0.231(a) and 1.1157(b)(1).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20280 Filed 8–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85; FCC 99–57]

Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR 76.952 and 47 CFR 76.990, which contain information collection requirements, will become effective on August 31, 1999. These amendments, which were published in the **Federal Register** on July 2, 1999, relate to implementation of provisions of the Telecommunications Act of 1996.

EFFECTIVE DATE: The amendments to 47 CFR 76.952 and 47 CFR 76.990, published at 64 FR 35948 will become effective on August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson or Marjorie Reed Greene, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On March 29, 1999, the Commission released a Report and Order, a summary of which was published in the **Federal Register**. See 64 FR 35948, July 2, 1999. The Report and Order implements the Cable Act Reform provisions of the Telecommunications Act of 1996. Because the rules imposed new information collection requirements, the amendments to 47 CFR 76.952 and 47 CFR 76.990 could not become effective until approved by the Office of Management and Budget (''OMB''), and no sooner than August 31, 1999. OMB approved these rule changes on June 16, 1999.

2. The **Federal Register** summary stated that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval. The amendments to 47 CFR 76.952 and 47 CFR 76.990 become effective on August 31, 1999. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20244 Filed 8–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85; FCC 99–57]

Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On July 2, 1999, the Commission published a final rule which implemented provisions of the Telecommunications Act of 1996 that reform several parts of Title VI of the Communications Act of 1934, including a provision concerning notice by cable operators to subscribers of service and rate changes. This document corrects that rule by removing an incorrect amendment and publishing the correct amendment.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson or Marjorie Reed Greene, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

On March 29, 1999, the Commission released a Report and Order, a summary of which was published in the **Federal Register**. See 64 FR 35948, July 2, 1999. In that rule, published in the **Federal Register** on July 2, 1999, an amendment was made to 47 CFR 76.1603(e). The amendment to 47 CFR 76.1603(e) should have instead been made to 47 CFR 76.964(b). The Commission has released, and will soon publish in the **Federal Register**, a Report and Order (FCC 99–12) which redesignates 47 CFR 76.964(b) as 47 CFR 76.1603(e). The change the Commission made to the rule published on July 2, 1999 anticipated that the requirement had previously been moved. This document corrects that error.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

The rule published on July 2, 1999 at 64 FR 35948, is corrected as follows:

PART 76—[CORRECTED]

1. On page 35951, in the third column, amendatory instruction 17 and the amendment to § 76.1603(e) are removed.

2. The following amendatory instruction and amendment are added in its place:

17. Section 76.964 is amended by revising paragraph (b) to read as follows:

§ 76.964 Written notification of changes in rates and services.

* * * * *

(b) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

* * * * *

[FR Doc. 99–20243 Filed 8–5–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072999A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Adjustment of General category daily retention limit on previously designated restricted-fishing days.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted-fishing day (RFD)

schedule should be adjusted, i.e., certain RFDs should be waived, in order to allow for maximum utilization of the General category June-August subquota. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following previously designated RFDs for 1999: August 8, 9, 15, and 16.

DATES: Effective August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under §§ 635.23(a) and 635.27(a). The 1999 General category effort controls were implemented June 1, 1999 (64 FR 29806, June 3, 1999).

Adjustment of Daily Retention Limit for Selected Dates

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that adjustment to the RFD schedule, and therefore an increase of the daily retention limit for selected previously designated RFDs, is necessary. Therefore, NMFS adjusts the daily retention limit for August 8, 9, 15, and 16, 1999, to one large medium or giant BFT per vessel. NMFS has selected these days in order give adequate advanced notice to fishery participants and NMFS enforcement.

The intent of this adjustment is to allow for maximum utilization of the June-August subquota (specified under § 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Classification

This action is taken under § 635.23(a)(4) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 2, 1999.

Gary C. Matlock,

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

[FR Doc. 99–20249 Filed 8–2–99; 5:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 99043–913–01; I.D. 072299C]

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Commercial Closure From Fort Ross to Point Reyes, CA; Inseason Adjustment from Cape Flattery to Leadbetter Point, WA

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

ACTION: Closure; inseason adjustment (transfer); request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Fort Ross to Point Reyes, CA, was closed at midnight, July 12, 1999. The Northwest Regional Administrator, NMFS (Regional Administrator), has determined that the commercial quota of 2,500 chinook salmon has been reached. In addition, 2,500 chinook salmon will be transferred from the May/June commercial troll fishery between the U.S.-Canada border and Cape Falcon, Oregon, to the July through September fishery between Cape Flattery and Leadbetter Point, WA. These actions are necessary to conform to the 1999 management measures and are intended to ensure conservation of chinook salmon.

DATES: Closure effective 2400 hours local time (l.t.), July 12, 1999. Transfer effective August 5, 1999. Comments will be accepted through August 20, 1999.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140, or Svein Fougner, 562–980–4030.

SUPPLEMENTARY INFORMATION:

Closure of the Test Fishery

Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that, when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, NMFS will, by notification issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1999 management measures for ocean salmon fisheries (64 FR 24078, May 5, 1999), NMFS announced that the commercial fishery for all salmon, except coho, in the area between Fort Ross (38°31'00'' N. lat.) to Point Reyes, CA (test fishery inside 6 nm [11.1 km]) would open on July 1 through the earlier of July 14 or attainment of a 2,500 chinook quota.

Daily landings of chinook salmon from July 1 to 8 ranged from 0 to 300 fish, with 1 to 22 boats participating daily. On Friday, July 9, participation increased to 49 boats, with most boats catching the 30–fish limit early in the day, and total landings for the day were over 1,100 fish. California Department of Fish and Game (CDFG) staff recognized the increased effort and anticipated the quota would be met by Saturday but were unable to close the fishery until Monday, July 12, 1999. The information regarding the attainment of the quota was distributed to the commercial fish buyers and fishermen on Saturday morning, and a voluntary closure was encouraged by the CDFG. In response to CDFG concerns, most fishermen chose to respect the voluntary closure; participation dropped from 51 boats on Saturday to 4 boats on Sunday. As of July 11, 1999, the total landings of chinook were 3,144, 644 fish over the quota.

In order to provide notification to the fishing fleet, the fishery was closed at midnight, July 12. In making this decision, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the CDFG. The State of California will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone (EEZ) in accordance with this Federal action. As provided by the inseason notification procedures of 50 CFR 660.411, actual

notice to fishermen of this action was given prior to 2400 hours l.t., July 12, 1999, by telephone hotline numbers 206–526–6667 and 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to close the fishery upon achievement of the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Transfer of Chinook Salmon

In the 1999 management measures for ocean salmon fisheries (64 FR 24078, May 5, 1999), NMFS announced that the commercial fishery for all salmon except coho, from the U.S.-Canada border to Cape Falcon, Oregon, would open May 1 through the earlier of June 15 or attainment of a 24,000 chinook guideline, and that the commercial fishery for all salmon from Cape Flattery (48°23'00'' N. lat.) to Cape Alava (48°10'00'' N. lat.) West of 125°05'00'' W. long. and Cape Alava to Leadbetter Point, WA, would open July 10 through the earliest of September 30 or attainment of the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota.

The May/June commercial fishery for salmon from the U.S.-Canada border to Cape Falcon, Oregon, landed 11,116 chinook salmon of the 24,000 chinook salmon guideline, with 12,884 fish remaining. The Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife to consider transferring all, or a portion of, the 12,884 fish remaining from the May/June fishery chinook guideline to the July through September season. The States of Washington and Oregon have recommended that any amount transferred should not result in increased impacts to Endangered Species Act (ESA) listed stocks from the level of impacts approved in the preseason regulations. Analysis of the transfer indicated that a transfer of 2,500 chinook salmon to the later season from Cape Flattery to Leadbetter Point, WA, could occur without increasing impacts to ESA-listed salmon. Therefore, NMFS is transferring 2,500 of the remaining 12,884 chinook salmon from the May/June commercial fishery to the July through September fishery from Cape Flattery to Leadbetter Point, WA, making the total guideline for this area for this period 7,000 chinook salmon.

Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). All other restrictions that applied to this fishery remained in effect as announced in the annual management measures. The State of Washington will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: August 2, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–20349 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 151
Friday, August 6, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV99–931–1 PR]

Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.02 to $0.025 per standard box of fresh Bartlett pears established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 7, 1999.

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

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement No. 141 and Order No. 931 (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable fresh Bartlett pears beginning July 1, 1999, and continue until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.02 to $0.025 per standard box of fresh Bartlett pears handled.

The fresh Bartlett pear marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of eight grower members and six handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.02 per standard box that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 3, 1999, and unanimously recommended 1999–2000 expenditures of $77,231 and an assessment rate of $0.025 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $97,000. The

assessment rate of $0.025 is $0.005 higher than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be less than the five-year average of 2,910,048 standard boxes, and the current rate would not generate enough income to adequately administer the program.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $40,433 for salaries, $5,323 for office rent, and $4,048 for health insurance. Budgeted expenses for these items in 1998–99 were $38,878, $5,323, and $4,062, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. Fresh Bartlett pear shipments for the year are estimated at 2,630,450 standard boxes, which should provide $65,761 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, should be adequate to cover budgeted expenses. Funds in the reserve (currently $23,604) would be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, about 98.5 percent of the fresh Bartlett pear handlers ship less that $5,000,000 worth of fresh Bartlett pears and 1.5 percent ship more than $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of fresh Bartlett pear producers, the average annual producer revenue is approximately $12,250. In view of the foregoing, it can be concluded that the majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.02 to $0.025 per standard box of fresh Bartlett pears handled. The Committee met on June 3, 1999, and unanimously recommended 1999–2000 expenditures of $77,231 and an assessment rate of $0.025 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $97,000. The assessment rate of $0.025 is $0.005 more than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be less than the five-year average of 2,910,048 standard boxes, and the current rate would not generate enough income to adequately administer the program.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $40,433 for salaries, $5,323 for office rent, and $4,048 for health insurance. Budgeted expenses for these items in 1998–99 were $38,878, $5,323, and $4,062, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. Fresh Bartlett pear shipments for the year are estimated at 2,630,450 standard boxes, which should provide $65,761 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, should be adequate to cover budgeted expenses. The reserve is within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

The Committee considered alternative levels of assessment but determined that, with the reduced estimate of assessable tonnage, increasing the assessment rate to $0.025 per standard box would be appropriate. The Committee decided that an assessment rate of more than $0.025 per standard box would generate income in excess of that needed to adequately administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop indicates that the producer price for the 1999–2000 marketing season could range between $8.56 and $12.72 per standard box of fresh Bartlett pears handled. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue should range between 0.29 and 0.20 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all

Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 1999–2000 fiscal period began on July 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is proposed to be amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 931.231 is revised to read as follows:

§ 931.231 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.025 per western standard pear box is established for the Northwest Fresh Bartlett Pear Marketing Committee.

Dated: August 3, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–20289 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[DA–99–06]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend a portion of the supply plant shipping standard and a producer delivery requirement of the Southwest Plains Federal milk marketing order (Order 106) for the period of September 1999 through August 2000 or until implementation of Federal order reform. The action was requested by Kraft Foods, Inc. (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

DATES: Comments must be submitted on or before August 13, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB__FMMO__Comments@usda.gov. Reference should be given to the title of the action and the docket number.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1999, 2,045 dairy farmers were producers under Order 106. Of these producers, 2,001 producers (i.e., 98%) were considered small businesses. For the same month, there were 12 regulated handlers under Order 106. Five of these handlers were considered small businesses.

The supply plant shipping standard and the producer delivery requirement are designed to attract an adequate supply of milk to the market to meet fluid needs. Kraft, the proponent of this proposal, anticipates that there will be an adequate supply of milk available

within the general area to meet the needs to the Order 106 market and states supplemental milk supplies will not be needed.

The proposal would allow a supply plant that has been associated with the Southwest Plains market during the months of September 1998 through January 1999 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1999 through August 2000 or until implementation of Federal order reform. The proposed action would also suspend the requirement that a producer's milk must first be received at a pool distributing plant during the month before the milk is eligible to be diverted to nonpool plants. Thus, this rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of September 1, 1999, through August 31, 2000, or until implementation or Federal order reform:

In § 1106.6, the words ''during the month''.

In § 1106.7(b)(1), beginning with the words ''of February through August'' and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend a portion of the supply plant shipping standard and the producer delivery requirement of the Southwest Plains order for the period of September 1999 through August 2000 or until completion of Federal order reform. The proposed suspension would allow a supply plant that has been associated with the Southwest Plains order during the months of September 1998 through January 1999 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1999 through August 2000 or until completion of Federal order reform. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

The proposed rule would also suspend the requirement that a producer's milk must be received at a pool plant during the month before it is eligible for diversion to a nonpool plant. By suspending this provision, producer milk would not be required to be delivered to pool plants before going to unregulated manufacturing plants.

According to Kraft, the proponent of the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. The handler notes that the supply plant shipping provision and the producer delivery requirement have been suspended since 1993 and 1992, respectively.

Kraft states there is no need to require producers located some distance from pool distributing plants to deliver their milk to such plants when their milk can more economically be diverted directly to manufacturing plants in the production area. Thus, the handler contends the proposed suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure producers historically associated with Order 106 will continue to have their milk pooled under the order.

Accordingly, it may be appropriate to suspend the aforesaid provisions from September 1, 1999, through August 31, 2000, or until implementation of Federal order reform.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: August 3, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–20288 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 361

RIN 3064–AB95

Minority and Women Outreach Program—Contracting; and Individuals With Disabilities Outreach Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed rule.

SUMMARY: On April 14, 1997, the FDIC published a proposed rule to provide that the FDIC certify the eligibility of businesses and law firms for the minority and women contracting program (62 FR 18059). The formal certification procedure would have replaced the current self-certification of minority- and women-owned businesses and law firms. As published elsewhere in this issue of the **Federal Register**, the FDIC is proposing to amend its outreach and procurement regulation to provide solely an outreach program that is consistent with the Constitution and applicable federal statutes, case law and regulations. As explained in that proposal, the FDIC will no longer grant a price evaluation adjustment in the procurement program based solely on race and gender criteria; thus, a formal certification procedure is no longer necessary. The proposed rule would have also established an outreach program for individuals with disabilities. In1997, the FDIC issued a policy including persons with disabilities in its outreach program. This policy prohibits discrimination against individuals with disabilities who participate, or are interested in participating, in FDIC-sponsored programs and activities, including its outreach program. Thus, although the FDIC as a matter of policy has expanded the outreach program to include individuals with disabilities, the regulation should conform to the statutory requirement and thus cover

only minorities and women. An FDIC statement of policy [1] provides that if a significant period of time elapses following the publication of a proposed rule or policy without final action, the Board will consider withdrawing the proposal. Pursuant to this policy, the FDIC is formally withdrawing the proposal.

FOR FURTHER INFORMATION CONTACT: Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Equal Opportunity, (202) 416–2456; or Gladys C. Gallagher, Counsel, Legal Division, (202) 898–3833, FDIC, 550 17th Street, NW, Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of July 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–20127 Filed 8–5–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 361

RIN 3064–AC21

Minority and Women Outreach Program—Contracting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation establishing an outreach program for minority- and women-owned businesses and announcing its intention to utilize that portion of the Federal Affirmative Action Contracting Program, set forth in the Federal Acquisition Regulations, providing contracting benefits to Small Disadvantaged Businesses. The FDIC will no longer grant price evaluation adjustments based solely on race and gender criteria. The FDIC will, however, continue its outreach programs for minorities, women, and individuals with disabilities and entities owned by them.

DATES: Written comments must be received on or before October 5, 1999.

ADDRESSES: All written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), between the hours of 7:00 a.m. and 5:00 p.m. on business days. Comments may also be faxed: (202) 898–3838 or submitted via Internet: comments@FDIC.gov. Comments will be available for inspection and photocopying in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Counsel, Legal Division, Corporate Operations Branch, Corporate Legal Issues Section, Contracting Law Unit (202) 736–0756; David McDermott, Acquisition and Corporate Services Branch, Division of Administration, (202) 942–3434; Rita Wiles Ross, Counsel, Legal Division, Corporate Operations Branch, Legal Operations Section, Outside Counsel Unit, (202) 736–3072; or Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Economic Opportunity, (202) 416–2456.

SUPPLEMENTARY INFORMATION:

I. Background

FDIC Minority- and Women-Owned Business Outreach Program

In 1989, with enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), Congress mandated that the FDIC augment its program for contracting activities by prescribing

> ''regulations to establish and oversee minority outreach program[s] * * * to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, * * * in all contracts entered into by the agency * * *'' 12 USC 1833e(c).

In response, the FDIC adopted a regulation that obligates and requires the Corporation to engage in outreach efforts to identify and register minority- and women-owned businesses (MWOBs) that can provide the goods and services utilized by the FDIC. 12 CFR 361.6(b); Minority and Women Outreach Program—Contracting, 57 FR 15004 (April 24, 1992). In addition, to ensure that MWOBs are ''being included in each solicitation, the solicitation process will include: * * * (3) Allowing qualified MWOBs a 3% price advantage and additional technical consideration for competitively bid services; * * *'' 12 CFR 361.8(b)(3).[1]

In soliciting and awarding contracts for legal services, the Legal Division ''actively seeks to engage firms owned by minorities and women, both directly and in association with other firms.'' 12 CFR 361.11(c). However, there is no price evaluation adjustment or other technical considerations available in contracting for legal services.

The Supreme Court has held that all racial classifications, whether imposed by federal, state, or local governments, must be analyzed by a reviewing court under strict scrutiny. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227; 115 S.Ct. 2097, 2113 (1995). To be sustained, federal racial classifications, like those of a State, must serve a compelling governmental interest and must be narrowly tailored to further that interest. 515 U.S. at 229. In this context, a compelling governmental interest may include past discriminatory barriers, whether such barriers were a result of intentional acts of the federal government or passive complicity in the acts of discrimination by the private sector. Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989). These decisions relate to programs that confer a benefit on the basis of race. They do not address outreach efforts where an agency only seeks to increase the pool of available MWOB contractors.

There does not appear to be a finding of discrimination underlying 12 U.S.C. 1833e. The FDIC does not believe such a finding is necessary to sustain an outreach program, because, unlike a program that awards financial benefits to contract with MWOBs, a pure outreach program has ''no winners or losers.'' It only increases the potential pool of MWOB contractors, and it does not affect the award process or favor one group of contractors over another based on considerations of race, ethnicity, or gender.

However, as noted above, the FDIC program has gone beyond the pure outreach mandate of section 1833e, and through the regulation, applies a price evaluation adjustment to awards to MWOB contractors for non-legal services. To pass strict scrutiny, such a program requires findings of past discrimination establishing a compelling governmental interest, Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989), but there was no finding of past discrimination in the rulemaking adopting part 361. Thus, to the extent it included a price evaluation

[1] Development and Review of FDIC Regulations and Policies, 63 FR 25157 (May 7, 1998).

[1] The FDIC's Division of Administration has issued an Acquisition Policy Manual (APM) establishing policies and procedures in contracting for non-legal services. The APM provides for the application of the 3% price evaluation adjustment for awards of $50,000 or more. APM at Chapter 6, § D.6. There is no provision for the award of ''additional technical consideration(s).''

adjustment for MWOB firms, the FDIC program could well fail the first half of the Adarand test.

Even assuming, *arguendo,* that there is an adequate compelling governmental interest, the next phase of the Adarand test requires consideration of whether the benefit conferred is sufficiently narrowly drawn to satisfy the constitutional standard. The Court lists five factors that may be relevant to the determination of whether an affirmative action remedy is narrowly drawn to achieve its goal. They are: ''(i) the efficacy of alternative remedies; (ii) the planned duration of the remedy; (iii) the relationship between the percentage of minority group members in the relevant population or workforce; (iv) the availability of waiver provisions if the hiring plan could not be met; and (v) the effect of the remedy upon innocent third parties.'' United States v. Paradise, 480 U.S. 149, 187 (1986).

Applying these standards to the 3% price evaluation adjustment established in the regulation, it does not appear that alternative remedies have been attempted; there is no time limit on the price evaluation adjustment; the price evaluation adjustment is unrelated to the percentage of minority firms in the industry or area; the price evaluation adjustment is automatically awarded to all eligible firms in all circumstances; and the remedy may well result in the loss of a potential contract by non-MWOB firms despite more cost-effective bids. Thus, the 3% price evaluation adjustment may not be sufficiently narrow to satisfy the constitutional standard.

Affirmative Action in Federal Procurement

In 1996, the Department of Justice invited public comments on a system designed to reform affirmative action in federal procurement in response to Adarand. 61 FR 26042, May 23, 1996. Continuing in that vein, in 1998, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration published a revision to the Federal Acquisition Regulations (FAR) implementing a new program of affirmative action in federal procurement. 63 FR 52426, September 30, 1998.

In this program, each year, the Department of Commerce will make a determination as to which industries demonstrate the results of past discrimination and are thereby eligible for a benefit in federal contracting. The Department of Commerce will also determine the size of a price evaluation adjustment, not to exceed 10%, to be available in those industries. In the first year of the program, eligible industries that are generally used by FDIC include accounting firms, asset managers, information technology contractors, office services, and building services. The amount of the price evaluation adjustment for 1999 is 10%.

The price evaluation adjustment is available to firms certified as Small Disadvantaged Businesses (SDBs) by the Small Business Administration (SBA). An SDB is a small business firm that is at least 51% owned by individuals who are both socially and economically disadvantaged. Socially disadvantaged individuals include Black Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans as a class, as well as other groups that the SBA may from time to time designate, and individuals that can prove by a preponderance of the evidence previous discrimination on a case-by-case basis. Economically disadvantaged individuals have an individual net worth of less than $750,000.[2] The standard for determining whether a firm qualifies as ''small'' varies between industry classifications and may be based on revenue or number of employees.

The price evaluation adjustment of 10% is available to qualified SDBs bidding in competitive procurements over $100,000 for services within the eligible industries as determined by the Department of Commerce.

In lieu of the price evaluation adjustment, an SDB may take advantage of an SDB participation factor, if the contracting agency includes such a factor in the procurement. An SDB participation factor may be offered at the discretion of the contracting agency in competitive procurements over $500,000, or $1,000,000 for construction contracts. The contracting agency assigns a value to this factor.[3] A non-SDB may take advantage of the factor by proposing to partner with an SDB or to use SDB subcontractors. An SDB can also take advantage of this factor as the prime contractor. However, the SDB would only be eligible for the participation factor if it first waives the price evaluation adjustment. Utilization of SDBs as subcontractors may also be encouraged, at the discretion of the contracting agency, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

[2] The $750,000 excludes individual equity in a primary residence and the value of the individual's ownership interest in the firm seeking SDB status.

[3] Only SDB participation within eligible industries may be considered under this factor.

II. Utilization of SDB Program

It is unlikely that the FDIC MWOB price evaluation adjustment, as implemented, would pass the Constitutional tests enunciated by the Supreme Court in Adarand. There has been no articulation of a compelling governmental interest as required by that case, and it does not appear that the benefit conferred by the program is sufficiently narrowly drawn to survive judicial scrutiny. On the other hand, the FAR program appears to satisfy the Adarand tests. The benefits are only available in industries where there is a compelling governmental interest based on findings of past discrimination, and the 10% price evaluation adjustment is related to the degree of under-representation within the industry. Moreover, the benefit is not solely available on the basis of race or ethnicity. Rather, to qualify, small firms must also be owned and operated by socially and economically disadvantaged individuals.

Although the FDIC is not subject to the FAR, the FDIC believes that the FAR's affirmative action contracting program provides a constitutionally sustainable means of enhancing the opportunities for SDBs in FDIC contracting. Accordingly, the FDIC intends to voluntarily utilize that program in lieu of the constitutionally questionable price evaluation adjustments based on race and gender that have been awarded in the past. With this in mind, the FDIC solicits public comment on whether the FDIC's proposed regulation should specifically reference the regulations that implement the federal government's SDB procurement program, in addition to such references in the FDIC's acquisition policies and procedures. We will, of course, continue to maintain an Outreach Program to ensure, to the maximum extent possible, that minorities and women and entities owned by minorities and women are given the opportunity to fully participate in contracts to provide both legal and other services. In addition, the FDIC will continue to follow its policy of including individuals with disabilities in the Outreach Program.

The program, to be included in the FDIC Acquisition Policy Manual (APM), will provide that, for goods and services

acquired under Formal Contracting Procedures, as defined in the APM, generally involving expenditures of $100,000 or more, a price evaluation adjustment will be available to technically qualified SDB bidders in the following circumstances: (a) The bidder has been certified as an SDB by the SBA under procedures set forth in 13 CFR part 124; and (b) the Standard Industrial Classification (SIC) code for the prime contract is one in which the Department of Commerce has authorized the use of a preference. The eligible SICs and amount of the price evaluation adjustment is established annually by the Department of Commerce pursuant to 48 CFR 19.201(b).

Moreover, solicitations issued under the Formal Contracting Procedures involving awards of $500,000 or more ($1,000,000 for construction contracts) may also include an evaluation factor for SDB participation in the performance of the contract. The value to be assigned this factor, if any, is determined by the contracting officer on a contract-by-contract basis. The prime contract need not be in an SIC code identified as authorized by the Department of Commerce for the use of preferences, but only SDB participation in authorized SIC codes would be considered in the evaluation of the participation factor. SDB participation may be in the form of subcontracts, joint ventures or teaming partners.[4] Where the SDB is bidding as a prime contractor in response to a solicitation that includes an SDB participation factor, the SDB will not be eligible for the participation factor unless it first waives its price evaluation adjustment.[5]

Utilization of SDBs as subcontractors may also be encouraged, at the FDIC's discretion, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

The FDIC will not certify SDBs. That process will be carried out by the Small Business Administration under procedures established in the SBA's regulations, 13 CFR part 124. SDBs responding to FDIC solicitations are responsible for identifying themselves and certifying their current status as an SDB. An SDB that has applied for but not yet received SBA certification may be entitled to treatment as an SDB where certification can be obtained before the contract is awarded. It is the intention of the FDIC to enter into a memorandum of understanding with the SBA, to establish procedures whereby the SBA will treat FDIC contractors seeking SDB certification in the same manner as contractors with FAR agencies that are similarly situated. However, if certification cannot be obtained in a timely manner, the contract may be awarded to another bidder.[6]

III. Notice of Proposed Rule Making

To facilitate the implementation of the policy enunciated above, we propose to repeal the provisions of part 361 that confer a price evaluation adjustment, 12 CFR 361.8(b)(3), as well as make other conforming amendments to the regulations. The FDIC Office of Diversity and Economic Opportunity (ODEO) will continue to have overall responsibility for providing the FDIC with technical assistance and guidance to facilitate the identification, registration and solicitation of minority- and women-owned firms including minority- and women-owned law firms (MWOLFs). ODEO is also responsible for the Corporation's outreach efforts, such as:

(1) Identifying MWOBs and MWOLFs that can provide legal or other services to FDIC;

(2) Conducting seminars, meetings, workshops and other various functions to promote the identification of MWOBs and/or MWOLFs; and

(3) Participating in conventions, seminars, meetings, workshops and other functions to promote the identification and inclusion of MWOBs and MWOLFs.

Moreover, ODEO has specific responsibility for the Outreach Program with respect to providers of non-legal services, and in addition to the functions noted above, it will distribute information concerning the FDIC program for outreach to minority- and women-owned businesses. Generally, ODEO will work with contracting officials to ensure that minority- and women-owned firms are included on FDIC solicitation lists.

ODEO will also collect information from each FDIC office and division that performs contracting or outreach activities, on a quarterly basis or upon request, including statistical information on contract awards and solicitations by designated demographic categories and related outreach activities. The FDIC will request and maintain information on firms that have represented themselves as minority- or women-owned for purposes of outreach efforts and statistical reporting.

The Legal Division will perform outreach efforts targeted at providers of legal services. Generally, in addition to the functions listed above, the Legal Division's National Outreach Coordinator will require, at a minimum, quarterly submissions of statistical information on legal fees and expenses paid to outside counsel by designated demographic categories. FDIC will also encourage use of minority and women lawyers within other firms and partnering of firms with MWOLFs. Moreover, specific procedures and activities will be detailed in the Legal Division's Outside Counsel Deskbook as well as the FDIC's web site at: *www.fdic.gov*.

Proposed Rule Changes

In addition to a general editorial updating and simplification of the rule, the FDIC proposes to amend § 361.3 to remove unnecessary definitions and to conform the definition of a minority to the SBA definition. Section 361.4 would remain essentially unchanged.

The FDIC proposes to remove §§ 361.7–361.10 because the FDIC will no longer grant price evaluation adjustments based on race and gender criteria. Statistics based on self-certification of minorities and women and entities owned by them will be used in conjunction with survey efforts solely for monitoring the FDIC's outreach efforts.

The FDIC seeks public comment on these proposed rule changes.

[4] Any joint venture in which an SDB undertakes to perform a portion of the work could qualify for consideration under the SDB participation factor. The technical value assigned to such joint ventures under the SDB participation factor would, of course, depend on the proportion of the work to be performed by the SDB joint venturer. In other circumstances, a joint venture may itself qualify as an SDB under SBA regulations. Generally, for a joint venture to qualify, the SDB participant must have at least a 51% ownership share, perform 51% of the work, and the managing partner must be from the SDB participant.

[5] In evaluating this factor, the contracting officer may consider the specificity of the proposal, the enforceability of the commitments, the complexity and variety of the work to be performed by SDBs, the realism of the proposal, and the contractor's past performance in complying with SDB participation goals.

[6] The FDIC will communicate with the SBA to ensure that FDIC contractors seeking certification as SDBs are given the same consideration as other contractors seeking similar certification. In FAR contracting, the SBA has committed itself to expedited treatment of certification applications where an award is pending, and if certification is not granted within that fifteen-day period, the contracting officer may make the award to the next best bidder.

IV. Matters of Regulatory Procedure

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Public comment and OMB approval has previously been obtained for an FDIC collection of information titled ''Acquisition Services Information Requirements'' which includes questions regarding contractors' minority status. This information collection, approved under OMB control number 3064–0072, is valid until August 31, 2001 and will not be changed by this proposed rulemaking.

Regulatory Flexibility Act

The FDIC has determined that this proposed rule may 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 the amendment repeals the 3% price evaluation adjustment that FDIC rules had provided to minority- and women-owned businesses, including small businesses. Accordingly, this initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603.

In *Adarand Constructors, Inc.* v. *Pena,* 115 S.Ct. 2097 (1995), the Supreme Court applied strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. The FDIC has determined that its price evaluation adjustments for minority- and women-owned businesses may not pass the Constitutional tests enunciated by the Supreme Court in Adarand. Therefore, in this proposed rulemaking, the FDIC proposes to amend its regulation to repeal that part of the regulation which provides a 3% price evaluation adjustment to minority- and women-owned businesses that bid on FDIC contracts. The FDIC believes that this approach is the only readily apparent solution, because providing any price incentive without meeting the criteria of the Court would be constitutionally suspect.

The Federal Acquisition Regulations (FAR), 63 FR 52426, (September 30, 1998), Reform of Affirmative Action in Federal Procurement, provide a constitutionally sustainable means of enhancing opportunities for small and disadvantaged businesses. The FDIC will voluntarily utilize the FAR's affirmative action program.

The objective of this proposal is to implement an outreach and affirmative action procurement program consistent the Supreme Court's decision in Adarand.

The 3% price evaluation adjustment being proposed for repeal was available to minority- and women-owned firms without regard to whether such firms were also ''small'' businesses. 12 CFR 361.8(b)(3). In 1998, the FDIC awarded 4,628 contracts, including 1,287 (28%) to minority- or women-owned firms. However, the overwhelming majority of those contracts were awarded without reference to the price evaluation adjustment because the contract was for less than the $50,000 threshold in the rule, or the purchase was made off the Federal Supply Schedule. Of the 537 awards that were subject to the price evaluation adjustment, 75 (14%) went to minority- or women-owned firms. Based on a self-certification, the majority of those firms (about 62%) identified themselves as small business concerns. The FDIC anticipates that there will be no significant change in its contracting activity for 1999. Thus, there may be some adverse effect on small entities that enjoyed the price evaluation adjustment under the regulation, principally small, women-owned firms. However, given the FDIC's record of contract awards where the price evaluation adjustment was not applicable as well as the benefits being conferred on Small Disadvantaged Businesses under the federal affirmative action contracting program, it is anticipated that the economic impact on small businesses may be substantially attenuated.

Repeal of regulations establishing a 3% price evaluation adjustment will not impose any new paperwork burden. Public comment and Office of Management and Budget approval has previously been obtained for an FDIC collection of information titled ''Acquisition Services Information Requirements'' which includes questions regarding contractors' minority- and/or women-owned status. This information collection, approved under OMB control number 3064–0072 is valid until August 31, 2001 and will not be changed by the rule changes proposed herein. This rule does not duplicate, overlap, or conflict with any other federal rules.

Because the 3% price evaluation adjustment for minority- and women-owned businesses would likely fail the constitutionally mandated strict scrutiny test established in the Adarand case, the only readily apparent alternative is to repeal the regulation. Nevertheless, parties may wish to address the impact of repeal on contract awards to small businesses.

Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed amendment will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Public Law 105–277).

List of Subjects in 12 CFR Part 361

Government contracts, Lawyers, Legal services, Minority businesses, Reporting and recordkeeping requirements, Women businesses.

For the reasons set forth above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise part 361 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 361—MINORITY AND WOMEN OUTREACH PROGRAM CONTRACTING

Sec.
361.1 Purpose.
361.2 Policy.
361.3 Definitions.
361.4 Scope.
361.5 Oversight and monitoring.
361.6 Outreach.

Authority: 12 U.S.C. 1833e.

§ 361.1 Purpose.

The purpose of the FDIC Minority and Women Outreach Program (MWOP) is to ensure that minority- and women-owned businesses (MWOBs) are given the opportunity to participate fully in all contracts entered into by the FDIC.

§ 361.2 Policy.

It is the policy of the FDIC that minorities and women, and businesses owned by them have the maximum practicable opportunity to participate in contracts awarded by the FDIC.

§ 361.3 Definitions.

For purposes of this part:

(a) The term ''minority'' has the same meaning as the term ''socially disadvantaged individuals'' as set out in the Small Business Administration regulations at 13 CFR 124.103(b).

(b) *Legal Services* means all services provided by attorneys or law firms (including services of support staff).

§ 361.4 Scope.

The FDIC outreach program applies to all contracts entered into by the FDIC. The outreach program is incorporated into FDIC policies and guidelines governing contracting and the retention of legal services.

§ 361.5 Oversight and monitoring.

(a) The FDIC Office of Diversity and Economic Opportunity (ODEO) has overall responsibility for nationwide outreach oversight, which includes, but is not limited to, the monitoring, review and interpretation of relevant regulations. In addition, the ODEO is responsible for providing the FDIC with technical assistance and guidance to facilitate the identification, registration, and solicitation of minority- and women-owned businesses.

(b) Each FDIC office that performs contracting or outreach activities shall submit information to the ODEO on a quarterly basis, or upon request. Quarterly submissions will include, at a minimum, statistical information on contract awards and solicitations by designated demographic categories.

§ 361.6 Outreach.

(a) Each office engaged in contracting with the private sector will designate one or more MWOP coordinators. The coordinators will perform outreach activities for MWOP and act as liaison between the FDIC and the public on MWOP issues. On a quarterly basis, or as requested by the ODEO, the coordinators will report to the ODEO on their implementation of the outreach program.

(b) Outreach includes the identification and registration of MWOBs who can provide goods and services utilized by the FDIC. This includes distributing information concerning the MWOP.

(c) The identification of MWOBs and minority- and women-owned law firms (MWOLFs) will primarily be accomplished by:

(1) Obtaining various lists and directories of minority-and women-owned firms maintained by other federal, state, and local governmental agencies;

(2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by, MWOBs and/or MWOLFs;

(3) Conducting seminars, meetings, workshops and other various functions to promote the identification and registration of MWOBs and/or MWOLFs;

(4) Placing MWOP promotional advertisements indicating opportunities with FDIC in minority- and women-owned media; and

(5) Monitoring to assure that FDIC staff interfacing with the contracting community are knowledgeable of, and actively promoting, the MWOP.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of July 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–20126 Filed 8–5–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. This action would add a new revision to the AFM and would revise the applicability of the existing AD. This action also would require modification of the air data reference systems. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent uncommanded changes in certain instrument settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98 NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

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–260–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–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 1, 1996, the FAA issued AD 96–21–02, amendment 39–9778 (61 FR 52688, October 8, 1996), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. That AD requires revision of the Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. That action was prompted by reports indicating that the co-pilot's air data reference system has intermittently failed following the switching of power between generators. The requirements of that AD are intended to prevent uncommanded changes in certain instrument settings on the co-pilot's instrument display, which, if not corrected, could result in confusion among the flight crew about the correct position and flight configuration of the airplane.

Actions Since Issuance of Previous Rule

In the preamble of AD 96–21–02, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary; this AD follows from that determination.

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, has notified the FAA that the pilot's air data reference system also may experience uncommanded changes following power transfer to the air driven generator or auxiliary power unit generator in the event that the primary electrical power is lost. Following from that, the manufacturer has developed a modification that positively addresses the unsafe condition by replacing the existing air data reference panels (ARP) and air data computers (ADC) with new, improved ARP's and ADC's, respectively. The manufacturer also has indicated that this modification would be incorporated on subsequent airplanes before delivery.

Explanation of Relevant Service Information

The manufacturer has issued Canadair Regional Jet Publication CSP A–012, Temporary Revision RJ/50–2, dated June 1, 1997. The temporary revision provides information for the flight crew concerning intermittent failures of the air data system resulting in uncommanded changes to the pilot's or co-pilot's flight instruments, and provides procedures for the flight crew to check and reset certain instrument settings as necessary.

Bombardier also has issued Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997, which describes procedures for modification of the air data reference systems. The modification involves replacing the ARP's and the ADC's with new, improved ARP's and ADC's, respectively. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–96–16R1, dated June 24, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada 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, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–21–02 to continue to require revising the Limitations Section of the FAA-approved AFM to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched.

The proposed AD would add a new temporary revision to the Emergency, Normal, and Abnormal Procedures Sections and Supplements 4 and 8 of the FAA-approved AFM to provide information for the flight crew concerning intermittent failures of the air data system resulting in uncommanded changes to the pilot's or co-pilot's flight instruments, and to provide procedures for the flight crew to check and reset certain instrument settings. This proposed AD also would limit the applicability of the existing AD to exclude certain airplanes on which the modification was accomplished during manufacture. This action also would require modification of the air data reference systems, which, when accomplished, would terminate the requirement for revising the AFM. The actions would be required to be accomplished in accordance with the service bulletin and temporary revision to the AFM described previously.

Cost Impact

There are approximately 86 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 96–21–02, and is retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM on U.S. operators is estimated to be $5,160, or $60 per airplane.

The new AFM revision that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new AFM revision proposed by this AD on U.S. operators is estimated to be $5,160, or $60 per airplane.

The new modification that is proposed in this AD action would take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $56,760, or $660 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or 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 removing amendment 39–9778 (61 FR 52688, October 8, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 98–NM–260–AD. Supersedes AD 96–21–02, Amendment 39–9778.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, having serial numbers 7003 through 7207 inclusive; except those airplanes on which Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997, has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded changes in the settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane, accomplish the following:

Restatement of the Requirements of AD 96–21–02, Amendment 39–9778

(a) Within 3 days after October 15, 1996 (the effective date of AD 96–21–02, amendment 39–9778), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Prior to each takeoff and after any event during which generators are switched, check the settings of the barometric altimeter, altitude pre-selector, V-speed, and speed bug. If any discrepancy is detected, reset, as necessary.''

New Requirements of This AD

AFM Temporary Revision

(b) Within 2 days after the effective date of this AD, revise the Emergency, Normal, and Abnormal Procedures Sections, and Supplements 4 and 8 of the FAA-approved AFM by inserting Canadair Regional Jet Publication CSP A–012, Temporary Revision RJ/50–2, dated June 1, 1997, into the applicable section of the AFM.

Note 2: The AFM revisions required by paragraph (b) of this AD are accomplished by inserting a copy of the Temporary Revisions into the applicable section of the AFM. When these Temporary Revisions have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the Temporary Revisions.

Replacement

(c) Within 18 months after the effective date of this AD, modify the air data reference systems in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997. After accomplishment of the modification, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. 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 ACO.

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–96–16R1, dated June 24, 1998.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20328 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–382–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80 and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes. This proposal would require revising the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve. This proposal is prompted by a report indicating that the pneumatic augmentation valve may go fully open when an engine fails during initial climb prior to deactivation of the second segment climb switch. The actions specified by the proposed AD are intended to prevent opening of the pneumatic augmentation valve, which could result in significant loss of thrust from the remaining engine and consequent inadequate initial climb performance of the airplane.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–382–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Boeing Commercial 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 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.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los AngelesAircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

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–382–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–382–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the results of an internal design review, conducted by McDonnell Douglas, of the design logic of the pneumatic augmentation valve wiring on McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, revealed that when an engine fails during initial climb prior to deactivation of the second segment climb switch, the pneumatic augmentation valve may go fully open. The opening of the augmentation valve combined with a pneumatic supply duct failure could result in a significant loss of thrust on the remaining engine. This condition, if not corrected, could result in inadequate initial climb performance of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998, and Revision 04, dated October 16, 1998, which describes procedures for revising of the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

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 accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,500 airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 1 to 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts cost would be nominal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $42,000 and $252,000, or between $60 and $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 98–NM–382–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in the McDonnell Douglas Service Bulletin DC9–36–012, Revision 04, dated October 16, 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 otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the pneumatic augmentation valve during initial climb following an engine failure, which could result in significant loss of thrust on the remaining engine and consequent inadequate initial climb performance of the airplane, accomplish the following:

Modification

(a) Within 3 years after the effective date of this AD, revise the wiring of the air conditioning pneumatic supply control, if applicable, and revise the wiring of the pneumatic augmentation valve, in accordance with McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998, or Revision 04, dated October 16, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

(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.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20327 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes, that would have required revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. That proposal was prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by that proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This new proposed action revises the proposed rule by specifying that, at the first signs of ice accumulation, ''heavy'' automatic cycling mode must be used during operation of the deicing boots. The actions specified by this new proposed AD are intended to prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 31, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–153–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: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–153–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. 99–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 16, 1999 (64 FR 38345). That NPRM would have required revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. That NPRM was prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe

pneumatic deicing boots were not activated. That condition, if not corrected, could result in reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Actions Since Issuance of Previous Proposal

The FAA has determined that further definition is necessary to specify the automatic cycling mode of activation of the deicing boots. These airplanes may operate deicing boots in either a ''light'' or a ''heavy'' automatic cycling mode; however, the FAA finds that at the first sign of ice accumulation, required activation of the deicing boots in ''heavy'' mode is warranted. The FAA considers that the required activation in ''heavy'' mode is necessary to assure the capability of the system to shed ice with a low pressure indication setting of 8 pounds per square inch gage (psig).

However, the manufacturer has advised the FAA that requiring activation of the deicing boots in ''heavy'' automatic cycling mode would cause the boots to wear at a rate higher than anticipated. The manufacturer further states that, consequently, such a high wear rate would require replacement of the deicing boots sooner than anticipated. The manufacturer concludes, therefore, that the additional costs associated with such additional replacement of the deicing boots would impose an additional burden to operators.

The FAA acknowledges that the activation of the deicing boots using the ''heavy'' automatic cycling mode may require costs that were not originally anticipated. The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In this case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Therefore, this supplemental NPRM revises paragraph (a) of the original proposal by adding the words ''heavy'' to specify that in the Airplane Flight Manual revision the deicing boot system must be operated in the ''heavy'' automatic cycling mode. Additionally, since these airplanes are all equipped with an automatic cycling mode, the FAA has removed the phrase ''if available'' in the same AFM paragraph. The proposed actions will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 99–NM–153–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the ''heavy'' automatic cycling mode; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

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

International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(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.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20326 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

RIN 1515–AC44

Importation and Entry Bond Conditions Regarding Other Agency Documentation Requirements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations with regard to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. The proposed amendment would extend this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence submitted to other Government agencies under laws and regulations of those other agencies.

DATES: Comments must be received on or before October 5, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202–927–2344).

SUPPLEMENTARY INFORMATION:

Background

Section 113.62 of the Customs Regulations (19 CFR 113.62) sets forth the conditions that are incorporated by reference in a basic importation and entry bond (on Customs Form 301) that must be on file with Customs when merchandise is imported and entered in the United States. Those conditions involve the agreements on the part of the obligors under the bond (that is, the principal and/or the surety) to take specific actions required by statute or regulation in connection with the importation/entry process and to pay liquidated damages as a consequence of a default on any agreement in a bond condition.

Paragraph (c) of § 113.62 concerns the agreement to produce documents and evidence. This regulatory text provides that ''[i]f merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees *to furnish Customs* with any document or evidence as required by law or regulation, and within the time specified by law or regulations'' (emphasis added). Since this bond condition refers only to documents or other evidence required to be furnished to Customs, it would not apply to documents and other evidence that are required by law or regulation to be submitted to another Government agency. Under paragraph (l)(1) of § 113.62, if the principal defaults on the paragraph (c) agreement, the obligors (that is, the principal and surety, jointly and severally) agree to pay liquidated damages in an amount generally equal to the value of the merchandise involved in the default or another amount that may vary depending on the nature of the merchandise or the terms of the specific substantive law or regulation at issue.

Basis for the Proposed Regulatory Change

On January 13, 1999, the Farm Service Agency (FSA) of the Department of Agriculture published in the **Federal Register** (64 FR 2152) a proposed rule to amend Part 782 of the FSA Regulations (7 CFR part 782), which pertains to the end-use certificate program. The end-use certificate program was established pursuant to section 321(f) of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057), which is codified at 19 U.S.C. 3391(f). The program applies to wheat or barley imported into the United States from any foreign country or instrumentality thereof that, as of April 8, 1994, required end-use certificates for imports of U.S.-produced wheat or barley. The purpose of the program is to ensure that foreign agricultural commodities do not benefit from U.S. export programs (*see* H. Rep. 103–361, 103d Cong., 1st Sess., at 68). The regulations under the program, which were promulgated by the FSA in consultation with Customs as required by the statute, currently affect only wheat originating in Canada (see 7 CFR 782.10(b)).

The amendments proposed by the FSA in the January 13, 1999 notice would affect §§ 782.2 and 782.12 (7 CFR 782.2 and 782.12), which set forth, respectively, the definitions that apply for purposes of Part 782 and the requirements for completing and filing the end-use certificate for imports of wheat originating in Canada. Specifically, the proposed regulatory changes would: (1) Amend the definition of ''importer'' to refer to the party qualifying as importer of record under 19 U.S.C. 1484(a); (2) reduce the time period for submission of the end-use certificate (form FSA–750) to the FSA from ''within 15 workdays following the date of entry'' to ''within 10 workdays following the date of entry or release'; and (3) add several data elements to be set forth on the form FSA–750.

In addition to a discussion of the proposed regulatory amendments, the background portion of the January 13, 1999, FSA notice contains the following statement: ''The U.S. Customs Service has informed the Department of Agriculture officials that it will be amending the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA.'' This statement resulted from discussions that Customs personnel had with FSA personnel regarding ways to improve the administration and enforcement of the end-use certificate program, consistent with the statutory consultative mandate set forth in the statute and reflected in the FSA regulations (see 7 CFR 782.3), and reflected the fact that the text of present paragraph (c) of § 113.62 technically does not apply to the end-use certificate because it is not furnished to Customs but rather is submitted to the FSA.

Nature and Scope of the Proposed Regulatory Change

Based on the above, Customs is proposing in this document to revise paragraph (c) of § 113.62 to ensure that it will cover documents and other evidence required in connection with the importation/entry process that are prescribed by, and submitted to, Government agencies other than Customs. Although the need for this proposal arose in the specific context of the FSA end-use certificate program, Customs has drafted the proposed new regulatory language in broad terms because Customs believes that the basic principle at issue should be applicable to importation/entry-related requirements of all Government agencies.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendment will not require any additional action on the part of the public but rather is intended to facilitate Customs enforcement efforts involving existing import requirements under other Government agency laws and regulations. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 113 of the Customs Regulations (19 CFR part 113) as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.62(c) is revised to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(c) *Agreement to produce documents and evidence.* If merchandise is released conditionally to the principal before production of all documents or other evidence required by a law or regulation administered by Customs or another government agency, the principal agrees to furnish Customs or the other government agency with any such document or other evidence as required by, and within the time specified in, such law or regulation.

* * * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: June 17, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–20248 Filed 8–5–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N–0214]

180–Day Generic Drug Exclusivity for Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing 180-day generic drug exclusivity under the Federal Food, Drug, and Cosmetic Act (the act). The proposed rule clarifies existing eligibility requirements for abbreviated new drug application (ANDA) sponsors and describes new eligibility requirements. The proposed changes to the regulations are necessary because of recent court decisions invalidating portions of FDA's current regulations. The proposed regulations are intended to permit the prompt entry of generic drug products into the market while maintaining the incentive of market exclusivity for generic drug manufacturers.

DATES: Submit written comments by November 4, 1999. Submit written comments on the information collection requirements by September 7, 1999. See section VIII of this document for the effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Virginia G. Beakes, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments) created section 505(j) of the act (21 U.S.C. 355(j)). Section 505(j) established the ANDA approval process, which allows a generic version of a previously approved innovator drug to be approved without submission of a full new drug application (NDA). An ANDA refers to a previously approved new drug application (the ''listed drug'') and relies upon the agency's finding of safety and effectiveness for that drug product.

Innovator drug applicants must include in an NDA information about patents for the drug product that is the subject of the NDA. FDA publishes this patent information as part of the agency's publication ''Approved Drug

Products with Therapeutic Equivalence Evaluations'' (the Orange Book).

Generic drug applicants must include in an ANDA a patent certification described in section 505(j)(2)(A)(vii) of the act for each patent listed in the Orange Book for the listed drug. The applicant must certify one of the following for each patent: (1) that no patent information on the drug product that is the subject of the ANDA has been submitted to FDA; (2) that such patent has expired; (3) the date on which such patent expires; or (4) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the ANDA is submitted. These certifications are known as ''paragraph I,'' ''paragraph II,'' ''paragraph III,'' and ''paragraph IV'' certifications, respectively.

Notice of a paragraph IV certification must be provided to each owner of the patent (patent owner) that is the subject of the certification and to the holder of the approved NDA (NDA holder) to which the ANDA refers. The terms ''patent owner'' and ''NDA holder'' as used throughout this proposed regulation mean either those parties or their representatives, including exclusive licensees. The agency recognizes that different terms are used throughout other sections of the regulations for the idea expressed in section 505(j)(2)(B)(i)(I) and (j)(2)(B)(i)(II) of the act that notice must be given to the principals (patent owner and NDA holder) or their representatives. The agency has added a definitions section to the proposed regulation to clarify the meaning of these terms, as well as other terms, as used in this section.

The submission of an ANDA for a drug product that is claimed in a patent is an infringing act if the ANDA product is intended to be marketed before expiration of the patent. (See 35 U.S.C. 271(e)(2).) Therefore, the submission of an ANDA with a paragraph IV certification may be the basis for patent infringement litigation.

Given this risk of patent infringement litigation, section 505(j)(5)(B)(iv)[1] of the act provides an incentive for generic drug applicants to file paragraph IV certifications challenging patents that may be invalid, unenforceable, or not infringed by the product that is the subject of the ANDA.

In certain circumstances, the first applicant whose ANDA contains a paragraph IV certification is protected from competition from subsequent generic versions of the same drug product for 180 days from either the date the first applicant's drug product is first commercially marketed or the date of a final court decision holding the patent that is the subject of the paragraph IV certification invalid, unenforceable, or not infringed. This marketing protection is commonly known as ''180-day exclusivity.''

In the **Federal Register** of October 3, 1994 (59 FR 50338), FDA published the final rule implementing the patent and marketing exclusivity provisions of the Hatch-Waxman Amendments. Section 314.107(c)(1) (21 CFR 314.107(c)(1)), the regulation implementing section 505(j)(5)(B)(iv) of the act, provided:

> If an abbreviated new drug application contains a certification that a relevant patent is invalid, unenforceable, or will not be infringed and the application is for a generic copy of the same listed drug for which one or more substantially complete abbreviated new drug applications were previously submitted containing a certification that the same patent was invalid, unenforceable, or would not be infringed *and the applicant submitting the first application has successfully defended against a suit for patent infringement brought within 45 days of the patent owner's receipt of notice submitted under § 314.95,* approval of the subsequent abbreviated new drug application will be made effective no sooner than 180 days from whichever of the following dates is earlier:
>
> (i) The date the applicant submitting the first application first commences commercial marketing of its drug product; or
>
> (ii) The date of a decision of the court holding the relevant patent invalid, unenforceable, or not infringed.
>
> (Emphasis added)

FDA's requirements for 180-day exclusivity were successfully challenged in the courts in *Mova Pharmaceutical Corp.* v. *Shalala*, 140 F.3d 1060 (D.C. Cir. 1998), and *Granutec, Inc.* v. *Shalala*, No. 97–1873 and No. 97–1874, 1998 U.S. App. LEXIS 6685 (4th Cir. Apr. 3, 1998).

Following the *Mova* circuit court decision, on June 1, 1998, the district court entered an order stating that the successful defense requirement of § 314.107(c)(1) is invalid and permanently enjoined FDA from enforcing it. In the **Federal Register** of July 14, 1998 (63 FR 37890), FDA published a guidance for industry entitled ''180–Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act'' (June 1998), describing its approach to 180-day exclusivity in light of the court decisions. In the **Federal Register** of November 5, 1998 (63 FR 59710), the agency published an interim rule revoking the ''successful defense'' requirement. Since that time the agency has regulated directly from the statute when making exclusivity decisions on a case-by-case basis.

The agency is proposing new regulations to address the issues that have arisen as a result of the *Mova* and *Granutec* decisions and to respond to other matters related to 180-day exclusivity not currently addressed by the regulations. Consistent with the legislative purpose of section 505(j)(5)(B)(iv) of the act, the proposed regulations continue to provide an incentive for challenging a listed patent, while at the same time preventing prolonged or indefinite delays in the availability of generic drug products.

During litigation of the many cases related to 180-day exclusivity, the parties and courts have recognized the potential for the 180-day exclusivity process to substantially delay the entry of competitive generic drug products into the market. This situation can occur when the marketing of any subsequent generic drug product is contingent upon the occurrence of an event that is within the first ANDA applicant's control. Such delays could result, for example, from the inability of the first ANDA applicant with a paragraph IV certification to obtain timely approval of its application and begin commercial marketing of its product.

Licensing agreements and other arrangements between an innovator company and the generic drug company who is the first ANDA applicant to file a paragraph IV certification can be of considerable financial benefit to the companies involved, but also may contribute to delayed generic competition by forestalling the beginning, or triggering, of the 180-day exclusivity period. These arrangements can create almost insurmountable barriers to the final approval and marketing of generic drug products that are otherwise ready for final approval. These barriers thwart a major congressional goal underlying the

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[1] Section 505(j)(5)(B)(iv) of the act states that:

> If the application contains a certification described in subclause (IV) of paragraph (2)(A)(vii) and is for a drug for which a previous application has been submitted under this subsection continuing [sic] such a certification, the application shall be made effective not earlier than one hundred and eighty days after—
>
> (I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or
>
> (II) the date of a decision of a court in action described in clause (iii) holding the patent which is the subject of the certification to be invalid or not infringed, whichever is earlier.

Prior to the enactment of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act), 180-day exclusivity was described at section 505(j)(4)(B)(iv) of the act. The Modernization Act added new provisions to section 505(j) that resulted in a renumbering of the sections.

passage of the Hatch-Waxman Amendments.

In developing the approach described in this proposal, the agency has been guided by the text of the statute, opinions rendered by courts that have addressed these issues, and concerns expressed to the agency in submissions commenting on the June 1998 guidance and November 1998 interim rule. The agency has also been guided by its 15 years of experience with the 180-day exclusivity provisions. This experience has provided FDA with valuable information regarding the influence of the 180-day exclusivity provisions on the ANDA approval process and the marketing of generic drug products.

II. Description of the Proposed Rule

This proposed rule would revise § 314.107 to clarify and modify eligibility requirements for ANDA applicants seeking 180-day marketing exclusivity for a generic drug product. This new approach is offered in light of the courts' rejection of the previous requirement that an ANDA applicant successfully defend against a patent infringement lawsuit before it is eligible for exclusivity.

A. 180–Day Exclusivity Eligibility

1. Only First Applicant is Eligible

The statutory language describing which applications are eligible for 180-day generic drug exclusivity is ambiguous. The current regulation interprets the statute as allowing eligibility for exclusivity only for the applicant that submits the first substantially complete ANDA with a paragraph IV certification. Although the agency has considered alternative interpretations, such as ''rolling exclusivity'' in which the next-in-line applicant is eligible for exclusivity should the previous applicant become ineligible, FDA proposes to maintain the current interpretation. The agency, however, invites comments related to exclusivity eligibility, both those supporting this interpretation and those suggesting other possibilities.

Under this proposed rule, only the applicant submitting the first substantially complete ANDA for a listed drug with a paragraph IV certification to any patent in the Orange Book for the listed drug (first applicant) would be eligible for exclusivity. A substantially complete application must contain all of the information required under section 505(j)(2)(A) of the act and under 21 CFR 314.50 and 314.94. These requirements include the submission of the results of any required bioequivalence studies, or, if appropriate, a request for a waiver of such studies. In order for an ANDA to be considered substantially complete for purposes of exclusivity, the bioequivalence studies submitted in the ANDA at the time it is initially submitted must, upon review by the agency, meet the appropriate standards for approval. If the applicant must conduct a new bioequivalence study to obtain approval of the ANDA, the application will not be considered to be substantially complete and the applicant will not be eligible for exclusivity. No other applicant with a paragraph IV certification will be eligible for exclusivity for that drug product. The agency is adopting this position out of concern that, in the rush to be the first ANDA with a paragraph IV, applicants will submit the results of the first completed bioequivalence study, whether or not the results meet the standards for approval. The bioequivalence study is a crucial component of the ANDA and conduct of the studies can be time consuming. In order to prevent the granting of exclusivity on the basis of submission of an inadequate bioequivalence study, FDA has determined that to be eligible for exclusivity, the ANDA applicant must submit, as part of the initial application, a bioequivalence study that meets the standards for approval.

To be eligible for exclusivity, an applicant must be the first to submit ANDA that is both substantially complete and contains a paragraph IV certification to any listed patent. The first applicant can be an applicant that submits an ANDA that initially contains a paragraph III certification, but later amends the certification to a paragraph IV certification, if at the time of the amendment that applicant's ANDA is the first substantially complete ANDA to contain a paragraph IV certification. If the first applicant subsequently withdraws its application or changes or withdraws its paragraph IV certification, either voluntarily or as a result of a settlement or defeat in patent litigation, no ANDA applicant will be eligible for 180-day exclusivity.

Limiting eligibility for exclusivity to the first applicant to submit a substantially complete ANDA with a paragraph IV certification is consistent with the goal of permitting earlier entry into the market of generic competitor products by encouraging prompt challenges to innovator patents. Granting exclusivity to a later applicant that submits a patent challenge, and that only becomes first in line because another applicant(s) has withdrawn its application or paragraph IV certification, would further delay the entry into the market of generic drug products with no countervailing public benefit.

In addition, if the first applicant submits a new paragraph IV certification because, for example, it makes a formulation change requiring a supplement or an amendment to its ANDA, it may no longer be accorded first applicant status. If there is another applicant with a paragraph IV certification for the same drug product, the first applicant will no longer be eligible for 180-day exclusivity. Also, no other applicant will be eligible for 180-day exclusivity.

As described in the preamble to the 1994 final rule (59 FR 50338 at 50348), there is one exception to this principle. If the agency accepted for filing a substantially complete ANDA prior to the NDA holder's submission of a late (untimely) filed patent, the ANDA applicant is not required to certify to this patent. However, if the ANDA applicant amends its ANDA to include a paragraph IV certification to the untimely filed patent, and the ANDA applicant later withdraws that paragraph IV certification, the next applicant to file a paragraph IV certification to the untimely filed patent will be eligible for exclusivity. The agency believes that in this situation it is appropriate to grant exclusivity to an applicant who was required to file a paragraph IV certification because the applicant filed its ANDA after the NDA holder submitted the patent information.

If there are multiple patents for the listed drug, the applicant submitting the first paragraph IV certification to any of the listed patents will be the only ANDA applicant eligible for exclusivity for that drug. The agency considered an approach that could have made multiple applicants eligible for exclusivity based upon the order of submission of paragraph IV certifications for each patent. Different ANDA's are most likely to have the first paragraph IV certifications to different patents when new patents are listed for the innovator drug after the submission of the first ANDA. Although the statute would support granting multiple exclusivities, the agency has determined that such multiple exclusivities for a single drug could further delay the entry of generic drugs onto the market. For example, if two different applicants were eligible for exclusivity because each was the first to file a paragraph IV certification for a different listed patent, and neither exclusivity could begin to run until first commercial marketing or a favorable court decision, it is possible that each exclusivity would block the final

approval of the other application for a substantial period of time. Moreover, the large number of patents listed for many drugs, the real possibility that different ANDA applicants may submit first paragraph IV certifications for these patents, and the relative ease with which an applicant now becomes eligible for exclusivity could combine to create an exclusivity program that is virtually unworkable in its complexity and which would create even more uncertainty for the industry.

If the ANDA applicant submitting the first substantially complete ANDA with a paragraph IV certification submits paragraph IV certifications to multiple patents at that time, any of those certifications will render the applicant eligible for exclusivity. The first court decision finding one of the patents invalid, not infringed, or unenforceable will trigger the running of the applicant's exclusivity.

2. First Applicant Eligible if Not Sued

The agency is proposing to amend § 314.107(c)(1) to state that the first applicant would be eligible for 180 days of market exclusivity even if the applicant is not sued for patent infringement by the patent owner or NDA holder. This is consistent with the policy established in FDA's June 1998 guidance. It is also consistent with the decision in *Purepac* v. *Friedman*, 162 F.3d 1201 (D.C. Cir. 1998), in which the court noted that section 505(j)(5)(B)(iv) of the act does not require the first applicant to be sued to be eligible for exclusivity.

The agency recognizes that neither the *Purepac* nor the *Mova* opinion expressly foreclosed the agency from adopting a requirement that an applicant be sued, and that in the 1989 proposed rule FDA considered a ''litigation'' requirement as a prerequisite for exclusivity eligibility. (See 54 FR 28872 at 28929, July 10, 1989.) However, in light of the removal of the ''successful defense'' requirement and subsequent reconsideration of the statutory language, the agency proposes that an applicant would be eligible for 180-day exclusivity even if it is not sued by a patent owner or NDA holder.

FDA believes that if the first applicant avoids a lawsuit and the related 30-month stay of final approval (see section 505(j)(5)(B)(iii) of the act), for example, by designing around a patent in such a way that its drug product is clearly noninfringing, then that applicant should not be denied eligibility for exclusivity. In addition, an ANDA applicant should not be encouraged to file a frivolous certification that invites litigation so as to qualify for exclusivity. Permitting an applicant who avoids a lawsuit to be eligible for exclusivity is consistent with the statutory language and goal of facilitating prompt entry of generic drug products into the market.

3. First Applicant Not Eligible if Sued and Loses Lawsuit

If the first applicant is sued and loses the patent litigation, proposed § 314.107(c)(4) would require the applicant to change its certification from a paragraph IV to a paragraph III. Upon the required certification change, the applicant would lose any claim to exclusivity eligibility.

Nothing in the statute or the regulations supports an award of exclusivity to an ANDA applicant that loses its lawsuit. In fact, such an award would run counter to the statutory goal of promoting earlier entry of generic drug products into the market.

If the agency were to interpret the statute to permit exclusivity for an ANDA applicant that lost its patent litigation, a subsequent applicant that is not sued for patent infringement because it managed to design around the patent nonetheless would not be able to enter the market until after patent expiration. The court decision trigger for the beginning of exclusivity would be unavailable to this subsequent applicant because it applies only when there has been patent litigation as a result of the paragraph IV certification and an ANDA applicant has won.

Additionally, if the agency permitted exclusivity for an applicant that lost its litigation and therefore could not market its product, the innovator might avoid generic competition for the life of its patent merely by refusing to sue any subsequent ANDA applicant. This outcome would not be justified by the first applicant's unsuccessful challenge to the patent.

The declaratory judgment provision discussed in section II.F of this document could prevent an innovator company from using this strategy to completely block ANDA approvals in some cases. However, it is unreasonable to expect subsequent ANDA applicants to obtain a declaratory judgment that triggers exclusivity for a first applicant who has not provided any benefit to the public, merely because the subsequent applicant wants to avoid being blocked for the life of the patent.

If a first applicant that loses its patent suit is not eligible for exclusivity, generic drug products may be able to enter the market prior to expiration of the innovator's patent in several situations. Market entry can occur if a subsequent ANDA applicant with a paragraph IV certification prevails in its patent litigation, settles its patent litigation, or is not sued as a result of the paragraph IV certification.

The agency recognizes that this approach requires a new interpretation of § 314.94(a)(12)(viii)(A). That provision states that when an applicant changes its paragraph certification from a IV to a III after losing a patent infringement suit, ''the application will no longer be considered to be one containing a [paragraph IV] certification.'' Previously the agency had described that regulatory provision as fulfilling only the ''housekeeping'' function of informing the agency that the ANDA would not be approved until the patent expired, and explained that the provision had no implications for exclusivity eligibility. That interpretation was consistent with the entire regulatory scheme that was built around the successful defense requirement.

The removal of the successful defense requirement has resulted in a fragmented regulatory framework, forcing the agency to modify not only the regulatory language in certain parts but also, as in this case, its interpretation of language that is to remain. Under the new proposed approach, when a first applicant loses its patent litigation and changes its certification from a paragraph IV to a paragraph III under § 314.94(a)(12)(viii)(A), it would not be eligible for exclusivity. In addition, a voluntary change in patent certification from a IV to a III as described in § 314.94(a)(12)(viii) also would have the effect of rendering the first ANDA applicant ineligible for 180-day exclusivity. After the first applicant changed its patent certification to a III, no applicant would be eligible for exclusivity, and the agency could approve eligible subsequent applications.

4. Shared Exclusivity for Multiple ANDA's Filed on the Same Day

The agency is proposing that all applicants for ANDA's containing paragraph IV certifications for a particular drug product that are received on the same day will be eligible for exclusivity if no other ANDA with a paragraph IV certification for the drug product has been previously filed. All such applicants would be considered first applicants. Submission of ANDA's on the same day is most likely to occur when an innovator's 5-year exclusivity barring FDA acceptance of ANDA's expires, or when ANDA applicants wish to challenge a patent listed for an innovator product with 5 years of exclusivity and file ANDA's at the end of 4 years of exclusivity (see section

505(j)(5)(D)(ii) of the act). The applicable periods would be 5 1/2 years or 4 1/2 years when pediatric exclusivity has been granted (see section 505A(a) of the act (21 U.S.C. 355a(a)).

Under this proposal, the exclusivity period would be shared by all first applicants. Once the exclusivity period begins, it would run for all first applicants, protecting the group of first applicants from competition from later applicants during the 180-day period. The application of the triggering period, discussed in section II.B.1 of this document, would remain essentially the same, with a slight modification. After a triggering event (described in section II.B of this document) occurred, all eligible first applicants could be approved and would be eligible to share the 180-day exclusivity. Once the 180 days of exclusivity has run following the first triggering event, any ANDA that was not among the group of first applicants also would be eligible for final approval.

The agency believes the statutory language supports this approach, which would protect the incentive created by Congress for ANDA applicants to challenge patents. Further, this approach is preferable to alternative approaches. One alternative approach, which the agency does not propose because it does not preserve the incentive to challenge patents, would be for the agency to determine that no ANDA applicant is eligible for 180-day exclusivity if, on the same day, the agency receives more than one ANDA with a paragraph IV certification for the same drug product and no other ANDA with a paragraph IV certification for the drug product has been previously filed.

Another option is for the agency to attempt to determine which application it received first on the same day, an inquiry that is impractical and may result in an arbitrary ordering of applications. It may not be possible for the agency to determine which application was received first. If, for example, the agency received more than one eligible application in the same mail delivery on a particular day, it would be impossible to determine which application was received first. If applications were received by various means throughout the day, when the applications in the pile were retrieved to date-and time-stamp, the application that the agency received first might be stamped last. Although theoretically this particular problem could be avoided by stamping each document at the time of receipt, this solution is impractical given agency workload and resource constraints.

5. Patent Expiration and 180–Day Exclusivity

The agency is clarifying that once the patent for which the first applicant filed a paragraph IV certification expires, the first applicant is no longer eligible for exclusivity. When the first applicant is no longer eligible for exclusivity, FDA may approve all otherwise eligible ANDA's. FDA regulations at § 314.94(a)(12)(viii) currently provide that exclusivity cannot extend beyond the term of the patent.

B. The Results of the Patent Challenge

In general, once an ANDA applicant has submitted a paragraph IV certification and notified the NDA holder and patent owner of the patent challenge under § 314.95 (21 CFR 314.95), a number of outcomes are possible including: (1) The NDA holder or patent owner may sue the ANDA applicant within the 45-day period established by statute (section 505(j)(5)(B)(iii) of the act) and that suit may be litigated to final judgment, (2) the parties may reach a settlement either before or after a patent infringement lawsuit is filed, or (3) the NDA holder and patent owner may refrain from filing a patent infringement suit. Which of these events occurs will depend on many factors, including market considerations and the relative strength of the patent claims. However, in each of these cases, there is the potential for a substantial delay in the entry of generic drug products into the market. The agency is proposing a relatively simple approach to limiting this delay, one that applies generally to all of the outcomes described previously.

Under the current 180-day exclusivity approach, delays in the approval of competitive generic drug products are the result of delays in the occurrence of one of the two events (triggering events) that will trigger the beginning of the 180-day exclusivity period—either the first commercial marketing of the first applicant's product, or a decision of a court holding the patent invalid, not infringed, or unenforceable, whichever is earlier. The courts in the *Mova* and *Purepac* decisions suggested that, to prevent unreasonable delay in the final approval of subsequent generic drug applications, FDA could require that a first ANDA applicant bring its product to market—and thus begin the running of exclusivity—within a prescribed time period. The agency believes that such a requirement is appropriate.

1. Triggering Period

The agency proposes to adopt the approach suggested by the courts in the *Mova* and *Purepac* decisions and set a time limit for the exercise of exclusivity. The agency is proposing the use of a 180-day ''triggering period,'' during which there must either be a favorable court decision regarding the patent or the first applicant must begin commercial marketing of its product. If neither of these events occur during the triggering period, the first applicant will lose its eligibility for exclusivity and subsequent ANDA's will be eligible for immediate approval.

The term ''triggering period'' is used throughout this proposed rule to refer to the 180-day period described previously; this is distinct from the 180-day exclusivity period (see section II.B.4 of this document) that may follow the triggering period. The term ''trigger'' as used throughout this proposed rule refers to the two statutory conditions, one of which must be met, for exclusivity to begin (see section 505(j)(5)(B)(iv) of the act). Those conditions, as discussed in sections I and II.B of this document, are: (1) A court decision finding the patent to be invalid, unenforceable, or not infringed by the ANDA product, and (2) first commercial marketing of the ANDA product. The term ''triggering event'' in this proposed rule refers to the occurrence of one of the two statutory triggers.

In most cases, the triggering period would begin to run on the day a subsequent ANDA applicant with a paragraph IV certification receives a tentative approval stating that but for the first applicant's exclusivity, the subsequent ANDA would receive final approval. In three instances the triggering period would not begin to run on the date of the tentative approval.

First, if the first applicant was sued for patent infringement as a result of its paragraph IV certification and the litigation is ongoing, the triggering period would not begin until expiration of the 30-month stay of ANDA approval (see section II.B.3 of this document). Similarly, if a court issued a preliminary injunction prohibiting the first applicant from commercially marketing its drug product, the triggering period would not begin until the injunction expired. Finally, the triggering period would not begin until expiration of the statutorily described time period corresponding with any existing exclusivity periods for the listed drug (see sections 505(j)(5)(D)(ii) and 505A(a) of the act).

To determine how a triggering period would work, the agency reviewed its experience with the 180-day exclusivity provision. In the past, delays in obtaining a court decision, or delays in the first applicant gaining approval for

its ANDA and/or bringing its product to market, have generally become a matter of concern when at least one subsequent ANDA applicant has obtained a tentative approval and the only barrier to final approval is the first applicant's eligibility for 180 days of exclusivity. Every day after the tentative approval during which the subsequent applicant can not market its product represents a lost opportunity both for the subsequent applicant and the consumer. The subsequent applicant can not benefit from having submitted an ANDA that meets the requirements of section 505(j) of the act, and the consumer does not have access to one or more lower cost generic products.

Where the first ANDA applicant is eligible for exclusivity and only that eligibility is blocking final approval of a subsequent ANDA, it is appropriate to begin the triggering period on the day that a subsequent applicant has received tentative approval for its ANDA. This is the first day that the absence of a generic drug product from the market is directly linked to the first applicant's eligibility for exclusivity.

a. *Length of triggering period*. The agency is proposing that the triggering period be 180 days. As described previously, the 180-day period would follow one of the following: (1) The tentative approval of a subsequent ANDA with a paragraph IV certification for the same drug product, (2) expiration of a 30-month stay of ANDA approval due to patent litigation, (3) expiration of a preliminary injunction prohibiting marketing of an ANDA product, or (4) expiration of the statutorily described exclusivity periods for the listed drug.

Once the triggering period begins, the ANDA applicant eligible for exclusivity would have 180 days to trigger its exclusivity. This may be done by beginning commercial marketing of its drug product or obtaining a favorable court decision (in its own or other litigation regarding the same patent). Once triggered, the ANDA applicant's exclusivity would then run for 180 days. If, within the 180-day triggering period, the beginning of exclusivity was not triggered, the first applicant would no longer be eligible for exclusivity and the agency could approve subsequent ANDA's at the end of the triggering period.

It is possible that there could be no generic drug product marketed during the triggering period if the first applicant does not begin commercial marketing of its product. In this case, at least one generic drug product—the product that had received the tentative approval—would receive final approval upon expiration of the triggering period and could begin marketing.

b. *Basis for length of triggering period*. The 180-day length of the triggering period is derived from the statutory provision governing 180 days of exclusivity. This provision quite clearly allows (and Congress, therefore, presumably contemplated) the possibility of a 180-day period during which there is no generic drug product on the market. This would occur when the running of the 180-day period of exclusivity has begun with a court decision finding the patent invalid, unenforceable, or not infringed, but the applicant that has the exclusivity does not begin marketing its product because it is not approved or for another reason.

There is no statutory requirement that the running of the exclusivity triggered by the court decision described in section 505(j)(5)(B)(iv)(II) of the act be accompanied by the commercial availability of the generic drug product. Even if no generic drug product is being marketed, the statute prohibits the agency from approving another ANDA until the 180-day exclusivity period has elapsed. After that period, however, the statute permits the approval of any otherwise eligible ANDA, even if the first applicant never marketed its product. It is therefore reasonable to assume that Congress thought that a 180-day period during which no generic drug product is marketed was acceptable.

At the same time, there is no indication that Congress would countenance an indefinite delay in the marketing of low cost generic drug products once the legal barriers to their approval have been removed. To the contrary, such a scenario directly conflicts with the goals of the Hatch-Waxman Amendments. Therefore, the agency is proposing a 180-day triggering period during which a triggering event must occur to commence the eligible ANDA applicant's period of exclusivity.

The agency recognizes that in very rare cases there could be a time period longer than 180 days during which no generic drug product is available. This may happen if, for example, a court decision triggering the exclusivity period is issued at the end of the 180-day triggering period, and the first applicant does not market its product or waive its right to exclusivity during the resulting 180-day exclusivity period. In the extreme case, this scenario could result in the inability of a subsequent ANDA applicant to market its product for a 360-day period (180-day triggering period plus 180-day exclusivity period) after its tentative approval.

The agency believes, however, that a first applicant that is unable to market its own product at the time a subsequent ANDA applicant receives a tentative approval would ordinarily waive its exclusivity (see section II.H of this document). This would permit final approval of the subsequent ANDA. Moreover, in contrast to the current regulatory structure, under which generic drugs may face almost insurmountable barriers to market entry, the proposed approach provides for much earlier market entry. Under the triggering period approach, there is certainty that one or more generic drug products will be able to enter the market after the 12-month period described previously, and in most cases, much more promptly.

2. Alternative Length of Triggering Period in Specific Cases

The agency is also specifically seeking comment on an alternative approach. The agency is considering shortening the length of the triggering period to 60 days in some cases. The 60-day triggering period would apply to an ANDA applicant that already has received final approval at the time of the tentative approval of a subsequent ANDA, and either has not been sued as a result of its patent certification, or has been sued and the case was settled or dismissed without a decision on the merits of the patent claim. The possible 60-day triggering period in this case is based upon limited data from a July 1998 Congressional Budget Office study entitled ''How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry,'' and a March 1999 internal FDA study (available in Docket No. 85N–0214).

FDA does not consider this 60-day timeframe to be burdensome to ANDA applicants because the data suggest that, since passage of the Hatch-Waxman Amendments, first generic drug products generally reach the market promptly after approval. Specifically, the studies indicate that generic products are routinely marketed within a 2-month period following ANDA approval.

3. Relationship of Triggering Period to 30–Month Stay

When the first applicant to submit an ANDA with a paragraph IV certification is sued by the NDA holder or patent owner, it would be unreasonable to start the triggering period with the tentative approval of a subsequent applicant if the tentative approval was granted relatively soon after the first applicant's patent litigation began. The first

applicant could find it difficult or impossible to either obtain a final court decision in a patent infringement case or begin commercial marketing of its product within 180 days of the subsequent applicant's tentative approval. The first applicant who is sued for patent infringement is, however, provided with a statutory time period, as discussed in the following paragraphs of this document, during which to resolve the patent litigation before the triggering period will begin.

The generic drug product approval process described in the Hatch-Waxman Amendments establishes a 30-month period for resolution of patent litigation resulting from a patent certification. (See section 505(j)(B)(5)(iii) of the act.) During this period, FDA may not approve the ANDA that is the subject of the litigation. After the 30-month period, barring a court order, FDA may grant final approval to the ANDA that is the subject of the litigation. Therefore, the agency is proposing that when the first ANDA applicant is sued as a result of its paragraph IV certification and the patent litigation is ongoing, the triggering period would not begin at least until the 30-month period has lapsed. After the 30 months has passed, the triggering period would begin when a subsequent applicant received a tentative approval. If a subsequent applicant received a tentative approval during the 30-month stay, the 180-day triggering period would begin on the day the 30-month period expired. The first applicant then would have to begin marketing its product, or obtain a final court decision, during the 180-day triggering period to obtain its exclusivity.

4. Distinction Between Triggering Period and Exclusivity Period

Although the triggering period would not begin until expiration of the first applicant's 30-month stay, it is still possible for the exclusivity period to begin during that 30-month period. If, for example, a court issues a favorable final decision in litigation over a subsequent ANDA's patent challenge during the 30-month stay of the first applicant, the exclusivity period for the first applicant would start on the date of that decision.

In proposing this interpretation of the statute—that the triggering period does not begin until expiration of the 30-month stay—the agency is aware that in some cases patent litigation resulting from a paragraph IV certification does not result in a final court decision within 30 months. The agency is also aware that parties to patent litigation in some cases may not have strong incentives to resolve the litigation as promptly as possible. This proposed approach may alter those incentives and encourage swifter resolution of litigation.

Although the agency is proposing that the general rule will be that the first ANDA applicant has 30 months in which to resolve its patent litigation before the triggering period may start, the agency also would allow for a reasonable extension of this period under certain circumstances. This would occur when the court hearing the patent infringement case issues a preliminary injunction prohibiting the marketing of the drug product that is the subject of the challenged ANDA until there is a court decision finding the patent invalid, not infringed, or unenforceable. The issuance of such an order is contemplated in section 505(j)(5)(B)(iii)(III) of the act.

FDA expects that an injunction would issue upon a finding that it is warranted by the facts and law in the particular case, and that the parties have reasonably cooperated in expediting the action. In the event the court issues an injunction prohibiting the marketing of the drug product under the first ANDA, the triggering period would not begin at least until the injunction expires or is lifted by the court. If the 30-month stay is shortened or lengthened by the court because either party has failed to reasonably cooperate, the triggering period will begin with reference to the date ordered by the court.

While the triggering and exclusivity periods are related, they are also distinct. The exclusivity period starts with either first commercial marketing of the first applicant's generic drug product or with a court decision finding the patent invalid, unenforceable, or not infringed. The triggering period, in contrast, would be tied to the date of a subsequent ANDA's tentative approval, and in some cases to the completion of a 30-month stay. The triggering period may not result in an exclusivity period for the first applicant if no triggering event occurs during the triggering period. In contrast, an exclusivity period may begin independent of any triggering period, if no subsequent ANDA is given a tentative approval to begin the triggering period. Alternatively, the exclusivity period could begin during the triggering period.

C. A Decision of a Court

FDA's current regulations state that for purposes of applying the ANDA approval and exclusivity provisions of the statute, ''the court'' is the court that enters final judgment from which no appeal can be or has been taken (district or appellate court) (§ 314.107(e)). This interpretation was challenged in *TorPharm* v. *Shalala*, No. 97–1925, U.S. Dist. LEXIS 21983 (D.D.C. Sep. 15, 1997); appeal withdrawn and remanded, 1998 U.S. App. LEXIS 4681 (D.C. Cir. Feb. 5, 1998); vacated No. 97–1925 (D.D.C. April 9, 1998).

Plaintiffs in that case maintained that ''the court'' meant the district court and that final approval could be granted and exclusivity begin running upon the entry of a district court decision finding a patent invalid, unenforceable, or not infringed. Because the district court decision in *TorPharm* agreeing with plaintiffs was vacated (set aside or rendered void), the agency will not address it further in this proposed rule. FDA instead proposes to maintain its current interpretation. The agency believes this interpretation is most consistent with the statutory scheme.

The agency is also proposing that the decision of a court that may begin the running of exclusivity is the final decision of a court hearing any litigation involving the patent at issue. Current § 314.107(c)(1)(ii) states that one of the two exclusivity triggers is the ''date of the decision of the court holding the relevant patent invalid, unenforceable, or not infringed.'' FDA proposes to modify § 314.107(c)(1)(ii) to read the ''date of the decision of a court * * *.''

This modification is consistent with the statutory language in section 505(j)(5)(B)(iv) of the act. The agency is clarifying that for purposes of both the modified regulatory provision and section 505(j)(5)(B)(iv)(II) of the act, '' a decision of a court in an action described in [section 505(j)(5)(B)(iii) of the act] holding the patent which is the subject of the certification to be invalid or not infringed'' can be a decision of any court hearing a patent infringement or declaratory judgment case involving the patent at issue. The decision triggering exclusivity need not come from the court hearing the patent litigation involving the first ANDA. (See also *Granutec, Inc.* v. *Shalala*, 1998 U.S. App. LEXIS 6685, Nos. 97–1873, 97–1874, slip op. at 14–18 (4th Cir. Apr. 3, 1998) (unpublished opinion discussing the agency's interpretation of ''a'' court decision).)

The use of different language in subsections (I) and (II) of section 505(j)(5)(B)(iv) of the act supports this interpretation. In subsection (I), the statutory trigger is specifically tied to the date that ''the applicant under the previous application'' gives notice that its product is being commercially marketed. In contrast, the trigger in subsection (II) relates only to the date of ''a decision of a court'' in patent

litigation described in section 505(j)(5)(B)(iii) of the act.

The language of the first trigger refers to a particular applicant. In contrast, the language of the second trigger does not attach importance to the specific applicant. It instead refers generally to a type of court decision. In the absence of specific, controlling language to the contrary, the agency continues to interpret ''a decision of a court'' in subsection (II) to mean a decision of any court hearing a patent infringement or declaratory judgment case involving the patent at issue.

This interpretation of the court decision trigger encourages prompt litigation of patent issues by all ANDA applicants, and under some circumstances could result in a corresponding earlier start of the 180-day exclusivity period. This could result in situations where, although the first applicant was sued first, its litigation is not completed first, and its exclusivity begins to run while it is still in litigation.

The agency is aware that in some instances the first applicant may be unable or unwilling to market its product upon satisfaction of the court decision trigger involving another applicant. For example, the first applicant's own patent litigation may be ongoing and its ANDA may have been finally approved at the completion of a 30-month stay under section 505(j)(5)(B)(iii) of the act. However, the applicant may be unwilling to assume the risk of liability for damages by marketing before patent expiration or a court decision finding the applicant's product does not infringe the patent. The agency notes, however, that in such a situation the first applicant may obtain a financial benefit from the award of exclusivity by waiving its exclusivity with respect to a subsequent applicant (see section II.H of this document).

A contrary interpretation that required the court decision be a decision in patent litigation against the first applicant could, under some circumstances, delay entry into the market of drug products by all ANDA applicants. For example, the patent owner or NDA holder may elect not to sue the first ANDA applicant, in which case the court decision trigger would never apply to that applicant's patent challenge, and exclusivity could therefore begin running only with the first applicant's commencement of commercial marketing. If the first applicant's marketing is delayed because it cannot obtain final approval of its ANDA or, having obtained final approval, the first applicant either cannot or will not bring its product to market, there could be a substantial delay in marketing of any generic drug product. This delay would result even if a subsequent applicant is successful in challenging the patent, either in a lawsuit brought by the innovator or in a declaratory judgment action.

As described in section II.B.3 of this document, under the approach proposed in this rule, the triggering period would not apply when a subsequent applicant obtains a court decision that begins the period of exclusivity. In such cases the first applicant's exclusivity would begin to run on the date of the final court decision in the subsequent applicant's litigation. The triggering period applies only when a subsequent applicant has obtained a tentative approval where final approval is blocked by the first ANDA applicant's eligibility for exclusivity. Under these circumstances, the subsequent applicant would have been eligible for final approval because either: (1) It wasn't sued by the innovator, (2) it was sued but the litigation was settled or dismissed without a favorable court decision, or (3) it was sued and the 30-month stay had elapsed.

D. Settlement Agreements

Settlement agreements are not addressed in current regulations but were discussed in the preamble to the proposed rule of July 10, 1989 (54 FR 28872). In the preamble, FDA explained that the ''date of a decision of a court holding the patent invalid or not infringed'' in § 314.107(c)(1)(ii) is the ''date of a final decision of a court from which no appeal can or has been taken, or the *date of a settlement order or consent decree signed by a Federal judge, which enters final judgment and includes a finding that the patent is invalid or not infringed*'' (54 FR 28872 at 28895 (emphasis added)).

FDA is proposing regulations in part to address the most challenging issue with respect to 180-day exclusivity: settlement and licensing agreements between innovator and generic drug companies. These agreements potentially can be made at any stage in the ANDA process, including before an ANDA is filed, after ANDA filing but during the 45-day period within which a patent infringement suit must be brought, after the 45-day period expires but before the first applicant commences commercial marketing, or during patent litigation.

The proposed regulations, by applying the triggering period, would reduce the delay in market entry of generic drug products that can result from such agreements. Although agreements may still be made, their effect on generic competition would be limited by the requirement that, within 180 days of the first tentative approval of a subsequent ANDA, the first ANDA applicant begin commercially marketing its own product or obtain a favorable court decision.

The agency has seriously considered the suggestions made in comments on the November 1998 interim rule (Docket No. 85N–0214) and the June 1998 guidance (Docket No. 98D–0481). Comments suggested that the agency require that it be promptly notified of a settlement or other agreement that either alters the adversarial relationship between the first ANDA applicant and the patent owner or NDA holder, or from which the first ANDA applicant derives an economic benefit. A number of comments suggested that the agency consider such arrangements as either rendering the first applicant ineligible for exclusivity, or triggering the running of the exclusivity period on the theory that such agreements are akin to commercial marketing.

The agency, however, believes the ''triggering period'' approach is preferable. This approach would not require FDA to inquire into the business arrangements between pharmaceutical companies, it would not require the submission of any additional information by the ANDA applicant, and it is a clear and definite approach that relies upon publicly available information, i.e., the issuing of a tentative approval letter.

E. Prompt Approval and Marketing

Current § 314.107(c)(3) requires a first applicant to actively pursue approval of its ANDA, or the agency may immediately approve any subsequent ANDA eligible for final approval. The agency proposes to delete this requirement because it is unnecessary under the regulatory scheme described in this proposed rule. The new scheme would provide a specific, clearly defined 180-day triggering period, during which the first ANDA applicant must either: (1) Commercially market its drug product, or (2) obtain a favorable court decision regarding the patent.

Given this approach, the issue of whether an ANDA applicant actively pursues approval of its product would not be relevant. The proposed approach, therefore, also has the advantage of eliminating the requirement for the agency to scrutinize applicants' progress and responses during the ANDA approval process, as well as to maintain a standard for active pursuit of approval.

F. Declaratory Judgment

Current regulations implementing the Hatch-Waxman Amendments do not address the application of section 505(j)(5)(B)(iv) of the act to declaratory judgment actions as referred to in section 505(j)(5)(B)(iii) of the act. These proposed regulations address the issue of whether a ruling in a declaratory judgment action brought by the ANDA applicant is a ''decision of a court in [an] action described in [section 505(j)(5)(B)(iii)] holding the patent which is the subject of the certification to be invalid or not infringed'' (section 505(j)(5)(B)(iv) of the act).

FDA proposes in § 314.107(f)(2)(ii) that a ''decision of a court'' should include a nonappealable decision of a court in a declaratory judgment action finding the patent invalid, unenforceable, or not infringed.

The agency has considered the suggestion that a dismissal of a declaratory judgment action under certain circumstances be treated as a decision of a court and trigger the 180-day exclusivity period under section 505(j)(5)(B)(iv)(II) of the act. Specifically, the agency considered whether dismissal for lack of jurisdiction on the grounds that no ''case or controversy'' exists because, for example, a party has no reasonable apprehension of a patent infringement action, could be considered a triggering court decision. The agency has rejected this interpretation of the statute. It places a burden on the agency to inquire into the facts underlying the dismissal of a case, and would be unnecessary under the ''triggering period'' approach. With the application of the 180-day triggering period, a subsequent applicant who is not sued for patent infringement and obtains a tentative approval with just the first applicant's eligibility for exclusivity serving as a bar to final approval will not be blocked indefinitely from approval.

G. Effect of Dismissal of Litigation

Proposed § 314.107(g) states that the 30-month stay of ANDA approval would not apply once paragraph IV related patent litigation involving the ANDA applicant and patent owner or NDA holder is dismissed without a court decision on the merits of the patent claim, regardless of whether such dismissal is with or without prejudice (whether the claims may be relitigated). The 30-month period, described in section 505(j)(5)(B)(iii) of the act and § 314.107(b)(3)(A) of the regulations, is intended to give innovator companies assurance that generic manufacturers would not file ANDA's with paragraph IV certifications and then immediately market the approved generic drug product. (See 130 Congressional Record H9118 (daily ed. Sept. 6, 1984) (statement of Rep. Waxman).)

The legislative history of the amendments makes clear that the 30-month stay of approval was intended to correspond as closely as possible with the expected duration of a patent infringement suit, and to provide protection to innovator companies during that time. (See 130 Congressional Record S10504 (daily ed. Aug. 10, 1984) (statement of Sen. Hatch). Those concerns are not implicated when the litigation is dismissed either as a result of a settlement or licensing agreement, or because the patent owner or NDA holder has determined not to pursue the litigation. Once the litigation is settled, the application can be approved immediately.

H. Waiver of 180–Day Exclusivity and Relinquishing Eligibility

Although current regulations do not address an ANDA applicant's ability to waive its 180-day exclusivity to permit approval of the ANDA of a subsequent applicant(s), the general issue of exclusivity waivers was addressed in the preamble to the 1994 final rule with respect to analogous provisions. There the agency stated that new drug exclusivity under the Hatch-Waxman Amendments can be waived by the holder of the exclusivity (59 FR 50338 at 50359).

Since publication of the 1994 regulations addressing 180-day exclusivity, FDA has been asked to determine whether an applicant who has obtained 180 days of exclusivity can waive such exclusivity to permit approval during the exclusivity period of a subsequent ANDA, or ANDA's, containing a paragraph IV certification. The agency has determined that waiver of 180-day exclusivity, like waiver of new drug exclusivity, is permitted under the act and at least one ANDA applicant has successfully effected a waiver. That waiver was challenged unsuccessfully in *Boehringer Ingelheim Corp.* v. *Shalala*, 993 F. Supp. 1 (D.D.C. 1997).

Proposed § 314.107(e) would permit the ANDA applicant that has obtained 180 days of exclusivity with the occurrence of a triggering event under section 505(j)(5)(B)(iv)(I) or (j)(5)(B)(iv)(II) of the act to notify FDA during the period of exclusivity that it will waive its exclusivity in favor of a subsequent ANDA or ANDA's containing a paragraph IV certification. After receiving such notification, the agency may approve the eligible named ANDA or ANDA's as of the date(s) identified in the notice. Waiver of exclusivity permits ANDA applicants that have been awarded exclusivity, but are either unwilling or unable to market their products, to nonetheless obtain a benefit from that exclusivity. A waiver may be particularly appropriate, for instance, when the first ANDA applicant is sued and, while its litigation is ongoing, a favorable court decision is rendered in a case involving a subsequent applicant. Exclusivity would be awarded to the first applicant, with the 180-day period starting on the date of a final court decision in the subsequent applicant's litigation. The first applicant's ANDA may not be finally approved, however, and the applicant could not market its product. Under these circumstances, the first applicant may obtain a benefit by waiving its exclusivity period in favor of a subsequent applicant.

It should be noted that an applicant may selectively waive its exclusivity only after the 180-day exclusivity period has begun to run with the occurrence of one of the triggering events described in section 505(j)(5)(B)(iv) of the act and in the regulations. Before that time, the first applicant is only eligible for exclusivity and might not obtain exclusivity if, for example, it failed to trigger the exclusivity before the expiration of the triggering period.

Prior to the occurrence of a triggering event, the first applicant may relinquish its eligibility for exclusivity entirely, and by so doing would permit the agency to approve immediately any subsequent ANDA's that are eligible for approval. It may not, however, waive its exclusivity in favor of a specific applicant(s).

I. Multiple Strength/Drug Product Exclusivity

The question of whether the agency will grant a separate period of exclusivity for each strength of a drug product is not addressed in the preambles to the 1989 proposed or 1994 final rules, or in current regulations. A citizen petition (Docket No. 99P–0792) that pertains to this issue was filed on March 31, 1999. The agency has determined that each strength of a drug product can be independently eligible for exclusivity. Applicants may be eligible for a separate exclusivity period for each particular strength of the drug product in an ANDA when each strength refers to a different listed drug.

FDA believes that this form of exclusivity is consistent with the statutory framework and public policy. Under the Hatch-Waxman Amendments, the agency requires that

an ANDA reference a particular listed drug product. Among other requirements, an ANDA applicant must include in the ANDA ''information to show that the route of administration, the dosage form, and the *strength* of the new drug are the same as those of the listed drug * * *'' (section 505(j)(2)(A)(iii) of the act, emphasis added). The agency, therefore, has determined that each strength of a drug product is itself a listed drug.

FDA's current regulations treat each strength of a drug product as a separate listed drug. Section 314.92(a)(1) (21 CFR 314.92 (a)(1)) states that ANDA's are suitable for ''drug products that are the same as a listed drug.'' The regulation further explains that ''the term 'same as' means identical in active ingredient(s), dosage form, strength, route of administration, and conditions of use * * *.''

FDA recognizes that different strengths of the same drug product in the same dosage form may be formulated differently for a variety of reasons. Varying formulations of the different strengths may provide separate and distinct bases for patent challenges. Consequently, the result of patent infringement litigation related to one strength of a particular drug product may not be applicable to another strength of the same drug product, even for the same ANDA applicant.

When the agency grants exclusivity to an ANDA applicant under the provisions of section 505(j)(5)(B)(iv) of the act, it may not grant final approval to other ANDA applicants for a period of 180 days. Exclusivity, therefore, affects the remaining applicants by essentially imposing a block on their immediate entry into the market.

The agency's interpretation of the statute to render ANDA's eligible for exclusivity for each particular strength of a drug product would have two results. First, it would encourage applicants vying for submission of the first application, and the concomitant reward of exclusivity, to submit ANDA's that cover the greatest number of strengths in an attempt to obtain maximum protection from other generic competitors. Second, it would prevent an ANDA applicant for only one strength of a drug product from blocking subsequent applicants with other strengths of the drug product from entering the market. Thus, FDA's interpretation would encourage prompt entry into the market of the greatest number of strengths of a particular drug product.

FDA has also determined that when the submission of a new strength of a drug is approved as a result of a suitability petition, the first ANDA referring to the approved petition that contains a paragraph IV certification to any patent for the listed drug referred to in the petition under § 314.93(d) will be eligible for exclusivity. The new strength of the drug product may have an independent basis for challenging the applicability of a listed patent and therefore should be eligible for the incentive provided by exclusivity.

III. Proposed Implementation Plan

The agency proposes that any final rule based on this proposal take effect 30 days after its publication in the **Federal Register**. The agency proposes to apply the provisions of any final rule to ANDA's pending as of the effective date and to ANDA's that are submitted after that date.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written assessment and economic analysis of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles set out in the Executive Order. Because the proposed rule does not impose any mandates on State, local, or tribal governments or the private sector, that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost/ benefit analysis according to the Unfunded Mandates Reform Act. With respect to the Regulatory Flexibility Act, because this proposed rule may have a significant economic effect on a substantial number of small entities, the analysis set forth below constitutes the agency's Initial Regulatory Flexibility Analysis. Discussion of the expected aggregate costs of this proposed rule and the anticipated impact of the rule on small entities is provided in the analysis. FDA has not identified any other Federal rules that duplicate, overlap, or conflict with the proposed rule.

A. Background

The Hatch-Waxman Amendments benefit consumers by bringing lower priced generic versions of previously approved drugs to market, while simultaneously promoting new drug innovation through the restoration of patent life lost during regulatory proceedings. The award of a 180-day period of market exclusivity for certain ANDA applicants with paragraph IV certifications was designed to maintain this balance by rewarding generic firms for their willingness to challenge unenforceable and invalid innovator patents, or design noninfringing drug products. Recently, however, this balance has been upset and generic competition impeded, in part through the establishment of certain licensing agreements or other commercial arrangements between generic and innovator companies.

Under current regulatory provisions, the first generic applicant to file a substantially complete ANDA with a paragraph IV certification can delay generic competition by entering into certain commercial arrangements with an innovator company. The result may be that, notwithstanding the intent of the Hatch-Waxman Amendments, rewards are directed to generic companies for hindering rather than speeding generic competition. A necessary condition for such arrangements is that the economic gains to the innovator from delaying generic competition exceed the potential economic gains to the generic applicant from 180 days of market exclusivity. Such instances are becoming more frequent because a successful strategy to extend market exclusivity can mean tens of millions of dollars in increased revenue for an innovator firm. Under such circumstances, it can be mutually beneficial for the innovator and the generic company that is awarded 180

days of generic exclusivity to enter into agreements that block generic competition for extended periods. This delayed competition harms consumers by slowing the introduction of lower priced products into the market and thwarts the intent of the Hatch-Waxman Amendments.

FDA's proposal to establish a 180-day triggering period addresses this problem in several ways. In most cases, the first generic applicant with a paragraph IV certification would lose its claim to 180-day exclusivity if it withheld its drug product from the market, or failed to obtain a favorable court decision, for more than 180 days after the tentative approval of a subsequent generic applicant for the same drug product. Also, a subsequent generic applicant could not be blocked from marketing its drug product for longer than, at most, 1 year from when it received tentative approval (the 180-day triggering period plus the 180-day exclusivity period). As a result, the potential economic losses to consumers from the increased unavailability of lower priced generic products would be reduced significantly.

Moreover, decreasing the length of time that these commercial arrangements could block generic competition lessens the market incentive for entering into such agreements. Limiting the period during which an agreement between an innovator and the first generic ANDA applicant with a paragraph IV certification could block generic competition provides less incentive, and therefore makes it less likely, that an innovator and a generic company would enter into such an agreement. Consequently, consumers would benefit because commercial arrangements to block generic competition would be not only less damaging, but would be less likely to occur.

B. Affected Entities

FDA does not know the precise number of businesses, either large or small, that engage in the types of business arrangements that would be significantly affected by the proposed rule. According to standards established by the Small Business Administration, a small pharmaceutical manufacturer employs fewer than 750 employees. While the innovator firms that are affected by the rule are likely to be large businesses, some of the affected generic firms may be small businesses. In 1997, 431 generic product approvals (including different product strengths) were distributed among 96 pharmaceutical companies. The 64 applications that became first generic approvals for a specific brand name drug, however, were submitted by only 30 firms. Moreover, the 14 first generic approvals that included a paragraph IV certification were submitted by only 5 firms. Therefore, FDA estimates that up to five generic firms and a similar number of innovator firms per year could be financially harmed by the accelerated competition brought about by this rule. Based on a sample of 150 generic firms, the agency could identify fewer than 10 percent that employed over 750 employees. Thus, FDA tentatively projects that approximately five small firms per year, those with first generic approvals containing paragraph IV certifications, could be adversely affected by the increased generic competition. Because this estimate is uncertain, however, FDA invites comments from firms that believe they would be affected by the proposed rule.

C. Compliance Requirements and Costs

To comply with this rule, affected firms will need to learn the new regulatory approach described in this proposed rule. The cost of this proposed rule is difficult to estimate because the number of firms affected is uncertain.

The agency expects, however, that many more firms would benefit from this new approach than would be adversely affected. Because the primary result of the rule would be to speed the start of the 180-day exclusivity period, only those relatively few innovator and generic firms that would profit from delayed competition would be disadvantaged. In contrast, a substantial number of generic competitors would benefit from the earlier sales revenues generated by the quicker introduction of generic competition.

Any professional skills necessary for implementation of this proposal should already exist within the firms and should not need to be newly acquired.

D. Minimizing the Impact on Small Entities

FDA has considered alternatives to regulating 180-day generic drug marketing exclusivity that may have a lesser or different impact on small businesses. Specifically, the agency considered continuing to regulate directly from the statute as it has done since June 1, 1998, when the D.C. District Court enjoined FDA from enforcing its ''successful defense'' regulation. The agency also considered proposing several modifications to the existing regulations to limit the ability of innovator and generic drug companies to enter into agreements that could thwart congressional intent to facilitate prompt entry of generic drugs into the market.

The agency considered retaining its current regulations and addressing new regulatory issues by reference directly to the statute. Because of the significant disadvantages associated with this alternative, the agency has rejected it. This alternative would create uncertainty in the generic drug manufacturing industry because the agency anticipates it may take years to provide sufficient guidance while addressing each scenario on an individual basis.

Regulating from the statute on a case-by-case basis also could result in significant delays in entry of generic drug products into the market, because it could limit the means for FDA to prevent such delays. For example, in cases where the first ANDA applicant with a paragraph IV certification was sued by the patent owner or NDA holder, the ANDA applicant and the patent owner/NDA holder could enter into an agreement that resulted in delayed resolution of the patent litigation. If the patent owner/NDA holder did not sue subsequent applicants, there would not be another court decision to act as an exclusivity trigger. The first applicant might not get a court decision for a long time and also might not market its product. Under these circumstances, no triggering events would occur and the first ANDA would block entry of subsequent ANDA applicants into the market.

The same blocking effect could occur even if the patent owner/NDA holder chose not to sue the first applicant with the paragraph IV certification, but instead entered into an agreement under which the first applicant would not market its product and trigger exclusivity. If the patent owner/NDA holder did not sue subsequent applicants, there also would not be a possibility of a favorable court decision to start the exclusivity period running.

The second alternative, proposing several regulatory modifications, was also rejected by the agency. Satisfactorily accomplishing the goal of promoting prompt entry of generic drug products into the market by inhibiting entry barriers would require many changes to the regulations. Additionally, it would impose a significant paperwork burden on applicants not present in the proposed rule.

The regulatory modifications would include provisions as follows: (1) An ANDA applicant would be required to notify the agency of a settlement agreement with a patent owner/NDA holder and whether it permitted immediate marketing of the drug

product; (2) an ANDA applicant would be required to market its drug product within 60 days of final approval or the agency would determine the exclusivity period commenced on the date of final approval; (3) the agency would determine that if the first applicant entered into an agreement with the patent owner/NDA holder under which it received a commercial benefit, the applicant had commercially marketed its drug product; and (4) if an ANDA applicant brought a declaratory judgment action against the patent owner/NDA holder that was dismissed for lack or case or controversy, the agency would determine that the court decision exclusivity trigger was satisfied.

These proposed regulatory modifications all have the advantage of limiting barriers to entry of generic drug products into the market by permitting earlier satisfaction of the exclusivity triggers in some cases. However, they also are associated with significant disadvantages. This alternative would impose a substantial paperwork burden on ANDA applicants by requiring them to notify the agency of settlements and submit documents relevant to settlement and declaratory judgment actions. Additionally, the approach would require the agency to collect and assess paperwork associated with financial agreements between an ANDA applicant and patent owner/NDA holder to determine if the applicant received a commercial benefit.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of the provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: 180–Day Generic Drug Exclusivity for Abbreviated New Drug Applications.

Description: FDA regulations at § 314.107 govern 180-day generic drug exclusivity under the act. This proposed rule would revise § 314.107 to clarify and modify eligibility requirements for ANDA applicants seeking 180-day marketing exclusivity for a generic drug product. This new approach is necessary because of recent court decisions rejecting the previous requirement that an ANDA applicant successfully defend against a patent infringement lawsuit before it is eligible for exclusivity.

Under proposed § 314.107(e), if the first ANDA applicant for which 180-day exclusivity has sarted wants to waive its exclusivity in favor of a subsequent ANDA applicant, it must so notify the agency in writing before the agency would approve the subsequent application. The first applicant would be required to notify the agency as to which subsequent applicant(s) it wants to waive the exclusivity in favor of and the effective date(s) of the waiver.

The only new information collection requirement in this proposed rule is in § 314.107(e). The industry burden for all other information collection requirements under these regulations has been estimated by FDA and approved under OMB Control Numbers 0910–0001 (approval expires November 30, 2001) and 0910–0305 (approval expires May 31, 2001).

Description of Respondents: Business or other for-profit organizations.

In 1997, 431 generic drug product approvals (including different product strengths) were distributed among 96 pharmaceutical companies. The 64 applications that became first generic approvals for a specific brand name drug, however, were submitted by only 30 firms. Moreover, the 14 first generic approvals that included a paragraph IV certification were submitted by only 5 firms. Based on this data concerning the number of first generic approvals with paragraph IV certifications for a particular drug product received by the agency in 1997, FDA estimates that approximately 14 waivers may be submitted annually under proposed § 314.70(e). FDA estimates that approximately five applicants may submit such waivers and that it will take approximately 2 hours to prepare and submit each waiver to FDA. The following table indicates the estimated annual reporting burden for the preparation of notices of exclusivity waivers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.107(e)	5	approx. 3	14	2	28
Total					28

[1]There are no capital costs associated with this collection of information.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs (address above). Submit written comments on the information collection by September 7, 1999.

VII. Request for Comments

Interested persons may, on or before November 4, 1999, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days from publication of the final rule.

IX. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Congressional Budget Office, *How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry*, 1998. Also available on the Congressional Budget Office web site at: ''http://www.cbo.gov''.

2. FDA, Internal FDA Study, 1999.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

2. In § 314.107, redesignate paragraph (e) as paragraph (f) and paragraph (f) as paragraph (h); revise paragraphs (a), (b) introductory text, (b)(3)(i), (c), (d) and newly redesignated paragraphs (f) and (h); and add new paragraphs (e) and (g) to read as follows:

§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.

(a) *General.* (1) A drug product may be introduced or delivered for introduction into interstate commerce when approval of the application or abbreviated application for the drug product becomes effective. Except as provided in this section, approval of an application or abbreviated application for a drug product becomes effective on the date FDA issues an approval letter under § 314.105 for the application or abbreviated application.

(2) *Definitions.* The following definitions of terms apply to this section:

180-day exclusivity means the 180-day period, under section 505(j)(5)(B)(iv) of the act, during which the first applicant is protected from competition of subsequent applicants.

ANDA means an abbreviated application, as defined under § 314.3.

Decision of a court refers to a final court decision finding the patent to be invalid, unenforceable, or not infringed, resulting from patent litigation brought against the first applicant or against any subsequent applicant. This includes a final court decision in a declaratory judgment action finding the patent to be invalid, unenforceable, or not infringed.

Final court decision means a final judgment from which no appeal can be or has been taken.

First applicant means the applicant submitting the first substantially complete abbreviated new drug application (ANDA) for a particular listed drug that contains ''a paragraph IV certification''[1] to any patent for the listed drug submitted to FDA and published under section 505(b) of the act. The first applicant includes all applicants filing substantially complete ANDA's with paragraph IV certifications for the same drug product on the first day that the agency receives applications with a paragraph IV certification for the drug product.

NDA means a new drug application approved under section 505(c) of the act.

NDA holder means the applicant that owns an approved NDA, or its representative or exclusive licensee. An NDA holder may also be the exclusive licensee or representative of the patent owner.

Obtains a favorable court decision means either a first applicant receives a final court decision in its patent litigation that the patent is invalid, unenforceable, or not infringed; or in litigation of a subsequent applicant involving the same patent there is a final court decision that the patent is invalid, unenforceable, or not infringed.

Paragraph IV certification means a certification under section 505(j)(2)(A)(vii) of the act that a relevant patent is invalid, unenforceable, or will not be infringed.

Patent owner means the owner of the patent which is the subject of the paragraph IV certification, or the patent owner's representative or exclusive licensee.

Subsequent applicant means any applicant filing a subsequent ANDA.

Subsequent ANDA means an ANDA that contains a paragraph IV certification and refers to the same listed drug as the first substantially complete ANDA containing a paragraph IV certification.

Substantially complete means an ANDA that contains information required by section 505(j)(2)(A) of the act and §§ 314.50 and 314.94, including the results of any required bioequivalence studies or, if applicable, a request for a waiver of such studies, and a complete statistical analysis of required bioequivalence studies demonstrating that the drug product proposed in the ANDA meets the appropriate bioequivalence standard.

A triggering event occurs when, during a triggering period, a first applicant commercially markets its drug product or obtains a favorable court decision.

Triggering period means a 180-day time period, usually beginning on the date of the tentative approval of a subsequent ANDA, during which 180-day exclusivity may begin for the first applicant if a triggering event occurs.

(b) *Effect of patent on the listed drug.* If approval of an ANDA submitted under section 505(j) of the act or of a 505(b)(2) application is granted, that approval will become effective in accordance with the following:

* * * * *

(3) *Disposition of patent litigation.* (i)(A) Except as provided in paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv) of this section, if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent is invalid, unenforceable, or will not be infringed, and the patent owner or NDA holder brings suit for patent infringement within 45 days of receipt by the patent owner or NDA holder of the notice of certification from the applicant under § 314.52 or § 314.95, approval may be made effective 30 months after the date of the receipt of the notice of certification by the patent owner or NDA holder unless the court has extended or reduced the period because of a failure of either the plaintiff or defendant to cooperate reasonably in expediting the action; or

(B) If the patented drug product qualifies for 5 years of exclusive marketing under section § 314.108(b)(2) and the patent owner or NDA holder brings suit for patent infringement during the 1-year period beginning 4 years after the date the patented drug was approved and within 45 days of receipt by the patent owner or NDA holder of the notice of certification, the approval may be made effective at the expiration of 7 1/2 years from the date of approval of the application for the patented drug product.

* * * * *

(c) *Exclusivity and triggering period for ANDAs.* (1) Approval of a subsequent ANDA will be made effective no sooner than 180 days from

[1] As defined elsewhere in this section.

whichever of the following dates occurs first:

(i) The date the first applicant first commences commercial marketing of its drug product; or

(ii) The date of a decision of a court holding the relevant patent invalid, unenforceable, or not infringed.

(2) For purposes of paragraph (c)(1) of this section, FDA will delay the effective date of approval of a subsequent ANDA for up to 180 days from the date described in paragraph (c)(1) of this section only when the first applicant is eligible for 180-day exclusivity. FDA will not award 180-day exclusivity to any applicant if the first applicant is no longer eligible to receive 180-day exclusivity.

(3) If the patent owner or NDA holder sues the first applicant within 45 days of receipt of the first applicant's notice of paragraph IV certification under § 314.95, and the first applicant loses the patent litigation, the first applicant must amend its certification in accordance with § 314.94(a)(12)(viii)(A) within 10 working days of the court decision finding the patent infringed. The first applicant's ANDA then no longer contains a paragraph IV certification and is not eligible for 180-day exclusivity. Immediately after such an amendment, FDA may approve eligible subsequent ANDA's.

(4) The first applicant must notify FDA of the date it commences commercial marketing of its drug product. Commercial marketing commences with the first date of introduction or delivery for introduction into interstate commerce outside the control of the manufacturer of a drug product, except for investigational use under part 312 of this chapter, but does not include transfer of the drug product for reasons other than sale within the control of the manufacturer or application holder. If the first applicant does not notify FDA within 10 working days of the date on which it began commercial marketing of its drug product, FDA may regard the effective date of approval as the date of the commencement of first commercial marketing.

(5)(i) If, before the 180-day exclusivity period for the first applicant has started, a subsequent applicant receives a tentative approval letter for its drug product stating that the first applicant's eligibility for 180-day exclusivity is the only obstacle to final approval of the subsequent ANDA, the first applicant will receive the 180-day exclusivity for which it is eligible if any of the following circumstances apply:

(A) The first applicant has received approval for its drug product, and, within 180 days from the date of the subsequent applicant's tentative approval, a triggering event occurs.

(B) The first applicant has not received approval for its drug product; and the first applicant was not sued by the patent owner or NDA holder for patent infringement; and, within 180 days from the date of the subsequent applicant's tentative approval, a triggering event occurs.

(C) The first applicant's drug product is not yet eligible for approval because the first applicant was sued by the patent owner or NDA holder for patent infringement; and, under paragraph (b)(3)(i)(A) of this section, 30 months have not elapsed since the date the patent owner or NDA holder received notice of the patent certification; and, within 180 days after the expiration of the 30 months described in paragraph (b)(3)(i)(A) of this section, a triggering event occurs.

(D) The first applicant's drug product is not yet eligible for approval because the first applicant was sued by the patent owner or NDA holder for patent infringement and a court granted a preliminary injunction, as described in paragraph (b)(3)(iv) of this section, prohibiting the first applicant from engaging in the commercial manufacture or sale of the drug product; and, within 180 days from the date the injunction expires, a triggering event occurs.

(E) The first applicant does not have a full approval for its drug product; and the first applicant was sued by the patent owner or NDA holder for patent infringement and is eligible for approval under paragraph (b)(3) of this section; and, within 180 days from the date of the subsequent applicant's tentative approval, a triggering event occurs.

(ii) If the first applicant does not begin its period of 180-day exclusivity by the end of the appropriate 180-day period (triggering period) described in paragraphs (c)(5)(i)(A) through (c)(5)(i)(E) of this section, FDA will approve otherwise eligible ANDA's for the drug product.

(d) *Delay due to § 314.108 exclusivity.* The agency will delay the effective date of the approval of an ANDA or a 505(b)(2) application if delay is required by the exclusivity provisions in § 314.108. When the effective date of an application is delayed under both this section and § 314.108, the effective date will be the later of the two dates specified under this section and § 314.108.

(e) *Waivers of exclusivity by abbreviated new drug applicants.* For purposes of paragraph (c)(1) of this section, a first applicant for which the 180-day exclusivity has started with a triggering event may waive its exclusivity to permit FDA to approve one or more subsequent ANDA's during the 180-day exclusivity period. FDA may approve a subsequent applicant's ANDA only after the first applicant notifies the agency in writing that it is waiving its 180-day exclusivity with respect to a particular subsequent applicant(s) or application(s), and identifies the effective date(s) of the waiver.

(f) *Court actions.* (1) For purposes of establishing the effective date of approval based on a court judgment, the following dates will be deemed to be the date of the final court decision on the patent issues:

(i) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is not appealed, the date on which the right to appeal lapses;

(ii) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is appealed, the date of the first decision or order by a higher court holding or affirming the decision of the district court that the patent is invalid, unenforceable, or not infringed;

(iii) If the district court enters a decision that the patent is infringed, and the decision is appealed, the date on which the district court enters a judgment that the patent is invalid, unenforceable, or not infringed under a mandate issued by a court of appeals; and

(iv) The date of a settlement order or consent decree signed by a Federal judge that enters final judgment and includes a finding that the patent is invalid, unenforceable, or not infringed.

(2) The applicant must submit a copy of the entry of the order or judgment to the Office of Generic Drugs (HFD–600) or to the appropriate division in the Office of Review Management (HFD–20) within 10 working days of a final judgment. The patent owner and NDA holder may also submit this information.

(g) *Effect of dismissal of litigation on 30-month stay.* If the patent litigation between the ANDA applicant and the patent owner or NDA holder described in paragraph (b)(3)(A) of this section is dismissed without a court decision on the merits of the patent claim, whether the dismissal is with or without prejudice, the agency may immediately approve the ANDA that was the subject of the litigation, if it is otherwise eligible for approval.

(h) *Computation of 45-day time clock.* (1) The 45-day clock described in paragraph (b)(3) of this section begins

on the day after the date of receipt of the applicant's notice of certification by the patent owner or NDA holder, whichever date is later. When the 45th day falls on Saturday, Sunday, or a Federal holiday, the 45th day will be the next day that is not a Saturday, Sunday, or Federal holiday.

(2) The ANDA applicant or 505(b)(2) applicant must notify FDA immediately in writing of the filing of any legal action for patent infringement filed within 45 days of receipt of the notice of certification. If FDA is not so notified by the ANDA or 505(b)(2) applicant, or by the patent owner or NDA holder, before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later, approval of the ANDA or the 505(b)(2) application will be made effective immediately upon expiration of the 45 days or completion of the agency's review and approval of the application, whichever date is later. The notification to FDA of the legal action must include the information in paragraphs (h)(2)(i) through (h)(2)(iv) of this section and be submitted according to paragraph (h)(2)(v) of this section as follows:

(i) The ANDA or 505(b)(2) application number;

(ii) The name of the applicant;

(iii) The established name of the drug product or, if no established name exists, the name(s) of the active ingredient(s), the drug product's strength, and the dosage form;

(iv) A certification that an action for patent infringement, identified by number, has been filed in an appropriate court on a specified date; and

(v) An ANDA applicant must notify FDA's Office of Generic Drugs (HFD–600). A 505(b)(2) applicant must notify the appropriate review division in the Center for Drug Evaluation and Research or the Office of Generic Drugs if it is reviewing the application. A patent owner or NDA holder may also notify FDA of the filing of any legal action for patent infringement.

(3) If the patent owner or NDA holder waives its opportunity to file a legal action for patent infringement within 45 days of a receipt of the notice of certification and the patent owner or NDA holder submits to FDA a valid waiver before the 45 days elapse, approval of the ANDA or the 505(b)(2) application will be made effective upon completion of the agency's review and approval of the application. FDA will only accept a waiver in the following form:

(*Name of patent owner or NDA holder*) has received notice from (*name of applicant*) under (*section 505(b)(3) or (j)(2)(B) of the act*) and does not intend to file an action for patent infringement against (*name of applicant*) concerning the drug (*name of drug*) before (*date on which 45 days elapses*). (*Name of patent owner or NDA holder*) waives the opportunity provided by (*section 505(c)(3)(C) or (j)(B)(2)(iii) of the act*) and does not object to FDA's approval of (*name of applicant*)'s (505(b)(2) or ANDA) for (*name of drug*) with an immediate effective date on or after the date of this letter.

Dated: July 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20353 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–264–FOR]

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio regulatory program (Ohio program) under the surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to Section 1501:13–1–04 of the Ohio Administrative Code (OAC) as it relates to exemptions for coal extraction incidental to government-financed highway or other construction. The amendment is intended to revise the Ohio program to include counterparts to the recently promulgated ''AML Enhancement Rule,'' which revised the Federal regulations as 30 CFR 707.5 and added a new provision, at 30 CFR 874.17.

DATES: Written comments must be received by 4:00 p.m., [E.S.T.], August 23, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Field Branch Chief, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153.

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated March 16, 1999 (Administrative Record No. OH–2178–00) Ohio submitted a proposed amendment to its program concerning exemptions for coal extraction incidental to government-financed highway or other construction. Ohio submitted the proposed amendment at its own initiative, in order to incorporate into its program the expanded exemption recently promulgated in the Federal regulations at 30 CFR 707.5, as part of the ''AML Enhancement Rule.'' Under this rule, approved Title IV abandoned mine land (AML) projects under SMCRA which involve incidental coal extraction and are less than 50 percent government financed may qualify for exemption. Projects which qualify for this expanded exemption must also meet the newly promulgated requirements contained in 30 CFR 874.17. (64 FR 7470, February 12, 1999). The proposed amendment was announced in the April 16, 1999, **Federal Register** (64 FR 18857). The initial comment period closed on May 17, 1999.

By letter dated July 9, 1999 (Administrative Record No. OH–2178–06) Ohio submitted a revised and final version of the proposed amendment. Ohio made this more recent submittal in

response to an OSM, July 1, 1999, issue letter (Administrative Record No. OH–2178–05). In the letter, OSM had requested that the amendment clearly restrict exemptions to projects that are AML eligible; and clearly require that the exempted reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R. The following are changes to OAC Section 1501:13–1–04 made in the final submission and not previously described in the April 16, 1999, **Federal Register** notice. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

The last sentence of Subsection (A)(3) in the original amendment read as follows: ''Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Section 1513.30 or 1513.37 of the revised code.'' This sentence has been revised as follows: ''Funding at less than 50 percent may qualify if the project is eligible under 1513.37 of the revised code and the construction is undertaken as an approved reclamation project under Section 1513.30 or 1513.37 of the Revised Code.''

Subsection (C)(4)(ii) in the original amendment read as follows: ''Ensure that the reclamation project is conducted in accordance with the provision of the approved AML program and procedures.'' This subsection has been revised as follows: ''Ensure that the reclamation project is conducted in accordance with the provisions of the AML program and procedures as approved by the U.S. Secretary Of Interior under 30 CFR Subchapter R.''

III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, we are seeking comments on the clarification to the State's amendment submitted on July 9, 1999. Comments should address whether the proposed amendment with these clarifications satisfies the applicable program approval criteria of 30 CFR 732.15. If we determine the amendment to be adequate, it will become part of the Ohio program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 611 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–20273 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN42–01–7267; FRL–6415–2]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed approval.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve an amendment to the carbon monoxide (CO) State Implementation Plan (SIP) for Minnesota. Minnesota submitted this amendment to the SIP to the EPA in four separate submittals, dated November 14, 1995, July 8, 1996, September 24, 1996, and June 30, 1999.

The submittals include revisions to the motor vehicle inspection and maintenance (I/M) program currently in operation in the Minneapolis/St. Paul CO nonattainment area. The revisions make changes to the State's I/M program, including model year coverage, vehicle waiver provisions, and other program deficiencies identified by the EPA. The revision also contains provisions for the discontinuation of the I/M program if EPA redesignates the area to attainment for CO.

DATES: Comments on this proposed action must be received by September 7, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Mooney at 312–886–6043 before visiting the Region 5 Office.)

A copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

SUPPLEMENTARY INFORMATION:

I. Overview

The Minnesota Pollution Control Agency (MPCA) submitted its initial I/M submittals to EPA in November and December of 1993. As described below, the EPA conditionally approved Minnesota's initial submittal on October 13, 1994 (59 FR 51860). Subsequently, Minnesota submitted to the EPA four additional revisions to the State's I/M program. The changes proposed since 1993 reflect actions taken by the State Legislature pertaining to model year coverage, waiver provisions, and other program changes required by EPA's conditional approval.

The information in this section is organized as follows:

A. What SIP amendments is EPA proposing to approve?

B. Why is EPA requiring the State to change its I/M program?

C. How has the State addressed EPA's requirements?

D. What does the State need to do to receive full approval?

E. What happens if the Minneapolis/St. Paul area is redesignated to attainment for CO?

A. What SIP Amendments Is EPA Proposing To Approve?

The following table outlines the revisions submitted by the State to EPA subsequent to the State's initial I/M submittal in 1993. The State's most recent submittal identifies those provisions of their earlier submittals that address EPA's conditional approval. In this submittal, the State also withdraws Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2) of the Minnesota Rules. The State is withdrawing these provisions because they have been superceded by recent amendments to the State I/M program. EPA proposes to approve the relevant portions of each of these submittals as requested by the State on June 30, 1999.

Date of submittal to EPA	Items received
November 14, 1995	—Basic I/M performance standard modeling. —I/M legislation with changes to model year coverage. —Response to EPA's October 13, 1994 conditional approval (59 FR 51860).
July 8, 1996	—Notification of public hearing.
September 24, 1996	—Administrative materials for the November 14, 1995, and July 6, 1996 submittals, including proof of public hearing.
June 30, 1999	—Minnesota Statute Sections 116.60 to 116.65 as amended by the 1999 Minnesota State Legislature. —Letter from the Minnesota Attorney General detailing the prevalence of statute over rules. —Letter from the Minnesota Pollution Control Agency (MPCA) requesting approval of I/M legislation, certain portions of Minnesota's I/M regulation, and performance standard modeling from earlier submittals. This letter also withdraws certain obsolete sections of the State's earlier submittals.

As requested by the State, the EPA is proposing to approve: Minnesota Statutes Sections 116.60 to 116.65; Minnesota Rules 7023.1010–7023.1105 (except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2)); and technical materials showing that the program meets EPA's basic I/M performance standard, as well as the conditions of EPA's October 13, 1994 conditional approval.

B. Why Is EPA Requiring the State To Change Its I/M Program?

Section 187(a)(4) of the Clean Air Act requires states with moderate CO nonattainment areas to improve existing I/M programs or implement new ones. EPA designated the Minneapolis/St. Paul area as a moderate CO nonattainment area on November 16, 1991 (56 FR 56694). Therefore, the State of Minnesota was required to develop a State Implementation Plan to meet the I/M requirements contained in the Clean Air Act, and in the corresponding regulations for I/M, codified at 40 CFR Part 51, Subpart S.

On November 10, 1992, the State submitted its initial I/M plan to the EPA, which it supplemented on November 12, 1993, and December 15, 1993. On October 13, 1994, the EPA published a rulemaking action conditionally approving Minnesota's I/M plan. As part of this rulemaking action, the EPA identified a number of deficiencies in the State's plan and issued a conditional approval, which required that the State submit a revised plan within one year from the conditional approval date. A detailed discussion of EPA's rulemaking action can be found in the final rule at 59 FR 51860 (October 13, 1994). In 1995, the Minnesota Legislature amended its I/M program to make changes to the vehicle model years tested in the program. In 1999, the Minnesota Legislature amended its I/M program to address the deficiencies identified in EPA's October 13, 1994 rulemaking action (59 FR 51860). The State has submitted all of these changes in the series of submittals noted above.

C. How Has the State Addressed EPA's Requirements?

EPA's conditional approval noted four specific deficiencies in Minnesota's I/M plan. All other parts of the plan comply with EPA's requirements. EPA's technical support documents dated June 23, 1994, September 7, 1994, and July 19, 1999 contain a more detailed analysis of the I/M review. The four deficiencies identified in EPA's conditional approval and the manner in which the State has addressed them follow:

1. The Requirement That Only Certified Automotive Repair Technicians Perform Repairs in Order for a Vehicle To Obtain a Waiver

In its November 15, 1995 SIP submittal, the State described its

technician assistance program. In general, the State of Minnesota does not require certification or licensing in order to perform automotive repairs in the State. Minnesota offers a variety of assistance and training programs in the State and offers a Consumer Advocacy Program to technicians and the public as part of its I/M program. In addition, the State publishes a number of newsletters and a technician training curriculum specifically focused on automobile emissions. Further, the State publishes a Repair Report that lists names and addresses of repair facilities, average cost of repair, and the percentage of pass and fail inspections based on the number of vehicles repaired at the facility. All of these programs provide the public and the repair community with the opportunity for feedback and training necessary to improve repair effectiveness without a formal certification process. Minnesota has demonstrated that their system, despite the lack of a certification process, does not cause an increase in the waiver rate or a reduction in the emission reductions achieved by the program. The waiver rates in Minnesota remain consistent with those seen in similar areas around the country. Overall, the program continues to meet EPA's basic I/M performance standard, the computer model based analysis of the emissions impact of the program. As a result, EPA believes that the State has addressed this deficiency.

2. The Requirement That the State's Minimum Repair Cost Limit Be Actually Spent Before a Vehicle is Eligible To Receive a Waiver

The legislation enacted during the 1999 Minnesota State Legislature, and submitted by the State on June 30, 1999, requires motorists to spend at least $75 in repair for vehicles manufactured before 1981, and $200 in repair for vehicles manufactured in 1981 and after in order to receive a waiver. Unlike prior statute, the new legislation does not allow repair estimates to qualify for waivers. This legislation is consistent with EPA's I/M regulations. It should be noted that this legislation conflicts with Minnesota State Rule 7023.1055, Subp. 1(E)(2) promulgated by the MPCA. In its June 30, 1999 submittal, the State submitted a letter from the Minnesota Attorney General which states that where a State statute is in conflict with a State rule, the statute takes precedence. Further, the State has formally withdrawn Rule 7023.1055, Subp. 1(E)(2) from its formal SIP submittal. Therefore, the EPA is proposing to approve the legislation.

3. The Requirement That Vehicles With Switched Engines Be Tested With Emissions Standards Based on the Model Year of the Chassis Rather than the Engine Year

The legislation enacted during the 1999 Minnesota State Legislature, and submitted by the State on June 30, 1999, requires vehicles to be tested based on chassis model year, rather than engine model year. This legislation is consistent with EPA's I/M regulations. It should be noted that this legislation conflicts with Minnesota State Rule 7023.1010, Subp. 35(B), and Rule 7032.1030, Subp. 11(B,C). In its, June 30, 1999 submittal, the State submitted a letter from the Minnesota Attorney General which states that where a State statute conflicts with a State rule, the statute takes precedence. Further, the State has formally withdrawn Rule 7023.1010, Subp. 35(B), and Rule 7032.1030, Subp. 11(B,C) from its formal SIP submittal. Therefore, EPA is proposing to approve the legislation.

4. The Requirement To Change the Re-inspection Procedure To Include a Determination That an Emission Control Device is the Correct Type for the Certified Configuration of the Vehicle Inspected

In its November 14, 1995 submittal, the MPCA fully described its inspection procedures, noting that inspection staff perform visual checks to ensure that emissions system for vehicles are correctly configured. The EPA believes that this procedure is sufficient to meet the requirements of EPA's I/M regulations and is approvable.

In 1995, the Minnesota Legislature passed a bill exempting cars five years old and newer from the I/M testing requirement. EPA's I/M regulations give States the flexibility to change various program elements, including model year coverage, as long as the overall program meets the EPA's basic I/M performance standard, which is a computer model based analysis of the emissions impact of the program. In its November 14, 1995, the MPCA included new I/M performance standard computer modeling reflecting the model year changes made by the Minnesota Legislature. The EPA has reviewed the State's computer modeling and finds that it complies with applicable modeling guidance. This modeling shows that the I/M program continues to meet EPA's basic I/M performance standard, even with the five model year exemption. Therefore, the changes made to the program are acceptable under EPA's I/M regulations.

D. What Does the State Need To Do To Receive Full Approval?

The State has provided the necessary technical materials to meet EPA's I/M requirements. At present, however, the State has not held a public hearing and submitted its response to comments to the EPA as part of its SIP submittal. The State must submit this information to EPA to receive full approval of its I/M SIP. If the State submits this information during the public comment period on today's action, the State's SIP submittal will be deemed complete and the EPA will move forward to fully approve the revision.

E. What Happens if the Minneapolis/St. Paul Area Is Redesignated to Attainment for CO?

As noted in EPA's technical support document for the State's CO redesignation request dated May 3, 1999, as well as in EPA's proposed approval of the State's redesignation request, the MPCA has performed computer photochemical modeling which shows that in the future the I/M program will not be necessary to attain or maintain the National Ambient Air Quality Standard (NAAQS) for CO. In its redesignation request, the State also included the I/M program as a contingency measure if the program is subsequently needed to correct a violation of the CO NAAQS. The EPA has reviewed the modeling submitted with the redesignation and has found that it meets EPA's technical modeling criteria. The EPA has also reviewed the State's redesignation request and has found that it meets the redesignation requirements in the Clean Air Act and EPA guidance (see 64 FR 25855, May 13, 1999). As a result, once the Minneapolis/St. Paul CO nonattainment area is redesignated to attainment, the State may discontinue operation of its I/M program and request its removal from the SIP. If EPA does not approve the redesignation request for the area, I/M will remain as an applicable requirement and EPA will work with the State to ensure that all nonattainment control programs are implemented in accordance with the requirements of the Act.

II. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective 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.'' This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected 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.'' This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

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

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

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (Act) preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon Monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–20310 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6414–5]

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; Extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for an advance notice of proposed rulemaking published June 17, 1999 (64 FR 32458), regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. In the June 17 notice, EPA requests

information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied.

At the request of Southern California Edison Company, EPA is extending the comment period for 30 days.

DATES: The comment period on the advance notice of proposed rulemaking is extended until September 15, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler (Phone: 415–744-1251).

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: July 30, 1999.

David Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–20309 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–164; FRL–6415–4]

Approving Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control Agency

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern New Source Review permitting requirements for stationary sources in San Diego County. EPA also proposes to eliminate approval conditions created in 1981 that are no longer relevant.

The intended effect of proposing limited approval and limited disapproval is to ensure San Diego County's New Source Review rules are consistent with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate these rules into the federally approved SIP. Although strengthening the SIP, these rules do not fully meet the CAA requirements for nonattainment areas. The rules have been evaluated based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments may be mailed to: David Wampler, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096

California Air Resources Board, 2020 ''L'' Street, Sacramento, California 95812

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office, [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1256; E-mail: wampler.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. What Action Is EPA Proposing?

A. New Source Review Rules

EPA today proposes a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for San Diego Air Pollution Control District (District or SDCAPCD) rules 20.1, 20.2, 20.3, and 20.4. Table 1 lists the number and title of the rules. The rules were submitted to EPA by the California Air Resources Board (CARB) on May 13, 1999 and found complete by EPA on June 10, 1999.

TABLE 1.—RULES INCLUDED IN TODAY'S PROPOSED RULEMAKING

Rule No.	Rule Title—New Source Review
20.1	General Provisions.
20.2	Non-Major Stationary Sources.
20.3	Major Stationary Sources and PSD Stationary Sources.
20.4	Portable Emission Units.

Upon final action, the rules will replace existing SIP rules of the same number approved by EPA into the SIP on April 14, 1981. See 46 FR 21757 and 40 CFR 52.220(c)(64)(i)(A).[1]

We evaluated the rules for consistency with the CAA, EPA regulations, and EPA policy. We've found that the revisions are overall more stringent than the rules of the same number that exist in the SIP.

Even though San Diego County APCD rules 20.1, 20.2, 20.3 and 20.4 will strengthen the SIP, these rules still contain deficiencies (discussed below)

[1] In addition to the approval for rules 20.1 through 20.4, EPA's April 14, 1981 final rulemaking action also approved SDCAPCD rules 20.5, ''Power Plants;'' 20.6, ''Standards for Permit to Operate—Air Quality Analysis;'' and 20.7, ''Standards for Authority to Construct: Significant Deterioration.'' The 4/14/81 approval of Rule 20.7 was found to be incorrect and it was later rescinded from the SIP in a final rulemaking on June 4, 1982 (47 FR 24308). Rules 20.5 and 20.6 remain fully approved into the SIP today and are unaffected by this rulemaking.

and are not fully approvable under Part D of the CAA. Therefore, EPA today proposes a limited approval and limited disapproval of these four rules. If our final action remains a limited approval and limited disapproval, San Diego County APCD will have—from the date of the final action—18 months to correct any deficiencies to avoid federal sanctions. See CAA § 179(b). Further the final disapproval triggers the Federal implementation plan requirements under 110(c). A detailed discussion of the rule deficiencies is included in the Technical Support Document (TSD) for this rulemaking. The TSD is available from the EPA Region IX office.

B. Remove Conditions in 1981 NSR SIP Approval

In addition to our action on the NSR rules, we propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(4).

II. How Did EPA Arrive at the Proposed Action?

A. Overview

1. New Source Review Rules

EPA evaluated the rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Our interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents.

EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to comply with certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

2. How EPA Evaluates Past NSR Submittals

Since 1981, numerous revisions to rules 20.1 through 20.4 have been adopted by SDCAPCD and submitted by CARB to EPA for SIP approval. See the TSD for a list of all previous NSR rule submittals for San Diego County. Although EPA is acting only on the most recently submitted version of May 13, 1999, EPA has reviewed materials associated with the two most recent NSR SIP submittals dated July 13, 1994 and July 22, 1998.

Once approved as new rules into the California SIP for San Diego County, the May 13, 1999, submitted SDCAPCD rules 20.1, 20.2, 20.3 and 20.4 will strengthen the existing SIP by:

- Including major source and major modification thresholds that are consistent with the 1990 Clean Air Act Amendments for major stationary sources and major modifications locating in serious ozone non-attainment areas;
- Establishing the appropriate emissions offset ratio for major stationary sources and major modifications locating in serious ozone non-attainment areas.

3. Removing Conditions in 1981 NSR SIP Approval

In addition to our proposed limited action to approve SDCAPCD rules 20.1 through 20.4, we also propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(4). These conditions are moot today for the following reasons:

- The current rules will, upon final approval, supercede the 1980 rules.
- EPA has not taken action on any revisions to SDCAPCD NSR rules 20.1 through 20.6.
- We have not issued final rulemaking to correct the deficiencies of SDCAPCD NSR rules discussed in the April 14, 1981 final rulemaking.
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

B. Rule Deficiencies

The following rule deficiencies prevent EPA from being able to fully approve SDCAPCD rules 20.1, 20.2, 20.3 and 20.4 contained in today's action. In addition to identifying the deficiencies, we have provided information on how to correct some of the deficiencies.

1. Deficiencies With Rule 20.1

- 20.1(b)(4) provides for an exemption from the offset requirements of rule 20.2(d)(5)[2] or of rules 20.3(d)(5) and (d)(8) for NO_X emission increases from new, modified or replacement emission units subject to the requirements of rule 69(d)(6). Rule 69, ''Electrical Generating Steam Boilers, Replacement Units and New Units,'' is not SIP approved and CARB, on behalf of SDCAPCD, does not intend to submit it to EPA for SIP approval. This exemption from the offset requirements is a deficiency because CAA section 173(c) requires offsets for all new major stationary sources or major modifications as defined in CAA 182(c) for serious ozone non-attainment areas. Rule 69 does not provide a recognized alternative to the offset requirement because it is not a SIP-approved rule.
- Rule 20.1(c)(26) definition of ''Federally Enforceable.'' There are two reasons why this definition is a rule deficiency. First, the definition allows Authority to Construct (ATC) terms and conditions imposed pursuant to the SDCAPCD rules and regulations or state law to be deemed ''non-federally enforceable'' unless otherwise requested by the owner. SDCAPCD has not defined which ''rules and regulations'' could create permit terms and conditions that are not federally enforceable. It is our position that SIP-approved rule 10[3]—''Permits Required,'' and rule 21—''Permit Conditions'' create a SIP-approved permitting program for subject sources in San Diego County. Additional SIP NSR rules for major and minor sources add—or will add, upon SIP approval—more specific pre-construction permitting requirements. Given the broad authority of SIP rules 10 and 21, it is our position that all permit terms and conditions in SIP-approved permits are federally enforceable.[4] The Air Pollution Control Officer (APCO) cannot unilaterally deem a such a permit condition ''non-federally-enforceable.''

Second, the definition incorrectly states, ''* * * which term or condition is imposed pursuant to * * * 40 CFR part 51, subpart I.'' Part 51, subpart I is not a permitting program that, on its own, provides a state authority to impose permit terms and conditions. Rather, part 51, subpart I contains

[2] Subsection (d)(5) of rule 20.2 was adopted locally by SDCAPCD on 11/4/98 but not included in the May 13, 1999 CARB SIP-submittal.

[3] Rule 10 ''Permits Required'' is a broad rule that states in subsection (a) ''Authority to Construct': ''Any person building, erecting, altering or replacing any article, machine, equipment or other contrivance * * * shall first obtain written authorization for such construction from the Air Pollution Control Officer.''

[4] See 40 CFR 52.23 and letter dated March 31, 1999 from John Sietz to Mr. Doug Allard, President of CAPCOA.

federal minor NSR (sections 51.160 through 51.166) and major non-attainment NSR (sections 51.160 through 51.165) requirements that state programs (i.e., rules) must contain before they can be SIP-approved. Once SIP-approved pursuant to part 51, subpart I, the NSR rules, and all terms and conditions of ATC permits issued pursuant to those rules, become federally enforceable.

To correct the deficiencies, the District must do either of the following:

1. The District could require all terms and conditions to be federally enforceable. To create this, the District must eliminate the entire paragraph that allows non-federally enforceable conditions to be created and revise the statement in rule 20.1(c)(26)(ii) to state, ''* * * which term or condition is imposed pursuant to * * * District rule 10, 21, 20.1 through 20.4 * * *'' EPA believes this option is the best way to correct the deficiencies and would eliminate any ambiguity surrounding the enforceability of the terms and conditions NSR permits.

2. Alternatively, if SDCAPCD would like the ability to separate NSR permit terms into federally enforceable and non-federally enforceable terms, SDCAPCD must revise and submit for SIP approval rules 10 and 21 and revise the statement in rule 20.1(c)(26)(ii) to state, ''* * * which term or condition is imposed pursuant to * * * District rule 10, 21, 20.1 through 20.4 * * *''

- 20.1(d)(5) requires that offsets be ''actual emission reductions'' but does not require offsets to be surplus at the time of use. Further, rule 20.1(d)(4)(ii) and (iii) prescribe how actual emission reductions are calculated (including any necessary adjustments), at the time of generation, not at the time of use. EPA requires that the emissions reductions used to offset any new or modified major stationary source be surplus at the time of use.[5]

To correct the deficiency the District must require offsets to be surplus at the time of use.

- 20.1(d)(5) is deficient because the subsection contains a reference to rule 27. Rule 27 has been submitted but contains a deficiency at 27(c)(1)(vi)—''Other Emission Reduction Strategies.'' Rule 27(c)(1)(vi) would allow emissions reduction credits (ERCs) to be created upon approval of the APCO and concurrence from ARB. EPA cannot approve into the SIP a reference to a rule that allows such broad APCO discretion as to how ERCs are created. Because the emission reductions are used to offset emission increases from new or modified major stationary sources, the district rules must be amended to assure that emission increases from new and modified stationary sources are offset by real reductions in actual emissions as required by Clean Air Act section 173(c)(1).

The following are two possible options to correct the deficiency:

(1) Remove the reference to rule 27 in the subsections of 20.1(d)(5).

(2) Revise and submit to EPA for SIP approval a new version of rule 27 that is approvable. Such approval must occur within 18 months from final approval of today's action.

2. Deficiency with Rules 20.3 and 20.4

- Rules 20.3(d)(5)(vi) and 20.4(d)(5)(vi) allow the APCO to authorize interpollutant[6] trading to satisfy the federal offset requirements. Specific ratios are provided in the rule. For example, a source may acquire, for every ton of NO_X increase, 2.0 tons of VOC emission reduction. Conversely, a one ton VOC increase may be offset with one ton of NO_X decrease. SDCAPCD has not provided a justification as to how the interpollutant offset ratios were obtained. Furthermore, to date, EPA has not developed a policy that describes how a state could establish appropriate basin-wide interpollutant offset ratios.

To correct the deficiency in Rules 20.3 and 20.4 the District must either delete the interpollutant ratios and add the requirement that interpollutant ratios will be evaluated on a case-by-case basis with public notice and EPA concurrence or provide modeling studies to adequately support the ratio in the rule.

3. Deficiency with Rule 20.2

- 20.2(d)(2) establishes the air quality impact analysis requirements for non-major (minor) sources in San Diego County. This section does not require an analysis of the available increment as required in 51.166(a)(1).

To correct the deficiency the District must revise the rule to add the requirement that minor sources subject to the AQIA requirements must evaluate their impact on the increment.

4. Deficiency with Rules 20.1 through 20.4

- Rules 20.1 through 20.4 do not provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice. Although subsection of 20.3(d)(3)—Prevention of Significant Deterioration—of the locally adopted rule contains this requirement, rule 20.3(d)(3) has not been submitted to EPA to be included in the SIP.

To correct this deficiency the District must revise the rules to require that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice.

III. EPA Solicits Comment on Two Special Issues

In addition to the above deficiencies, there are two provisions in the submitted rules for which EPA solicits comment:

(1) The provision in 20.1(d)(1)(ii)(C) that allows a stationary source to exclude emissions from portable equipment from its aggregate potential to emit; and

(2) The overall adequacy of the SDCAPCD minor source NSR program requirements contained in submitted rule 20.2.

EPA is not proposing its limited approval, limited disapproval on the basis of these two deficiencies.[7] We are soliciting comment on the provisions and will, after evaluating the comments, either approve the above listed provisions, or cite the provisions as a deficiency and as a further basis for limited disapproval in the final rulemaking. The Agency's evaluation of the two provision are provided below.

A. Provision 20.1(d)(1)(ii)(C)—Exclusion of emissions from portable equipment from a stationary source's potential to emit (PTE)

1. Overview

By excluding the emissions from portable equipment from a stationary source's aggregate PTE, major stationary sources could be improperly classified as minor sources and avoid applicable requirements.[8] On the surface, it appears that 20.1(d)(1)(ii)(C) is not consistent with federal law. However, CARB has submitted to EPA for SIP approval SDCAPCD rule 20.4 which is

[5] CAA section 173(c)(2) prohibits the use of emission reductions that are ''otherwise required by this chapter.''

[6] Although the term ''interpollutant'' is used, the District rules only allow for trades between the ozone precursors NO_X and VOC.

[7] Except that San Diego's minor NSR rule contains one deficiency in that rule 20.2 does not require minor sources to analyze the impact on the available increment.

[8] SDCAPCD provided EPA an internal memo dated May 17, 1999 that explained how the District regulations would prevent a stationary source from abusing portable equipment to avoid major NSR requirements.

dedicated entirely to the NSR regulation of portable equipment.

EPA solicits comment on whether it is appropriate to exclude emissions from portable equipment from a stationary source's PTE. In general, EPA believes it could be appropriate if the portable equipment is subject to NSR regulations separate from, and equivalent to, stationary source NSR regulations. Without separate regulations, however, EPA believes emissions from portable equipment should not be excluded from the stationary source's PTE.

On a side note, Rule 20.1 (d)(1)(ii)(D) allows emissions from military tactical support equipment, including gas turbines, to be exempt from a stationary source's aggregate potential to emit. Based on conversations with District staff and data provided by representatives of the Department of Defense, EPA believes this is allowable in San Diego County because: (1) Most of the emissions from military tactical support equipment are from piston engines that are non-road engines and are therefore not required to be considered part of a stationary source; and (2) emissions from gas turbines (emission units that are not covered under non-road engine regulations) are *de minimus.* If the emissions from gas turbines exceed *de minimus* levels after approval of this rule, the District must submit a revision deleting this exemption or EPA will use its authority under section 110(k)(5) of the Act to require the District to submit a SIP revision.

2. History of Portable Equipment Regulations in San Diego

Rule 20.1(d)(1)(ii)(C) allows emissions from all portable emission units to be excluded from a stationary source's PTE. The exemption does not distinguish between portable units that were previously permitted (before regulations for portable units were adopted by SDCAPCD on May 17, 1994)[9] and those permitted after 1994. EPA solicits comment on whether such a distinction is necessary for the exclusion to be allowed. EPA believes that only portable equipment permitted after May 17, 1994 should be eligible for the exclusion because portable units permitted prior to that date were regulated as part of a stationary source and may not have met appropriate federal NSR requirements at that time.

In addition, EPA solicits comment on specific portable equipment NSR requirements contained in rule 20.4 as identified below.

3. Summary of the District's Current NSR Requirements for Portable Emission Units in San Diego

a. Portable emission unit is defined in rule 20.1(c)(49). The District's definition generally limits the amount of time a portable unit could operate at one location (stationary source) to no more than 12 consecutive months. If the portable unit exceeds this time limit or is otherwise operated in a manner to circumvent NSR, the portable unit is considered ''relocated'' and subject to the requirements for relocated units under 20.1, 20.2 and 20.3.

District rule 20.4 further defines two types of portable emissions units: Type I and Type III. Type I portable units can locate at stationary sources with an aggregate PTE less than 50 tpy and Type III portable units can locate at any stationary source regardless of the stationary source's aggregate PTE.

b. Offset Requirements for Type I and Type III units: According to rule 20.4(d)(5), Type III units are required to obtain offsets at a 1.2:1 ratio for any emission increase prior to operation at a major stationary source. Type I emission units are generally limited to operation at non-major stationary sources only. However, they are allowed, according to the District's definition of Type I, to operate at a major stationary source if they provide emission offsets prior to operation. Sources of emissions offsets may include same-pollutant or interpollutant reductions,[10] or emission reductions obtained from the ''emission offset pool'' as allowed in 20.4(d)(5)(v).

We solicit comment on the definition of Type I Portable Emission Unit (rule 20.4(c)(3)) that would allow Type I units to only obtain offsets (at the levels required for Type III portable units) before it locates at a major stationary source. This definition creates an apparent loophole by allowing Type I portable equipment to locate at a major stationary source without meeting the same LAER requirement as Type III portable equipment.

Finally, we solicit comment on rule 20.4(d)(5)(v) that would allow offsets from portable equipment to come from an ''emission offset pool.'' According to the rule, the offset pool consists of emission offsets which are designated for use by any number of portable emission units. EPA believes this alternative mechanism is workable as outlined in the rule provided the offsets are surplus emission reductions at the time of use,[11] enforceable, quantifiable, and permanent.

c. LAER Requirements for Type I and Type III units: Only Type III emission units are required to comply with LAER. See 20.4(d)(1)(ii). In lieu of complying with LAER, this subsection allows Type III portable units to obtain offsets at a 1.3:1 ratio from the stationary source at which the portable unit will locate.[12] [13]

We solicit comment on rule 20.4(d)(1)(ii) that allows Type III portable units to obtain additional offsets from a stationary source in lieu of LAER. While the CAA allows internal offsets to be used in lieu of LAER for stationary sources, SDCAPCD's portable equipment rule—in EPA's view—has decoupled portable equipment from the stationary source, and therefore, stationary source reductions cannot be extended to independent portable equipment.

d. Air Quality Impact Analysis (AQIA) for Portable Equipment: Type III and Type I emission units are required to perform an AQIA if a portable emission unit's proposed emissions are above the AQIA thresholds specified in table 20.4–1 (reproduced below in Table 2). See rule 20.4(d)(2). The AQIA requires that the portable unit perform such analyses based on the location at which the unit will locate. Furthermore, the APCO may require an AQIA even if the thresholds are not exceeded. Finally, rule 20.4(d)(2)(ii) does not require an AQIA for NO_X and VOC impacts on ozone.

In general, an example of how the AQIA analysis will be performed for portable equipment is discussed by the District in response to written comment #96 in the District's 1992 NSR rule Workshop Report:

An applicant for a portable emission unit can perform a ''worst-case'' AQIA, where the impact of an emission unit's maximum emissions is analyzed and added to the maximum background concentration in the County. If the applicant can demonstrate that the proposed emissions do not cause or contribute to a violation of any Ambient Air Quality Standard (AAQS), then further analysis would not be required for that unit

[9] For example, many pre-1994 permits limited the portable unit *and* the stationary source to less than 100 #/day NO_X to avoid BACT requirements.

[10] Interpollutant ratios established in the rule for Type III (or Type I) portable units has been identified as a rule deficiency.

[11] The District rules do not require that NSR offsets are surplus at the time of use. See rule Deficiency section and the TSD for more information.

[12] Type I portable units are not required to comply with LAER even if they plan to locate at a major stationary source (as allowed in the definition of Type I).

[13] The provision to allow ''internal'' offsets at a 1.3:1 ratio to be used in lieu of LAER is allowed under CAA section 182(c)(7) and (8) for major stationary source modifications in serious ozone non-attainment areas. See SDCAPCD rule 20.3(d)(7) for stationary source LAER requirements.

when it is moved from one site to another. If a worst case analysis cannot be made * * * then an AQIA would be required each time the equipment moves from one site to another.

As with the other provisions in the portable equipment rule, EPA solicits comment on the provisions for AQIA in 20.4(d)(2). In particular, because 20.4(d)(2) does not require any analysis for impacts related to a portable unit's potential VOC emissions, we solicit comments on how to evaluate ambient air quality impacts from a high VOC emitting portable source that moves from one location to another within San Diego the County. Furthermore, EPA is soliciting comment on whether or not there is any potential for this rule's implementation to cause or contribute to any disparate impact in local communities. We are not suggesting that this rule does have such an impact, but we are aware of community concerns surrounding these issues in San Diego and want to ensure that such concerns are not associated with this rule.

Also, although 20.4(d)(2)(iv) gives the APCO the authority to require an AQIA at any time—regardless of the portable unit's emission rates—the District, through CARB, has not submitted any analyses to justify the AQIA trigger levels in Table 20.4–1 (reproduced below in Table 2). EPA is concerned that the trigger levels in Table 20.4–1 do not account for multiple emission units that may independently locate at a single stationary source. EPA, therefore, solicits comment on whether the trigger levels in Table 20.4–1 are appropriate considering that multiple emission units may independently locate at a single stationary source.

e. Public Notification Requirements for Portable Equipment: If the owner or operator of a portable unit, with proposed emission increases above the thresholds in table 20.4–1, requests a permit, the APCO is required to provide at least a 40 day public comment period. Within that period, the APCO shall provide at least 30 days during which comment on the proposed project may be received. All comments will be considered prior to the APCO taking final action.

Federal regulations require at 40 CFR 51.161 public notification requirements for minor and major stationary sources. While section 51.161 does not establish a deminimus threshold below which no public notification is needed, 40 CFR 51.160(e) requires states to ''identify types and sizes of facilities that will be subject to review * * *'' and ''discuss the basis for determining which facilities will be subject to review.'' SDCAPCD, through CARB has not provided an analysis that the sizes and types of emissions units regulated—and for which public notice will be provided—will ensure the federal requirements of section 51.160 are met.

EPA solicits comment on whether the trigger levels are appropriately established in Table 20.4–1 to ensure the public has the opportunity to review the proposed portable equipment permits.

4. Title V Consistency and Enforcement

The title V program in San Diego County does not allow a stationary source to exclude emissions from portable equipment. See definition of stationary source at SDCAPCD Regulation XIV, rule 1401(c)(45). Further, the District requires emissions from insignificant emission units to be included in the title V applicability determination of a stationary source.

If the emissions from portable equipment are not required for NSR applicability determinations, EPA is concerned that the separate applicability determination requirements could create a source that is non-major under NSR and major under title V. While EPA generally promotes consistency across programs, an alternative may be acceptable if there is a rational basis for treatment under one program compared to the other. The EPA solicits comment on whether a separate permitting requirement for portable units will lead to confusion for sources, contractors operating portable units at those sources, the public and the District.

Furthermore, EPA solicits comment on whether possible confusion would lead to ill-informed, and incorrect compliance certifications under title V because a stationary source operator may not examine the Title V compliance requirements for certain portable equipment if the equipment has been excluded under NSR.

B. Minor New Source Review Requirements in San Diego—Rule 20.2

EPA also requests comment on whether the minor source NSR regulations contained in SDCAPCD rule 20.2—combined with the requirements in existing SIP rules 10 and 21—are sufficient to assure that the national air quality standards are achieved as required in CAA section 110(a)(2)(C).

1. Overview of Federal Minor NSR Requirements

In addition to the regulation of major stationary sources as required in part C (attainment areas) and part D (non-attainment areas) of the Clean Air Act, states are also required to include in the SIP a program to provide for the ''regulation of the modification and construction of *any* stationary source * * * as necessary to assure that national ambient air quality standards are achieved * * *'' [emphasis added]. See CAA section 110(a)(2)(C).

The implementing regulations require states to develop ''legally enforceable procedures'' to enable the state ''to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—(1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard * * *'' See 40 CFR 51.160(a). However, instead of establishing sizes and types of stationary sources that will be subject to minor new source review, EPA allows states some discretion. This discretion is not unbounded, however, and states are required to, ''discuss the basis for determining which facilities will be subject to review.''

2. San Diego's Minor NSR Program

Rule 20.2, ''New Source Review—Non-Major Stationary Sources,'' is part of the District's minor NSR rule. This rule supplements existing SIP [14] rule 10, ''Permits Required,'' and rule 21, ''Permit Conditions.'' Rule 20.2 applies to sources that are, after completion of a project, not a major source. See rule 20.2(a). Rule 20.2 contains two basic requirements: (1) an air quality impact analysis at subsection (d)(2); and (2) the public notification requirements at subsection (d)(4). The following is a discussion of the two substantive requirements both of which are triggered if the emissions increase from a project is greater than the levels indicated in the Table 2 below.

[14] See 60 FR 62756 for discussion on minor NSR as it applies to Title V permitting. In the discussion of the District's definition of ''Federally Mandated New Source Review'' in Regulation XIV, EPA identified—and SDCAPCD concurred—that SIP-approved rules 10 and 21 constitute the District minor NSR program, at that time. On a side note, today's proposed rulemaking does not alter the status of EPA's Title V interim approval in San Diego as it relates to minor NSR.

TABLE 2.—SAN DIEGO'S AQIA AND PUBLIC NOTIFICATION TRIGGER LEVELS FOR MINOR SOURCES AND PORTABLE EMISSION UNITS

Air contaminant	Lb/hr	Lb/day	Tons/yr
Particulate matter(PM–10)	.....	100	15
NO_X	25	250	40
SO_X	25	250	40
CO	100	550	100
Lead and Lead compounds	.....	3.2	0.6

a. Minor source NSR public notification requirements: Rule 20.2(d)(4) requires that the APCO shall not issue an ATC or modified PTO for any project subject to the AQIA requirements unless the APCO provides the public with at least 40 days notice of the proposed action. Within that time period, the APCO shall make available all information relevant to the proposed action and provide at least 30-days during which comments may be submitted.

b. Air quality impact analysis: An air quality impact analysis is required for any project (including relocated and replacement emission units) that has an emissions increase greater than or equal to the applicable thresholds in table 20.2–1. See 20.2(d)(2). If an AQIA is required, the applicant of a new, modified, replacement, or relocated emission unit shall demonstrate to the satisfaction of the APCO that the project will not:

''(A) cause a violation of a state or national ambient air standard anywhere that does not already exceed such standard; nor [15]

(B) cause additional violations of a national ambient air quality standard anywhere the standard is already being exceeded, nor

(C) cause additional violations of a state ambient air quality standard anywhere the standard is already being exceeded, except as provided for in Subsection (d)(2)(v), nor

(D) prevent or interfere with the attainment or maintenance of any state or national ambient air quality standard.''

As discussed in the Rule Deficiencies Section of this proposed rulemaking, San Diego's NSR rule for minor and major sources must require an analysis of the source's impact on the air quality increment.

[15] The District rule requires that the applicant analyze the project's impact on state air quality standards. CARB has requested that this subsection ''be submitted for inclusion in the SIP only with respect to the NAAQS.'' EPA interprets this to mean that sources are not required to assure compliance with the state air quality standards for purposes of fulfilling the federal permitting standards contained in the SIP.

3. Federal Enforceability of Terms and Conditions of Minor NSR Permits

As discussed in the Rule Deficiencies section above, EPA has identified the District's definition of ''federally enforceable'' as a rule deficiency. It is important to discuss how EPA interprets the District's definition of ''federally enforceable'' as it applies to terms and conditions of minor NSR permits.

For minor NSR, EPA interprets, and the District concurs,[16] that SIP-approved rules 10 and 21, combined with new rule 20.2 (upon SIP-approval) constitute the District's minor NSR rule. EPA recognizes that the District would like the ability to separate minor and major NSR terms and conditions into federally enforceable and non-federally enforceable terms and conditions.[17] EPA is concerned about the practical implementation of a program that allows for separation of permit terms and conditions because sources, the public, and regulators may experience confusion if competing compliance obligations reside within the same permit. Please see the Rule Deficiencies section for options on how the District could change the definition of ''federally enforceable.''

4. Discussion on Minor NSR

EPA solicits comment today on whether the thresholds for AQIA and public notice contained in 20.2 are sufficient and/or whether additional requirements are necessary in addition to the AQIA and public notice requirements.

SDCAPCD, through CARB has not provided an analysis, as required in section 51.160(e) that discusses the basis for determining which (minor) facilities will be subject to review. This analysis is important because it supports the ''legally enforceable procedures'' established in rule 20.2 (e.g., AQIA analysis). These ''procedures,'' in turn, must enable the District to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these, will result in a violation of the applicable control strategy or interfere with attainment of the NAAQS. See section 51.160(a).

[16] See Footnote 14.

[17] See second to last paragraph of the district's definition of federally enforceable that would allow for such separation provided the term or condition is not created to fulfill a federal requirement.

While the District AQIA analysis requires an individual source with expected emissions above the AQIA thresholds to analyze its air quality impact, EPA is concerned that the District has not accounted for the combined impact from multiple sources with emissions below the AQIA thresholds.

Furthermore, in the past, EPA has accepted control requirements for minor sources (e.g. minor source BACT) to support a state's demonstration that minor source construction will not interfere with attainment or violate an applicable portion of the control strategy. Many air pollution control districts within the state of California require air pollution controls on non-major (minor) sources. CARB, however, has elected to not submit for SIP approval the state BACT requirements at SDCAPCD rule 20.2(d)(1). San Diego explicitly requested CARB to exclude the state BACT requirement (and other state requirements) from the submittal. For a complete list of the sections and subsections of this rule that are not included, please refer to the TSD.

To conclude, EPA solicits comment on whether the requirements for minor sources are adequate to assure that national ambient air quality standards are achieved. EPA has not received a demonstration from San Diego that shows the air quality impacts from individual or combined minor sources will not interfere with attainment of the NAAQS or result in a violation of the control strategy. We believe such a demonstration is necessary and we solicit comments on what should be required (e.g., minor source BACT). Furthermore. EPA solicits comment on the practical implementation of a minor source permitting program that allows for separation of permit terms and conditions into federally enforceable and non-federally enforceable. EPA believes such a permit program could be

confusing to sources, regulators and the public.

IV. Overview of Limited Approval/ Disapproval

A detailed discussion of rule 20.1 through 20.4 deficiencies, a discussion of SDCAPCD's minor NSR program and portable emission unit NSR rule, as well as other rule clarifications and EPA interpretations, can be found in the Technical Support Document for Rules 20.1, 20.2, 20.3 and 20.4 which is available from the U.S. EPA, Region 9 office.

Because of the deficiencies identified in this rulemaking, rules 20.1, 20.2, 20.3 and 20.4 are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of sections 110(a)(2)(C) and 173 of the CAA, and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rule(s) under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of San Diego County Air Pollution Control District's submitted rule 20.1, 20.2, 20.3 and 20.4 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of San Diego County Air Pollution Control District's rules 20.1, 20.2, 20.3 and 20.4 because they contain deficiencies and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this proposed rulemaking have been adopted by the SDCAPCD and are currently in effect in the SDCAPCD. EPA's final limited disapproval action will not prevent San Diego County Air Pollution Control District or EPA from enforcing these rules.

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

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

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

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 29, 1999.

Nara L. McGee,

Acting Regional Administrator, Region 9.

[FR Doc. 99–20311 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 64, No. 151

Friday, August 6, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

ACTION: Notice of public listening sessions.

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 three public listening sessions in August of the Commission on 21st Century Production Agriculture. The purpose of these sessions is to gather public input on the future role of the Federal Government in support of production agriculture. These sessions will be open to the public.

PLACE, DATE, AND TIME OF MEETINGS: These sessions will be held on August 12, 1999, at the Radisson Hotel and Conference Room, 2233 Ventura Street, Fresno, California 93721, from 9:00 PDT—5:00 PDT; August 14, 1999, at the Spokane Center, 334 West Spokane Falls Boulevard, Spokane, Washington 99201, from 9:00 PDT—5:00 PDT; and August 16, 1999, at the Holiday Inn Denver Southeast, 3200 South Parker Road, Aurora, Colorado, 80014, from 9:00—5:00 PDT.

FOR FURTHER INFORMATION CONTACT: Timothy M. Peters (202–720–4860), Assistant Director, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: July 30, 1999.

Keith J. Collins,

Chief Economist.

[FR Doc. 99–20247 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Availability of the proposed revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement.

SUMMARY: The proposed revised Land and Resource Management Plan (Forest Plan), the Draft Environmental Impact Statement (DEIS), and associated documents are being released for public review and comment on August 6, 1999.

Six separate documents, and a set of maps have been prepared in conjunction with the proposed revised Forest Plan. These documents are:

- Proposed Revised Land and Resource Management Plan.
- Draft Environmental Impact Statement.
- Draft Environmental Impact Statement Appendices A–M.
- Draft Environmental Impact Statement Appendix N—Biological Assessment and Biological Evaluation.
- Draft Environmental Impact Statement Appendix O—Travel Management.
- Summary of the Draft Environmental Impact Statement.
- Map packet.

DATES: Public comment will be 90 calendar days from August 6, 1999, ending on November 4, 1999.

ADDRESSES: Interested parties are invited to send written comments regarding the proposed revised Forest Plan and Draft EIS to the address below: Forest Supervisor, Forest Plan Revision Comments, White River National Forest, PO Box 948, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Questions about this action or requests for the documents listed above should be addressed to: Carolyn Upton, Team Leader, White River National Forest, PO Box 948, Glenwood Springs, CO 81602, Telephone Number: (970) 945–3226.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement identifies alternative D as the preferred alternative. This is a draft document that may change between now and the final decision. Any changes may be based, in part, on public comments received during the 90-day comment period.

When the Final Environmental Impact Statement is completed, there will be three decisions associated with it. These three decisions are listed below with the corresponding deciding officer:

1. Final EIS selected alternative and associated Forest Plan decision—Lyle Laverty, Regional Forester for the Rocky Mountain Region of the Forest Service.
2. Travel Management Plan—Martha Ketelle, Forest Supervisor for the White River National Forest.
3. Management decisions on vacant range allotments—Martha Ketelle, Forest Supervisor for the White River National Forest.

Comments on all three decisions will be received during the comment period identified above.

The Forest Interdisciplinary team prepared the DEIS and the proposed revised Forest Plan with continuous public involvement. Public involvement included people within the vicinity of the Forest as well as extensive mailings to keep people informed and to allow dialogue with the public. A collaborative work group process was held in the winter of 1997/1998 to receive input on a variety of forest plan issues.

The DEIS and proposed revised Forest Plan were formulated around resolution of 6 revision topics. They are:

1. Biological diversity
2. Recreation
3. Travel management
4. Recommended wilderness and roadless areas
5. Special interest areas
6. Timber harvest/allowable sale quantity

Public open houses are scheduled in various communities within and adjacent to the Forest. Dates, locations and times of meetings will be published in the Glenwood Post, and sent to recipients of the proposed revised Forest Plan documents.

The documents may be revised in response to public comments prior to the publication of the Final Environmental Impact Statement and Final Revised Land and Resource Management Plan in 2000.

Dated: July 26, 1999.

Martha Ketelle,

Forest Supervisor.

[FR Doc. 99–19922 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–BW–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and deletions

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

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: September 7, 1999

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 22, February 26, June 4 and 25, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 3483, 9470, 29992, 34187 and 34188) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Skin Protectant, Plus
9999–00–NSH–0001

Services

Base Supply Center

Fallon Naval Air Station, Fallon, Nevada

Janitorial/Custodial

U.S. Army Reserve Center, Danbury, Connecticut

Janitorial/Custodial

Centers for Disease Control and Prevention, Chamblee and Lawrenceville, Georgia

Janitorial/Custodial

U.S. Fish and Wildlife Service, Wallkill River National Wildlife Refuge Office, 1547 County Rte. 565, Sussex, New Jersey

Mailroom Operation

Department of Housing and Urban Development, Russell Federal Building, Atlanta, Georgia

Management Services

U.S. Department of Housing & Urban Development, 1600 North Broadway, Santa Ana, California

Operation of Individual Equipment Element Store

Davis-Monthan Air Force Base, Arizona

Operation of Postal Service Center

MacDill Air Force Base, Florida

Recycling Service

Davis-Monthan Air Force Base, Arizona

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Pillowcase—Disposable
6532–01–125–3269
Blanket, Bed/Bath (Flame Resistant)
7210–01–141–2458
Cover, Mattress (Plastic)
7210–00–082–5739

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–20291 Filed 8–5–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

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

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 7, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41

U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center and Operation of Individual Equipment Element Store

Beale Air Force Base, California
NPA: The Lighthouse of Houston, Houston, Texas

Base Supply Center and Operation of Individual Equipment Element Store

Cannon Air Force Base, New Mexico
NPA: San Antonio Lighthouse, San Antonio, Texas

Full Food & Dining Facility Attendant

Fort Polk, Louisiana
NPA: The RC Foundation, Corpus Christi, Texas

Janitorial/Custodial

Denver Federal Center, Building 95, Denver, Colorado
NPA: North Metro Community Services for Developmentally Disabled, Westminister, Colorado

Janitorial/Custodial

Kennesaw National Battlefield Park Visitor Center, Kennesaw, Georgia
NPA: Nobis Enterprises, Inc., Marietta, Georgia

Switchboard Operation

Department of Veterans Affairs, New Jersey Health Care System, Lyons, New Jersey
NPA: New Jersey Association for the Deaf-Blind, Inc., Somerset, New Jersey

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–20292 Filed 8–5–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a timely request by Thai Benkan Corporation, Ltd., (TBC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand. This review covers TCB, a manufacturer/exporter of this merchandise to the United States, during the period July 1, 1997, through June 30, 1998. We have preliminarily determined that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and the normal value. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues; and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Antidumping/Countervailing Duty Enforcement, Office 4 Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–5849, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, (the Act) as amended, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department published in the **Federal Register** an antidumping duty order on pipe fittings from Thailand (57 FR 29702). On July 30, 1998, the respondent requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 1997, through June 30, 1998. We published a notice of initiation of the review on August 27, 1998 (63 FR 45796). On September 15, 1998, the Department sent an antidumping questionnaire to TBC. The Department received questionnaire responses in October and November of 1998. On May 7, 1999, we issued a supplemental questionnaire and received a response to that questionnaire on May 27, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of preliminary review results if it determines that it is not practicable to complete the review within the statutory time limit. On March 10, 1999, the Department extended the time limit for the preliminary results of this case (*Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 11824).

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe

fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings.) Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. The review covers TBC and the period of review (POR) July 1, 1997, through June 30, 1998.

Verification

As provided in section 782(i) of the Act, we verified information provided by TBC. We used standard verification procedures, including on-site inspection of the respondent's facilities, the examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports placed on file in the Central Records Unit (CRU).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the scope of this review that were produced by the respondent, and sold in the ordinary course of trade in the comparison market during the POR, to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales.

Fair Value Comparisons

With respect to TBC, in determining whether this respondent's sales of pipe fittings to customers in the United States were made at less than fair value, we compared export price (EP) to normal value (NV), as described in the ''*Export Price*,'' and ''*Normal Value*'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the prices of individual U.S. transactions.

During the POR, TBC reported that it made all of its sales to the United States through its affiliate, Benkan America, Inc. (BA), which is the importer of record for the subject merchandise. When sales are made prior to the date of importation through an affiliate in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the affiliate in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer. Where the factors indicate that the activities of the selling entity in the United States are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices and key sales terms), we treat the transactions as CEP sales. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea*, 63 FR 40404, 40417–19 (July 29, 1998).

According to TBC, the imported merchandise was delivered directly to the unaffiliated customers' warehouses without being moved into BA's inventory. *See* TBC's October 22, 1998, questionnaire response at A–12. Additionally, in its supplemental questionnaire response, dated May 27, 1999, TBC reiterated that BA never moved the subject merchandise into its inventory or otherwise took possession of the merchandise. Furthermore, TBC states that BA merely acted as a processor of paper and a communication link between the foreign producer and unaffiliated U.S. customers. At no point, according to TBC, was BA involved in any pricing decisions; rather BA served only as a paper facilitator ensuring that purchasing orders from the unrelated U.S. customers were transferred to TBC and that TBC's sales invoices were properly delivered to U.S. customers. Finally, TBC stated that the above method of transaction represents BA's normal practice of facilitating the sale of merchandise produced by foreign affiliates. Accordingly, TBC reported these sales as EP sales. *See* TBC's supplemental questionnaire response, dated May 27, 1999, at S–5.

Based on our review of the record information concerning TBC's sales to the United States and after conducting a sales verification, we determined that BA does not maintain warehousing facilities in the United States. Thus it is not able to store TBC's merchandise prior to a sale in the United States. Moreover, our verification of the sales transaction methods indicates that BA was not involved in any part of the price negotiation process nor did it provide any additional services to the U.S. customers. *See* Memorandum to the File regarding *Verification of the Sales Questionnaire Responses of Thai Benkan, Ltd., Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, Administrative Review (1997–1998) (TBC Verification Report)* dated July 31, 1999. As such, we have concluded that the subject merchandise was sold prior to importation (outside of the United States) to the unaffiliated U.S. purchaser. Consequently, we preliminary determine that these sales are EP transactions.

Export Price

We calculated EP in accordance with sections 772(a) and (c) of the Act where the respondents sold the subject merchandise directly to the first unaffiliated purchasers in the United States prior to importation. Specifically, we calculated EP based on the packed prices to unaffiliated customers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. customs brokerage and duties, and U.S. inland freight because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery. We also increased EP by the allocated amount of duty drawback.

Normal Value

1. Viability

In accordance with section 773(a)(1)(C)(ii) of the Act, we determine that the home market for the respondent serves as a viable basis for calculating normal value (NV) because the aggregate volume of the respondent's home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.

2. Arm's-Length Transactions

A significant number of home market sales was made through TBC's affiliates: Marubeni Thailand Co., Ltd., Benkan Corporation of Japan and Bensho Corporation, Ltd. However, in all cases, TBC reported home market sales from its affiliates to the first unrelated home market customer. Consequently, no sales to affiliated parties were considered in our analysis.

Level of Trade

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 level of trade (LOT) as the EP or the CEP transaction. The NV LOT for EP sales is that of the starting-price sales in the comparison market, or when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the different 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 an LOT adjustment under section 773(a)(7)(A) of the Act. *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, 61732 (November 19, 1997).

Based on our analysis of these factors, we found that for TBC no LOT difference existed between its respective U.S. and home market sales. Therefore, we have made no LOT adjustment under section 773(a)(7)(A) of the Act. For a detailed discussion of these LOT issues, see Memorandum to the File regarding *Level of Trade Analysis of Thai Benkan, Ltd.; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, Administrative Review (1997–1998) (TBC LOT Analysis),* dated July 30, 1999.

Constructed Value

In this case, we preliminarily determined NV for all U.S. sales based on contemporaneous home market sales. Consequently, we did not use CV in our analysis.

Price-to-Price Comparisons

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and at the same level of trade as the EP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for movement expenses (inland freight) and billing adjustments. To adjust for differences in circumstances of sales (COS) between the home market and the EP transactions in the United States, we reduced home market prices by an amount for home market imputed credit expenses, where applicable, and made an upward adjustment for U.S. credit, where appropriate. To adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise (DIFMER) pursuant to section 773(a)(6)(C) of the Act.

Currency Conversion

Pursuant to section 773A(a) of the Act, for purposes of the preliminary results, we converted foreign currencies into the U.S. dollars using the official exchange rates in effect on the date of the U.S. sales. These official exchange rates are based on the daily rates identified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a ''fluctuation'' It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the moving average of the rates for the past 40 business days. Where we determined that the daily rates applicable to this review fluctuated, as defined above, we converted foreign currencies into U.S. dollars using the benchmark exchange rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-averaged dumping margins exist for the period July 1, 1997 through June 20, 1998:

Manufacturer/exporter	Weighted-average margin (percent)
Thai Benkan Corporation, Ltd.	0.94

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For assessment of EP sales we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis,* no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the

original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original LTFV investigation, the cash deposit rate will be 39.10 percent, the ''All Others'' rate which is based on the LTFV investigation (57 FR 29702, July 6, 1992). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20344 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Final Results of Expedited Sunset Review: Carbon Steel Wire Rope From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: carbon steel wire rope from Mexico.

SUMMARY: On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on carbon steel wire rope from Mexico (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

Effective Date: August 6, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of *Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this antidumping duty order is carbon steel wire rope from Mexico. Carbon steel wire rope includes ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire. The subject merchandise is classifiable under subheadings 7312.10.9030, 7312.10.9060 and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

The review covers all manufacturers and exporters of Mexican carbon steel wire rope.

History of the Order

The antidumping duty order on carbon steel wire rope from Mexico was published in the **Federal Register** on March 25, 1993 (58 FR 16173). The Department, in the antidumping duty order, established a deposit rate of 111.68 percent for Aceros Camesa S.A. de C.V. (Camesa). In addition, the Department established a rate of 111.68 percent on all other imports of the subject merchandise from Mexico (58 FR 16173, March 25, 1993).

Since that time, the Department has conducted one administrative review.[1] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on carbon steel wire rope from Mexico (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (''the Committee'') on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.[2] The Committee claimed interested party status, under 19 U.S.C. 1677(9)(C) and (F), as a trade association, the majority of whose members manufacture, produce, or wholesale carbon steel wire rope in the United States. We received a complete substantive response from the Committee on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In its response, the Committee indicated that it was the petitioner in the original investigation and participated in the first administrative review of this order and is currently participating in the ongoing second administrative review. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the antidumping duty order on steel wire rope from Mexico is extraordinarily complicated. In accordance with section 751(c)(6)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995).

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[1] *See Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 46735, September 2, 1998.

[2] The Committee's members include: Bergen Cable Technology, Inc., Bridon American Corporation, Carolina Steel & Wire Corporation, Continental Cable Company, Loos & Co., Inc., Macwhyte Company, Paulsen Wire Rope Corporation, Sava Industries Inc., Strandflex (Division of MSW) and the Wire Rope Corporation of America, Inc.

(*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the Committee's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, the Committee argues that revocation of the antidumping duty order on carbon steel wire rope from Mexico would be likely to lead to continuation or recurrence of dumping (*see* February 3, 1999 Substantive Response of the Committee at 11). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, the Committee asserts that a deposit rate of 111.68 percent has been in effect on all imports of the subject merchandise since the issuance of the order. The Committee notes, however, that in the Department's final determination in the sole administrative review (dated September 2, 1998), the Department reduced the deposit rate for one Mexican manufacturer, Camesa, to zero (*see* February 3, 1999 Substantive Response of the Committee at 7).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, the Committee asserts that, following the imposition of the order, imports of carbon steel wire rope from Mexico all but ceased (*see* February 3, 1999 Substantive Response of the Committee at 3). Citing U.S. Census Bureau trade statistics, the Committee asserts that imports of the subject merchandise decreased from 2,882 net tons in the year preceding the imposition of the order to 112 tons in the year of the order. The Committee asserts that import values have not risen above this level in any succeeding year.[4]

In summary, the Committee argues that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins above *de minimis* levels have been in place since the imposition of the order and (2) imports of the subject merchandise have been sporadic and extremely limited and do not reflect actual commercial conditions under which Mexican producers would operate in the absence of the order.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels have continued to exist for shipments of the subject merchandise from Camesa and all other Mexican producers/exporters throughout most of the life of the order.[5]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The Department, utilizing U.S. Census Bureau IM146 reports and information concerning imports of subject merchandise from our original investigation and subsequent administrative review, can confirm that imports of the subject merchandise decreased sharply following the imposition of the order and remain sporadic and limited. These facts strongly support a finding that dumping is likely to continue in the foreseeable future.

The Department notes that in the sole administrative review of this order we calculated a dumping margin of zero for Camesa, who the Department believes to be the sole producer/exporter of the subject merchandise. However, the Department does not find this zero dumping margin, in and of itself, to be indicative of the Camesa's behavior in the absence of the order for several reasons. First, a single *de minimis* dumping margin does not demonstrate that Camesa can continuously and consistently sell subject merchandise in the United States without dumping. This finding is also supported by the fact that imports of subject merchandise from Mexico decreased dramatically

[3] *See Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

[4] The Committee asserts that imports of non-subject merchandise were misclassified as subject merchandise in both 1995 and 1998. It has requested verification of the import volumes of subject merchandise from the U.S. Census Bureau. As of the publication of this notice, the U.S. Census Bureau has not issued any correction to its previously published import statistics for this product. If this report were to confirm the Committee's assertions, the import volumes of subject merchandise for 1995 and 1998 would be 0 and 39 tons per year, respectively.

[5] *See Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 46735, September 2, 1998.

following the issuance of the order and have remained limited and sporadic, including during the review period. Therefore, as set forth in the *Sunset Policy Bulletin* (section II.A.3), and consistent with the SAA at 889–90, and the House Report at 63, the Department finds that where dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly, we normally will determine that revocation of the antidumping duty order would be likely to lead to recurrence of dumping. As such, given that import volumes have fallen significantly since the imposition of the order and that respondent interested parties have waived their right to participate in this review before the Department, and, absent argument and evidence to the contrary, the Department determines that, consistent with Section II.A.3 of the *Sunset Policy Bulletin,* dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in the antidumping duty order on carbon steel wire rope from Mexico, established a deposit rate of 111.68 percent for Camesa. In addition, the Department established a rate of 111.68 percent on all other imports of the subject merchandise from Mexico (58 FR 16173, March 25, 1993). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the Committee argues that the Department should report to the Commission the rate established in the original investigation because, as stated in the *Sunset Policy Bulletin,* it is the only calculated rate that reflects the behavior of exporters without the discipline of the order. The Committee states that the 111.68 percent rate has been in effect for all imports of the subject merchandise and, only recently, was the deposit rate reduced to zero with respect to Camesa. Further, the Committee argues that this latest rate is based on an extremely limited and controlled shipment made by Camesa in order to establish the basis for an administrative review (*see* February 3, 1999 Substantive Response of the Committee at 6).

The Department agrees with the Committee. We find that the dumping margin calculated in the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Consistent with the *Sunset Policy Bulletin,* we determine that the margin calculated in the Department's original investigation is probative of the behavior of Mexican producers and exporters of carbon steel wire rope if the order were revoked. Therefore, we will report to the Commission the company-specific and ''all others'' rate from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Camesa	111.68
All Other Mexican Manufacturers/Exporters	111.68

This notice 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 351.305 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20341 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Brandon Farlander, or Rick Johnson, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0408, (202) 482–0182 or (202) 482–3818, respectively.

The Applicable Statute

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. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997)

Background

On July 19, 1993, the Department published in the **Federal Register** (58 FR 37154) the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. On September 29, 1998, the Department published its initiation of this antidumping duty administrative review covering the period of August 1, 1997 through July 31, 1998 (63 FR 51893). On February 24, 1999, the Department published a notice of extension of the time limit for the preliminary results of this review to August 1, 1999. *See Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 64 FR 9127 (February 24, 1999).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from

Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Antidumping Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, dated August 2, 1999, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results 7 days to August 9, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20332 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Amended Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In the Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38792 (July 19, 1999) (Hot-Rolled Steel Final Determination) the Department of Commerce (the Department) made an inadvertent error in the suspension of liquidation section. The Department is amending its final determination to clarify that we will instruct Customs to continue the suspension of liquidation of all entries of hot-rolled, flat-rolled, carbon-quality steel products from Brazil pursuant to section 734(h)(2)(B) of the Act.

FOR FURTHER INFORMATION CONTACT: Barbara Chaves at (202) 482–0414 or Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Background

On July 6, 1999, the Department signed a suspension agreement with CSN, USIMINAS, and COSIPA suspending this investigation. Also on July 6, 1999, the Department issued its Hot-Rolled Steel Final Determination as well as the Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38792, (July 19, 1999), (Notice of Suspension of Investigation). As correctly stated in the Notice of Suspension of Investiation, we are continuing the suspension of liquidation in accordance with section 734(h)(2)(B). Since the Hot-Rolled Steel Final Determination inadvertently indicated that suspension of liquidation would be terminated, we are issuing this amended final determination to correct the error.

Amendment

We are amending the Hot-Rolled Steel Final Determination as follows: In accordance with section 734(f)(2)(B) of the Act, the suspension of liquidation of entries of the subject merchandise in effect since the publication of the affirmative preliminary determination of the same case on February 19, 1999, shall continue. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 8299 (February 19, 1999). Pursuant to section 734(f)(3) of the Act, the suspension of liquidation of entries of the subject merchandise will terminate at the close of the 20-day period beginning on the day of publication of the Notice of Suspension of Investigation, July 19, 1999 (unless an interested party files a petition with the International Trade Commission for a review of the suspension agreement under such section). In addition, any cash deposits of entries of subject merchandise shall be refunded and any bonds shall be released after the close of such 20-day period.

As provided in section 734(f)(2)(B) of the Act, the Department may adjust the required security to reflect the effect of the agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effect of imports of subject merchandise. Accordingly, effective as of July 19, 1999, the Department has adjusted the security required from producers and/or exporters to zero. The security rates in effect for nonsignatory producers/exporters remain as published in our final determination.

This amended final determination is issued and published in accordance with sections 735(d) and (e) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20343 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom in response to a request by the petitioner, Hercules Incorporated. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of July 1, 1997 through June 30, 1998. Based on our analysis, the Department has preliminarily determined that a dumping margin exists for the manufacturer/exporter during the period of review (POR). If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each comment (1) a statement of the issue, and (2) a brief summary of the comment.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner or Ron Trentham, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3814 and (202) 482–6320, respectively.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified in 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28270) the antidumping duty order on INC from the United Kingdom. On July 1, 1998, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period of July 1, 1997 through June 30, 1998 (63 FR 35909).

In accordance with 19 CFR 351.221, the petitioner requested that the Department conduct an administrative review of sales of subject merchandise made by respondent, Imperial Chemical Industries PLC (ICI). We published a notice of initiation of this antidumping duty administrative review on August 27, 1998. *See initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 63 FR 45796, August 27, 1998.

Under Section 751(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 established time limit. On April 6, 1999, the Department published in the **Federal Register** a notice extending the time for the preliminary results from April 2, 1999, until July 31, 1999. *See Industrial Nitrocellulose From the United Kingdom: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 16707, April 6, 1999.

Scope of the 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, which 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) item number 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.

Fair Value Comparisons

To determine whether sales of INC from the United Kingdom to the United States were made at less than fair value (LTFV), we compared the constructed export price (CEP) to the normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. When making produce comparisons in accordance with section 771(16) of the Act, we considered all products as covered by the ''Scope of Review'' section of this notice, above, that were sold by the respondent in the home market in the ordinary course of trade during the POR for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of the identical or the most similar merchandise made in the home market that were suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in Section B and C of our antidumping questionnaire.

Constructed Export Price

ICI initially reported U.S. sales as export price (EP) sales. However, in a previous segment of this proceeding, the Department determined that ICI's U.S. sales were CEP transactions. *See Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, February 10, 1999. In response to the Department's supplemental questionnaire of February 17, 1999, ICI reported all of its U.S. sales as CEP transactions.

In calculating price to the United States price for ICI, the Department used CEP, as defined in section 772(b) of the Act because all sales to the first unaffiliated purchaser in the United States took place after importation. We calculated CEP based on packed, factory prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for rebates, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duties, and direct and indirect selling expenses to the extent that they were associated with economic activity in the United States. These included credit expenses and commissions as applicable, in accordance with sections 772(c)(2) and 772(d)(1) of the Act. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

For INC that was imported by a U.S. affiliate of ICI and then further processed into lacquer, sealer, and primer products before being sold to unaffiliated parties in the United States, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied. Where appropriate, in accordance with Section 772(d)(2) of the Act, the Department also deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in Section 772(e) of the Act is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold in the United States if there is a sufficient quantity of sales to provide a reasonable basis for comparison. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added, pursuant to § 351.401(c)(2) of the Department's regulations, based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by ICI's U.S. affiliate accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, in accordance with § 351.402(c)(2), we determined that the value added is likely to exceed substantially the value of the subject merchandise. We also

determined that there was a sufficient quantity of sales of identical merchandise available in the U.S. market to provide a reasonable basis for comparison and that the use of such sales is appropriate in accordance with 772(e). Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical merchandise sold to unaffiliated persons in the United States. *See* § 351.402(c)(3). Discussion of the information which the Department used in making these determinations is not possible due to its proprietary nature. For a complete discussion, *see* Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Imperial Chemical Industries PLC (ICI) in the United States During the Period of Review Under Section 772(e) of the Act dated July 31, 1999.

Level of Trade

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 level of trade (LOT) as the EP or CEP transactions. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. 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 Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*).

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 LOT's but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and the selling functions 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 different 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 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).

ICI did not claim a LOT adjustment. Nevertheless, we evaluated whether a LOT adjustment was necessary by examining the ICI's distribution system, including selling functions, classes of customers, and selling expenses. In reviewing ICI's home market distribution channels, we found that the POR sales of the merchandise under review in the comparison market were made at only one LOT. With respect to U.S. sales, after making deductions to the CEP sales pursuant to section 772(d) of the Act, we found the selling activities performed by ICI for the CEP sales to its affiliate were limited to order processing and arranging transportation. Therefore, we found that the selling functions performed at the CEP LOT were sufficiently different from the selling functions performed at the NV LOT (*i.e.*, sales solicitation, price negotiation, customer visits, advertising, technical support, invoicing, and billing adjustment) to consider these to be different LOTs. We, therefore, evaluated whether the difference in LOT affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant LOTs in the comparison market. Because there was only one home market LOT, we were unable to determine whether there was a pattern of consistent price differences based on home market sales of subject merchandise.

The Statement of Administrative Action (SAA) provides that, ''if information on the same products and company is not available, the LOT adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different LOTs by the exporter or producer under investigation, the Department may further consider the selling expenses of other producers in the foreign market for the same product or other products.'' *See* SAA at 830. In accordance with the SAA, we have considered alternative sources of information to make the necessary LOT adjustment, but we did not have information on the record that would allow us to examine or apply these alternative methods for calculating a LOT adjustment. Therefore, we do not have an appropriate basis to determine a LOT adjustment.

Because we have found that all of the comparison sales in the home market were at a more advanced LOT than the sales to the United State, we were unable to qualify a LOT adjustment based on a pattern of consistent price differences, in accordance with section 773(a)(7)(B) of the Act. Therefore, we have preliminarily determined to grant a CEP offset to ICI. *See* Memorandum Regarding industrial Nitrocellulose from the United Kingdom-Level of Trade Analysis-Imperial Chemical Industries, PLC, August 2, 1999.

Normal Value

1. Home-Market Viability

In order to determine whether there was a sufficient volume of sales of INC in the home market to serve as a viable basis for calculating normal value, we compared ICI's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the aggregate volume of home market sales of the foreign like product by ICI was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for ICI's home market sales.

2. Arm's-Length Transactions

Sales to an affiliated customer in the home market which were determined

not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to section 351.403 of the Department's regulations, where prices to the affiliated party were on average less than 99.5 percent of the price to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. Therefore, we disregarded all sales to that home market customer. *See* 19 CFR 351.403(c) and Preamble to the Department's regulations, 62 FR at 27355.

Price-to-Price Comparisons

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same LOT as the CEP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for discounts and movement expenses (inland freight). Under section 773(a)(6)(C)(iii) of the Act, the Department adjusts for differences in circumstances of sales (COS) between the home market and CEP transactions in the United States. We reduced home market prices by an amount for home market credit pursuant to section 351.410(c) of the Department's regulations. We also made adjustments for indirect selling expenses incurred in the comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to section 351.410(e). In addition, based on our determination as the ICI's LOT (*see* ''Level of Trade'' section of this notice), we made a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act. *See Carbon Steel Plate*, 62 FR at 61732. To adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs under section 773(a)(6) of the Act. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise (DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period covering July 1, 1997 through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Imperioal Chemical Industries PLC	19.87

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party participating in the proceeding may request a hearing within 30 days of the date of publication of this notice. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

Upon issuance of the final results of this review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. We have calculated importer-specific *ad valorem* duty assessment rates for the subject merchandise based on the ratio of the total amount of importer-specific antidumping duties calculated for the examined sales to the total entered value of the sales used to calculate those duties. These rates will be assessed uniformly on all entries made by particular importers during the POR.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 11.13 percent, the ''all-others'' rate established in the LTFV investigation. *See* 55 FR 21058, May 22, 1990. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary 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 double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20345 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Continuation of Antidumping Duty Order: Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Natural bristle paint brushes from the People's Republic of China.

SUMMARY: On May 10, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on natural bristle paint brushes from the People's Republic of China (''China'') would be likely to lead to continuation or recurrence of dumping (64 FR 25011 (May 10, 1999)). On June 3, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 29885 (June 3, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on natural bristle paint brushes from China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 10, 1999.

Background

On December 2, 1998, the Department initiated, and the Commission instituted, a sunset review (64 FR 364 and 64 FR 374, respectively) of the antidumping duty order on natural bristle paint brushes from China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Natural Bristle Paint Brushes from China*, 64 FR 25011 (May 10, 1999)).

On June 3, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see* Natural Bristle Paint Brushes from China, 64 FR 29885 (June 3, 1999) and USITC Pub. 3199, Inv. No. 731–TA–244 (Review) (June 1999)).

Scope

The merchandise covered by this antidumping duty order is shipments of natural bristle paint brushes and brush heads from the China. Excluded from the order are paint brushes with a blend of 40 percent natural bristles and 60 percent synthetic filaments. This merchandise is currently classifiable under item 9603.40.40.40 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 is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on natural bristle paint brushes from China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is June 10, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2004.

Dated: August 2, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20335 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to requests by the petitioner, FMC Corporation, and by two manufacturers/exporters of the subject merchandise. The period of review is December 27, 1996, through June 30, 1998.

With respect to Guangdong Petroleum Chemical Import & Export Trade Corporation, this review has now been rescinded as a result of the withdrawal request for administrative review by the petitioner, the interested party that requested review of Guangdong Petroleum.

We have preliminarily found that sales of subject merchandise by Shanghai Ai Jian Import & Export Corporation and Sinochem Jiangsu Wuxi Import & Export Corporation have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or James Nunno, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–0783, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the

provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1997, the Department published in the **Federal Register** an amended antidumping duty order on persulfates from the People's Republic of China (PRC). *See* 62 FR 39212. On July 31, 1998, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of Shanghai Ai Jian Import & Export Corporation (Ai Jian), Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi), and Guangdong Petroleum Chemical Import & Export Trade Corporation (Guangdong Petroleum). We also received requests for a review from Ai Jian and Wuxi on July 31, 1998. We published a notice of initiation of this review on August 27, 1998 (63 FR 45796).

On September 9, 1998, we issued an antidumping questionnaire to Ai Jian and Wuxi. On September 10, 1998, we issued an antidumping questionnaire to Guangdong Petroleum. The Department received responses from the three exporters in November 1998. In addition, the Department received responses from Shanghai Ai Jian Reagent Works (AJ Works) (producer for Ai Jian and Wuxi) and Guangzhou Zhujian Electrochemical Factory (producer for Guangdong Petroleum). On November 23, 1998, the petitioner withdrew its request for an administrative review with respect to Guangdong Petroleum. *See Partial Rescission of Administrative Review* section of the notice below.

We issued supplemental questionnaires to Ai Jian, Wuxi, and AJ Works in December 1998. Responses to these questionnaires were received in February 1999.

In January 1999, the two exporters and the petitioner submitted publicly available information and comments for consideration in valuing the factors of production. In February 1999, the parties submitted rebuttal comments.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On March 4, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to August 2, 1999. *See Persulfates From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 10444 (March 4, 1999).

In May 1999, we verified the respondents' questionnaire responses.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, (NH sub4) sub2 S sub2 O sub8, K sub2 S sub2 O sub8, and Na sub2 S sub2 O sub8. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Based on verification, we made certain original documentation containing relevant information. Based on verification, we made certain changes to the data in the sales and factors of production listings submitted by Ai Jian and AJ Works, respectively, and used the revised data to calculate the preliminary margins. *See* the U.S. Price and Factors of Production Adjustments for the Preliminary Results Memorandum from the Team to the File, dated August 2, 1999. Our verification results are outlined in the verification reports placed on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building.

Partial Rescission of Administrative Review

On November 23, 1998, the petitioner withdrew its request for an administrative review with respect to Guangdong Petroleum. Pursuant to 19 CFR 351.213(d)(1), the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. The petitioner's request for withdrawal was timely and there were no requests for review from other interested parties. Therefore, the Department is rescinding this review with respect to Guangdong Petroleum.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991((*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on four factors, whether the respondent: (1) sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *see also Sparklers,* 56 FR at 20589.

With respect to Ai Jian and Wuxi, for purposes of our final determination for the less than fair value (LTFV) investigation covering the period January through June 1996, the Department determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222 (May 19, 1997) (*Persulfates Final Determination*). For this administrative review, Ai Jian and Wuxi have

responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is identical with the evidence on the record of the LTFV investigation of persulfates from the PRC (*see Persulfates Final Determination*, 62 FR at 27222), and continues to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. In addition, during verification, we examined Ai Jian and Wuxi's business and financial activities, and found that both exporters operate independently with respect to exports. *See Sales Verification Report* for both Ai Jian and Wuxi, dated June 24, 1999.

Export Price

For both AJ and Wuxi, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted, based on the facts of record. We calculated EP based on packed, CIF U.S. port, or FOB PRC port, prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for ocean freight services which were provided by market economy suppliers. We also deducted from the starting price, where appropriate, an amount for foreign inland freight, foreign brokerage and handling, and marine insurance. As these movement services were provided by NME suppliers, we valued them using Indian rates. *See* ''Normal Value'' section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) the merchandise is exported from an NME county; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC. *See* Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2, dated December 21, 1998.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to persulfates. For purposes of the LTFV investigation, we found that India was a significant producer of comparable merchandise. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates from the People's Republic of China*, 61 FR 68232, 68233 (December 27, 1996) (*Persulfates Preliminary Determination*). For purposes of this administrative review, we find that India is a producer of persulfates based on information submitted by the respondents in their January 25, 1999, submission. Therefore, we have continued to use India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the Preliminary Results Factors Valuation Memorandum from the Team to the File, dated August 2, 1999 (*Factors Memorandum*). In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from POR issues of the Indian publication *Chemical Weekly*, as provided by the respondents in their January 25, 1999, submission. For caustic soda and sulphuric acid, because price quotes reported in the *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulphuric acid used by respondents. For potassium sulfate and anhydrous ammonia, we relied on import prices contained in the March and December 1997 issues of Monthly Statistics of the Foreign Trade of India (*Monthly Statistics*), as provided by the respondents in their January 25, 1999, submission. Consistent with our methodology used in the LTFV investigation of this proceeding, we used AJ Works' calculated cost of manufacturing based on the information submitted on February 4, 1999, as revised at verification, to value the cost of ammonium persulfates. Where necessary, we adjusted the values reported in the *Chemical Weekly* to exclude sales and excise taxes. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). We made further adjustments to account for freight costs between the suppliers and AJ Works' manufacturing facilities.

In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61977 (November 20, 1997).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

For electricity, we relied upon public information from an August 6, 1996, article in *Business World* to obtain an average price for electricity provided to industries in India. To value water we relied on public information reported in the October 1997 publication of the *Second Water Utilities Data Book: Asian and Pacific Region*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

As noted in the verification report for AJ Works, company officials indicated that the factory used coal in its production of persulfates. *See Memorandum for the File* for AJ Works, dated June 24, 1999, at page 9. Because the factory had not previously reported factors of production for coal, we used, as facts available, the consumption amounts reported during the LTFV investigation (for the period January through June, 1996). The respondents placed this data on the record of this administrative review on July 13, 1999. To value coal, we relied on public information reported in the antidumping new shipper review for Freshwater Crawfish Tail Meat from the PRC. *See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review,* 64 FR 8543, 8545 (February 22, 1999), and *Factors Memorandum* at page 2. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted the value for coal to account for freight costs incurred between the suppliers and AJ Works.

For the reported packing materials (*i.e.,* polyethylene and woven bags, polyethylene sheet, wood pallets, fiberboard, and polypropylene sacks), we relied upon Indian import data from the March and December 1997 issues of *Monthly Statistics.* We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and AJ Works.

For foreign inland freight, we use the April 1994 truck rate from the *Times of India.* For ocean freight we used the verified per-unit expense reported by Ai Jian in its February 4, 1999, section C supplemental submission because Ai Jian incurred ocean freight expenses that were paid in U.S. dollars to a market economy supplier. For marine insurance and foreign brokerage and handling expenses, we used public information reported in the antidumping duty investigations of sulfur dyes, including sulfur vat dyes, from India and stainless steel bar from India, respectively. *See Final Determination of Sales at Lesser Than Fair Value: Sulphur Dyes, Including Vat Dyes from India,* 58 FR 11385 (March 1, 1993); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915 (December 28, 1994); *Factors Memorandum* at page 5. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For factory overhead (FOH), selling, general, and administrative expenses (SG&A), and profit, relied on the financial statements of Calibre Chemicals Pvt. Limited (Calibre), an Indian producer of potassium persulfates and other chemicals, which were submitted by the respondents, because this company is a producer of subject merchandise.

Due to the differing cost structures between Calibre's production of subject and non-subject merchandise, it is more reliable to calculate FOH as a percentage of the total raw material costs for subject merchandise, as opposed to calculating FOH as a percentage of total materials, labor, and energy costs for all products. Therefore, we used the methodology proposed by the petitioner in its February 16,1999, submission in order to calculate FOH. *See Factors Memorandum* at page 6. We adjusted the SG&A percentage that the respondents calculated from Calibre's financial statements as follows: (1) we used data from both Calibre's 1997 and 1998 fiscal years; (2) we considered Calibre's ''transportation and distribution'' expenses to be tied to the movement of finished goods and, therefore, excluded them from Calibre's cost of manufacturing; (3) we reclassified Calibre's ''service and job work'' expenses as SG&A expenses; (4) we excluded all depreciation cost, as we considered them to be part of FOH; and(5) we used Califbre's sale of scrap to offset its cost of manufacturing, not its SG&A expenses. We adjusted the profit percentage calculated by the respondents to reflect the average profit from both Calibre's 1997 and 1998 fiscal years. In addition, we removed from the profit calculation the excise duties and sales taxes. *See Persulfates Preliminary Determination,* 61 FR at 68236.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the period December 27, 1999, through June 30, 2998.

Manufacturer/exporter	Martin (percent)
Shanghai Ai Jian Import & Export Corporation	4.27
Sinochem Jiangsu Wuxi Import & Export Corporation	5.34

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issues and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statues, regulations, and cases cited.

The Department will subsequently issue the final results of thus administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each reviewed company will be that established in the final results of this administrative review; (2) the cash deposit rate for Guangdong Petroleum will continue to be 34.97 percent, the company-specific rate from the LTFV investigation; (3) the cash deposit rate for all other PRC exporters will continue to be 119.02 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interest Parties.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20337 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Panel Decision and Amended Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision and amendment to final results of antidumping duty administrative review in accordance with decision upon remand.

SUMMARY: As a result of a remand from a Binational Panel, convened pursuant to the North American Free Trade Agreement, the Department of Commerce is amending its final results in the ninth antidumping duty administrative review of Porcelain-on-Steel Cookware from Mexico (December 1, 1994–November 30, 1995). The Department of Commerce has determined, in accordance with the instruction of the Binational Panel, the dumping margin for entries of porcelain-on-steel cookware from Mexico produced by Esmaltaciones de Norte America, S.A. de C.V. to be 16.97 percent. The margin for Cinsa, S.A. de C.V. is not affected by this remand.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or David J. Goldberger, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4929, or 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 42496) the final results of antidumping duty administrative review for Porcelain-on-Steel Cookware from Mexico. Subsequent to the final results, Columbian Home Products (the petitioner), Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) challenged the Department's findings and requested that the Binational Panel (the Panel) review the final results.

Thereafter, the Panel remanded the Department's final results with respect to one issue—whether the Department should utilize the indirect selling expense ratio submitted by Yamaka China (Yamaka) in determining Yamaka's indirect selling expenses on its sales of porcelain-on-steel cookware produced by ENASA. Specifically, the Panel directed the Department (1) to determine, after addressing both the petitioner's ministerial error letter and Cinsa's submission opposing the petitioner's letter, whether the Department did in fact make a ministerial error; (2) if it did, to correct the error, and (3) in making any correction, to consider comments from the parties on the proper calculation, specifically address those comments in its remand determination, and explain the basis for the correction in detail.[1]

We have determined that the use of an indirect selling expense ratio for affiliated importer Global Imports, Inc., rather than the indirect selling expense ratio for affiliated importer and reseller Yamaka in calculating the margin for Yamaka's sales of porcelain-on-steel cookware produced by ENASA, was in fact a ministerial error and have, therefore, corrected that error. The Department submitted its remand determination on June 4, 1999.

On July 20, 1999, the Panel affirmed the remand determination of the Department. (*See* Porcelain-on-Steel Cookware from Mexico (9th Administrative Review), USA–97–1904–07 (Final Panel Order).) As a result, the margin for ENASA increased from 2.74 to 16.97 percent. The margin for Cinsa is not affected by this remand because the sales through Yamaka consisted solely of ENASA-produced merchandise. Because the Department has since concluded additional administrative reviews, the cash deposit rate for ENASA remains that established by the most recently completed administrative review. The Department will issue appraisement instructions directly to the Customs Service.

This amendment to the final results of antidumping duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)), and 19 CFR 351.221.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20342 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] For a complete discussion of the Department's reasoning in the selection of an indirect selling expense ratio, see Redetermination on Remand: Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review (June 3, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of Sebacic Acid from the People's Republic of China.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China in response to requests from the petitioner, Union Camp Corporation, and the following three respondents: Tianjin Chemicals Import and Export Corporation, Guangdong Chemicals Import and Export Corporation, and Sinochem International Chemicals Company, Ltd. In addition to these three respondents, the petitioner also requested a review of Sinochem Jiangsu Import and Export Corporation. This review covers four exporters of the subject merchandise. The period of review is July 1, 1997, through June 30, 1998.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to

comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or Christopher Priddy, Office 2, AD/CVD Enforcement Group I, Import Administration'Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1130, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations at 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1998, the Department published in the **Federal Register** at 63 FR 35909 a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) covering the period July 1, 1997, through June 30, 1998.

On July 30, 1998, in accordance with 19 CFR 351.213(b), the petitioner requested that we conduct an administrative review of Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong), Sinochem International Chemicals Company, Ltd. (SICC) and Sinochem Jiangsu Import and Export Corporation (Jiangsu). On July 29, 1998, Tianjin, Guangdong, and SICC also requested that we conduct an administrative review. We published a notice of initiation of this antidumping duty administrative review on August 27, 1998, at 63 FR 45796. On September 1, 1998, we issued questionnaires to the four respondents. Tianjin, SICC, and Guangdong submitted responses to sections A, C, and D of the antidumping questionnaire on October 9, 1998, and November 2, 1998. The Department issued its supplemental questionnaires on January 8, 1999, and received responses to the questionnaires in February and March 1999. Jiangsu did not respond to the Department's questionnaire.

On December 29, 1998, the Department invited interested parties to provide publicly available information (PAI) for valuing the factors of production and for surrogate country selection. We received responses from the interested parties on January 25, 1999, and February 18, 1999, and additional comments on March 1, 1999. On March 12, 1999, in accordance with section 751(a)(3)(A) of the Act, the Department postponed the deadline for issuing the preliminary results of this review. *See Sebacic Acid from the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 13771 (March 22, 1999).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on the four factors of whether the respondent: (1) Sets its own export prices independently from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587 and *Sparklers* at 20589.

With respect to SICC, Tianjin, and Guangdong, in our final results for the period of review (POR) covering July 1, 1996, through June 30, 1997, the Department determined there was both *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See Final Results of Antidumping Administrative Review: Sebacic Acid From the People's Republic of China*, 63 FR 43373 (August 13, 1998) (*Sebacic Acid Third Review*). For this review, SICC, Tianjin, and Guangdong have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in the previous administrative review and continues to demonstrate an absence of both *de jure* and *de facto* government control with respect to their exports in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

With respect to Jiangsu, which did not respond to the questionnaire, we preliminarily determine that this company does not merit a separate rate. Because the Department assigns a single

rate to companies in an NME country unless an exporter can demonstrate absence of government control, we preliminarily determine that Jiangsu is subject to the country-wide rate for this case.

Export Price

For SICC, Tianjin, and Guangdong, we calculated export price (EP), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price (CEP) methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. Because all reported movement services were provided by NME companies, we based the charges associated with these services on surrogate rates from India. *See* ''Normal Value'' section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC. *See* ''Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2,'' dated December 21, 1998.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. Although we do not have information about the quantity of sebacic acid produced in India, we found that information contained in the respondents' February 18, 1999, submission indicates that India was a producer of sebacic acid during the POR. In addition, we determined in prior reviews of this order that India was a significant producer of comparable merchandise (*i.e.*, oxalic acid). *See Sebacic Acid Third Review*. We find that India fulfills both statutory requirements for use of a surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating the various surrogate values, see ''Memorandum to the File from Case Analyst: Calculations for the Preliminary Results,'' dated August 2, 1999. In accordance with this methodology, we valued the factors of production as follows:

We valued castor oil and castor seed using 1998 price data from the Solvent Extractors Association of India provided by the petitioner in its January 25, 1999, submission. For the castor oil that Hengshui Dongfeng Chemical Factory purchased from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with 19 CFR 351.408(a)(1). Handan Fuyang Sebacic Acid Factory (Handan) claimed it obtained castor oil from a market economy source and paid market economy prices for this factor, but Handan did not provide the necessary price data. Therefore, we have valued Handan's castor oil consumption based on the Indian surrogate value for castor oil.

For macropore resin, we used the value for activated carbon. Consistent with our methodology used in the third review of this proceeding, we valued activated carbon using export prices as quoted in the *Chemical Weekly*. For caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we used published market prices reported in the *Chemical Weekly*. For caustic soda and sulfuric acid, because price quotes reported in the *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by the respondents. For sodium chloride (also referred to as sodium chlorite or vacuum salt), we used Indian import values from the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*) for the period April 1996 though February 1997.

Where appropriate, we adjusted the values reported in the *Chemical Weekly* to exclude sales and excise taxes. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). We made further adjustments to account for freight costs between the suppliers' buildings and the respondents' sebacic acid manufacturing facilities.

In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997).

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rate applicable to medium industrial users throughout India as obtained from the ''Our India'' website compiled by the Indian Industrial and Management Services. We adjusted the values to reflect inflation up to the POR using the WPI factors published by the IMF. We based the value of steam coal on April 1996 through February 1997

import values from the *Monthly Statistics.* We adjusted the steam coal values for inflation using the WPI factors published by the IMF.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on data contained in the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. To value factory overhead, we summed those components which pertain to overhead expenses and divided them by the sum of those components pertaining to the cost of manufacturing. We multiplied this factory overhead rate by the cost of manufacture divided by one minus the factory overhead rate. Using the same source, we also calculated the SG&A rate as a percentage of the cost of manufacturing. We calculated profit as a percentage of the cost of production (*i.e.*, materials, energy, labor, factory overhead, and SG&A).

To value plastic and woven bags, we used import values from the *Monthly Statistics.* For jumbo bag valuation, we used a value from *Monthly Statistics* as found in the Department's Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China (*Index of Factor Values*). We adjusted these three values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and sebacic acid producers.

In valuing foreign inland trucking freight, the Department relied upon data from the *Times of India* as found in the Department's *Index of Factor Values;* for foreign inland rail rates the Department relied upon data from *Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 64 FR 13401 (March 18, 1999). To value ocean freight, we used a price quote from Sealand Shipping, Inc., for merchandise comparable to sebacic acid (*i.e.*, oxalic acid). For marine insurance and foreign brokerage and handling expenses, we used public information reported in the antidumping duty investigations of sulfur dyes and stainless steel bar from India, respectively. *See Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Vat Dyes from India,* 58 FR 11835 (March 1, 1993); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915 (December 28, 1994).

Consistent with the methodology employed in the previous administrative review for sebacic acid, we have determined that fatty acid, glycerine, and castor seed cake (when castor oil is self-produced) are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid, glycerine, and, where applicable, castor seed cake, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 539–544. To value fatty acid and glycerine, we used prices published in *Chemical Weekly.* We valued castor seed cake using market prices quoted in *The Economic Times of India (Mumbai)* for certain months within the POR.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from both sebacic acid and capryl alcohol based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533. To value capryl alcohol, consistent with our methodology from the previous administrative review, we used market prices reported in the *Chemical Weekly* for November 1997 and January 1998 and adjusted the prices for sales and excise taxes.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/Exporter	Margin (percent)
Tianjin Chemicals I/E Corp.	6.16
Sinochem International Chemicals Corp.	0.00
Guangdong Chemicals I/E Corp.	15.01
Country-Wide Rate	243.40

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review which will include the results of its analysis of issues raised in any such written briefs no later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific 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 examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For the reviewed companies named above which have separate rates (SICC, Tianjin, and Guangdong), the cash deposit rates will be the rates for those firms established in the final results of this administrative review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the

final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20338 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Continuation of Antidumping Duty Order: Sorbitol From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Sorbitol from France.

SUMMARY: On February 4, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of dumping (64 FR 5636 (February 4, 1999)). On March 10, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 11948 (March 10, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on sorbitol from France.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

Effective Date: March 17, 1999.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52757, respectively) of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Sorbitol from France*, 64 FR 5636 (February 4, 1999)).

On March 10, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sorbitol from France*, (64 FR 11948 (March 10, 1999) and USITC Pub. 3165, Inv. No. 731–TA–44 (Review) (March 1999)).

Scope

The merchandise covered by this antidumping duty order is crystalline sorbitol from France, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals and currently classifiable under HTS item number 2905.44.00. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on sorbitol from France. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is March 17, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2004.

Dated: August 2, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20334 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed-circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request by Tohoku Steel Co., Ltd. (Tohoku), the Department of Commerce (the Department) is initiating a changed-circumstances antidumping duty

administrative review and issuing an intent to revoke in part the antidumping duty order on stainless steel bar from Japan. Tohoku requested that the Department revoke the order in part with regard to imports of K–M35FL steel bar. Based on the fact that Al Tech Specialty Steel Corp., Dunkirk, NY, Carpenter Technology Corp., Reading, PA, Republic Engineered Steels, Inc., Massillon, OH, Slater Steels Corp., Fort Wayne, IN, Talley Metals Technology, Inc., Hartsville, SC, and the United Steel Workers of America, AFL–CIO/CLC, collectively petitioners in the less-than-fair-value (LTFV) investigation and also in this review, support Tohoku's request for a changed-circumstances review and revocation in part of the order with regard to K–M35FL steel bar, we are initiating this review and we preliminarily determine to revoke the order in part with regard to this merchandise.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1999, Tohoku requested that the Department conduct a changed-circumstances administrative review to determine whether to revoke the antidumping duty order in part with regard to K–M35FL steel bar, which is currently covered by the scope of the order. Tohoku stated that the leaded steel product in question is not produced in commercial quantities in the United States. With its June 17, 1999 submission, Tohoku included a letter from the petitioners agreeing to Tohoku's request to have K–M35FL steel bar excluded from the scope of the antidumping duty order on stainless steel bar from Japan. As the parties to this proceeding agree on the outcome of the review, Tohoku requests that the Department issue its determination with respect to the changed-circumstances review in an expedited fashion pursuant to 19 CFR 351.216(e).

The Applicable Statute

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 (1998).

Scope of Review

The products covered by this changed-circumstances review are imports of K–M35FL steel bar manufactured by Tohoku and exported from Japan.

The scope of the order covers stainless steel bar (SSB). For purposes of this review, the term SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, groves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order In Part

Pursuant to section 751(d)(1) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed-circumstances review). Section 751(b)(1) of the Act requires a changed-circumstances administrative review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 351.216 provide that the Department will conduct a changed-circumstances administrative review under 19 CFR 351.216(e) based upon an affirmative statement of no interest from the petitioner in the proceeding (*i.e.*, such a statement constitutes ''changed circumstances sufficient to warrant a review''). Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, or revoke an order in part, if it determines that the order under review is no longer of interest to domestic interested parties. In addition, in the event that the Department concludes that expedited action is warranted, section 351.216(e) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.216(e), based on petitioners' affirmative statement of no interest in the continued application of the order to K–M35FL steel bar, we are initiating this changed-circumstances administrative review. Based on the fact that no other domestic interested parties have objected to the position taken by petitioners that they have no further interest in the application of the order to imports of K–M35FL steel bar from Japan, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant partial revocation of the order on stainless steel bar from Japan. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order as it relates to imports of K–M35FL from Japan. This partial revocation will apply to all entries of K–M35FL from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of

publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20336 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Revocation of Antidumping Finding: Stainless Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of revocation of antidumping finding: Stainless steel plate from Sweden.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping finding on stainless steel plate from Sweden is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 37167 (July 9, 1999)). Therefore, pursuant to section 19 CFR 351.222(i)(1)(iii), the Department of Commerce (''the Department'') is publishing notice of the revocation of the antidumping finding on stainless steel plate from Sweden. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 63748, respectively) of the antidumping finding on stainless steel plate from Sweden pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked. (*See Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden,* 63 FR 67658 (December 8, 1998)).

On July 9, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on stainless steel plate would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Stainless Steel Plate from Sweden,* 64 FR 37167 (July 9, 1999) and USITC Pub. 3204, Inv. No. AA1921–114 (Review) (July 1999)).

Scope

The merchandise covered by this determination is stainless steel plate from Sweden. Stainless steel plate is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting.

Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers:7219.11.00.00, 7219.12.00.05, 7209.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7209.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheading is provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, is revoking the antidumping finding on stainless steel plate from Sweden. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 2, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20333 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–013. Applicant: University of Texas, Houston, TX 77030. Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 35127, June 30, 1999. Order Date: April 26, 1999.

Docket Number: 99–017. Applicant: The Burnham Institute, La Jolla, CA 92037. Instrument: Cryo Electron Microscope, Model Tecnai 12 Twin. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 64 FR 36338, July 6, 1999. Order Date: December 11, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United

States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–20346 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815, C–475–825, and C–580–835]

Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Marian Wells (France), Cynthia Thirumalai (Italy), and Eva Temkin (Republic of Korea), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6309, (202) 482-4087, and (202) 482–1167, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (April 1998).

Scope of Orders

The products covered by these orders are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to these orders is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by these orders is dispositive.

Excluded from the scope of these orders are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of these orders. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of these orders. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these orders. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of these orders. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of these orders. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of these orders. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Amended Final Determination

Republic of Korea

On May 20, 1999, the Department released its final determination in the countervailing duty investigation of stainless steel sheet and strip in coils from the Republic of Korea (''Korea''). Subsequently, on June 2, 1999, the petitioners in this investigation alleged that the Department had made two ministerial errors in calculating the estimated net countervailable subsidy rate. We disagree with one of the petitioners' allegations that we made a ministerial error; the allegation constituted a methodological argument. We agree with the petitioners that we made a ministerial error with regard to their second allegation and we have, therefore, made a correction in the calculations. This correction resulted in the estimated net countervailable subsidy rate attributable to Inchon Iron & Steel Company's (''Inchon'') post-1991 variable rate loans increasing from 2.64 percent *ad valorem* to 2.65 percent *ad valorem*. The ministerial error allegations and the Department's analysis are detailed in a June 17, 1999 memorandum to Bernard Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II, from David Mueller, Director, Office CVD/AD Enforcement VI (''Allegations of Ministerial Errors in the Final Results of the Countervailing Duty Investigation: Stainless Steel Sheet and Strip in Coils from the Republic of Korea''), a public version of which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building). Thus, the total estimated net countervailable subsidy rate is 2.65 percent *ad valorem* for Inchon. This change does not alter the ''all others'' rate.

Countervailing Duty Orders

In accordance with section 705(d) of the Act, on June 8, 1999, the Department published its final determinations in the countervailing duty investigations of certain stainless steel sheet and strip in coils from France (64 FR 30774), Italy (64 FR 30624), and Korea (64 FR 30636). On July 19,1999, the International Trade Commission (''ITC'') notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of stainless steel sheet and strip in coils from France, Italy, and Korea.

Therefore, countervailing duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from France, Italy, and Korea entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before March 17, 1999, the date the Department instructed the U.S. Customs Service to discontinue the suspensions of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals on or after the date of publication of these countervailing duty orders in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of stainless steel sheet and strip in coils made on or after March 17, 1999, and prior to the date of publication of these orders in the **Federal Register** are not liable for the

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

assessment of countervailing duties due to the Department's discontinuation, effective March 17, 1999, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute the suspensions of liquidation and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rates apply to all producers and exporters of stainless steel sheet and strip in coils from France, Italy, and Korea not specifically listed below. The cash deposit rates are as follows:

Producer/exporter	Net subsidy rate (percent *ad valorem*)
France:	
Usinor	5.38
All Others	5.38
Italy:	
Acciai Speciali Terni S.p.A.	12.22
Arinox S.r.L.	1.03
All Others	12.09
Korea:	
Inchon	2.65
Dai Yang	1.58
Taihan	7.00
Sammi	59.30
All Others	1.68

The Korean steel producer POSCO is excluded from these orders because it received a *de minimis* net subsidy rate of 0.65 percent *ad valorem*.

This notice constitutes the countervailing duty orders with respect to stainless steel sheet and strip in coils from France, Italy, and Korea, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders and amended final determination are published in accordance with section 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: August 2, 1999.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–20340 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Procedures for Delivery of HEU Natural Uranium Component in the United States

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is announcing the final Procedures for Delivery of HEU Natural Uranium Component in the United States.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Sally C. Gannon, Enforcement Group III, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–3793.

Background:

On April 25, 1996, Congress passed the United States Enrichment Corporation Privatization Act (''USEC Privatization Act''), 42 U.S.C. 2297h, *et seq.* The USEC Privatization Act requires the U.S. Department of Commerce (''Department'') to administer and enforce the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. On January 7, 1998, in order to implement this statutory mandate, the Department issued the Procedures for Delivery of HEU Natural Uranium Component in the United States (''HEU Procedures''). The purpose of issuing the HEU Procedures is to enhance the predictability and transparency of the administration and enforcement of the above-referenced limitations.

On March 20, 1998, the Department issued Annex 1 to the HEU Procedures to clarify certain requirements detailed in the HEU Procedures. On July 6, 1998, the Department provided public notification of the HEU Procedures and Annex 1 to the HEU Procedures (see 63 FR 36391 (July 6, 1998)). On July 23, 1998, the Department issued a proposed Annex 2 to the HEU Procedures regarding re-importation requirements and requested public comment on Annex 2. The Department received comments from eight parties.

On October 8, 1998, in accordance with Section F of the January 7, 1998, HEU Procedures, the Department requested comments from parties on necessary or desirable changes to the HEU Procedures (see 63 FR 54108 (October 8, 1998)). The Department received comments from eight parties regarding the HEU Procedures. After careful review of the comments, and after consultations with various parties, the Department determined that revision and clarification of the HEU Procedures were warranted. On March 26, 1999, the Department provided public notification of the draft revised HEU Procedures and invited parties to provide comments (see 64 FR 14697 (March 26, 1999)).

Because the Department made substantive changes, in part as a result of parties' comments, the Department determined on May 7, 1999, that an additional opportunity to comment on the draft revised HEU Procedures was appropriate (see 64 FR 25867 (May 13, 1999)). The Department received comments from eleven parties. After careful review of these comments and consultations with various parties, the Department has made further revisions to the draft HEU Procedures. The Department hereby provides public notification of the final Procedures for Delivery of HEU Natural Uranium Component in the United States, the text of which follows in the Annex to this notice. These final HEU Procedures replace all prior versions of the HEU Procedures, including any annexes, as detailed above in the ''Background'' section of this notice.

Dated: July 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Annex—Procedures for Delivery of HEU Natural Uranium Component in the United States

The United States Enrichment Corporation Privatization Legislation, 42 U.S.C. 2297h, *et seq.* (''USEC Privatization Act''), directs the Secretary of Commerce to administer and enforce Russian-origin uranium limitations set forth in 42 U.S.C. 2297h–10(b). Accordingly, the U.S. Department of Commerce (''Department'') is implementing 42 U.S.C. 2297h–10(b) of the USEC Privatization Act by issuing these revised Highly-Enriched Uranium (''HEU'') Procedures. The authority to implement the HEU Procedures does not derive from the Tariff Act of 1930, as amended. Therefore, these revised HEU Procedures are not subject to the Agreement Suspending the

Antidumping Investigation on Uranium from the Russian Federation (''Russian Suspension Agreement''), 57 FR 79235 (October 30, 1992), as amended.

A. Coverage

The uranium covered by the revised HEU Procedures is the U_3O_8 or U_3O_8 equivalent contained in the UF_6 component of the low-enriched uranium derived from the HEU taken from dismantled nuclear warheads, deemed under United States law for all purposes to be of Russian origin, and delivered to the Russian Executive Agent pursuant to 42 U.S.C. 2297h–10(b) of the USEC Privatization Act (''HEU Natural Uranium Component'').

B. Definitions

The following definitions apply to the terms of the HEU Procedures, including all Attachments thereto, and any documentation submitted to, or released by, the Department in connection with deliveries of HEU Natural Uranium Component.

1. Account Administrator—means the party that administers an account into which the Russian Executive Agent or a Designated Agent takes delivery of, and provides account balance information for, the HEU Natural Uranium Component prior to its sale pursuant to the USEC Privatization Act.

2. Annual Maximum Deliveries—means the delivery limitations to End-Users as set forth at 42 U.S.C. 2297h–10(b)(5):

ANNUAL MAXIMUM DELIVERIES TO END-USERS

Year	Millions lbs. U_3O_8 equivalent
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20

3. Consumption—means for use as nuclear fuel.

4. Delivery—means the physical or book transfer of the HEU Natural Uranium Component to the account of an End-User in the United States.

5. Designated Agent—means any party that has been authorized by the Ministry of Atomic Energy of the Russian Federation (''MINATOM'') to sell the HEU Natural Uranium Component.

6. Designated Agent's Account—means the account held in the name of the Designated Agent, or its wholly-owned subsidiary, into which only the HEU Natural Uranium Component is delivered pursuant to the USEC Privatization Act.

7. End-User—means an entity that purchases natural uranium for consumption in a nuclear reactor in the United States, owned or operated by itself or a parent, subsidiary, or other entity under common ownership or control.

8. Executive Agent—means either the United States or Russian Federation executive agent with the authority to implement the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 19, 1993 (''HEU Agreement'').

9. Secretary—means the Secretary of Commerce or a designee. The Secretary has responsibility for the administration and enforcement of the limitations set forth in 42 U.S.C. § 2297h–10(b).

10. U_3O_8 to UF_6 Conversion—1 KgU in UF_6 = 2.61283 lbs. U_3O_8e.

11. Verification—The process by which the Department examines the records of the party that provided the information being examined, and interviews company personnel who prepared such information and who are familiar with the sources of the data in the information, in order to establish the adequacy and accuracy of submitted information.

12. Importer of Record—means the person by whom, or for whose account, HEU Natural Uranium Component is imported.

13. Resale Party—means a seller of HEU Natural Uranium Component pursuant to Paragraph G.2.

C. Record Procedures and Commercial Confidentiality

1. Public Record and Access

a. HEU Record: A separate record for documents and information generated under the HEU Procedures shall be created under the identifying title ''HEU File'' and maintained in the Central Records Unit.

b. Central Records Unit: Import Administration's Central Records Unit is located at B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. The office hours of the Central Records Unit are between 8:30 A.M. and 5:00 P.M. on business days.

c. The Central Records Unit is responsible for maintaining a public and an official record for the HEU File. The public record will consist of all material contained in the official record that the Secretary determines is subject to release under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, *et seq.* (1998), and disclosed to the general public in the Central Records Unit. The Secretary will charge an appropriate fee for providing copies of documents. The official record will contain the foregoing information and information for which the submitter has claimed an exemption to release under FOIA. To the extent permitted by law, such official record will be accessible only to authorized government officials.

d. FOIA Release and Treatment of Commercial and Financial Information: Documents submitted to the Department are subject to release under FOIA, unless a party claims protection from release under a FOIA exemption. In order to claim protection from release, a party must specify the information which the party seeks to protect from release, provide an explanation as to why it should be protected, and bracket such information. See section 4.7 of the Department's FOIA regulations, set forth in 15 CFR Part 4 (1998). A party making a submission may not claim its own identity as protected from release under FOIA. Although the party making the submission is responsible for seeking protection from release under FOIA for any third-party information in its submission, and for identifying such information, the Department will endeavor to protect price, quantity, and customer identity information from release under all FOIA requests for the life of the HEU Agreement to the extent allowed under the FOIA statute. The party submitting such documentation may provide a releaseable public version along with the non-releaseable version. Further information on FOIA may be accessed at *http://www.usdoj.gov/foia.*

e. Interim Record: The Department will create the public record of the HEU File. Within 90 days from publication of the final revised HEU Procedures, the Department will return to parties any contracts and related contractual information submitted pursuant to the January 7, 1998, HEU Procedures and will notify parties who submitted additional information to the Department, pursuant to the January 7, 1998, HEU Procedures, of the opportunity to claim that documents are exempt from release under FOIA. The Department will also transfer other documentation relating to the HEU Procedures from the records of the

Russian Suspension Agreement (A–821–802) to the HEU File.

2. Record Submission Instructions

a. Where to file: For the Department to consider a submission to the record, persons must address and submit all documents to: The Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Submissions may be made between 8:30 A.M. and 5:00 P.M. on business days. Courtesy copies addressed to the appropriate employee, and designating the employee's mail stop room number, may be delivered to Room 1874 (Courier Delivery Entrance).

b. Required Header Information: Any submission made to the HEU File must contain the following information in the upper right hand corner of the document in the order presented below: HEU File, Number of Pages, Fully Releaseable under FOIA, or, Not Fully Releaseable under FOIA, Attn: Uranium Program, Room 7866.

c. Number of Copies: Each submission to the Department must be accompanied by three copies of the submission. Where claim of exemption from release under FOIA is made, the specific portion(s) of the submission for which exemption is claimed must be clearly identified when the submission is made. Upon receipt, the Central Records Unit will stamp the official date of filing on the submission.

D. Allocation of Annual Maximum Deliveries to Designated Agents

The Department recognizes that MINATOM may allocate the Annual Maximum Deliveries of HEU Natural Uranium Component among any Designated Agent(s) which it authorizes to sell the HEU Natural Uranium Component. For each Designated Agent receiving a delivery allocation, MINATOM will issue a certificate identifying such Designated Agent, the duration of time for which the allocation is valid, and the maximum annual amount to be delivered under that certificate. The certificate(s) will also contain a statement that the material to be delivered to the Designated Agent(s) may be sold in the United States in accordance with 42 U.S.C. 2297h–10(b). No such certificate shall be valid and effective until such time as the Department receives a copy of such certificate. The cumulative quantities authorized by all such certificates for each year may not exceed the Annual Maximum Deliveries for such year.

E. Re-Allocation

Annual deliveries allocated to a Designated Agent may be re-allocated to any other Designated Agent or to MINATOM within the same annual period subject to the Annual Maximum Deliveries, provided that MINATOM submits to the Department a copy of the amended and/or terminated certificate(s) from which the annual delivery allocation is to be withdrawn and a copy of the new certificate(s) re-allocating the annual delivery allocation.

F. Delivery Forfeit and Flexibility

On December 31 of each year, any portion of the Annual Maximum Deliveries not delivered that year will be forfeited. In the unlikely event that there are transfer, transportation, or other difficulties beyond the control of the Designated Agent, the Department may provide for a 30-day grace period to complete the delivery. The Department must be notified in writing of a request for a 30-day grace period, detailing the reasons for the delivery delay.

G. Swaps, Exchanges, Loans, or Resales of Material

1. Swaps, Exchanges or Loans: Swaps, exchanges or loans of HEU Natural Uranium Component may be conducted solely for the purpose of facilitating delivery, further processing and end-use as nuclear fuel. Notification of such permitted swaps, exchanges or loans is required to be provided to the Department at the time of the transactions, in the format set forth in Attachment One; however, no prior approval by the Department is required to proceed.[1] Examples of such permitted swaps, exchanges or loans are those designed to avoid transportation costs. The Department considers swaps, exchanges or loans that will result in sales for consumption in the United States, directly or indirectly, in excess of the Annual Maximum Deliveries to be circumvention. Swaps, exchanges or loans are subject to verification by the Department at any time and at its discretion.

2. Resales:

a. The Department will permit parties to resell the HEU Natural Uranium Component. If the HEU Natural Uranium Component is resold, the End-User (or any other entity) making the resale must notify the Department of the date of the resale, the entity to whom it was sold, and the volume resold, in the format provided in Attachment One; however, no prior approval by the Department is required to proceed.

b. If an End-User resells the HEU Natural Uranium Component to any party other than another End-User, the material must be held in a separate account and quarterly reports on the account balance, in the format provided in Attachment Two, are required from the purchaser of the resold material.

c. An End-User may purchase HEU Natural Uranium Component on resale only from another End-User or an entity utilizing a separate account and providing quarterly reports to the Department as noted in Paragraph G.2.b above.

d. Resales remain subject to the requirements of 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, these HEU Procedures, and are also subject to verification by the Department at any time and at its discretion. Resold material will not be subject to the Annual Maximum Deliveries in the year in which it is resold.

H. Post-Delivery Notification

For all deliveries of HEU Natural Uranium Component, Designated Agents must submit to the Department, within ten (10) days of receipt, copies of all delivery confirmations provided to the Designated Agents from the appropriate Account Administrator. Such confirmations must contain the identity of the account holders from and to which the material was transferred, the quantity transferred, and the date of delivery.

I. Quarterly Reports

1. Designated Agents

Designated Agents must submit for the HEU File quarterly reports and certifications detailing all activity relating to the movement of HEU Natural Uranium Component into and out of their respective accounts, in the format set forth in Attachment Two. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters

[1] Parties need not report as a swap or exchange hereunder a routine adjustment in nuclear material accounting documentation which is intended only to account for the delivery by an End-User, in the normal course of a processing transaction, of HEU Natural Uranium Component to be used in the production of a processed uranium product where: (i) prior to delivery of the HEU Natural Uranium Component, the processor produced the product using natural uranium other than the End-User's natural uranium to fulfill the contractual processing obligation to such End-User and delivered it to a downstream processor; (ii) the adjustment is intended only to ascribe the HEU Natural Uranium Component to the product delivered to the downstream processor and to return to the upstream processor natural uranium of the origin used to produce the product; and (iii) no monetary or other consideration is paid or given for the exchange of origins affected by the adjustment.

ending March 31, June 30, September 30, and December 31, respectively.

2. Account Administrators

Account Administrators must submit quarterly reports regarding the accounts holding the HEU Natural Uranium Component, in the format set forth in Attachment Three. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31, respectively.

J. Verification

The Department reserves the right to verify any information submitted to the Department relating to deliveries under the USEC Privatization Act. Furthermore, the Department may restrict future deliveries from any account in which the reported activity is found to be in violation of these HEU Procedures and/or the Annual Maximum Deliveries if such violations are not rectified to the satisfaction of the Department and MINATOM.

K. Consultations

Upon request, MINATOM and the Department will hold consultations subsequent to the filing of the quarterly reports due February 1 of each year for the purpose of exchanging/reviewing all data pertaining to deliveries of HEU Natural Uranium Component under these revised HEU Procedures during the previous year. Consultations may be held at other times as necessary.

L. Importation/Re-Importation Requirements [2]

1. HEU Natural Uranium Component exported from the United States for further processing and subsequently re-imported:

The End-User, or its agent, or the importer of record must submit a notification letter and certifications as set forth in Attachment Four.

2. HEU Natural Uranium Component sold for delivery outside the territory of the United States to an End-User and subsequently imported to be consumed by an End-User in accordance with Annual Maximum Deliveries:

The End-User or its agent must submit a notification letter and certifications as set forth in Attachment Four.

3. HEU Natural Uranium Component sold for consumption outside the United States to be imported into the United States for further processing and exportation:

The entity or importer of record must provide the information set forth in Attachment Five. In addition, the owner, or the importer of record, of this material must certify to the Department that the material will not be used in (and was not obtained under) any arrangement, swap, exchange, or other transaction designed to circumvent any of the Agreements while in the United States and that the owner, or the importer of record, will not circumvent (and has not circumvented) the Annual Maximum Deliveries. The owner, or the importer of record, must also provide the Department with the expected quantity (U_3O_8 equivalent, less any processing losses) that will be exported from the United States. There will be no time or quantity limitations on the import of HEU Natural Uranium Component under this provision.

4. In all cases noted above, the owner of the HEU Natural Uranium Component or its agent must provide the Department with the required information ten (10) days prior to its expected entry into the United States. Within ten (10) days of receipt of the required information, the Department will provide to the United States Customs Service the appropriate instructions to clear the imports. The Department will notify the importer of record of the issuance of such instructions.

M. Enforcement

If the Department finds that a Designated Agent has directly or indirectly exceeded its delivery allocation, the Department will require the Account Administrator or the appropriate entity to withhold any further release of HEU Natural Uranium Component from the Designated Agent's Account, until the issue has been satisfactorily resolved among the Department, MINATOM, and the relevant Designated Agent. The Department will notify both the Account Administrator and the affected Designated Agent in writing of its enforcement action.

N. Future Revisions

Any future changes to these HEU Procedures will be made only with public notice in the **Federal Register** and an opportunity for interested party comment.

O. Revised Uranium Import Certification

All uranium importers, regardless of declared country of origin, must continue to submit to the U.S. Customs Service upon importation the certification in the format set forth in Attachment Six, unless said importer is submitting certification information set forth in Attachments 4 or 5.

ATTACHMENT ONE

Swaps, Exchanges, Loans, and Resales Notification Format

For each swap, exchange, loan, or resale under a provision of the HEU Procedures, provide the following information to the Department:

1. The quantity and origin(s) of the material.
2. The location(s) of the transaction.
3. The parties involved in the transaction.
4. The purpose of the transaction.
5. The date of the swap, exchange, loan or resale.

ATTACHMENT TWO [3]

Designated Agent or Resale Party Quarterly Report Form

Quarterly Delivery Report for (INSERT DATES AND DESIGNATED AGENT OR RESALE PARTY) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): _____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

[2] The certifications required under this Paragraph are independent of the general importer certification requirements of the agreements suspending the antidumping investigations on uranium, as amended (''the Agreements'').

Certification number three on Attachment Four (page two) and certifications numbers two and four on Attachment Five (page two) will continue to be required only to the extent they are applicable. At such time when the Agreements are no longer in existence, the certifications under this Paragraph will be amended to reflect the absence of the Agreements.

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent): _____

(DESIGNATED AGENT OR RESALE PARTY) certifies that it holds an HEU Natural Uranium Component account at (STATE NAME OF ENTITY(IES)) and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for one of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. § 2297h–10(b) of the USEC Privatization Act and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. § 2297h–10(b)(7); (3) for delivery to an End-User, within the Annual Maximum Deliveries set forth in the USEC Privatization Act, at 42 U.S.C. § 2297h–10(b)(5); (4) for export out of the United States; (5) for further processing on behalf of (NAME OF ENTITY); or (6) for resale to (NAME OF ENTITY).

(DESIGNATED AGENT OR RESALE PARTY) further certifies that, for the time period during which the material was in its possession or control, none of the HEU Natural Uranium Component transferred from or into the account(s) during the calendar quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in 42 U.S.C. § 2297h–10(b) of the USEC Privatization Act, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature:

Printed Name:

Title:

ATTACHMENT THREE

Account Administrator Quarterly Report Form

Quarterly Report for (INSERT DATES AND ACCOUNT ADMINISTRATOR) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): _____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent): _____

(ACCOUNT ADMINISTRATOR) certifies that to the best of its knowledge, the foregoing information is true and correct.

Signature:

Printed Name:

Title:

ATTACHMENT FOUR (page one)

Importation/Re-Importation Notification Form and Certifications

TOPIC: Importation/Re-Importation of Uranium Under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act

Pursuant to Paragraph L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing the importation or re-importation of Russian origin uranium subject to the limitations set forth in the USEC Privatization Act, at 42 U.S.C. 2297h–10(b):

Export (if Applicable)

1. Quantity of HEU Natural Uranium Component Exported (U_3O_8 equivalent) out of U.S.:

2. Date of Export out of U.S. (if available):

Importation/Re-Importation

1. (NUMBER) lbs. of U_3O_8 equivalent contained in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt %, if applicable:

2. Port of Importation/Re-Importation:

3. Importer of Record:

4. Planned Date of Importation/Re-Importation:

5. End User:

6. Vessel/Airline Name:

Also, please find attached the importer of record declaration regarding country of origin, anti-circumvention and qualification of this material under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Signature:

Printed Name:

Title:

ATTACHMENT FOUR (page two)

Importation/Re-Importation Notification Form and Certifications

CERTIFICATIONS TO U.S. CUSTOMS SERVICE

A. (END-USER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), enriched in (INSERT COUNTRY) and/or fabricated in (INSERT COUNTRY).

B. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed

[3] The Department will amend this certification to reflect changes, if any, in the existence of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended.

to circumvent the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

C. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

D. (END-USER or IMPORTER OF RECORD) hereby certifies that the uranium being imported into the United States is in compliance with 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.* The material being imported represents (NUMBER) lbs. U_3O_8 equivalent of (NUMBER) lbs. U_3O_8 equivalent exported for further processing on (DATE) or delivered to an End-User outside the United States.

Signature:
Printed Name:
Title:

ATTACHMENT FIVE (page one)

Importation Notification Form and Certifications

TOPIC: Importation of Uranium Under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act—Consumption Outside the United States

Pursuant to Section L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing our scheduled importation of Russian origin uranium into the United States for subsequent export:

1. Scheduled Date of Importation:
2. (NUMBER) lbs. of U_3O_8 in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt % (if applicable):
3. Port of Importation:
4. Importer of Record:
5. Vessel/Airline:
6. Parties Providing Further Processing and/or storage:
7. Anticipated Date of Export out of U.S. (if available):
8. Non-U.S. End-User:

Also, please find attached the importer of record declaration regarding country of origin, anticircumvention, and qualification of the material under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Signature:
Printed Name:
Title:

ATTACHMENT FIVE (page two)

Importation Notification Form and Certifications

CERTIFICATIONS TO U.S. CUSTOMS SERVICE

1. (OWNER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), and/or enriched in (INSERT COUNTRY), and/or fabricated in (INSERT COUNTRY) and is not intended for consumption in the United States.

2. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

3. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

4. (OWNER or IMPORTER OF RECORD) hereby further certifies that the material being imported will not be used in any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

5. (OWNER or IMPORTER OF RECORD) hereby further certifies that the material being imported will not be used in any arrangement, swap, exchange, or other transaction designed to circumvent the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.* and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature:
Printed Name:
Title:

ATTACHMENT SIX

Certification For All Other Uranium Importers

CERTIFICATION TO U.S. CUSTOMS SERVICE

1. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended, or the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised (FR Cite).[4]

Signature:
Printed Name:
Title:

[FR Doc. 99–20339 Filed 8–5–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3125–000, Docket No. ER99–3143–000, Docket No. ER99–3248–000, Docket No. ER99–3207–000, Docket No. ER99–3118–000, Docket No. ER99–3168–000, Docket No. ER99–3165–000 and Docket No. ER99–3197–000 (Not Consolidated)]

Minergy Neenah, L.L.C., Reliant Energy Indian River, L.L.C., Consolidated Edison Energy Massachusetts, Inc., Capital Center Generating Company, L.L.C., Duke Energy St. Francis, L.L.C., Astoria Generating Company, L.P., Tenaska Georgia Partners, L.P. and BIV Generation Company, L.L.C.; Notice of Issuance of Order

August 2, 1999.

Minergy Neenah, L.L.C., Reliant Energy Indian River, L.L.C., Consolidated Edison Energy Massachusetts, Inc., Capital Center Generating Company, L.L.C., Duke St. Francis, L.L.C., Astoria Generating Company, L.P., Tenaska Georgia Partners, L.P., and BIV Generation Company, L.L.C. (hereafter, ''the Applicants'') filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may

[4] Please insert into the certification the citation of this **Federal Register** notice.

also have requested in their respective application that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On July 28, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's July 28, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under part 34, subject to the condition found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should filed a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the dealine for filing motions to intervene or protests, as set forth above, is August 27, 1999.

Copies of the full text of the Order are availabile from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This issuance may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20276 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–459–006, et al.]

Bangor Energy Resale, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 30, 1999.

Take notice that the following filings have been made with the Commission:

1. Bangor Energy Resale, Inc.

[Docket No. ER98–459–006]

Take notice that on July 23, 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. North American Energy Conservation, Inc., Energy International Power Marketing, Corporation, ENMAR Corporation, Nine Energy Services, LLC, LS Power Marketing, LLC, Griffin Energy Marketing, L.L.C., J. Aron & Company, CSW Energy Services, Inc., Morgan Stanley Capital Group Inc., Unicom Power Marketing, Inc., Hinson Power Company

[Docket Nos. [ER94–152–022, ER98–2059–005, ER99–254–003, ER98–1915–005, ER96–1947–012, ER97–4168–007, ER95–34–020, ER98–2075–006, ER94–1384–025, ER97–3954–008, and ER95–1314–017]

Take notice that on July 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Cook Inlet Energy Supply, CNG Retail Services Corporation, CNG Power Services Corporation, NGTS Energy Services, Poco Petroleum, Inc., Poco Marketing Ltd., Detroit Edison Company, Genstar Energy, L.L.C., Novarco Ltd., Williams Energy Marketing & Trading Company, ProLiance Energy, LLC, NYSEG Solutions, Inc.

[Docket Nos. ER96–1410–015, ER97–1845–008, ER94–1554–021, ER96–2892–010, ER97–2197–007, ER97–2198–008, ER98–3026–003, ER99–2364–001, ER98–4139–003, ER99–1722–002, ER97–420–010, and ER99–220–002]

Take notice that on July 26, 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. The Montana Power Trading & Marketing Company, Illinova Energy Partners, Inc., PanCanadian Energy Services Inc., INFINERGY Services, LLC, Amoco Energy Trading Corporation, Primary Power Marketing L.L.C., CLECO Corporation

[Docket Nos. ER97–399–011, ER94–1475–017, ER90–168–042, ER98–3478–003, ER99–2895–001, ER98–4333–001, and ER96–2677–000]

Take notice that on July 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. New York Independent System, Operator, Inc.,

[Docket Nos. ER97–1523–010, OA97–470–009, and ER97–4234–007 (not consolidated)]

Take notice that on July 26, 1999, the New York Independent System Operator, Inc. (NYISO), pursuant to ordering paragraph (N) of the Commission's Order in Central Hudson Gas & Electric Corp., *et. al.*, 86 FERC ¶ 61,062 (1999), tendered for filing a market monitoring plan.

The NY ISO requests an effective date of September 1, 1999 and waiver of the Commission's notice requirements and of any applicable filing requirements not otherwise satisfied.

A copy of this filing has been served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER99–1661–000]

Take notice that on July 27, 1999, West Texas Utilities Company (WTU), tendered for filing three amended executed agreements with Brazos Electric Cooperative, Inc. (Brazos), a long-term market-based power sales agreement, a service agreement under the Central and South West Open Access Transmission Tariff and an Interconnection Agreement.

WTU continues to seek an effective date of January 1, 1999, for the three agreements and, accordingly, seeks waiver of the Commission's notice requirement.

Copies of the filing were served on Brazos, the Public Utility Commission of Texas and all parties to this proceeding.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Erie Boulevard Hydropower, L.P.

[Docket No. ER99–1764–002]

Take notice that on July 26, 1999, Erie Boulevard Hydropower, L.P. (Applicant) tendered for filing its Amended Code of Conduct in compliance with the Commission's order issued in Docket No. ER99–1764–000.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Energy Cooperative of Western New York, Inc.

[Docket No. ER99–3411–000]

Take notice that on June 29, 1999, Energy Cooperative of Western New York, Inc. (ECWNY), petitioned the Commission for acceptance of ECWNY Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ECWNY intends to engage in wholesale electric power and energy purchased and sales as a marketer. ECWNY is not in the business of generating or transmitting electric power.

The Energy Cooperative of Western New York, Inc., is a not-for-profit corporation created by a group of businesses (both industrial and commercial). The Co-op's sole mission is to buy energy for its members at a low cost. It has met all the requirements of the PSC, Public Service Commission, of New York to offer this service to its members.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER99–3707–000]

Take notice that on July 22, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and OGE Energy Resources, Inc. (OERI), replacing the unexecuted service agreement filed on September 4, 1998 under Docket No. ER99–170–000 per COC FERC Electric Power Sales Tariff, Original Volume No. 4, which has been replaced by the COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 7–MB.

COC and OERI are requesting an effective date of one day after the original filing in Docket No. ER99–170–000.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corporation

[Docket No. ER99–3720–000]

Take notice that on July 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Delmarva Power & Light Company for Short Term Market Based Rate Power Sales and the Resale of Transmission Rights under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on July 29, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corporation

[Docket No. ER99–3721–000]

Take notice that on July 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with NRG Power Marketing, Inc., for Short Term Market Based Rate Power Sales and the Resale of Transmission Rights under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on July 29, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Monmouth Energy, Inc., Carthage Energy, LLC, UtiliCorp United Inc., Williams Generation Company-Hazelton

[Docket Nos. ER99–3722–000], ER99–3735–000, ER99–3736–000, and ER99–3737–000]

Take notice that on July 26, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Cleco Marketing & Trading LLC

[Docket No. ER99–3724–000]

Take notice that on July 26, 1999, Cleco Marketing & Trading LLC, formerly named Cleco Trading & Marketing LLC, tendered for filing its Notice of Succession in which it adopted, ratified, and made its own in every respect all applicable rate schedules, and supplements thereto, heretofore filed with the Commission by Cleco Trading & Marketing LLC.

Effective June 25, 1999, Cleco Trading & Marketing LLC changes its name to Cleco Marketing & Trading LLC.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER99–3725–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Coral Power, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on Coral Power, L.L.C., and the California Public Utilities Commission.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–3726–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and the City of Santa Clara, California, d/b/a Silicon Valley

Power (Santa Clara) for acceptance by the Commission.

The ISO states that this filing has been served on Santa Clara and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective July 15, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER99–3727–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and the City of Santa Clara d/b/a Silicon Valley Power (Santa Clara) for acceptance by the Commission.

The ISO states that this filing has been served on Santa Clara and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 15, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Yadkin, Inc.

[Docket No. ER99–3728–000]

Take notice that on July 26, 1999, Yadkin, Inc. (Yadkin), tendered for filing a service agreement between Yadkin and Carolina Power & Light Company under Yadkin's FERC Electric Tariff Original Volume 2—Market-Based Rate Tariff. This Tariff was accepted for filing by the Commission on September 30, 1996, effective as of October 1, 1996, in Docket No. ER96–2603–000.

The service agreement is proposed to be effective June 28, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER99–3729–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the City of Santa Clara, California, d/b/a Silicon Valley Power (Santa Clara) for acceptance by the Commission.

The ISO states that this filing has been served on Santa Clara and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 15, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER99–3730–000]

Take notice that on July 26, 1999, Arizona Public Service Company (APS), tendered for filing its Open Access Transmission Tariff, Revision 5 (Revised Tariff). APS proposed Revised Tariff is consistent with the Commission's Pro Forma Tariff and the proposed changes do not change the rates or Annual Transmission Revenue Requirement as accepted in the Commission's Order in the consolidated Docket Nos. OA96–153 and ER96–2401, dated June 17, 1999.

APS requests a waiver of the Commission's Notice Requirements in accordance with 18 CFR 35.11 to allow for an effective date of August 1, 1999.

A copy of this filing has been served on the Arizona Corporation Commission and all parties of the attached Service List.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Company

[Docket No. ER99–3731–000]

Take notice that on July 26, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an assignment letter indicating that Northeast Energy Services, Inc. (NORESCO), will replace Equitable Power Services Company (Equitable Power) as transmission customer in the Non-Firm Point-to-Point Transmission Service Agreement dated February 4, 1997 and originally filed under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. The original Service Agreement was approved by the FERC in Docket No. ER97–4199–000 in a Letter Order dated October 2, 1997.

Copies of this filing were served upon NORESCO, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Montaup Electric Company, Westchester RESCO Company, L.P., Avista Energy, Inc., Tucson Electric Power Company, Tucson Electric Power Company, Allegheny Power, Arizona Public Service Company, Maine Public Service Company, Medical Area Total Energy Plant, Inc., Florida Power Corporation, Golden Spread Electric Cooperative, Inc., GS Electric Generating Cooperative, Inc.

[Docket Nos. ER99–3738–000, ER99–3739–000, ER99–3740–000, ER99–3741–000, ER99–3742–000, ER99–3743–000, ER99–3745–000, ER99–3746–000, ER99–3748–000, ER99–3747–000, ER99–3785–000, and ER99–3786–000]

Take notice that on July 27, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3744–000]

Take notice that on July 27, 1999, Alliant Energy Corporate Services, Inc. (Alliant Energy), tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing the Central Wisconsin Electric Cooperative as a network customer under the terms of Alliant Energy's transmission tariff.

Alliant Energy requests an effective date of July 7, 1999, for Network Load of this Network Customer. Alliant Energy, accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Carolina Power & Light Company

[Docket No. ER99–3749–000]

Take notice that on July 27, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service with Entergy Power Marketing Corp., and Consumers Energy and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Consumers Energy. Service to the Eligible Customers 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 July 19, 1999, for the Agreement with Entergy and July 21, 1999 for the Agreements with Consumers.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER99–3750–000]

Take notice that on July 27, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Southern Indiana Gas & Electric Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of July 12, 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: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. FirstEnergy System

[Docket No. ER99–3751–000]

Take notice that on July 27, 1999, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Duke Energy Trading and Marketing, L.L.C., the Transmission Customer. 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 date under this Service Agreement is July 21, 1999, for the above mentioned Service Agreement in this filing.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–3752–000]

Take notice that on July 27, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Williams Energy Marketing & Trading Company (WLM), dated July 26, 1999. This Service Agreement specifies that WLM has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and WLM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 26, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Kansas City Power & Light Company

[Docket No. ER99–3753–000]

Take notice that on July 27, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated July 12, 1999, between KCPL and Utilicorp United. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of July 20, 1999 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3754–000]

Take notice that on July 27, 1999, Alliant Energy Corporate Services, Inc. (Alliant), tendered for filing an executed First Amendment to the Service Agreement for Network Integration Transmission Service between Alliant Energy Corporate Service, Inc., and Wisconsin Public Power, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of June 1, 1997 for the filed Amendment. Alliant Energy Corporate Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Turner Energy, L.L.C.

[Docket No. ER99–3755–000]

Take notice that on July 27, 1999, Turner Energy, L.L.C., tendered for filing notice of cancellation of Turner Electric Energy, L.L.C.'s FERC Rate Schedule No. 1.

Turner Energy, L.L.C., request that the cancellation or termination be effective as of December 31, 1998.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Energy Corporation

[Docket No. ER99–3756–000]

Take notice that on July 27, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Entergy Power Marketing Corp., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 20, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. California Independent System Operator Corporation

[Docket No. ER99–3757–000]

Take notice that on July 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Strategic Energy, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on Strategic Energy, L.L.C., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective July 15, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Niagara Mohawk Power Corporation

[Docket No. ER99–3758–000]

Take notice that on July 27, 1999, Niagara Mohawk Power Corporation, tendered for filing its Interconnection Agreement with independent power producer Onondaga Cogeneration Limited Partnership. The Interconnection Agreement governs the interconnection between Niagara

Mohawk's transmission system and Carr Street's East Syracuse, New York facility.

Copies of the filing were served upon Carr Street and the New York Public Service Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Entergy Services, Inc.

[Docket No. ER99–3759–000]

Take notice that on July 27, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGS), tendered for filing a Long-Term Market Rate Service Agreement between EGS and the Cities of Erath, Louisiana and Kaplan, Louisiana for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER99–3760–000]

Take notice that on July 27, 1999, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (the Entergy Operating Companies), tendered for filing a revised form of Network Integration Transmission Service Agreement between Entergy Services and Entergy Services acting as agent for the Entergy Operating Companies.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. GEN–SYS Energy

[Docket No. ER99–3780–000]

Take notice that on July 27, 1999, GEN–SYS Energy tendered for filing a revised market-based rate schedule for the sale of electric energy and capacity at wholesale pursuant to negotiated agreements pursuant to the Commission's May 5, 1999 order issued in Docket EC99–61–000.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. CSW Power Marketing, Inc., Avista Corporation, Western Resources, Inc., Consolidated Edison Company of New York, Inc., Old Dominion Electric Cooperative, Milford Power Limited Partnership, Otter Tail Power Company, Southern Energy NY-Gen, L.L.C., Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., Montana-Dakota Utilities Co., Commonwealth Edison Company

[Docket Nos. ER99–3788–000, ER99–3789–000, ER99–3790–000, ER99–3791–000, ER99–3792–000, ER99–3793–000, ER99–3794–000, ER99–3795–000, ER99–3796–000, ER99–3797–000, ER99–3798–000 and ER99–3799–000]

Take notice that on July 28, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. New York Independent System Operator, Inc.

[Docket No. ES99–50–000]

Take notice that on July 28, 1999, the New York Independent System Operator, Inc. (NYISO) submitted an application under Section 204 of the Federal Power Act for authorization to assume short-term indebtedness. The NYISO intends to establish a $12 million dollar credit facility to meet its working capital and short-term operating needs. The NYISO has requested that the Commission authorize it to establish the credit facility no later than August 25, 1999, so that it may commence operations, as scheduled, on September 1, 1999.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Soyland Power Cooperative, Inc.

[Docket No. ES99–51–000]

Take notice that on July 28, 1999, Soyland Power Cooperative Inc. (Soyland), submitted an application under Section 204 of the Federal Power Act for authorization to enter into Irrevocable Letters of Credit in an amount not to exceed $7,325,000. The Applicant also requested exemption from the competitive bidding and negotiated offer requirements. Soyland requests expedited treatment for its application.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Southwestern Public Service Company v. El Paso Electric Company

[Docket No. OA96–200–008]

Take notice that on July 26, 1999, El Paso Electric Company (EPE or Company) filed a letter dated July 20, 1999, from them to Southwestern Public Service Company (SPS) showing the results of EPE's recent re-evaluation of certain previous requests of SPS for firm transmission service.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20278 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–187–000, et al.]

Entergy Nuclear Holding Company, No. 1, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 29, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Holding Company No. 1, Inc.

[Docket No. EG99–187–000]

Take notice that on July 13, 1999, Entergy Nuclear Holding Company No. 1, Inc. amended its Application for Determination of Exempt Wholesale Generator Status filed on July 9, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Commonwealth Edison Company, Unicom Investment Inc., Edison Mission Energy

[Docket Nos. EC99–96–000 and ER99–3691–000]

Take notice that on July 22, 1999, Commonwealth Edison Company (ComEd), Unicom Investment Inc. (UII), and Edison Mission Energy (Mission) (collectively, the Parties), filed an application under Section 203 of the Federal Power Act for authorization for the sale by ComEd of its fossil generating facilities to a special purpose subsidiary of Mission. On the same date, the Parties filed under Section 205 of the Federal Power Act forms of Facilities Agreements that ComEd and Mission will enter into to govern interconnection and operations subsequent to the sale by ComEd to Mission.

ComEd, UII, and Mission, request the Commission to allow the Facilities Agreements to become effective upon closing of the sale transaction, which the parties expect to occur on or shortly after September 30, 1999.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Sithe Energies, Inc., Sithe Pennsylvania Holdings LLC, Sithe New Jersey Holdings LLC, Sithe Maryland Holdings LLC, York Haven Power Company

[Docket No. EC99–97–000]

Take notice that on July 22, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as and collectively referred to as GPU Energy), Sithe Energies, Inc. (Sithe), and Sithe affiliates Sithe Pennsylvania Holdings LLC, Sithe New Jersey Holdings LLC, Sithe Maryland Holdings LLC and York Haven Power Company submitted for filing an application pursuant to Section 203 of the Federal Power Act (FPA) concerning both the sale of substantially all of GPU Energy's non-nuclear generating facilities to the above-mentioned Sithe affiliates and the related corporate reorganization of entities within the Sithe corporate family that are subject to the Commission's jurisdiction under Section 205 of the FPA.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, AmerGen Energy Company L.L.C.

[Docket Nos. EC99–98–000 and ER99–3804–000]

Take notice that on July 23, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), New York State Electric 7 Gas Corporation (NYSEG) and AmerGen Energy Company, LLC (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain limited jurisdictional facilities associated with the sale of Niagara Mohawk and NYSEG of their interests in the Nine Mile Point Unit Nos. 1 and 2 nuclear gathering facilities located in the Town of Scriba, Oswego County, New York.

The Applicants have served copies of this filing on the New York Public Service Commission.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Illinova Corporation, Dynegy Inc.

[Docket No. EC99–99–000]

Take notice that on July 23, 1999, Illinova Corporation (Illinova) and Dynegy Inc. (Dynegy), tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994 & Supp. 1998) and Part 33 of the Commission's Regulations, 18 CFR 33.1, a Joint Application for Approval of Merger and Request for Expedited Consideration.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company, Nevada Power Company

[Docket No. EC99–100–000]

Take notice that on July 23, 1999, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 203 of the Federal Power Act, a Joint Application for Authorization of Transfer of Control Over Transmission Facilities. This application intended to transfer control over the Applicants' transmission facilities to the Mountain West Independent System Administrator (Mountain West) as contemplated in the related filing in Docket No. ER99–3719–000.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Energy Alternatives, Inc.

[Docket No. EG99–200–000]

Take notice that on July 21, 1999, Energy Alternatives, Inc. (Energy Alternatives) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Energy Alternatives, a Minnesota corporation, is a wholly-owned subsidiary of Midwest Energy Services, Inc., a Minnesota corporation, which is a wholly-owned subsidiary of Dakota Electric Association, a Minnesota cooperative corporation, which owns and operates an electric distribution system.

Energy Alternatives will own and operate generating facilities with a nominal capacity of 20 MW located in distribution substations near the cities of Lakeville, Miesville, and Hastings, Minnesota and in the townships of Byllesby and Castle Rock in Dakota County, Minnesota, consisting of ten 2 MW Caterpillar diesel reciprocating engine generator sets, five 480 volt/12,470 volt step up transformers, and associated circuit breakers. The facilities will be interconnected with the distribution system of Dakota Electric Association.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. COSI Coldwater, Inc.

[Docket No. EG99–204–000]

Take notice that on July 27, 1999, COSI Coldwater, Inc. (Applicant), with its principal office at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facilities are located on more than 20 rivers and streams throughout upstate New York and consist of 72 hydroelectric generating plants that have a combined capacity of approximately 660 MW. Electric energy produced by the Facilities is sold exclusively at wholesale.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. COSI Carr St., Inc.

[Docket No. EG99–205–000]

Take notice that on July 27, 1999, COSI Carr St., Inc. (Applicant), with its principal office at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will provide operation and maintenance services to the East Syracuse Station (the Facility) an approximately 101 MW natural gas-fired combined-cycle cogeneration facility, located in East Syracuse, New York. Electric energy produced by the Facility is sold exclusively at wholesale.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Nordic Electric, L.L.C., Con Edison Solutions, Inc., AC Power Corporation, Sparc, L.L.C., Agway Energy Services, Inc., Total Gas & Electric, Inc., Metro Energy Group, LLC, Shell Energy Services Company, L.L.C.

[Docket No. ER96–127–008, ER97–705–009, ER97–2867–008, ER98–2671–002, ER97–4186–007, ER97–4202–008, ER99–801–001 and ER99–2109–001]

Take notice that on July 23, 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. CoEnergy Trading Company, MAC Power Marketing, L.L.C., New Millennium Energy Corporation, Spokane Energy, L.L.C.

[Docket No. ER96–1040–015, ER98–575–004, ER97–2681–006 and ER98–4336–003]

Take notice that on July 22, 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

12. DukeSolutions

[Docket No. ER98–3813–004]

Take notice that on July 21, 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 web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

13. Wisconsin Electric Power Company

[Docket No. ER99–2900–000]

Take notice that on July 23, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as directed in the July 2, 1999 letter order in this docket.

Wisconsin Electric respectfully requests an effective date June 1, 1999. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on all current customers under the Coordination Sales Tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Dayton Power and Light Company

[Docket No. ER99–3684–000]

Take notice that on July 22, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing TXU Energy Trading Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon TXU Energy Trading Company and the Public Utilities Commission of Ohio.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3685–000]

Take notice that on July 22, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 25 to add Ameren Energy, Inc., (Customer) to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of June 21, 1999, to Ameren Energy, Inc..

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. The United Illuminating Company

[Docket No. ER99–3686–000]

Take notice that on July 22, 1999, The United Illuminating Company (UI), tendered for filing for informational purposes all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period November 1, 1998, through April 30, 1999.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Indiana Gas and Electric Company

[Docket No. ER99–3687–0000]

Take notice that on July 22, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreement concerning the provision of electric service to Allegheny Power Service Corporation, as a umbrella-term service agreement under its market-based Wholesale Power Sales Tariff.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER99–3688–000]

Take notice that on July 22, 1999, Arizona Public Service Company (APS), tendered for filing revised Exhibits A and C to APS-FERC Rate Schedule No. 225 between APS and Citizens Utilities Company (Citizens).

Current rate levels are unaffected, revenue levels are unchanged from

those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER99–3689–000]

Take notice that on July 22, 1999, Cinergy Services, Inc. (Cinergy), acting as agent for and on behalf of The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc., and Cleveland Public Power (CPP), tendered for filing an executed Letter Amendment to the Third Party Limited Term Agreement. This Agreement has been designated by Federal Energy Regulatory Commission (FERC) as CG&E Rate Schedule FERC No. 47.

The Letter Amendment provides that CG&E will only use firm transmission service through the American Power System and CPP will reimburse CG&E for the additional cost.

Cinergy and CPP are requesting an effective date of one day after this filing.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Alliance Energy Services Partnership

[Docket No. ER99–3690–000]

Take notice that on July 22, 1999, Alliance Energy Services Partnership (AESP), pursuant to section 35.15 of the Commission's Regulations, tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1.

AESP has requested an effective date for the proposed rate schedule cancellation of July 23, 1999. Accordingly, AESP requests waiver of the 60-day prior notice requirement.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Sithe New Jersey Holdings LLC, Sithe Pennsylvania Holdings LLC, Sithe Maryland Holdings LLC, Sithe Power Marketing, L.P. Sithe Energies, Inc.

[Docket No. ER99–3692–000]

Take notice that on July 22, 1999, Sithe New Jersey Holdings LLC and Sithe Pennsylvania Holdings LLC (together Applicants), tendered for filing a petition for Commission acceptance of proposed rate schedules. Applicants request authority to make wholesale power sales, including energy and capacity, at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

The Applicants intend to engage in wholesale power sales. The Applicants do not own or control and are not affiliated with any entity that owns or controls electric transmission or distribution facilities in the United States. Applicants further state that it is not affiliated with any franchised electric utility in the Untied States. Applicants conclude that any interests that its affiliates have in domestic electric generation facilities do not raise any generation market power concerns.

Applicants request that the tendered rate schedules become effective as of closing of a divestiture transaction with Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. The closing is anticipated for September of 1999.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Midwest Generation, LLC

[Docket No. ER99–3693–000]

Take notice that on July 22, 1999, Midwest Generation, LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed market-based rate tariff; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect subsidiary of Edison International.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Southwest Power Pool

[Docket No. ER99–3694–000]

Take notice that on July 22, 1999, Southwest Power Pool (SPP), tendered for filing four service agreements for point-to-point transmission service and loss compensation service under the SPP Tariff with Western Resources Generation Services (Western Resources) and Public Service Company of Colorado (PSCo).

SPP requests an effective date of July 1, 1999, for these agreements.

Copies of this filing were served upon Western Resources and PSCo.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER99–3695–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Engelhard Power Marketing, Inc. (Engelhard).

A copy of the filing was served upon Engelhard.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Energy, Inc.

[Docket No. ER99–3696–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Enron Power Marketing, Inc. (EPMI).

A copy of the filing was served upon EPMI.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER99–3697–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Heartland Energy Services (Heartland).

A copy of the filing was served upon Heartland.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Puget Sound Energy, Inc.

[Docket No. ER99–3698–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Hetch-Hetchy Water & Power (Hetch-Hetchy).

A copy of the filing was served upon Hetch-Hetchy.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER99–3699–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff,

First Revised Volume No. 8, with Illinova Energy Partners, Inc. (Illinova).

A copy of the filing was served upon Illinova.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Puget Sound Energy, Inc.

[Docket No. ER99–3700–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Entergy Electric System (Entergy).

A copy of the filing was served upon Entergy.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Puget Sound Energy, Inc.

[Docket No. ER99–3701–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Engage Energy US, L.P. (Engage).

A copy of the filing was served upon Engage.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Rochester Gas and Electric Corporation

[Docket No. ER99–3702–000]

Take notice that on July 22, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and TransAlta Energy Marketing (U.S.) Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553–000 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 19, 1999, for TransAlta Energy Marketing (U.S.) Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Puget Sound Energy, Inc.

[Docket No. ER99–3703–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Idaho Power Company (IPC).

A copy of the filing was served upon IPC.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Rochester Gas and Electric Corporation

[Docket No. ER99–3704–000]

Take notice that on July 22, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and American Electric Power Service Corporation. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553–000 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 1, 1999, for American Electric Power Service Corporation's Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Metropolitan Chicago Healthcare Council—Shared Services, Inc.

[Docket No. ER99–3705–000]

Take notice that on July 22, 1999, Metropolitan Chicago Healthcare Council—Shared Services, Inc. (MCHC—Shared Services, Inc.), tendered for filing its petition to the Commission for acceptance of MCHC—Shared Services, Inc.'s Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission Regulations.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER99–3706–000]

Take notice that on July 22, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and OGE Energy Resources, Inc. (OERI), replacing the unexecuted service agreement filed on September 4, 1998 under Docket No. ER99–170–000 per COC FERC Electric Power Sales Tariff, Original Volume No. 4, which has been replaced by the COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6–CB.

COC and OERI are requesting an effective date of one day after the original filing in Docket No. ER99–170–000.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Northeast Utilities Service Company

[Docket No. ER99–3708–000]

Take notice that on July 23, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Consolidated Edison Energy, Inc. (CEEI) under the NU System Companies' Sale for Resale Tariff No. 7 Market Based Rates.

NUSCO states that a copy of this filing has been mailed to CEEI.

NUSCO requests that the Service Agreement become effective July 1, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Northeast Utilities Service Company

[Docket No. ER99–3709–000]

Take notice that on July 23, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Statoil Energy Trading, Inc. (Statoil) under the NU System Companies' Sale for Resale Tariff No. 7 Market Based Rates.

NUSCO states that a copy of this filing has been mailed to Statoil.

NUSCO requests that the Service Agreement become effective July 1, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Southwestern Public Service Company

[Docket No. ER99–3710–000]

Take notice that on July 23, 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 Tenaska Power Services Company (Tenaska). This umbrella service agreement provides for

Southwestern's sale and Tenaska's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Pennsylvania Electric Company

[Docket No. ER99–3711–000]

Take notice that on July 23, 1999, Pennsylvania Electric Company (doing business as and referred to as GPU Energy), tendered for filing the First Amended and Restated Interconnection Agreement by and between The Cleveland Electric Illuminating Company (CEI) and Pennsylvania Electric Company (Agreement). The Agreement is associated with the sale of GPU Energy's 20% interest in the Seneca Pumped Storage Generating Station (Seneca) to CEI.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Pacific Gas and Electric Company

[Docket No. ER99–3713–000]

Take notice that on July 23, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing an Interconnection Agreement Between Pacific Gas and Electric Company and Fresno Irrigation District (Fresno), dated May 28, 1999. The Interconnection Agreement (IA or Agreement) establishes the terms and conditions under which PG&E will provide electric system interconnection between PG&E and Fresno. In its filing letter, PG&E has explained that the IA in this docket is identical to the Interconnection Agreement pending before the Commission in Laguna Irrigation District, Docket No. EL98–46–000 and related Docket No. ER99–3145–000, with the exception of the contents of Appendix A (specifying the points of interconnection) and the name of the Irrigation District. PG&E also has explained that the IA contains a reservation of rights with respect to disputes arising under the FPA.

Copies of this filing have been served upon Fresno and the California Public Utilities Commission.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Duquesne Light Company

[Docket No. ER99–3714–000]

Take notice that on July 23, 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 Aquila Energy Marketing Corporation (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 24, 1998.

Copies of this filing were served upon Customer.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3715–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment No. 2 to Supplement No. 8 to the Market Rate Tariff and Amendment No. 2 to Supplement No. 33 to the Standard Generation Service Tariff to incorporate Netting Agreements with New Energy Ventures, Inc. into the tariff provisions.

Allegheny Power requests a waiver of notice requirements to make the Amendments effective as of the effective dates therein, May 28, 1999 for Amendment No. 2 to Supplement No. 33 and June 2, 1999, for Amendment No. 2 to Supplement No. 8.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3716–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 34 to the Standard Generation Service Tariff to incorporate Netting Agreements with Penn Power Energy into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, July 13, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

44. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3717–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 3 to the Market Rate Tariff and Amendment Nos. 1 and 2 to Supplement No. 32 to the Standard Generation Service Tariff to incorporate Netting Agreements with Strategic Energy, L.L.C., into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, July 13, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

45. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3718–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 22 to the Standard Generation Service Tariff to incorporate Netting Agreements with American Energy Trading, Inc., into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, July 7, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

46. Central Vermont Public Service Corporation

[Docket No. ER99–3723–000]

Take notice that on July 23, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Energy Atlantic, L.L.C., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on July 26, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

47. Bangor Hydro-Electric Company, Rochester Gas and Electric Corporation

[Docket No. ER99–3732–000 and ER99–3734–000]

Take notice that on July 23, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending, June 30, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

48. Cadillac Renewable Energy LLC

[Docket No. ER99–3733–000]

Take notice that on July 23, 1999, Cadillac Renewable Energy LLC filed its quarterly report for the quarter ending March 31, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20250 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant-Prepared Environmental Assessment Using the Alternative Licensing Process

August 2, 1999.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 487.

c. *Applicant:* PP&L, Inc.

d. *Name of Project:* Wallenpaupack.

e. *Location:* On the Wallenpaupack Creek and Lackawaxen River, near the Borough of Hawley and the City of Scranton, in Wayne and Pike Counties, Pennsylvania. The project would not utilize federal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Gary Petrewski, PP&L, Inc., Two North Ninth Street (GENN5), Allentown, PA 18101–1179, (610) 774–4759.

h. *FERC Contact:* Any questions on this notice an the scoping process should be addressed to Patrick Murphy, E-mail address, patrick.murphyferc.fed.us, or telephone (202) 219–2659.

i. *Deadlines for Filing Scoping Comments:* October 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20416.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Project:* The project consists of an 870-foot-long, 67 foot-high concrete dam with a center spillway equipped with two 67.5-foot-long by 14-foot-high steel roller gates; a 13-mile-long, 5,700 acre reservoir at a full pool elevation of 1,190 feet msl; an 18,000-foot-long, 14-foot-diameter pipeline connecting the dam with the powerhouse; a powerhouse containing two generating units with a total installed capacity of 40,000 kW; and other appurtenances.

k. *Scoping Process:* PP&L, Inc. (PP&L) intends to use the Federal Energy Regulatory Commission's (Commission) alternative licensing procedures (ALP). Under the ALP, PP&L will prepare an Applicant Prepared Envirnmental Assessment (APEA) and license application for the Wallenpaupack Project.

On May 4, 1999, PP&L requested the Commission's approval to use the ALP. The Commission issued a notice of this request on June 25, 1999, with comments due by July 25, 1999. After receipt of comments on this notice, the Commission will issue an order addressing PP&L's request for approval to use the ALP. PP&L expects to file with the Commission, the APEA and license application for the Wallenpaupack Project by September 30, 1992. The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meeting identified below, and to solicit your scoping comments.

Scoping Meeting

PP&L and the Commission staff will hold a public scoping meeting to help

us identify the scope of issues to be addressed in the APEA. In addition to the public scoping meeting, PP&L is holding an ''open house'' that will feature information on project operation and existing project facilities as well as guided tours of the dam and lake. The open house is an ideal opportunity to meet the PP&L staff and informally discuss issues relating to the relicensing of the Lake Wallenpaupack Project.

Open House

Wednesday, September 1, 1999, 10:00 a.m.–3:00 p.m., Lake Wallenpaupack Conference Center, Hawley, PA

Evening Public Meeting

Wednesday, September 1, 1999, 7:00 p.m., Lake Wallenpaupack Area High School, Route 6, Hawley, PA

To help focus discussion, PP&L will mail Scoping Document 1 (SD1) outlining the subject areas to be addressed in the APEA to the parties on the PP&L mailing list. Copies of SD1 will also be available at the scoping meeting. Additionally, PP&L will mail an initial information package (IIP) that provides an in-depth description of the Wallenpaupack Project and surrounding environment.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping meeting.

Objectives

At the scoping meeting, PP&L will, with Commission staff's assistance: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA; (4) determine the resource issues to be addressed in the APEA; and (5) identify those resources that require a detailed study as well as those issues that do not require a detailed analysis.

Procedures

The meeting will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the public meeting and to assist staff in defining and clarifying the issues to be addressed in the APEA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20277 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed July 26, 1999 Through July 30, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990261, Draft EIS, USN, Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA), To Improved Capability to Detect Quieter and Harder-to-Find Foreign Submarines, Implementation, Due: October 28, 1999, Contact: Joseph Johnson (703) 601–1687. Published FR–06–11–99—Correction to Contact Person Name and Telephone.

EIS No. 990266, Draft EIS, AFS, WY, Squirrel Meadows—Grand Targhee Land Exchange Proposal, Implementation, Targhee National Forest, Teton County, WY, Due: September 20, 1999, Contact: Patty Bates (208) 354–2312.

EIS No. 990267, Final EIS, NRS, MN, Snake River Watershed Plan, Watershed Protection and Flood Prevention, NPDES Permit and COE Section 404 Permit, Marshall Pennington and Polk Counties, MN, Due: September 07, 1999, Contact: William Hunt (651) 602–7854.

EIS No. 990268, Draft EIS, NPS, AK, Spruce Creek Access Project, Construct and Operation. Denali National Park and Preserve, NPDES and COE Section 404 Permits, AK, Due: September 30, 1999, Contact: Nancy Swantton (907) 683–9500.

5**EIS No. 990269, Final EIS, COE, CA,** Morrison Creek Mining Reach Downstream (South) of Jackson Highway, Mining and Reclamation Project, COE Section 404 Permit Issuance, Sacramento County, CA, Due: September 07, 1999, Contact: Larry Vinzant (916) 557–5263.

EIS No. 990270, Draft EIS, AFS, AK, Skipping Cow Timber Sale, Harvesting Timber, South Half of Zarembo Island, Tongass National Forest, Wrangell, Contact: Jerry Jordan (907) 974–2323.

EIS No. 990271, Draft EIS, COE, FL, Herbert Hoover Dike Major Rehabilitation Evaluation Study, Improvements to the Breach of Reach One, Lake Okeechobee, FL, Due: September 24, 1999, Contact: Mark Ziminske (904) 232–1786.

EIS No. 990272, Final EIS, AFS, AZ, Grand Canyon/Tusayan Growth Area Improvements, General Management Plan (GMP), Special-Use-Permit, Approvals and Licenses Issuance, Coconino County, AZ, Due: September 07, 1999, Contact: R. Dennis Lund (520) 635–8200.

EIS No. 990273, Final EIS, GSA, TN, Volunteer Army Ammunition Plant, Disposal and Transfer Ownership of Property to Other Federal Agencies and Private Entities, City of Chattanooga's, Hamilton County, TN, Due: September 07, 1999, Contact: Phil Youngberg (404) 331–1831.

EIS No. 990274, Draft EIS, BLM, NV, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV, Due: October 05, 1999, Contact: Gary Foulkes (775) 635–4060.

EIS No. 990275, Draft EIS, FHW, ND, Interstate 29 Reconstruction Project, Improvements from Rose Coulee to Cass County Road No. 20, Funding, City of Fargo, ND, Due: September 20, 1999, Contact: Mr. J. Michael Bowen (701) 328–9550.

Amended Notices

EIS No. 990252, Final Supplement, FAA, IN, Indianapolis International Airport Master Plan Development, Updated/New Information, Establishing New Air Traffic Procedures to Restore, Construct and Operate, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and US COE Section 404 Permit, Marion County, IN, Due: September 07, 1999, Contact: George M. Bebble (847) 294–7832. Published FR–07–16–99—The Agency inadvertently omitted the Executive Summary from the Final Supplemental EIS. Because of the Omission the Agency Extend the Comment Period from 8–16–99 to 9–7–99. Also, Changed the Contact Person Name and Phone.

Dated: August 3, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–20330 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 12, 1999 Through July 16, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–J65306–MT Rating EC2, Nevada/Dalton Project, Implementation of Fire Treatment, Timber Harvest, Travel Management of Road, Helena National Forest, Lincoln Ranger District, Lewis & Clark and Powell Counties, MT.

Summary: EPA expressed environmental concerns regarding lack of an air quality impact analysis to determine impacts from prescribed burning, the lack of information and commitment to carrying out a monitoring program to identify impacts from the implementation activities and the potential drift of herbicides to aquatic areas from aerial application. EPA noted that proposed actions need to be consistent with the State of Montana's TMDL development.

ERP No. D–FAA–K51038–CA Rating EO2, San Jose International Airport Master Plan Update, Improvements include Extension of Runway 12R/30L from 10,200 ft to 11,000 ft; Extension of Runway 12L/30R, Airport Layout Plan, City of San Jose, Santa Clara County, CA.

Summary: EPA expressed environmental objections due to a lack of full disclosure of noise impacts. EPA also suggested that opportunities may exist to reduce the use of hazardous materials, reduce hazardous waste generation, adopt more comprehensive solid waste recycling, reduce the use of pesticides and fertilizers, and protect water quality and groundwater. EPA expressed serious concern about the project's potential air quality impacts, including projected exceedances of a Federal air quality standard and projected emissions increases for at least eight hazardous air pollutants.

ERP No. DA–FHW–K40105–CA Rating LO, Devil's Slide Bypass Improvements, CA–1 To Half Moon Bay Airport to Linda Mar Boulevard, Updated Information, Funding and COE Section 404 Permit, Pacifica and San Mateo Counties, CA.

Summary: EPA reviewed the Devil's Slide Draft Supplemental EIS, expressed a lack of objections to the project.

ERP No. DS–DOE–A09828–00 Rating EC2, Surplus Plutonium Disposition (DOE/EIS–0283–DS) for Siting, New and Revised Information, Construction and Operation of three facilities for Plutonium Disposition, Possible Sites Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX and WA.

Summary: EPA continues to express concerns regarding effects on water and ecological resources and the presence of contamination in the existing environment and lack of assurance that the proposed operations would not lead to further adverse impacts.

ERP No. DS–FHW–K40220–CA Rating **3, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Updated and Additional Information, Funding and COE Section 404 Permit, San Diego County, CA.

Summary: EPA determined that the SDEIS was greatly limited in it's discussion of potentially significant impact from the direct, indirect, secondary, and cumulative impacts to wetlands, waters of the U.S., water quality, air quality, and biological resources. EPA recommends that a supplemental EIS be prepared and circulated for comment.

Final EISs

ERP No. F–BLM–K65217–AZ Ray Land Exchange/Plan Amendment, Implementation, Exchange of Federal Lands for Public Lands, Pinal, Gila and Mohave Counties, AZ.

Summary: EPA continues to object to the proposed project based on its potential to cause significant, continued degradation of resources in the project area and has requested appropriate mitigation of impacts to wildlife, habitat, and water resources.

ERP No. F–FAA–D51026–00 Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), To consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA, DC and MD.

Summary: EPA's previous concerns have been adequately addressed therefore, EPA has no objection to the action.

Other

ERP No. LF–AFS–K65185–CA Tahoe National Forest and Portion of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA.

Summary: EPA continues to object to the Forest Service's decision to designate the Downieville complex or to actively seek Research Natural Area or Special Interest Area designation to ensure protection of its acknowledged, exceptional ecosystem values. EPA support the proposed designation of Canyon Creek, lower South Yuba River, and the North Yuba River.

Dated: August 3, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–20331 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34191; FRL–6093–8]

Organophosphate Pesticide; Pesticide Registration Notice; Availability for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability for public comment of a Pesticide Registration Notice that presents EPA's proposed approach for managing risks from organophosphate pesticides to occupational users. The approach described in this notice applies to both workers and handlers as defined by the Worker Protection Standard (WPS), and other persons not specifically covered by WPS, who nonetheless perform similar activities and are exposed to pesticides in a similar manner. In general, this proposed approach provides for baseline protective measures for all occupational situations where these measures are feasible and where current risk assessments show that they are necessary, including closed mixing and loading systems, enclosed cab equipment or equivalent protective clothing, and increased reentry intervals. Further, this notice outlines the steps that EPA will take to address situations when the baseline mitigation measures are not feasible, or situations where maximum feasible mitigation is

still inadequate to protect occupational users.

DATES: Comments, identified by docket control number OPP–34191, must be received by EPA on or before October 5, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34191 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Linda Werrell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (703) 308–8033 and fax number: (703) 308–8041; e-mail address: werrell.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

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

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

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To obtain electronic copies of the proposed Pesticide Regulation Notice mentioned in this notice, you can go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/ pesticides/op/fedreg.htm. You may access information about organophosphate pesticides at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34191. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34191 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption.Electronic submissions will be accepted in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34191. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.

• Describe any assumptions that you used.
• Provide copies of any technical information and/or data you used that support your views.
• If you estimate potential burden or costs, explain how you arrived at the estimate.
• Provide specific examples to illustrate your concerns.
• Offer alternative ways to improve the rule or collection activity.
• Make sure to submit your comments by the deadline in this notice.
• At the beginning of your comments, be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. Are There Issues on Which EPA is Particularly Interested in Receiving Comment?

Comments are encouraged on any aspect of the Pesticide Registration Notice mentioned in this notice. EPA is particularly interested in comments on the following matters:

1. Is EPA's definition of closed systems and closed cabs too broad or too specific? Should EPA adopt the same standards as California for closed systems?

2. What technologies are available or under development to reduce exposure to occupational users in green houses and during orchard applications? Are there other agricultural applications for which closed cabs are not currently feasible?

3. The Pesticide Registration Notice gives one example of the industry moving toward automated or technological replacements for human occupational users (the substitution of Geographic Positioning Systems (GPS) or mechanical flaggers for human flaggers in aerial applications). Are there other examples where agricultural work functions could be automated ?

4. In many cases, existing re-entry intervals (REIs) for organophosphate pesticide uses may be inadequate. Where feasible, EPA will seek to extend re-entry intervals, however, there are practical limits on the length of re-entry intervals. What other measures should EPA consider to protect occupational users re-entering treated fields? Is testing/monitoring of plant residues prior to harvest practical?

5. For retained uses where exposure to occupational users is still a concern, EPA may require biological monitoring for occupational user populations of concern. As many organophosphate pesticide uses are of concern, what is the most efficient approach to monitoring occupational user populations?

IV. What Action is EPA Taking in this Notice?

This notice announces the availability for public comment of a Pesticide Registration Notice that presents EPA's proposed approach for managing risks from organophosphate pesticides to occupational users. The approach described in this notice applies to both workers and handlers as defined by the Worker Protection Standard (WPS), and other persons not specifically covered by WPS, who nonetheless perform similar activities and are exposed to pesticides in a similar manner. The proposed risk management approach that is outlined in this Pesticide Registration Notice would be used in developing the individual organophosphate pesticide occupational risk management decisions, which will be proposed for public comment as part of the pilot public participation process that EPA and Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

The Agency is proposing this approach for managing risk to occupational users of organophosphate pesticide products at this time because the organophosphate pesticide occupational risk assessments developed thus far indicate, with few exceptions, that risk management measures beyond those specified by the Worker Protection Standard (40 CFR part 170) will be needed to adequately protect occupational users of these products. In many cases, the organophosphate pesticide risk assessments show that even when the maximum feasible protective clothing and engineering controls are used, risks to occupational users still exceed the Agency's levels of concern. In such instances, EPA is required by FIFRA to weigh these risks against the benefits of the pesticide's use. The Agency is outlining its proposed decision process in this notice because early notification to registrants will help to ensure that occupational risk management decisions for the organophosphate pesticides will be approached consistently and implemented equitably. The Agency also believes this early notification will encourage the voluntary adoption of measures to reduce risks to occupational users as soon as possible.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 2, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–20315 Filed 8–5–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34192; FRL–6097–9]

Neurotoxic Pesticides; Availability of Data Call-In Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requiring registrants of neurotoxic pesticides to conduct acute, subchronic, and developmental neurotoxicity studies and submit the results to EPA. These studies are designed to show the effects of a chemical on the nervous system. EPA will issue Data Call-In Notices to registrants of all neurotoxic pesticides in phases over time, beginning with the cholinesterase-inhibiting organophosphates because of their known neurotoxicity concerns. EPA expects to receive the first studies within 2 years. This Data Call-In program was developed with the advice of the Children's Health Advisory Committee and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel.

DATES: The Data Call-In Notice will be available October 5, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34192 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (703) 308–8004 and fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

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

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

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To obtain electronic copies of the Neurotoxicity Data Call-In Notice mentioned in this notice, you can go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/ pesticides/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34192. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34192 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption.Electronic submissions will be accepted in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34192. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

IV. What Action is EPA Taking in this Notice?

EPA is requiring registrants of neurotoxic pesticides to conduct acute, subchronic, and developmental neurotoxicity studies and submit the results to EPA. These studies are designed to show the effects on the nervous system of a chemical with a one-time or very short-term dose (acute), with exposure over an extended period of time (sub-chronic), and before or shortly after birth (developmental). The data developed in response to this Data Call-In will help determine whether or not differences occur because of age or stage of nervous system development. (The differences could be measurable (or quantitative) or descriptive (qualitative)). EPA will use these data in making decisions in the implementation of certain aspects of the Food Quality Protection Act's (FQPA) tolerance-setting process.

EPA is implementing the Data Call-In in phases over the next several months to ensure that data from the highest priority neurotoxic pesticides are called in first and that the laboratory capacity available to pesticide registrants is adequate to perform the studies within the required timeframes. This program to call in data will apply to approximately 140 pesticides. The cholinesterase-inhibiting organophosphates have been selected to be the first chemical class to be called in, based on their known neurotoxicity concerns. EPA expects to receive the first studies within 2 years. This Data Call-In program was developed with the advice of the Children's Health Advisory Committee and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 2, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–20316 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6407–9]

Proposed Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Upper Tenmile Creek Watershed Site, Lewis and Clark County and Jefferson County, Montana

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), concerning the Upper Tenmile Creek Watershed site in Lewis and Clark County and Jefferson County, Montana (Site). The proposed settlement agreement (Agreement) requires the Chapter 7 bankruptcy estates of Pegasus Gold Montana Mining, Inc. (PGMMI) and Pangea Explorations, Inc. (PEI) to transfer an environmental protection easement and dedication of restrictive uses to property within the Basin Creek Mine, located within the Site, to Lewis and Clark County of the benefit of the United States Environmental Protection Agency (EPA). EPA intends to use a portion of the property, known as the Luttrell Pit, for a mine waste repository for abandoned mine removal actions which will be undertaken pursuant to EPA's CERCLA authorities.

The settlement resolves the Estates' CERCLA liability for the Luttrell Pit. Because of the Estates' obligations to reclaim the Basin Creek Mine pursuant to the Montana Metal Mine Reclamation Act, Mont. Code Ann. section 82–4–301 *et seq.*, the State of Montana, acting by and through the Department of Environmental Quality, is a party to the Agreement. Additionally, the Agreement is subject to the approval of the United States Bankruptcy Court, District of Nevada.

DATES: For a period of ten (10) days from the date of publication of this document, the public may submit comments to EPA relating to this proposed settlement.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado, (303) 312–6473. Comments should be addressed to Carol J. Pokorny, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, and should reference the Upper Tenmile Creek Watershed site Basin Creek Mine Agreement.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Enforcement Attorney, at (303) 312–6925.

Dated: July 12, 1999.

Andrew Michael Gaydosh,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 99–20307 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6407–8]

Proposed Agreement and Covenant Not to Sue Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—Upper Tenmile Creek Watershed Site, Lewis and Clark County and Jefferson County, MT

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLE) concerning the Upper Tenmile Creek Watershed Site, in Lewis and Clark and Jefferson Counties, Montana (the ''Site''). Under the Agreement and Covenant Not to Sue (Agreement), Lewis and Clark County will acquire an environmental protection easement to a portion of the Site for the benefit of EPA. Lewis and Clark County does not intend to use the property. EPA intends to use the property as a repository for waste excavated from abandoned miles.

DATES: For a period of ten (10) days from the date of publication of this document, the public may submit comments to EPA relating to the Agreement. Copies of the Agreement may be obtained from the Superfund Records Center at the address listed below.

ADDRESSES: The Agreement is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Carol Pokorny, Technical Enforcement Program, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, and should reference the Upper Tenmile Creek Watershed Site Agreement and Covenant Not to Sue with Lewis and Clark County.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Legal Enforcement Program, at 303/312–6925.

Dated: July 12, 1999.

Andrew Michael Gaydosh,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 99–20308 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Special Executive Session

Date & Time: Wednesday, August 4, 1999, 10:00 a.m.

Place: 999 E Street, NW., Washington, DC

Status: This meeting will be closed to the public pursuant to 11 CFR 2.4(b)(7).

Items To Be Discussed: Matters concerning participation in civil actions or proceedings or arbitration.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–20392 Filed 8–4–99; 11:28 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Distribution of Funds to Address Unmet Needs Resulting From Presidentially Declared Disasters

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA announces the allocation of Fiscal Year (FY) 1999 funds for grants to States to address disaster-related needs not met by Federal disaster relief programs. The amount of $230 million is available to certain States for use in communities that have experienced Presidentially declared major disasters in FY 1998 and/or FY 1999. The funds will be allocated to States (grantees) for distribution in communities affected by the disasters.

EFFECTIVE DATE: This notice is effective August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Director, Program Support Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW, Room 417, Washington, DC 20472, (telephone) 202–646–4621, (facsimile) 202–646–3104, or (email) *robert.shea@fema.gov*.

SUPPLEMENTARY INFORMATION: Congress recently appropriated $230 million to the Federal Emergency Management Agency (FEMA) to address communities' unmet disaster assistance needs for Fiscal Years 1998 and 1999. Congress instructed FEMA to award these funds expeditiously to States for use in eligible communities. Pub. L. 106–31, Emergency Supplemental Appropriations Act for Fiscal Year 1999, requires the publication of a notice governing the allocation and use of these funds.

Authority: Pub. L. 106–31, Emergency Supplemental Appropriations Act for Fiscal Year 1999.

Eligible Applicants

States are to use these funds to benefit communities affected by Presidentially-declared major disasters, including Native American tribes. We surveyed States for their unmet needs related to disasters declared before January 1, 1999. We are currently requesting States to identify unmet needs related to disasters declared between January 1, 1999 and May 21, 1999. The later date is the date of enactment of the appropriations bill that provides the funds for this effort.

State emergency management organizations (grantees) will administer these grants in conjunction with their administration of FEMA disaster assistance programs.

Availability of Funds

We will initially allocate funding to States that meet the following criteria:

- Certain States affected by the January 1998 ice storms;
- Certain States affected by Hurricane Georges;
- States with major disasters declared between October 1, 1998 and January 1, 1999.

These States are: Louisiana, Mississippi, Puerto Rico, Alabama, New York, New Hampshire, Kansas, Washington, Florida, Texas, Vermont, and Missouri.

Allocations The initial allocations are as follows:

State	Disaster No.	Allocation
Alabama	1250	$7,112,000
Florida	1259	2,559,000
Florida [*]	1249	27,337,000
Kansas	1254	7,994,000
Kansas	1258	5,514,000
Louisiana	1246	5,840,000
Mississippi	1251	13,273,000
Missouri	1253	7,029,000
Missouri	1256	4,130,000
New Hampshire	1199	3,937,000
New York	1196	41,668,000
Puerto Rico	1247	15,600,000
Texas	1257	42,108,000
Vermont	1201	481,000
Washington	1252	836,000
Washington	1255	4,247,000
Total		189,665,000

[*] $40,000 of the allocation for disaster number 1249 is designated for the Poarch Band of Creek Indians (Florida).

We will provide an application package to States that receive allocations. States will submit applications to us indicating the proposed use of the funds. Awards will be made, up to the amount of the allocation, after an expedited review of the State application package.

The application will require additional information and data that was used by the States in identifying the amount of their unmet needs in the submission to HUD and FEMA. This additional information and data must be specific and include supporting documentation. To the extent the information and data is deemed insufficient or supports an ineligible activity, the amount of the initial allocation will be reduced accordingly.

Grant Requirements/Use of Funds

The purpose of these funds is to provide to the extent possible for unmet needs that are the direct result of Presidentially declared major disasters in Fiscal Years 1998 and 1999. States (grantees) and subrecipients must use these funds for activities for which there is no available funding through FEMA, the Small Business Administration, or the U.S. Army Corps of Engineers.

The funds can be used only for unmet needs for the purposes of mitigation, buyout assistance, disaster relief, and long-term recovery. We urge States to use funding in all categories in a manner that will reduce future disaster related costs.

The State must administer any funding used for buyouts or mitigation activities by the State consistent with the intent of the Hazard Mitigation Grant Program. For example, States must ensure that mitigation and buy-out activities are cost effective and that the use of acquired properties will be restricted in the same manner as under the Hazard Mitigation Grant Program.

Environmental Review

The State and FEMA will complete an environmental review for all activities. Generally these reviews must be completed before beginning projects. Applicants for funding under this program will be responsible for preparing environmental documentation, conducting appropriate consultation with authoritative State agencies, and forwarding the results of such documentation and consultation to us for final review and approval to enable us to ensure compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other Federal environmental statutes and Executive Orders. Costs to prepare documentation and conduct consultation are eligible project costs and should be included within the budgeted project cost.

Cost Share

Each State must provide an assurance that there will be not less than 25 percent in non-Federal funds, or equivalent value, to match unmet needs funds. Funds provided under this Act

cannot be used as the non-Federal match for other Federal funds nor can other Federal funds be used as the required non-Federal match for these funds.

Allowable Costs

States may use up to 7% of these funds for costs to administer or manage the grant. Administrative and management costs should be included in the State's application. Further guidance on allowable costs for states and subgrantees can be found in Office of Management and Budget (OMB) Circulars on the Cost Principles.

- State and local governments should consult OMB Circular A–87.
- Private Non-Profit organizations should consult OMB Circular A–122.
- Educational institutions should consult OMB Circular A–21.

Reports

States will provide quarterly progress and financial reports to FEMA within 30 days after the end of each Federal quarter. We will include the suggested format for these reports and exact due dates in the application package. The report will include specific information on actual projects funded during that quarter and the needs for which the funds were provided for each of those projects.

Evaluation Process

Our regional offices will review State applications and quarterly progress reports to determine whether activities fall within the four eligible categories and that other Federal disaster relief programs do not already address them.

Remaining Funds

The remaining funds will be allocated to States that have had a Presidentially declared major disaster between January 1, 1999 and May 21, 1999, after we complete our survey of their unmet needs. Those states are: Tennessee, Alabama, Maine, Mississippi, Louisiana, Arkansas, California, Wyoming, Missouri, Georgia, Oklahoma, Kansas, Texas, Colorado, and Iowa.

FEMA will implement a system in which mitigation (including buyout assistance) will be our priority, followed by long-term recovery and other unmet needs generally categorized as disaster relief. States may submit unmet needs in any category, but FEMA will place emphasis on mitigation and buyout assistance. FEMA will determine other unmet needs (disaster relief and long-term recovery) based on State submission. FEMA will ask for reviews by appropriate Federal agencies so as to avoid duplication of existing Federal programs.

Based on the congressional action to place these funds under FEMA's disaster authorities, E.O. 12372 review procedures do not apply.

Application Submission and Deadline

We will mail application packages to States that are allocated funds in this notice. States should complete the application package and return it to the FEMA regional office listed in the material that they receive.

Applications are due on or before 30 calendar days from the receipt of the application package sent by FEMA. Unless we receive a request for an extension, States that have not submitted an application by the due date will be considered for the next allocation of funds after this initial allocation is complete.

Dated: August 2, 1999.

James L. Witt,

Director.

[FR Doc. 99–20348 Filed 8–5–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 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. InterWest Bancorp, Inc., Oak Harbor, Washington; to merge with NBT Northwest Bancorp, Tukwila, Washington, and thereby indirectly acquire National Bank of Tukwila, Tukwila, Washington.

Board of Governors of the Federal Reserve System, August 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20259 Filed 8–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, August 11, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20377 Filed 8–4–99; 10:51 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Infectious Diseases (NCID); Meeting

The National Center for Infectious Diseases (NCID), Hepatitis Branch of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Consultant Meeting to Update Recommendations for the Prevention and Control of Blood-Borne and other Pathogens in Hemodialysis Settings.

Times and Dates: 8 a.m.–5 p.m., October 5, 1999; 8 a.m.–5 p.m., October 6, 1999.

Place: Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia, 30030 telephone 404/371–0204.

Status: Open to the public, limited only by the space available. Registration required. See contact person for more information. The meeting room accommodates approximately 150 people.

Purpose: The purpose of this working meeting is to review and discuss draft recommendations that will serve as a resource to individuals and organizations involved in prevention and control of blood-borne and other pathogens in hemodialysis settings.

Matters To Be Discussed: Participants will discuss recommendations for infection control and other practices to prevent transmission of hepatitis B virus, hepatitis C virus, and bacteria such as methicillin-resistant staphylococcus aureus (MRSA) and vancomycin-resistant enterococci (VRE) in hemodialysis settings.

The agenda will include an overview of issues related to prevention of transmission of these agents and management of infected patients in hemodialysis centers and work group sessions on current and updated recommendations for infection control practices including screening, vaccination, standard and dialysis unit precautions, isolation, and cleaning and disinfection.

The participants will consist of representatives from public, private, voluntary and non-governmental organizations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person(s) listed below prior to the opening of the meeting.

Contact Person for More Information: Mr. Wesley Hodgson or Mr. Rob Lyerla, Hepatitis Branch, NCID, CDC, M/S G–37, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–3048.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–20261 Filed 8–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0192]

Agency Information Collection Activities; Announcement of OMB Approval; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Infant Formula Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 17, 1999 (64 FR 26765), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0188 The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: August 2, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–20258 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2535]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer in olefin polymers, adhesives, pressure-sensitive adhesives, and ethylene-vinyl acetate copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4680) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers complying with § 177.1520, adhesives complying with § 175.105, pressure-complying with § 177.1520, adhesives complying with § 175.105, pressure-sensitive adhesives complying with § 175.125 and ethylene-vinyl acetate copolymers complying with § 177.1350 intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 13, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20256 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Amoxicillin Injection for Sheep; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness, target animal safety, and human food safety data that may be used in support of a new animal drug application (NADA) or supplemental NADA for veterinary prescription use of amoxicillin injection for treatment of bacterial pneumonia in sheep. The data, contained in Public Master File (PMF) 5433, were compiled under National Research Support Project-7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Amoxicillin injection, used for the treatment of sheep for bacterial pneumonia due to *Pasteurella* spp. and *Haemophilis* spp., is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, amoxicillin is subject to section 512 of the act (21 U.S.C. 360b), requiring that its uses in sheep be the subject of an approved NADA or supplemental NADA. Sheep are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, Western Region, University of California, Davis, CA 95616, has provided target animal safety, effectiveness, and human food safety data for veterinary prescription use of amoxicillin injection in sheep for treatment of bacterial pneumonia due to *Pasteurella* spp. and *Haemophilis* spp. NRSP–7 did not provide information concerning potential environmental impacts of the manufacturing process. Such information is required upon submission of an application relying on this file to support approval.

Data and information on safety and effectiveness are contained in PMF 5433. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data, data concerning manufacturing methods, facilities, and controls, and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA or supplement may contact Naba K. Das (address above).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information provided in this PMF to support approval of an application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1999.

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–20255 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

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 552(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 MSCDA (U10) NETWORK APPLICATIONS.

Date: August 6, 1999.

Time: 12:30 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

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. 93.209, 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: August 2, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH

[FR Doc. 99–20286 Filed 8–5–99; 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 Special Emphasis Panel Basic Science Research on Female Pelvic Floor Disorders.

Date: August 27–28, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80220.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(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: July 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–20287 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice 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: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 11:30 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 1999.

Time: 10:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Gloria B. Levin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr,nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 17, 1999.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Anthony C. Chung, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 1999.

Anna P. Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20285 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories

will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory voluntarily withdrew from the National Laboratory Certification Program on July 15, 1999: Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

• The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–20360 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a Teleconference Meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in August 1999.

The meeting will include the review, discussion and evaluation of grant applications reviewed by IRGs. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, section 10(d).

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact below whose name and telephone number are listed.

SAMHSA:CSAT:OPCP:NAC:
cgraham:443–8390:07/30/99

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: August 18, 1999.

Place: Center for Substance Abuse Treatment, 5515 Security Lane, 6th Floor Conference Room, Suite 617, Rockville, MD 20852.

Type: CLOSED: August 18, 1999–2–3 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443–8923, and FAX: (301) 480–6077.

This notice is being published less than fifteen days prior to the meeting date, due to urgent needs to meet timing limitation imposed by review and funding cycle.

Dated: August 2, 1999.

Sandi Stephens,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–20253 Filed 8–5–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 29, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–20018 Filed 8–5–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–N–05]

FY 1999 Super Notice of Funding Availability (SuperNOFA); List of High Performing Empowerment Zones and Empowerment Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On February 26, 1999, HUD published its Fiscal Year (FY) 1999 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment programs. In the FY 1999 SuperNOFA, HUD advised that it would publish in the **Federal Register** the list of high performing empowerment zones and enterprise communities. This notices provides that list.

FOR FURTHER INFORMATION CONTACT: For information about the list of high performing empowerment zones and empowerment communities, contact Dennis Kane, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–6339 (this is not a toll-free number).

For information about the programs listed in the SuperNOFA, please contact the office or individual listed in the **FOR FURTHER INFORMATION** portion of the section of the individual programs in the SuperNOFA, published on February 26, 1999 at 64 FR 9618. Individuals with hearing or speech impairments may access HUD telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1999 (64 FR 9618), HUD published its FY 1999 SuperNOFA for HUD's Housing, Community Development, and Empowerment programs. The FY 1999 SuperNOFA announced the availability of approximately $2.4 billion in HUD program funds covering 32 grant programs and program components administered by the following HUD offices: the Office of Community Planning and Development (CPD); the Office of Housing-Federal Housing Administration (FHA); the Office of Public and Indian Housing (PIH); the Office of Policy Development and Research (PD&R); the Office of Fair Housing and Equal Opportunity (FH&EO); and the Office of Lead Hazard Control.

On May 18, 1999 (64 FR 27120), HUD published a notice that, among other things, extended the deadline for certain programs in the SuperNOFA to accommodate areas that were designated disaster areas as a result of the tornados in early May 1999. The May 18, 1999 notice republished for the convenience of the readers the introduction section of the SuperNOFA to reflect updates to programs and application due date changes.

In both the February 26, 1999 SuperNOFA and in the May 18, 1999 extension notice, HUD advised, in the introduction section, that the SuperNOFA application rating system provides for up to two bonus points for eligible activities/projects that the applicant proposes to be located in high performing federally designated Empowerment Zones (EZs) or Enterprise Communities (ECs). HUD also advised that it would publish in the **Federal Register** the list of high performing EZs and ECs.

This notice provides the list of high performing EZ and ECs, both urban and rural.

The list is attached as Appendix A to this notice.

Dated: August 2, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

Appendix A—List of High Performing Empowerment Zones and Enterprise Communities for Purposes of FY 1999 Supernofa Funding Awards

Alabama
- Birmingham EC
- Chambers County EC—Chambers County, Anniston, Alabama

Alaska
- Metlakatla Indian EC

Arizona
- Arizona Border Region EC—Chochise, Santa Cruz, Yuma Counties
- Phoenix EC
- Four Corners EC (Arizona, New Mexico, Utah)

Arkansas
- Pulaski County EC

California
- Central California EC
- Desert Communities EZ
- Huntington Park EC
- Imperial County EC—Imperial County
- Los Angeles EZ
- Oakland EC
- San Diego EC
- San Francisco EC
- Santa Ana EZ
- City of Watsonville/County of Santa Cruz EC—Santa Cruz County

Colorado
- Denver EC

Connecticut

Bridgeport EC
New Haven EZ
New Haven EC
Delaware
Wilmington EC
District of Columbia
Washington EC
Florida
Empowerment Alliance of Southwest Florida EC
Jackson County, Florida EC—Jackson County
Miami/Miami Dade EZ
Miami EC
Tampa EC
Georgia
Albany EC
Atlanta EZ
Central Savannah River Area EC—Burke, Hancock, Jefferson, McDuffie, Tallafero, Warren Counties
Southwest Georgia United EZ
Hawaii
Molokai EC
Illinois
Chicago EZ
East St. Louis EC
Southernmost Illinois Delta EZ
St. Louis MO/East St. Louis IL EZ
Springfield EC
Indiana
Gary EZ
Indianapolis EC
Town of Austin EC
Iowa
Des Moines EC
Kansas
Kansas City MO/Kansas City KS EC
Wichita County EC
Kentucky
Bowling Green EC
Kentucky Highlands EZ—Clinton, Jackson, Wayne Counties
Louisville EC
Scott/McReary Area EC—Scott (TN), McCreary (KY) Counties
Louisiana
Macon Ridge EC—Catahoula, Concordia, Franklin, Morehouse, Tensas Counties
New Orleans EC
Northeast Louisiana Delta EC—Madison County
Oachita Parish EC
Maine
City of Lewiston EC
Maryland
Baltimore EZ
Massachusetts
Boston EZ
Boston EC
Lowell EC
Springfield EC
Michigan
Clare County EC
Detroit EZ
Flint EC
Muskegon EC
Minnesota
Minneapolis EZ
Minneapolis EC
St. Paul EC
Missouri
City of East Prairie/Mississippi County EC—Mississippi County
Kansas City MO/Kansas City KS EC
St. Louis MO/East St. Louis IL EZ
St. Louis EC
Mississippi
North Delta EC—Panola, Quitman, Tallahatchie Counties
Montana
Fort Peck Assiniboine and Sioux Tribe EC
Nebraska
Omaha EC
Nevada
Las Vegas EC
New Hampshire
Manchester EC
New Jersey
Cumberland County EZ
Newark EC
Philadelphia PA/Camden NJ EZ
New Mexico
Albuquerque EC
City of Deming EC
Four Corners EC (Arizona, New Mexico, Utah)
La Jicarita EC—Mora, Rio Arriba, Taos Counties
New York
Albany/Troy/Schenectady EC
Buffalo EC
New York EZ
Newburgh/Kingston EC
Rochester EC
North Carolina
Charlotte EC
Halifax, Edgecombe, Wilson EC—Halifax, Edgecombe, Wilson Counties
Robeson County EC—Robeson County
North Dakota
Griggs-Steele EZ
Ohio
Akron EC
Cincinnati EZ
Cleveland EZ
Columbus EZ
Columbus EC
Greater Portsmouth EC—Scioto County
Huntington WV/Ironton OH EZ
Oklahoma
Oklahoma City EC
Southeast Oklahoma EC—Choctaw, McCurtain Counties
Tri-County Indian Nations EC
Oregon
Josephine County EC—Josephine County
Portland EC
Pennsylvania
City of Lock Haven Federal EC—Clinton County
Fayette EC
Harrisburg EC
Philadelphia PA/Camden NJ EZ
Pittsburgh EC
Rhode Island
Providence EC
South Carolina
Allendale ALIVE EC
Charleston/North Charleston EC
Columbia/Sumter EZ
Willliamsburg, Lake City EC—Wiliamsburg, Florence Counties
South Dakota
Beadle/Spink Dakota EC—Beadle, Spink Counties
Oglala Sioux Tribe EZ
Tennessee
Clinch-Powell EC
Fayette County/Haywood County EC—Fayette, Haywood Counties
Knoxville EZ
Nashville EC
Scott/McReary Area EC—Scott (TN), McCreary (KY) Counties
Texas
Dallas EC
El Paso EZ
El Paso EC
FUTURO EC
Houston EC
Rio Grande Valley EZ—Cameron, Hidalgo, Starr, Willacy Counties
San Antonio EC
Waco EC
Utah
Four Corners EC (Arizona, New Mexico, Utah)
Ogden EC
Vermont
Burlington EC
Virginia
Accomack-Northampton EC—Northampton, Accomack Counties
Norfolk/Portsmouth EZ
Norfolk EC
Washington
Lower Yakima County Rural EC—Yakima County
Seattle EC
Tacoma EC
Tri-County Rural EC
West Virginia
Central Appalachia EC—Braxton, Clay, Fayette, Nicholas, Roane Counties
Huntington WV/Ironton OH EZ
Huntington EC
McDowell County EC—McDowell County
Upper Kanawha Valley EC
Wisconsin
Milwaukee EC
Northwoods Niijii EC

[FR Doc. 99–20297 Filed 8–3–99; 2:22 pm]
BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4434–N–03]

Public Housing Rent Policies; Guidance Pending Publication of Final Rule on Admissions and Occupancy Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Guidance.

SUMMARY: This document provides guidance on certain admissions and occupancy requirements for those public housing agencies that must implement changes in the United States Housing Act of 1937 regarding rents that are effective October 1, 1999.

DATES: *Effective Date:* August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112,

Washington, DC, 20410; telephone (202) 708–0744, or the Public and Indian Housing Resource Center at 1–800–955–2232. (With the exception of the telephone number for the PIH Resource Center, these are not toll-free telephone numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance on the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the ''Public Housing Reform Act''). The Public Housing Reform Act makes significant changes to the rents charged for public housing units (see sections 508 and 523 of the statute). These changes are the subject of HUD's rulemaking on ''Changes to Admission and Occupancy Requirements in Pubic Housing and Section 8 Housing Assistance Programs.'' HUD's proposed rule on this subject was published on April 30, 1999 (64 FR 23460), and the 60-day public comment period on this rule closed on June 29, 1999. Certain provisions of the Public Housing Reform Act are effective October 1, 1999, notwithstanding whether HUD has issued rules for effect on these statutory provisions. The statutory provisions that become effective October 1, 1999, include the changes to rents charged for public housing units.

HUD realizes the importance of this April 30, 1999 rule to public housing agencies (PHAs) in setting and describing their rent policies, as required by the PHA plans. HUD is making every effort to complete this rulemaking as quickly as possible, but believes that given the time to carefully review, consider and address the public comments received on the April 30, 1999 proposed rule, the earliest publication date will probably occur near the end of August. HUD recognizes that an end-of-August publication may not provide sufficient time for PHAs to obtain the guidance they need to put these rent provisions into effect for new admissions, re-examinations, and recertifications after October 1, 1999. Therefore, HUD is issuing this guidance now on rent determinations.

Guidance on Rent Provisions

1. As indicated in HUD's Notice of Initial Guidance, published February 18, 1999, the new rent provisions are effective for families as they are admitted, re-examined or recertified, on or after October 1, 1999.

2. In determining annual income and adjusted income (e.g., required earned income disallowance or the alternative individual savings account, exclusions versus deductions, permissive deductions) for such families, §§ 5.603, 5.611, 5.612 and 5.614(a)(2) and the corresponding sections of the preamble to the April 30, 1999 proposed rule serve as guidance for these determinations, with the exception of earned income of minors. PHAs must take all necessary steps to ensure that families eligible for new mandatory deductions receive those deductions.

3. For addressing earned income of minors, the existing regulations which exclude earned income of minors from the definition of income (24 CFR 5.609(c)(1)) serve as the appropriate guidance.

4. For choice of rents (flat rents, income-based rents), § 5.614 and the corresponding section of the preamble to the April 30, 1999 proposed rule serve as guidance for choice of rent requirements. As further clarification, the market value of a unit on which flat rents are based must be a rent which would allow the unit to be successfully rented if the development were not public housing (neither lower nor higher). In addition to the documentation required by the April 30, 1999 proposed rule, regarding the calculation and establishment of flat rents, PHAs should keep records documenting specific offers to families of the dollar amounts of tenant rent under each option.

PHAs that follow this guidance will not be penalized for any changes made by HUD to the proposed rule provisions at the final rule stage. If changes are made at the final rule stage to these provisions, the final rule will provide adequate time for PHAs to adjust their policies.

Dated: August 2, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–20298 Filed 8–5–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–014110–0

Applicant: The University of Texas-Pan American, Coastal Studies Lab, South Padre Island, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct specific activities for the Kemp's ridley sea turtle (*Lepidochelys kempii*), green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), hawksbill sea turtle (*Eretmochelys imbricata*), and leatherback sea turtle (*Dermochelys coriacea*) in various locations on the Texas Gulf coast.

Permit No. TE–14168

Applicant: Peter Sprouse, Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the Tooth Cave spider (*Neoleptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), in Travis and Williamson Counties, Texas.

Permit No. TE–824714

Applicant: Bureau of Land Management, Farmington Field Office, Farmington, New Mexico

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Juan and Rio Arriba Counties, New Mexico.

Permit No. TE–798998

Applicant: Horizon Environmental Services, Inc., Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the following federally listed species in Texas:

Black-capped vireo (*Vireo atricapillus*)
Golden-cheeked warbler (*Dendroica chrysoparia*)
Tooth Cave spider (*Neoleptoneta myopica*)
Bee Creek Cave harvestman (*Texella reddelli*)
Bone Cave harvestman (*Texella reyesi*)
Tooth Cave ground beetle (*Rhadine persephone*)

Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
Coffin Cave mold beetle (*Batrisodes texanus*)
Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
Houston Toad (*Bufo houstonensis*)
Interior least tern (*Sterna antillarum*)

Permit No. TE–014994–0

Applicant: Hill Country Environmental, Inc., Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the black-capped vireo (*Vireo atricapillus*) and golden-cheeked warbler (*Dendroica chrysoparia*) in central Texas.

Permit No. TE–14045–0

Applicant: University of Arizona, School of Renewable Natural Resources, Tucson, Arizona

Applicant requests authorization for scientific research and recovery purposes to attach tail-mount fitted radio transmitters to Mexican spotted owls (*Strix occidentalis lucida*) and monitor them in Pima County, Arizona.

Permit No. TE–820085–0

Applicant: The Nature Conservancy of Texas, Texas Conservation Data Center, San Antonio, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the black-capped vireo (*Vireo atricapillus*) and golden-cheeked warbler (*Dendroica chrysoparia*) throughout Texas.

DATES: Written comments on these permit applications must be received on or before September 7, 1999.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. 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 within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–20262 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulartory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive., Reston, Virgina, 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How the minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performances.

Bureau form number: None.

Frequency: Annaul proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 300.

Annual burden hours: 12,000 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: July 30, 1999.

P. Patrick Leahy,

Chief Geologist.

[FR Doc. 99–20264 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–74–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP9–0272]

Notice of Field tour of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Field tour of the Eastern Washington Resource Advisory Council; August 26, 1999; Whitman and Adams Counties, Washington.

SUMMARY: The Eastern Washington Resource Advisory Council will take a field tour on August 26, 1999. The tour will start at 8:30 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher, Spokane, Washington 99212–1275. The Council will tour the recently-acquired Escure property in Whitman and Adams Counties, Washington. Topics to be addressed include recreation activities and natural resource issues. The tour will conclude no later than 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Clifford Ligons, Bureau of Land Management, 1103 N. Fancher Road, Spokane, Washington 99212–1275; or call 509–536–1200.

Dated: August 2, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99–20263 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA 31024]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, Bureau of Land Management proposes to withdraw approximately 112,790 acres of Federal lands and minerals to protect prehistoric archeological sites and other valuable resources of the Perry Mesa area in central Arizona. This notice segregates the lands described below for up to 2 years from location and entry under the general land laws, including the mining laws. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Gene Dahlem, BLM Phoenix Field Office, 623–580–5500.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to temporarily protect the prehistoric archeological sites and other valuable resources of the Perry Mesa area while various studies and analyses are completed to support a final decision on withdrawing the lands. The mineralization of the area is known to contain gold. The proposal, if finalized, would withdraw the following described Federal lands from location and entry under the general land laws, and the Federal minerals from location and entry under the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Gila and Salt River Meridian

Federal Surface/Federal Minerals

T. 9 N., R. 2 E.,
- Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
- Secs. 8 to 12, inclusive;
- Sec. 13, NW¼NE¼, N½NW¼, and SW¼NW¼;
- Sec. 14, E½, E½W½, W½NW¼, and NW¼SW¼;
- Sec. 15, E½, NW¼, N½SW¼, N½SW¼SW¼, SW¼SW¼SW¼ excluding Patent No. 02–73–0047, SE¼SW¼SW¼, and SE¼SW¼;
- Sec. 16;
- Sec. 17, E½NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, NW¼, and S½;
- Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 20;
- Sec. 21, N½, SW¼, N½SE¼, SW¼SE¼, and N½SE¼SE¼;
- Sec. 22, E½, E½W½, E½NW¼NW¼, NW¼NW¼NW¼ excluding Patent No. 02–73–0047, SW¼NW¼NW¼, SW¼NW¼, and NW¼SW¼;
- Sec. 23;
- Sec. 24, W½NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼.

T. 9½ N., R. 2 E.,
- Sec. 19, lots 1 to 6, inclusive, E½SW¼, and SE¼;
- Sec. 20, lots 1 to 6, inclusive, SW¼, and E½SE¼;
- Sec. 21, lot 1 excluding Patent No. 380377, lot 2, SW¼, N½SE¼ excluding Patent No. 380377, and S½SE¼;
- Sec. 22, lot 1, lot 2 excluding SS 14, SW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼, and E½SE¼SE¼ excluding SS 14;
- Sec. 23, lots 1 to 6, inclusive, E½SW¼, and SE¼;
- Sec. 24, lots 1 to 7, inclusive, SW¼, and SW¼SE¼;
- Secs. 25 and 26;
- Sec. 27, lot 1 excluding Patent No. 1138507, lots 2 to 4, inclusive, SE¼NE¼ excluding Patent No. 1138507, SW¼NE¼, S½NW¼, and S½;
- Sec. 28, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 29, lot 1, W½NE¼, SE¼NE¼, W½, and SE¼;
- Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
- Secs. 32 to 34, inclusive;
- Sec. 35, N½, SW¼, N½SE¼, and SE¼SE¼;
- Sec. 36.

T. 10 N., R. 2 E.,
- Sec. 1, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 6, lots 1 to 9, inclusive, S½NE, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 7, lots 1 to 8, inclusive, E½, and E½W½;
- Secs. 8 to 11, inclusive;
- Sec. 12, lots 1 to 4, inclusive, W½E½, and W½;
- Sec. 13, lots 1 to 4, inclusive, W½E½, and W½;
- Secs. 14 to 17, inclusive;
- Sec. 18, lots 1 to 8, inclusive, E½, and E½W½;
- Sec. 19, lots 1 to 8, inclusive, E½, and E½W½;
- Secs. 20 to 23, inclusive;
- Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
- Sec. 25, lots 1 to 6, inclusive, W½E½, NW¼, and N½SW¼;
- Sec. 26;
- Sec. 27, E½, N½NW¼ excluding Patent No. 1085371, S½NW¼, and SW¼;
- Sec. 28, N½, SW¼, N½SE¼ excluding Patent No. 1099067, and S½SE¼;
- Sec. 29;
- Sec. 30, lots 1 to 11, inclusive, NE¼, E½NW¼, E½SE¼, MS 3748, MS 3749, MS 3750, and MS 3645 excluding Patent No. 911367;
- Sec. 31, lots 1 to 10, inclusive, E½NE¼, E½SW¼, SE¼, MS 3748, and MS 3750;
- Sec. 32;
- Sec. 33, E½NE¼ excluding Patent No. 1031935, W½NE¼, E½W½ excluding Patents No. 1031935 and 380377, W½W½, and SE¼ excluding Patents No. 1031935 and 426411;
- Sec. 34, N½, SW¼, E½SE¼ excluding Patent No. 1082896, NW¼SE¼, and SW¼SE¼ excluding Patent No. 1082896;
- Sec. 35;
- Sec. 36, lots 1 to 12, inclusive, and NW¼NE¼.

T. 11 N., R. 2 E.,
- Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 8, lots 1 and 2, W½NE¼ excluding IL 568, and W½;
- Sec. 17, W½W½E¼, and W½;
- Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 19, lots 1 to 14, inclusive, E½SW¼, and SE¼;
- Sec. 20, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 21, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 22, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 23, lot 4, SW¼NW¼, and W½SW¼;
- Sec. 26, W½W½;
- Sec. 27;
- Sec. 28, lots 1 to 5, inclusive, E½, and NE¼NW¼;
- Sec. 29, lots 1 to 4 inclusive, NW¼NE¼, W½, and SW¼SE¼;
- Sec. 30, lot 1, NE¼, NE¼NW¼, and NE¼SE¼;
- Secs. 32 to 34, inclusive;
- Sec. 35, S½N½NE¼, S½NE¼, W½, and SE¼;
- Sec. 36, lots 3 and 4, SW¼, and W½SE¼.

T. 9 N., R. 3 E.,
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;

Secs. 8 and 9;
Sec. 17;
Sec. 18, lots 1 and 4, E½, and E½W½;
Sec. 19, lots 3 and 4, E½, and E½W½;
Sec. 20.
T. 9½ N., R. 3 E.,
Sec. 19, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Sec. 20, lots 1 to 4, inclusive, and S½;
Sec. 21, lots 1 to 4, inclusive, and S½;
Sec. 22, lots 1 to 4, inclusive, and S½;
Secs. 27 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 to 34, inclusive.
T. 10 N., R. 3 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 3, inclusive, lots 5 to 10, inclusive, S½NE¼, S½SW¼, and SE¼;
Sec. 5, lots 3 to 9, inclusive, S½NW¼, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SW¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, excluding SS 16 and Patent No. 225;
Sec. 9, E½, E½NW¼, W½W½ excluding SS 16, E½SW¼, and SE¼;
Secs. 10 to 17, inclusive;
Sec. 18, lots 1 to 8, inclusive, E½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE½SE¼;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1 to 7, inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 to 36, inclusive.
T. 11 N., R. 3 E.,
Sec. 1, lots 2 to 4, inclusive, S½NW¼, and NW¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1, 2, 5, and 6, S½NE¼, and SE¼;
Sec. 4, lots 1, 2, 4, 5, and lots 7 to 16, inclusive;
Sec. 5, lots 1 to 4, inclusive, S½N½, SW¼, and SE¼SE¼;
Sec. 7, lots 1 and 2, E½, and E½NW¼;
Sec. 8, NE¼NE¼, S½NE¼, W½, and SE¼;
Sec. 9, lots 1 to 16, inclusive;
Sec. 10, lots 3 and 4, E½, SE¼NW¼, and E½SW¼;
Sec. 11, N½NE¼, SW¼NE¼, W½, and S½SE¼;
Sec. 12, lots 3 and 4, SE¼NW¼, SW¼, and W½SE¼;
Sec. 13, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 14;
Sec. 15, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 16, lots 1 to 16, inclusive;
Sec. 20, lots 1 to 16, inclusive;
Sec. 21, lots 1 to 16, inclusive;
Sec. 22, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 23;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lot 1, lot 2 excluding Patent No. 889734, lots 3 and 4 excluding Patent No. 832552, W½NE¼, W½, W½W½SE¼, and E½W½SE¼ excluding Patent No. 832552;
Sec. 26;
Sec. 27, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 28 and 29;
Sec. 30, SE¼SW¼ and S½SE¼;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 and 33;
Sec. 34, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 35, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

The areas described aggregate approximately 112,637 in Yavapai County.

Federal Minerals

T. 9 N., R. 2 E.,
Sec. 15, Patent No. 02–73–0047;
Sec. 17, Patent No. 1138507;
Sec. 22, Patent No. 02–73–0047.
T. 9½ N., R. 2 E.,
Sec. 27, Patent No. 1138507.
T. 10 N., R. 2 E.,
Sec. 27, Patent No. 1085371;
Sec. 28, Patent No. 1099067;
Sec. 33, Patent No. 1031935;
Sec. 34, Patent No. 1082896.
T. 11 N., R. 3 E.,
Sec. 25, Patent No. 889734.

The areas described aggregate approximately 153 acres in Yavapai County.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights, unless the proposal is canceled or unless the withdrawal is finalized prior to the end of the segregation period.

Existing uses of the segregated lands may be continued in accordance with their terms, except for the location or relocation of mining claims, during the pendency of the 2-year segregative period, including but not limited to livestock grazing, legal ingress and egress to any valid mining claims and patented claims that may exist, rights-of-way, access to non-Federal lands and interests in lands, current recreational uses, and commercial uses being conducted under special use permits.

Dated: August 3, 1999.

Ray Brady,

Manager, Lands and Realty Group.

[FR Doc. 99–20274 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1430–00; CACA–39853]

Notice of Public Meeting on Proposed Withdrawal of Public Lands; Indian Pass Withdrawal, Imperial County, CA

AGENCY: Bureau of Land Management.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management has filed an application to withdraw 9,360.74 acres of public lands in Imperial County, California, to protect the archaeological and cultural resources located in the Indian Pass Area of Critical Environmental Concern and Expanded Management Area (collectively the ''Indian Pass area''). The lands will be withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing, geothermal leasing, or the material sales laws, subject to valid existing rights. This notice advises that the Bureau of Land Management has scheduled a meeting to inform the public of the proposed withdrawal and to seek suggestions and information from the public and other agencies on the scope of issues related to the proposed withdrawal that should be considered in the environmental review document.

DATES: Written comments should be received on or before September 30, 1999. Comments previously submitted in response to the Notice of Proposed Withdrawal and Opportunity for Public Meeting, 63 FR 58752, November 2, 1998, will be considered. The meeting date is Tuesday, September 7, 1999, 7:00 p.m. to 9:00 p.m.

ADDRESSES: Written comments regarding the scope of the environmental review document should be sent to the Bureau of Land Management, 1661 South 4th Street, El Centro, California 92243. The meeting location is at the same address.

FOR FURTHER INFORMATION CONTACT: Lynda Kastoll, BLM, El Centro Field Office, (760) 337–4421.

SUPPLEMENTARY INFORMATION: On October 26, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw 9,360.74 acres of public lands

from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The lands have been and will remain open to the operations of the mineral leasing, geothermal leasing, and material sales laws. No private lands or valid existing mineral rights would be affected by the proposed withdrawal.

The purpose of the proposed withdrawal is to protect the archaeological and cultural resources in the Indian Pass area, which is considered to be a sacred site by the Quechan people.

The legal description of the lands proposed for withdrawal is as published in 63 FR 58752, November 2, 1998. A copy of the legal description is available by contacting Lynda Kastoll at the address or phone number listed above.

The lands have been temporarily segregated as specified above until November 2, 2000, to allow for various studies and analyses. No action as to the proposed withdrawal shall be taken until these studies and analyses are completed. This notice is published in accordance with the regulations set forth in 43 CFR part 2300, and pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) to obtain suggestions and information from other agencies and the public on the scope of issues that would be analyzed or considered in preparation of an environmental assessment.

Dated: August 2, 1999.

Robert Zimmer,

Acting Field Manager.

[FR Doc. 99–20260 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 174

AGENCY: Minerals Management Service.

ACTION: Correction to final Notice of Sale for Sale 174.

On July 16, 1999, the Minerals Management Service published in the **Federal Register** (64 FR 38468) a final Notice of Sale for Sale 174, Western Gulf of Mexico. The Notice of Sale identified blocks available for leasing in this sale as well as blocks unavailable for leasing.

This Notice corrects the Notice of Sale. In addition to the blocks identified in the July 16 Notice of Sale as unavailable for leasing, the following blocks are also unavailable for leasing: Mustang Island Area, Blocks 775, 798, 821, and 822. These blocks will be used by the U.S. Navy's mine warfare training program.

All other terms, conditions, and block availability remain as stated in the July 16 Notice of Sale.

Dated: August 2, 1999.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 99–20265 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Wednesday, August 18, 1999, 8:00 a.m. to 5:00 p.m., and Thursday, August 19, 1999, 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be at Best Western's Victoria Inn, 1709 Main Street, Weaverville, California 96093. Telephone: 530/623–4432.

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental and Natural Resource Division, Northern California Area Office, 1639 Shasta Dam Boulevard, Shasta Lake, California 96019. Telephone: 530/275–1554 (TDD 530/450–6000).

SUPPLEMENTARY INFORMATION: The Trinity River Basin Fish and Wildlife Task Force will meet to formulate and implement the ongoing Trinity River watershed ecosystem management program for fish and wildlife. This program considers the needs of multiple species and their interactions with physical habitats in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated.

Dated: July 30, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–20118 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for written submissions.

EFFECTIVE DATE: July 28, 1999.

SUMMARY: The Commission received a request from the United States Trade Representative (USTR) on August 2, 1999, to provide probable effects advice on proposed modifications to the North American Free Trade Agreement (NAFTA) rules of origin. The United States, Canada, and Mexico negotiated these modifications. The Commission's confidential advice on the probable effects will be submitted to the USTR on September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from David Lundy, Office of Industries (202–205–3439); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

Background

Chapter 4 of the NAFTA, which entered into force on January 1, 1994, contains the rules of origin for application of the tariff provisions of the NAFTA to trade in goods. Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

The Commission was requested by the USTR, in a letter received on August 2, 1999, to provide advice on the probable effect on U.S. trade and domestic industries of the proposed modifications to the rules of origin. The modifications include changes to Annexes 401 and 403.1, which are part of chapter 4 of the NAFTA. The letter requested that the advice be forwarded to the USTR by September 10, 1999. A list of the proposed modifications, compiled by the Commission in consultation with the U.S. Department of Treasury, is

available from the Office of the Secretary of the Commission or by accessing the electronic version of this notice at the Commission's World Wide Web site (http://www.usitc.gov). A complete copy of Annexes 401 and 403.1 incorporating the modifications is also available from the Office of the Secretary or the Web site.

Written Submissions

No public hearing is being scheduled in connection with these proposed modifications. However, interested parties are invited to submit written statements (original and 14 copies) concerning any economic effects of the modifications. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and must be received no later than the close of business on August 31, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. 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.

Issued: August 2, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20321 Filed 8–5–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [2]

Background

The Commission instituted this review on August 3, 1998 (63 FR 41282) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 16, 1998 (63 FR 69306). The hearing was held in Washington, DC, on June 3, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 26, 1999. The views of the Commission are contained in USITC Publication 3212 (July 1999), entitled Polychloroprene Rubber from Japan (Inv. No. AA1921–129 (Review)).

Issued: July 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20322 Filed 8–5–99; 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] Commissioners Crawford and Askey dissenting.

DEPARTMENT OF JUSTICE

Antitrust Division

[Case No. 1: 99CVO1962]

United States v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc., Civ. No. 99 CV 01962; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, Washington, DC, in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., Civ. No. 99 CV 01962.

On July 20, 1999, the United States filed a Complaint, which alleged that Allied's proposed acquisition of Browning-Ferris Industries, Inc. (''BFI'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in 18 markets around the country, including Akron/Canton, OH; Atlanta, GA; Boston, MA; Charlotte, NC; Chicago, IL; Dallas, TX; Davenport, IA; Denver, CO; Detroit, MI; Evansville, IN; Joplin/Lamar, MO; Kalamazoo/Battle Creek, MI; Moline, IL; Oakland, CA; Oklahoma City, OK; Rock Falls/Dixon, IL; Rockford, IL; and Springfield, MO. The proposed Final Judgment, filed on July 20, 1999, requires Allied and BFI to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 [telephone: (202) 307–0924].

Constance K. Robinson,

Director of Operations & Merger Enforcement.

JUDGE: Ricardo M. Urbina; DECK TYPE: Antitrust; DATE STAMP: 7/20/1999

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I

Definitions

As used in this Hold Separate Stipulation and Order:

A. *Allied* means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *BFI* means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes it successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including any customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Incinerator and Landfills

a. Boston, MA

BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576.

b. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099, BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL 61432.

c. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO.

d. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167.

e. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598.

f. Joplin/Lamar/Springfield, MO

Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Township 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend such that it will not expire any sooner than 12 months following the entry of the proposed Final Judgment:

g. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

h. Oakland, CA

BFI's, Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

i. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th Street, Oklahoma City, OK 73128.

s. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

b. Atlanta, GA

(i) Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263;

(ii) Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and

(iii) BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I–85 Service Road North, Charlotte, NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126;

h. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IL 47711;

i. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

j. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. Relevant Hauling Assets, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, real property and improvements to real property (*i.e.,* buildings and garages); and it includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

i. Akron, OH

Allied's front-end and rear-end loader truck small container commercial routes (hereinafter, ''commercial routes'') that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or ''open competition'' areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA/Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

7. Denver, CO

Allied's commercial routes that serve the City of Denver, and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities:

10. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

BFI's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied's commercial routes that serve the City of Rockford and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

II

Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from Allied's acquisition of BFI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, and with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), ongoing business concerns that will remain independent and uninfluenced by Allied (or BFI); and that competition is maintained during the pendency of the ordered divestitures.

III

Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV

Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V

Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or negotiation or sales by, any Relevant Disposal Asset and Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this

Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and the Relevant Hauling Assets will be maintained and, with the exception of the assets listed in Sections I(C)(1)(f) and (2)(b)(iii), operated as independent, ongoing, economically viable and active competitors in the waste disposal business or commercial waste hauling business, or both; (2) management of the Relevant Disposal Assets and the Relevant Hauling Assets will not be influenced by Allied (or BFI); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and the Relevant Hauling Assets will be kept separate and apart from defendants' other operations. Defendants' influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets, with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets, with the exception of the assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets, with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and the Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets or Relevant Hauling Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or BFI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI shall be managed by Richard J. Wojahn. Mr. Wojahn shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

Dated: July 19, 1999.

For Plaintiff United States of America

6Anthony E. Harris, Esquire,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20005, (202) 307–6583.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

For Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615, (202) 662–4517.

Order

It Is So Ordered by the Court, this ____ day of _____

_____

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint in this action on July 20, 1999, and plaintiff and defendants, Allied Waste Services, Inc. (''Allied'') and Browning-Ferris Industries, Inc. (''BFT''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Disposal Assets and Relevant Hauling Assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing one or more viable competitors in the waste disposal business, the commercial waste hauling business, or both, in the specified areas;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the injunctive provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication or any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I

Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II

Definitions

As used in this Final Judgment:

A. *Allied* means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. BFI means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. Relevant Disposal Assets means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills, Incinerators, and Airspace Disposal Rights

a. Boston, MA

(1) BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

(2) Airspace disposal rights at BFI's Fall River Landfill, located at 1080 Airport Road, Fall River, MA 02720, pursuant to which SEMASS may dispose of up to the maximum amount of ash and ''bypass'' waste, as now defined in the operating permit (or any modifications, amendments or extensions thereto) of Fall River Landfill, for a period of time up to the closure or attainment of permitted capacity of the landfill, provided however, that defendants must commit to operate BFI's Fall River Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Massachusetts, except as to price and credit terms; and

(3) Airspace disposal rights at Ogden Martin Systems Massburn incinerator, located at 100 Recovery Way, Haverhill, MA 01830, pursuant to which a purchaser or purchasers may dispose as much as 1,150 tons/day of waste, for a ten-year period of time.

b. Charlotte, NC

Allied's Lee County Landfill, located at 1301 Sumter Highway, Bishopville, SC 29010, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Sections IV or V of the Judgment, that the purchaser of Allied's Charlotte Transfer Station [*see* Section II(C)(2)(d) below] is unacceptable.

c. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099; BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432.

d. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO;

e. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167;

f. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

g. Joplin/Lamar/Springfield, MO

(1) Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Townsend 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend so that it will not expire any sooner than 12 months following the entry of this Final Judgment; and

(2) Airspace disposal rights at Allied's Wheatland Regional Landfill, located at Columbus, KS, pursuant to which a purchaser or purchasers can dispose up to 700 tons/day of waste, for a period of time up to three months after the opening of Southwest Regional Landfill, *provided, however,* that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Wheatland Regional Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Missouri, except as to price and credit terms;

h. Kalamazoo/Battle Creek, MI

Airspace disposal rights at Allied's Ottawa Farms Landfill, located at 15550 68th Street, Coopersville, MI 49404, or BFI's C&C Landfill, located at 14800 P Drive North, Marshall, MI 49068, pursuant to which a purchaser may dispose up to 450 tons/day of waste for up to a ten-year period of time, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Sections IV or V of the Judgment, that the purchaser of Allied's Kalamazoo Transfer Station [*see* Section II(C)(2)(i) below] is unacceptable; *and provided, however,* that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Ottawa Farms landfill or BFI's C&C Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Michigan, except as to price and credit terms;

i. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

j. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

k. Oklahoma City, OK

BFI's Oklahoma Landfill, Located at 7600 SW 15th Street, Oklahoma City, OK 73128.

2. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 180 19th Street, Canton, OH;

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

Allied's front-end and rear-end loader truck small container routes (hereinafter, ''commercial routes'') that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

b. Atlanta, GA

Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263; Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayettevile, FA 30214; and BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintee, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I–85 Service Road North, Charlotte, NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126;

h. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IN 47711;

i. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

j. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. Relevant Hauling Assets, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). It also includes all intangible assets, including hauling/related customer lists, contracts, leasehold interests, and accounts.

7. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities;

10. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Collection of small container solid waste* means collection of waste from customers by *inter alia*, providing a customer with a one to ten cubic yard container, which is picked up mechanically using a front- or rear-end loader truck. The term excludes hand pick-up collection service, and service using a compactor attached to, or part of, a container.

III

Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes defendants' Relevant Hauling and Relevant Disposal Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. In the event that Allied acquires BFI, defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell all Relevant Disposal Assets and Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture and additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets and Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied (or former BFI) employee who works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets or Relevant Hauling Assets.

E. Defendants shall permit prospective purchasers of the Relevant Disposal Assets or Relevant Hauling Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Disposal Assets and Relevant Hauling Assets and of any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. With the exception of the facilities described in Section II(C)(1)(g), defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

H. Defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that defendants will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Judgment, shall include all Relevant Disposal Assets and Relevant Hauling Assets and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Disposal Assets or Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser (or purchasers) for whom it is demonstrated to the United States's sole satisfaction that: (1) The purchaser(s) has the capability and intent of competing effectively in the waste disposal or hauling business in each relevant area; (2) the purchaser(s) has the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in each relevant area; and (3) none of the terms of agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in each relevant area.

V

Appointment of Trustee

A. In the event that defendants have not sold the Relevant Disposal Assets or Relevant Hauling Assets within the time specified in Section IV of this Final Judgment, the divestiture of each Relevant Disposal Asset or Relevant Hauling Asset not sold shall be accomplished by a trustee to be selected by the Uinted States, as its sole discretion. Defendants shall not object to the selection of the trustess on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after the United States notifies defendants of the trustee selection.

B. After the United States's selection of the trustee, only the trustee shall have the right to divest the unsold Relevant Disposal Assets or Relevant Hauling Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon all reasonable efforts of the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall divest the unsold Relevant Disposal Assets or Relevant Hauling Assets in the manner that is most conducive to creating, preserving and maintaining competition between Allied and BFI in the markets for the collection and disposal of municipal solid waste described in the Complaint. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such

trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Disposal Assets or Relevant Hauling Assets, and shall assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Relevant Disposal Assets or Relevant Hauling Assets, and to defendants' overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Relevant Disposal Assets or Relevant Hauling Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Subject to customary confidentiality assurances, defendants shall permit prospective acquirers of any Relevant Disposal Assets or Relevant Hauling Assets to have reasonable access to the information provided to the trustee and to management personnel for the Relevant Disposal Assets or Relevant Hauling Assets, and to make inspection of any physical facilities for the Relevant Disposal Assets or Relevant Hauling Assets.

E. After the trustee's appointment, the trustee shall confer regularly with designated representatives of the parties and shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. The United States may object to a proposed divestiture by the trustee in the manner prescribed in Section VI of this Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants shall be made in the manner prescribed in Section VI of this Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. No less than three (3) days prior to filing such report with the Court, the trustee shall furnish a copy of such report to the parties. Upon the filing of such report with the Court, each party shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice [or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later], the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(F) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section V(F), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Ban on Future Acquisitions

A. Without prior written approval of the United States, defendants shall not acquire, directly or indirectly, any interest in any business, assets, capital stock, or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, as engaged in waste disposal or collection of small container waste in any area listed in Section VII(B), where the person's annual revenues from waste disposal or collection of small container waste in the area were in excess of $1,000,000 in the 12 month period immediately preceding the proposed acquisition, or the sale price of the assets would be in excess of $1,000,000.

B. Unless otherwise noted, the injunctive provisions in Section VII (A) above apply whenever defendants seek to acquire any interest in any business, assets, capital stock, or voting securities of any person that was engaged in the disposal of waste from, or the collection

of small container solid waste in, any of the following areas:

AREAS FOR WHICH INJUNCTIVE PROVISION APPLIES

City	Counties
Atlanta, GA	Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinett, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties, GA (disposal only).
Boston, MA	Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA
Charlotte, NC	Mecklenburg County, NC
Chicago, IL	Will, Kane, Cook, DuPage, Lake and McHenry counties, IL
Davenport, IA and Moline, IL	Rock Island County, IL and Scott County, IA
Evansville, IN	Vanderburgh County, IN
Kalamazoo/Battle Creek, MI	Kalamazoo and Calhoun counties, MI
Joplin/Lamar, MO	Jasper and Newton counties, MO
Springfield, MO	Greene and Christian counties, MO

VIII

Defendants' Additional Obligations

Defendants are hereby ordered and directed to, in accordance with the terms of this Final Judgment:

A. Refrain from reacquiring any interest in any Relevant Disposal Assets or Relevant Hauling Assets divested pursuant to the terms of this Final Judgment, without prior written notice to, and written consent of, the United States;

B. Refrain from conditioning the sale of any landfill pursuant to this Final Judgment on any understanding, agreement or commitment, written or understood, that the purchase (or purchasers) will agree to sell airspace or otherwise permit defendants to dispose of waste in that landfill; and

C. Within sixty (60) days after entry of the Final Judgment, jointly move with the United States to modify each of the Final Judgments in *United States* v. *Allied Waste Industries, Inc.*, 7 Trade Reg. Rep. (CCH) ¶50,860 (D.D.C., filed and pending April 8, 1999); *United States* v. *Browning-Ferris Industries, Inc.*, 1996–2 Trade Cas. (CCH) ¶71,456 (D.D.C. 1996); and *United States* v. *Browning-Ferris Industries, Inc.*, 1995–2 Trade Cas. (CCH) ¶71,079 (D.D.C. 1995) (the ''consent decrees''), to provide that, for the period of time and in the geographic areas specified in the consent decrees, defendants and any person acquired by defendants will neither offer nor enforce any provision of any current or future contract for the collection of small container solid waste, the terms of which do not conform to the injunctive provisions of the consent decrees.

IX

Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every twenty (20) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all Relevant Disposal Assets and Relevant Hauling Assets and to provide requiring information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Disposal Assets and Relevant Hauling Assets pursuant to Section X of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Disposal Assets and Relevant Hauling Assets that were divested and to effect the ordered divestitures.

X

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of any Relevant Disposal Asset or Relevant Hauling Asset.

XI

Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

XII

Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States Department of Justice,

upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections IV, VI or XII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

_____

United States District Judge

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 20, 1999, I caused a copies of the foregoing Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and United State's Explanation of Consent Decree Procedures to be served on each defendants by hand-delivery and by mailing copies of the pleadings first-class, postage prepaid, to a duly authorized legal representative, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day Reavis, & Pogue, 51, Louisiana Avenue, NW, Washington, DC 20001–2113.

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Anthony E. Harris, Esquire,

Illinois Bar #1133713, Department of Justice, Anitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 20, 1999, the United States filed a civil antitrust suit that alleges that the proposed acquisition by Allied Waste Industries, Inc. (''Allied'') of Browning-Ferris Industries, Inc. (''BFI'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that in many markets throughout the United States, Allied and BFI are two of the most significant competitors in small container commercial waste collection, disposal of municipal solid waste (''MSW'') (*i.e.*, the operation of landfills, transfer stations or incinerators), or both services.

The Complaint alleges that a combination of Allied and BFI would substantially lessen competition in the disposal of municipal solid waste in thirteen highly concentrated markets: Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin/Lamar and Springfield, Illinois; Kalamazoo/Battle Creek, Michigan; Moline, Illinois; Oakland, California; and Oklahoma City, Oklahoma.

The Complaint alleges that the merger also would substantially lessen competition in the provision of small container commercial waste collection services in fourteen highly concentrated, relevant geographic markets: Akron/Canton, Ohio; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Davenport, Iowa/Moline, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Kalamazoo/Battle Creek, Michigan; Oklahoma City, Oklahoma; Rock Falls/Dixon, Illinois; Rockford, Illinois; and Springfield, Missouri.

According to the Complaint, the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) a permanent injunction that would prevent Allied from acquiring control of or otherwise combining its assets with those owned by BFI.

At the time the Complaint was filed, the United States also filed a proposed settlement that would permit Allied to complete its acquisition of BFI, provided divestitures of certain waste collection and disposal assets are accomplished in such a way as to preserve competition in the affected markets. This settlement consists of a

proposal Final Judgment, a Hold Separate Stipulation and Order, and a letter that outlines a standard on which the United States and the defendants have agreed to decide whether waste collection routes that partially serve a given geographic area, or which contain a mix of residential and small container waste collection customers or franchise or nonfranchised business, should be divested pursuant to the terms of the proposed Final Judgment.[1]

The proposed Final Judgment orders Allied and BFI to divest commercial waste collection routes in each of the relevant areas in which the Complaint alleges the merger would substantially reduce competition in the provision of small container commercial waste collection services. In addition, the proposed Final Judgment orders Allied and BFI to divest an incinerator, landfills, transfer stations, or disposal rights in such facilities in each of the relevant markets in which the merger would substantially reduce competition in the disposal of municipal solid waste. (A summary of the commercial waste collection and waste disposal assets that defendants must divest pursuant to the Judgment appears below in Appendix A.) Allied and BFI must complete their divestitures of the waste collection and disposal assets within 120 days after July 20, 1999, or five days after entry of the proposed Final Judgment, whichever is later.

The Hold Separate Stipulation and Order (''Hold Separate Order'') and the proposal Final Judgment ensure that until the divestitures mandated by the Judgment are accomplished, the currently operating collection and disposal assets that are to be divested will be maintained and operated as saleable, economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of the combined company. Allied and BFI, subject to the United States' approval, will appoint a person to manage the operations to be divested and ensure defendants' compliance with the requirements of the proposed Final Judgment and Hold Separate Order.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

Allied is the third largest waste collection and disposal firm in the United States. Based in Scottsdale, Arizona, it provides waste collection and disposal services in over 20 states. In 1998, Allied's total operating revenues were in excess of $1.6 billion.

BFI, based in Houston, Texas, is the nation's second largest waste collection and disposal firm. It provides waste collection and disposal services throughout the country, often in direct competition with Allied. During its 1998 fiscal year, BFI had total domestic operating revenues of over $4.7 billion.

In March 1999, Allied announced its agreement to acquire BFI in a stock transaction worth nearly $9.4 billion. This transaction, which would combine two major waste industry competitors and substantially increase concentration in a number of already highly concentrated, difficult-to-enter waste markets, precipitated the United States's antitrust suit.

B. The Competitive Effects of the Transaction

Waste collection firms, or ''haulers,'' contract to collect municipal solid waste (''MSW'') from residential and commercial customers; they transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Allied and BFI compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Small Container Commercial Waste Collection Services

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, plus front-end (and sometimes, rear-end) loader vehicles for collection and transportation—is uniquely well suited to the provision of small container commercial waste collection service. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for analyzing the effects of the merger.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimmize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide

[1] A copy of this correspondence appears in Appendix B. According to the proposed Final Judgment [§§ II(D)(1)–(14), IV and V], defendants must divest small container commercial waste collection routes that serve customers in certain geographic areas. Since some small container commercial waste collection routes may serve only part of an area defined in the proposed Final Judgment, or may contain a mix of small container commercial and other types of customers (*e.g.*, in Dallas, Texas franchised customers), the United States and the defendants agreed to apply a *de minimis* standard in determining whether a route may be subject to divestiture under the Judgment. The parties agreed that defendants must divest the entire waste collection route if, in its most recent year of operation, the route obtained 10 percent or more of its revenues from the provision of small container commercial waste collection services (and in the case of Dallas, Texas, such services from nonfranchised commercial customers), or 10 percent or more of such revenues are generated by customers located in a geographic area specified in the Judgment.

Applying this standard to the Boston area, for example, the proposed Final Judgment would require defendants to divest any Allied route (or any route that BFI acquired from Allied or any other person after January 1, 1999), if the route obtained 10 percent or more of its revenues from commercial waste collection customers who have business locations in the City of Boston, or Bristol, Essex, Middlesex, Norfolk, Suffolk, or Worcester counties, MA.

commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that fourteen areas—Akron/Canton, Ohio; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Davenport, Iowa/Moline, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Kalamazoo/Battle Creek, Michigan; Oklahoma city, Oklahoma; Rock Falls/Dixon, Illinois; Rockford, Illinois; and Springfield, Missouri—constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and BFI in the provision of small container commercial waste collection services. In each of these markets, Allied and BFI are two of the largest competitors, and the combined firm would command from 25 percent to 85 percent or more of total market revenues. These fourteen small container commercial waste collection markets generate from $2.5 million to over $200 million in annual revenues.

New entry into these markets would be difficult, time consuming, and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into ''evergreen'' contacts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be very unprofitable to serve. Taken together, the prevalence of long term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Compliant alleges that a combination of Allied and BFI would likely lead to an increase in prices charged to consumers of commercial waste, collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers. This is especially troublesome in markets where entry has not proved an effective deterrent to the exercise of market power.

2. The Effects of the Transaction on Competition in Other Markets for Disposal of Municipal Solid Waste

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can only be sent for disposal to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste, risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposing of MSW.

Disposal of MSW tends to occur in highly localized markets.[2] Disposal costs are a significant component of waste collection services, often comprising 40 percent or more of overall operating costs. it is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (*e.g.*, mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) all substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discrimination, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, thirteen areas—Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin/Lamar/Springfield, Missouri; Kalamazoo/Battle Creek, Michigan; Moline, Illinois; Oakland, California; and Oklahoma City, Oklahoma—are relevant geographic markets for disposal of municipal solid waste. In each of these markets, Allied and BFI are two of only a few significant competitors. Their combination would command from 30 percent to well over 90 percent of disposal capacity for municipal solid waste in highly concentrated markets that each generate revenues of from $5 million to over $250 million annually.

Entry into disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming risk. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and hence, is not likely to prevent exercise of market power after the acquisition.

In each listed market, Allied's acquisition of BFI would remove a significant competitor in disposal of municipal solid waste. With the elimination of BFI, market incumbents will no longer compete as aggressively since they will not have to worry about losing business to BFI. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely to ensure that consumers will pay substantially higher prices for disposal of MSW, collection of small container commercial waste, or both, following the acquisition.

[2] Though disposal of municipal solid waste is primarily a local activity, in some densely populated urban area there are few, if any, local landfills or incinerators available for final disposal of waste. In these areas, transfer stations are the principal disposal option. A transfer station collects, processes and temporarily stores waste for later bulk shipment by truck, rail or barge to a more distant disposal site, typically a sanitary landfill, for final disposal. In such markets, local transfer stations compete for municipal solid waste for processing and temporary storage, and sanitary landfills may compete in a broader regional market for permanent disposal of area waste.

In this case, in several relevant areas (*e.g.*, Akron/Canton, Atlanta, Charlotte, Chicago, Kalamazoo/Battle Creek, and Springfield), distant landfills may compete with local disposal facilities (incinerators or landfills) through the use of transfer stations. Regional landfills also compete for permanent disposal of waste from these areas. In some areas, however, the proposed Final Judgment requires defendants to divest transfer stations because such divestitures may aid in the competitive viability of a companion landfill, the divestiture of which, the United States believes, is essential for effective relief.

III. Explanation of the Proposed Final Judgment

A. Divestiture Provisions of the Judgment

The divestiture relief described in the proposed Final Judgment will eliminate the anticompetitive effects of the defendants' acquisition in the provision of small container commercial waste collection services in, and the disposal of MSW from, the relevant markets by establishing new, independent and economically viable competitors in each affected market. The proposed Final Judgment requires Allied and BFI, within 120 days after July 20, 1999, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell certain commercial waste collection assets (''Relevant Hauling Assets'') and disposal assets (''Relevant Disposal Assests'') as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion. The collection assets to be divested include small container commercial waste collection routes, trucks, customer lists, and if requested by the purchaser, garage facilities. The disposal assets to be divested include an incinerator, landfills, transfer stations, airspace disposal rights and an incinerator, and certain other assets critical to successful operation of such facilities (*e.g.*, leasehold and renewal rights in the particular landfill or transfer station, garages and offices, trucks and vehicles, scales, permits, and intangible assets such as landfill or transfer station-related customer lists and contracts).

If Allied and BFI cannot accomplish the divestitures within the prescribed period of time, the proposed Final Judgment provides that the United States may appoint a trustee to complete the divestiture of each relevant disposal asset or relevant hauling asset not sold. The proposed Final Judgment generally provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste collection or disposal that can compete effectively in the relevant area.[3] Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Additional Injunctive Relief

1. United State's Prior Approval of Any Subsequent Acqusitions by Defendants of Commercial Waste Collection and Waste Disposal Competitors in Certain Highly Concentrated Markets

The Final Judgment, § VII, also requires that for a five-year period after its entry, defendants must seek and obtain written approval from the United States beforing acquiring any person engaged in the provision of small container waste collection service or the disposal of municipal solid waste in the Atlanta, Boston, Charlotte, Chicago, Davenport, IA/Moline, IL, Evansville, Kalamazoo/Battle Creek, Joplin/Lamar, or Springfield areas, where the acquired person had reported annual revenues of at least $1 million or the purchase price of the person's assets is at least $1 million. This notice and prior approval provision will assist the United States in preventing potentially significant acquisitions by Allied of smaller waste industry rivals in already highly-concentrated markets in transitions that otherwise would fall outside the reporting thresholds of the Hart-Scott-Rodino Act. Allied, BFI and other leading waste industry firms have already made a number of such acquisitions, which, taken together, have significantly increased concentration, and substantially reduced competition, in many local waste markets.

2. Modification of Consent Decrees in Prior Waste Cases Involving the Defendants

Finally, the Final Judgement, § VIII, requires Allied and BFI to join the United States in moving to modify the consent decrees in three earlier cases—*United States* v. *Allied Waste Industries, Inc.*, 7 Trade Reg. Rep. (CCH) ¶ 50,860 (D.D.C., *filed and pending* April 8, 1999); *United States* v. *Browing-Ferris Industries, Inc.*, 1996–2 Trade Cas. (CCH) ¶ 71,456 (D.D.C. 1996); and *United States* v. *Browing-Ferris Industries, Inc.*, 1995–2 Trade Cas. (CCH) ¶ 71,079 (D.D.C. 1995). In essence, the modification would prohibit Allied and BFI, and any person acquired by them, in the St. Louis, Missouri; Dubuque, Iowa, Memphis, Tennessee; Baltimore, Maryland and southern Florida areas from offering or enforcing evergreen clauses in small container commercial waste collection contracts. The modifications would clarify—and in some instances, extend—the scope of these consent decrees, and help eliminate contractual provisions that significantly deter entry, thus hindering competition in the provision of commercial waste collection services in these five major markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment

[3] The proposed Final Judgment in this case, like the decree pending in *United States* v. *USA Waste Services, Inc.*, No. 98 CV 1616 (N.D. Ohio, filed July 17, 1998), also prohibits defendants from *reacquiring* any of the assets divested under the terms of the decree. *See* Judgment, § VIII(C). While the injunctive provisions of antitrust divestiture decrees logically and implicitly proscribe reacquisition of divested assets, the unique circumstances of this industry, which is rapidly consolidating and where there have been instances of the same assets changing hands several times as a result of such consolidation, dictated that the United States make this proscription explicit in this case.

within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.** Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

IV. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and BFI. The United States could have continued the litigation to seek preliminary and permanent injunctions against Allied's acquisition of BFI. The United States is satisfied, however, that defendants' divestiture of the assets described in the Judgment will establish, preserve and ensure viable competitors in each of the relevant markets identified by the United States. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Allied's acquisition of BFI from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added).

As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [4] Rather,

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted).'' [6]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case,'' Microsoft, 56 F. 3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bring a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 26, 1999.

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[4] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[5] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[6] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States* 460 U.S. 1001 (1983) quoting *United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Respectfully submitted,

Anthony E. Harris,

Illinois Bar #1133713, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Appendix A—Summary of Waste Disposal and Collection Assets That Must Be Divested Under the Proposed Final Judgment

I. Waste Disposal Assets

The proposed Final Judgment, §§ II(C)(1) and (2), IV and V, requires Allied and BFI to divest certain ''relevant disposal assets.'' In general, this means, with respect to each incinerator, landfill or transfer station, defendants must sell, to a purchaser acceptable to the United States, all of their rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed incinerator, landfill or transfer station; the garage and related facilities; offices, and any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of their rights, titles and interests in any intangible assets, including customer lists, contracts, and accounts, or options to purchase any adjoining property. The list of disposal facilities that must be divested includes properties in the following locations, under the listed terms and conditions:

A. Incinerator, Landfills and Airspace Disposal Rights

1. Boston, MA

(a) BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

(b) Airspace disposal rights at BFI's Fall River Landfill, located at 1080 Airport Road, Fall River, MA 02720, pursuant to which SEMASS may dispose of up to the maximum amount of ash and ''bypass'' waste, as now defined in the operating permit (or any modifications, amendments or extension thereto) of Fall River Landfill, for a period of time up to the closure or attainment of permitted capacity of the landfill, provided however, that defendants must commit to operate BFI's Fall River Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Massachusetts, except as to price and credit terms; and

(c) Airspace disposal rights at Ogden Martin Systems Massburn incinerator, located at 100 Recovery Way, Haverhill, MA 01830, pursuant to which a purchaser or purchasers may dispose as much as 1,150 tons/day of waste, for a ten-year period of time.

2. Charlotte, NC

Allied's Lee County Landfill, located at 1301 Sumter Highway, Bishopville, SC 29010, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Section IV or V of the Final Judgment, that the purchaser of Allied's Charlotte Transfer Station [see Section II(B)(4) below] in unacceptable.

3. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099; BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432.

4. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO.

5. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northview, MI 481667.

6. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

7. Joplin/Lamar/Springfield, MO

(a) Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri state Highway M, township 30N, Range 32 West, Section 34, in Jasper County, MO, which option allied must exercise or extend so that it will not expire any sooner than 12 months following the entry of the final Judgment; and

(b) Airspace disposal rights at Allied's Wheatland Regional Landfill, located at Columbus, KS, pursuant to which a purchaser or purchasers can dispose up to 700 tons/day of waste, for a period of time up to three months after the opening of southwest Regional Landfill, provided, however, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Wheatland Regional Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Missouri, except as to price and credit terms.

8. Kalamazoo/Battle Creek, MI

Airspace disposal rights at Allied's Ottawa Farms Landfill, located at 15550 68th Street, Coopersville, MI or BFI's C&C Landfill, located at 14800 P drive North, Marshall, MI 49068, pursuant to which a purchaser may dispose up to 450 tons/day of waste for up to a ten-year period of time, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Section IV or V of the Final Judgment, that the purchaser of Allied's Kalamazoo Transfer Station *see* Section (B)(9) below] is unacceptable; and provided, however, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Ottawa Farms Landfill or BFI's C&C Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Michigan, except as to price and credit terms;

9. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

10. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

11. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th street, Oklahoma City, OK 73128.

B. Transfer Stations

1. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

2. Atlanta, GA

Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263; Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060.

3. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 02501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184.

4. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I–85 Service Road North, Charlotte, NC 28206.

5. Chicago, IL

BFI's Melrose Park 7330 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201.

6. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO.

7. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126.

8. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IN 47711.

9. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

10. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

II. Commercial Waste Collection Assets

The Final Judgment, §§ II(D), IV and V, also orders Allied and BFI to divest certain

''relevant hauling assets'' that may be used in the small commercial waste collection business. The assets primarily include routes, capital equipment trucks and other vehicles, containers, interests, permits, supplies, customer lists, contracts, accounts, and if requested by the purchaser of the assets, garages, used to service customers along the routes in the following locations:

A. Akron, OH

Allied front-end and rear-end loader truck small container routes (hereinafter, ''commercial routes'') that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio.

B. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA.

C. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC.

D. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL.

E. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX.

F. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA.

G. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO.

H. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI.

I. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities.

J. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI.

K. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK.

L. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL.

M. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

N. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

Appendix B—Agreement Regarding Routes that Partially Serve an Area in the Judgment or Obtain Revenues From Commercial and Other Types of Customers

July 19, 1999.

By Facsimile and U.S. Mail

Tom D. Smith, Esquire,
Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005–2088.

David M. Foster, Esquire,
Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Re: Proposed Final Judgment in *United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.*

Dear Messrs. Smith and Foster: I write regarding several issues not explicitly resolved by language in the proposed Final Judgment.

Section II(D) of the Judgment defines ''Relevant Hauling Assets'' and does so by reference to whether a defendant's route: (a) is a front-end loader or rear-end loader small container route; (b) ''serves'' a city or county listed in the Judgment; and (c) solely with respect to Dallas, Texas [Judgment, Section II (D)(5)], serves a nonfranchised or ''open competition'' area.

The United States and the defendants agree that a defendant's waste collection route is a front-end loader or rear-end loader small container route, which must be divested pursuant to the terms of the Final Judgment, if the route, in its most recent year of operation, generated ten percent or more of its revenues from: (a) front-end loader and rear-end loader small container commercial customers; (b) whose businesses are located in a city or county listed in Section II of the Judgment; or (c) with respect to Section II(D)(5), whose businesses are located in a nonfranchised or open competition area of the Dallas area.

Please sign below if this letter accurately sets forth our agreements with respect to the Final Judgment and you agree that the terms set forth herein are enforceable pursuant to the terms of the Final Judgment.

Sincerely yours,

Anthony E. Harris,

Attorney, Litigation II Section.

On Behalf of Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

For Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 26, 1999, I caused a copy of the foregoing Competitive Impact Statement to be served on the defendants Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. by facsimile and by mailing it first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Anthony E. Harris, Esquire,

Illinois Bar # 1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

[FR Doc. 99–20163 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No 98–8]

Mark Binette, M.D., Grant of Restricted Registration

On September 19, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark J. Binette, M.D. (Respondent) of Mesa, Arizona, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated January 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Phoenix, Arizona on August 4 and 5, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On January 20, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted without restrictions. Neither party filed exceptions to Judge Bittner's opinion, and on February 22, 1999, Judge Bittner

transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, except as specifically noted below. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1989. He previously possessed DEA Certificate of Registration BM3082283, however he let it expire on January 31, 1995, since he did not have an active state license at that time.

According to Respondent, he first smoked marijuana in the 1970s when he was a teenager. He was arrested in 1977 for selling marijuana to an undercover police officer for $25. A search of Respondent's home incident to the arrest revealed lysergic acid diethylamide (LSD); however Respondent testified that the LSD was not his but had been left at his home after a party several weeks earlier. It appears that Respondent was convicted of charges relating to these events, that he was sentenced to a period of probation, and that the record of the conviction was expunged in 1984. Respondent further testified that he occasionally used marijuana between 1977 and 1992, but that he did not believe that he had an addiction problem at that time.

In 1992, Respondent began an extramarital affair with a fellow resident who introduced him to methamphetamine, and who provided him with pharmaceutical methamphetamine. According to Respondent, his fellowship stipend was insufficient to make school loan payments and to support his wife and children, so he worked extra hours at several jobs and used the methamphetamine to help him stay awake. In early 1993, Respondent's relationship with the fellow resident ended when she tested positive for methamphetamine use and was forced to enter a drug treatment program. Respondent then began obtaining street methamphetamine from his cousin, and ultimately smoked methamphetamine several times a day.

On April 10, 1993, while working an overnight shift in an emergency room at an air force base, Respondent was followed to his car by base officers who discovered methamphetamine in Respondent's car. Respondent was not arrested at that time, but blood and urine samples were collected which ultimately tested positive for methamphetamine use. Respondent was subsequently charged with possession of a controlled substance and released on his own recognizance.

In November 1993, Respondent met informally with the executive director of the State of Arizona Board of Medical Examiners (Medical Board) and the co-director of the Medical Board's Monitored Aftercare Program. According to Respondent, he gave assurances that he no longer used amphetamines, and the Medical Board allowed Respondent to retain his medical license.

However, Respondent tested positive for methamphetamine use several times between August 1993 and January 1994. In February 1994, Respondent's recognizance release was revoked due to his continued methamphetamine use and he was incarcerated. Several days later he was released from jail and he went to a drug treatment center in Georgia, which is tailored to health care professionals. Respondent left this facility before completing his treatment because he could not afford the cost of the treatment.

Respondent met with the Medical Board again on April 15, and May 9, 1994, and was told that he could not practice medicine in Arizona until he completed his treatment at the facility in Georgia. On May 13, 1994, the Medical Board issued an order which, among other things, prohibited Respondent from using controlled substances that were not obtained pursuant to a valid prescription of a treating physician.

On May 17, 1994, a postal inspector was conducting a random profile of packages and identified a package that she suspected contained controlled substances. The package was opened pursuant to a search warrant and it contained a half ounce of methamphetamine with a street value of approximately $2,800. The package was then resealed and forwarded to Ohio for a controlled delivery. Law enforcement officers contacted a local prosecutor to review an affidavit for a search warrant to be executed after the controlled delivery of the package. During his conversation with the law enforcement officers, the prosecutor became suspicious because his brother had a friend with the same name as that of the addressee on the package. The prosecutor then learned that his brother's wife, from whom he was separated, lived in an apartment complex at the same address as the return address on the package. Later when the prosecutor saw the package, he recognized the handwriting on the package as his brother's and so informed the officers.

On May 19, 1994, there was a controlled delivery of the package and the recipient was arrested and interviewed. During the interview, he mentioned an individual named ''Russ,'' but eventually told the officers that Respondent had mailed him the package. The individual also stated that Respondent had sent him a package of methamphetamine in April 1994, and that he had written Respondent a check for $500 as payment for the methamphetamine.

On several occasions, Respondent contacted his brother who advised him to cooperate with the authorities. Eventually, on May 27, 1994, Respondent did have a conversation with local law enforcement officers during which he indicated that his cousin was the source of the methamphetamine and that he was willing to cooperate in an investigation of his cousin. He indicated that his cousin had asked him to review a recipe for methamphetamine, and that his cousin moved about 40 pounds of methamphetamine per week.

At the hearing, Respondent testified that he had loaned his cousin approximately $20,000 for a business venture, that by April 1994, his cousin had repaid all but $7,000 or $8,000 of the loan, and that he received methamphetamine from his cousin in lieu of interest payments on the loan. Respondent further testified that in April 1994, Respondent went to his cousin's apartment on several occasions and collected $500 on each of two visits. On the third visit, his cousin paid him another $500 and convinced Respondent to mail a package of methamphetamine to a mutual friend and in return, the friend would send payment for the methamphetamine directly to Respondent. According to Respondent he mailed one package of methamphetamine to the mutual friend in late April 1994 and another package on May 17, 1994.

Respondent had another positive urine and was jailed for several days following his arrest on June 15, 1994. He was then released to go to Valley Hope Treatment Center where he stayed for thirty days. Thereafter, he was transferred to the House of Acceptance, Inc. (the House), a substance abuse treatment center.

On August 11, 1994, Respondent was indicted in the United States District Court for the District of Arizona on one count of conspiracy to distribute a controlled substance in violation of 21 U.S.C. 846, three counts of distribution and possession with intent to distribute a controlled substance in violation of 21 U.S.C. 841(a)(1), three counts of using a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b), and one count of establishment of a distribution operation in violation of 21 U.S.C. 856(a)(2). On August 12, 1994, an Amended Information charged Respondent with one count of simple possession of a controlled substance in violation of 21 U.S.C. 844(a).

On October 31, 1994, Respondent pled guilty to one felony count of using a communication facility to facilitate the distribution of a controlled substance on May 19, 1994, and to one misdemeanor count of simple possession of a controlled substance. On February 6, 1995, Respondent was convicted of these offenses in the United States District Court for the District of Arizona and sentenced to 15 months incarceration to be served at a drug rehabilitation center, followed by probation for one year.

As part of the plea agreement, Respondent agreed to cooperate in the investigation and prosecution of others. However, Respondent testified that he was never asked to make any monitored telephone calls, asked to provide any additional documentation, or used in any manner in an investigation of his cousin.

On October 20, 1994, the Medical Board placed Respondent's license to practice medicine in Arizona on inactive status after Respondent admitted that he violated the Medical Board's May 1994 Order by continuing to use methamphetamine.

Respondent participated in in-patient treatment at the House from July 1994 until March 10, 1995. Thereafter, in August 1995, Respondent requested that his medical license be reactivated, and on January 18, 1996, the Medical Board reinstated Respondent's medical license and placed it on probation for five years under the condition that he perform at least 150 hours of community service each year. On February 13, 1996, the Medical Board issued a Rehabilitation Stipulation and Order that added conditions to its January 1996 order, including participation in the Medical Board's Monitored Aftercare Program; participation in a 12-step recovery program; obtaining a sole treating physician who was aware of his addiction; not consuming alcohol, poppy seeds, or controlled substances not prescribed by his treating physician; submission to random drug screening; maintenance of a log of all controlled substances prescribed by his treating physician; submission to periodic Medical Board ordered mental, physical, and medical competency examinations; participation in mental health treatment; attending meetings with the Medical Board; and participation in a treatment program in the event of a relapse.

On March 28, 1997, the Medical Board issued an Order terminating the January 1996 Order of Probation, and on April 9, 1997, the Medical Board issued a Stipulation and Order. The April 1997 action is considered a slightly lesser sanction against Respondent's medical license than probation, but it did not change the substantive requirements of the Medical Board's January and February 1996 Orders.

Respondent presented extensive evidence at the hearing regarding his treatment and rehabilitation. Respondent testified that he last used any illegal drug on or about June 10, 1994. As discussed above, he stayed at the House from July 1994 until March 10, 1995. Among other things, the House conducts classes addressing relapse prevention, anger management, life skills, and chemical dependency; requires participation in group therapy and 12-step programs; and provides extensive monitoring. In addition, the House performs drug screens on its participants approximately every four to five days. According to the director, Respondent's stay and performance at the House was ''[a]bove reproach,'' and all of his urine screens were negative. Since his release from the House, Respondent has continued to offer his services there.

Respondent participates in the Medical Board's Monitored Aftercare Program which requires participation in group therapy, random urine testing, and regular attendance at 12-step meetings, such as Alcoholics Anonymous or Narcotics Anonymous. In addition, the medical director of the program meets with individual participants periodically and a staff therapist meets with the participants more regularly.

According to the program's medical director, he has collected between 25 to 30 urine samples from Respondent each year that he has been participating in the program and that they have all been negative. The medical director further testified that Respondent has complied with all of the terms of the program, that the quality of Respondent's recovery is excellent, that Respondent's prognosis for ongoing recovery is also excellent, and that he did not believe that any risk would result from granting Respondent a DEA registration.

Respondent's probation officer testified that Respondent came under his supervision on May 18, 1995, with standard conditions of release as well as special conditions tailored to his substance abuse problem. These special conditions included Respondent's agreement to submit to a search if requested by the probation officer, to participate in a substance abuse treatment program, a mental health treatment program and financial counseling; and to perform 200 hours of community service. According to the probation officer, Respondent complied with all of the standard and special conditions required by his supervised release, and he was released from supervision on May 17, 1996.

Respondent testified at the hearing that he was too proud and embarrassed to ask anyone for help with his addiction, and that had he not been arrested, he might not have received the help that he needed. He testified that upon accepting his addiction, he went to 180 Alcoholics Anonymous meetings in 180 days, followed by five meetings per week for the next year, then about four meetings per week, and now he sponsors others in their recovery programs. In addition to his community service at the House, Respondent testified that he does volunteer counseling at another treatment center.

Respondent further testified that he intends to continue working on his recovery after the conclusion of his five-year probationary period with the Medical Board because ''[addiction]'s a disease that needs to be treated on a daily basis for the rest of your life, because if not, if allowed to go uncontrolled, it will kill you.''

As of the date of the hearing, Respondent was working as an independent contractor for several insurance companies performing physical examinations. He also helped cover several local nursing homes, and worked as a physician in the urgent care department of several medical centers in Tucson, Arizona. Respondent testified that he hopes to work as an internist at a local hospital beginning in the fall of 1999, but that this position is contingent upon him receiving a DEA registration.

Respondent resumed practicing medicine in January 1996, and has experienced some difficulty as a result of not having a DEA registration. He has been unable to obtain staff privileges at some hospitals and to be designated as a provider by insurance companies. Respondent further testified that his

lack of a DEA registration has also affected his ability to treat patients at the urgent care facilities because he cannot prescribe them controlled substances without involving another physician.

The Government contends that Respondent's application for registration should be denied based upon his violation of the laws relating to controlled substances, his criminal convictions, and the relatively short period of time that he has been in recovery. In arguing that his application should be granted, Respondent does not deny that he violated controlled substance laws and that he was convicted of controlled substance related offenses. Instead, Respondent contends that he has overcome his substance abuse problem and that during the course of his controlled substance abuse, he never misused his former DEA registration to obtain drugs illegally.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the conjunctive; the Deputy Administrator may rely on any one or an combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application of registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that in May 1994, the Medical Board issued a Rehabilitation Stipulation Order placing a number of probationary conditions on his license to practice medicine in Arizona. Thereafter, his medical license was inactivated in October 1994, and when it was reactivated in January 1996, Respondent was placed on probation for five years. Respondent is currently licensed to practice medicine in Arizona with no restrictions on his ability to handle controlled substances. But as Judge Bittner noted, ''inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative.''

As to Respondent's experience in dispensing controlled substances, there is no evidence in Respondent ever improperly dispensed controlled substances to his patients. Concerning his own abuse of methamphetamine, there is not evidence that Respondent used his DEA registration to obtain the methamphetamine that he abused.

Regardinig factor three, it is undisputed that Respondent was convicted in February 1995 for possession of a controlled substance in violation of 21 U.S.C. 844(a), a misdemeanor, and of the use of communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b), a felony. It also appears that Respondent was convicted of controlled substance related offenses in 1977 and that those convictions were later expunged. The Deputy Administrator agrees with Judge Bittner that as a general rule, convictions that have subsequently been expunged can be considered ''convictions'' for purposes of these proceedings. As Judge Bittner noted, ''[a]ny other interpretation would mean that the conviction could be considered between the date it occurs and date it is expunged, but no thereafter, which is inconsistent with established rule in these proceedings that the lapse of time between conduct and the hearing effects only the weight to be given the evidence'' citing Thomas H. McCarthy, D.O., 54 FR 20938 (1989), *aff'd*, No. 89–3496 (6th Cir. Apr. 5, 1990). However, unlike Judge Bittner, the Deputy Administrator finds that the record is unclear as to exactly what charges Respondent was convicted of in 1977 and therefore declines to consider these convictions is rendering his decision in this matter.

But, the Deputy Administrator does agree with Judge Bittner that convictions for possession of a controlled substance cannot be considered under this factor. Pursuant to 212 U.S.C. 823(f)(3), the Deputy Administrator shall consider an ''applicant's conviction record * * * relating to the manufacture, distribution, or dispensing of controlled substances.'' Therefore, Respondent's 1995 misdemeanor conviction for possession of a controlled substance cannot be considered under this factor. Judge Bittner seems to suggest that this conviction can be considered under 21 U.S.C. 824(a)(2), however the Deputy Administrator disagrees since only felony convictions relating to controlled substances can be considered under 21 U.S.C. 824(a)(2).

However, the Deputy Administrator has considered Respondent's conviction in 1995 of using a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b).

As to factor four, Respondent's compliance with applicable laws relating to controlled substances, it is clear that Respondent illegally possessed controlled substances in 1977 and 1993, and that he illegally mailed methamphetamine in 1994. Respondent also admitted that he self-administered methamphetamine between 1992 and 1994 for no legitimate medical purpose and outside the scope of his medical practice.

Regarding factor five, the Deputy Administrator agrees with Judge Bittner that it is significant that Respondent was addicted to methamphetamine between June 1992 and June 1994, and that he abused methamphetamine while performing his duties as a physician. However, the Deputy Administrator also finds it noteworthy that Respondent has not illegally used controlled substances since June 1994, and that he has undergone significant treatment for his addiction, and continues with his recovery efforts.

The Deputy Administrator agrees with Judge Bittner that the Government has established a prima facie case for the denial of Respondent's application based upon Respondent's prior addiction to methamphetamine, his violation of controlled substance laws, his 1995 felony conviction, and his abuse of methamphetamine while performing the duties of a physician. Nonetheless, the Deputy Administrator concurs with Judge Bittner's conclusion that ''[t]he record, however, establishes that Respondent has spent the last four years rehabilitating himself and has successfully remained sober during that time.'' In addition, Judge Bittner found Respondent's evidence regarding this rehabilitation and recovery to be credible. Judge Bittner found that ''Respondent now understands the gravity of his actions and is remorseful.'' Judge Bittner concluded ''that a preponderance of the evidence does not establish that it would be inconsistent with the public interest to grant Respondent's application for a new DEA registration,'' and therefore recommended that Respondent's application be granted.

The Deputy Administrator agrees with Judge Bittner that denial of Respondent's application is not warranted. However, the Deputy Administrator believes that some restrictions on Respondent's registration are necessary to protect the public health and safety in light of Respondent's fairly recent abuse of controlled substances, his violation of controlled substance laws and his felony conviction.

Therefore, the Deputy Administrator concludes that Respondent's application for registration should be granted subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration.

1. Respondent must continue his involvement with the Medical Board's Monitored Aftercare Program and abide by its requirements regardless of whether the Medical Board requires such involvement.

2. Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the February 12, 1996 application for registration submitted by Mark Binette, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20232 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rafael Cappiello, M.D., Revocation of Registration

On April 8, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rafael Cappiello, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC8554354 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Cappiello that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cappiello or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cappiello is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR parts 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Cappiello currently possesses DEA Certificate of Registration AC8554354 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cappiello's license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Cappiello is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Cappiello is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cappiello is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC8554354, previously issued to Rafael S. Cappiello, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20237 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert S. Chancellor, M.D., Revocation of Registration

On April 8, 1999, the Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert S. Chancellor, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BC2622644 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Chancellor that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Chancellor or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chancellor is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without hearing pursuant to 21 CFR 1391.43 (d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Chancellor currently possesses DEA Certificate of Registration BC2622644 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Chancellor's

license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Chancellor is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the application or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Chancellor is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Chancellor is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate or Registration BC2622644, previously issued to Robert S. Chancellor, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20238 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–21]

Bryant D. Chomiak, Revocation of Registrations

On January 12, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Bryant D. Chomiak, M.D. (Respondent) of Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration BC2335912 and BC5019395 pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of such registrations pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in Nevada, the state in which he practices. The order also notified Respondent that should not request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause that was sent to Respondent at his registered location in Henderson, Nevada was returned to DEA unclaimed. However, a signed receipt indicates that the Order to Show Cause sent to Respondent at his registered location in Las Vegas, Nevada was received on January 20, 1999. There was no response to the Order to Show Cause by Respondent or anyone purporting to represent him within 30 days of receipt of the order and the matter was transmitted to the Deputy Administrator on April 6, 1999, for final agency action.

On April 26, 1999, the DEA's Office of Administrative Law Judges received a letter from Respondent dated April 16, 1999, indicating that he was seeking reinstatement of his Nevada medical license; stating that the revocation of his Nevada medical license had noting to do with his professional conduct; and seeking advice regarding the proper procedure to be followed in this matter. by letter dated May 3, 1999, the Hearing Clerk for the Office of Administrative Law Judges advised Respondent that it was unclear from his April 16, 1999 letter whether or not he was requesting a hearing. The Hearing Clerk then stated ''that although your response to the Order to Show Cause is outside the time period specific in 21 CFR 1301.43, you may file with this office a written request for a hearing by May 14, 1999. Otherwise, you will be deemed to have waived your right to a hearing.''

On May 18, 1999, Administrative Law Judge Gail A. Randall issued an Order Terminating the Proceedings in this matter. Judge Randall found that there had been no response to the May 3, 1999 letter from the Hearing Clerk, and therefore concluded that Respondent had waived his right to a hearing.

Thereafter, on May 19, 1999, the Office of Administrative Law Judges received a letter from Respondent dated May 16, 1999, in which Respondent stated that ''I suppose, the best course is to request a hearing to explain my position formally.'' Since Judge Randall had already terminated the proceedings before her, the Hearing Clerk forwarded Respondent's May 16, 1999 letter to Government counsel for appropriate action. the investigative file, including all of the above-referenced documents, has been transmitted to the Deputy Administrator.

The Deputy Administrator concludes that Respondent has waived his right to a hearing in this matter. The Order to show Cause specifically states that Respondent had 30 days from the date of receipt of the order to request a hearing. The Order to Show Cause was received on January 20, 1999, and no correspondence did not specifically request a hearing and was clearly outside the 30-day period for requesting a hearing. Nonetheless, Judge Randall gave Respondent a second chance to request a hearing. Respondent was give until May 14, 1999, yet Respondent's letter requesting the hearing was not filed with DEA until May 19, 1999, again outside the allotted time period. Therefore, Respondent is deemed to have waived his right to a hearing and the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificates of Registration BC23355912 and BC5019395, issued to him in Nevada. The Deputy Administrator further finds that on April 24, 1997, the Board of Medical Examiners of the State of Nevada (Board) ordered the summary suspension of Respondent's license to practice medicine in Nevada pending further proceedings. Thereafter, on July 15, 1997, the Board revoked Respondent's Nevada medical license. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in Nevada, and it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Respondent is not currently authorized to practice medicine and handle controlled substances in Nevada. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BC2335912 and BC5019395, previously issued to Bryant D. Chomiak, M.D., be, and they hereby are, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registrations, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20239 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated Agril 26, 1999, and published in the **Federal Register** on May 7, 1999, (64 FR 24678), Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances to make finished products.

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 Dupont Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Dupont Pharmaceuticals 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 0.104, 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 classes of controlled substances listed above is granted.

Dated: July 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20229 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–27]

Roger Lee Kinney, M.D.; Grant of Restricted Registration

On March 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Roger Lee Kinney, M.D. (Respondent) of Sapulpa, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated April 15, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Tulsa, Oklahoma on July 21, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On January 22, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Randall's opinion, and on April 12, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1966, and entered private practice in Sapulpa, Oklahoma in 1967, as a general or family practitioner. He has been a staff member at the only local hospital for approximately 30 years. There are 14 active staff positions at the hospital and it serves a fairly rural area consisting of approximately 58,000 people.

During the early 1980s, Respondent purchased and ingested cocaine. The record is not clear as to the extent of Respondent's abuse of cocaine. However according to Respondent, he last ingested cocaine on August 8, 1985. There is also some evidence in the record that in 1981, Respondent dispensed and distributed Preludin, a Schedule II controlled substance, not in the usual course of his professional practice or for legitimate medical or research purposes.

In 1985, a federal grand jury charged Respondent with an 82-count indictment, which include counts for illegal distribution of a controlled substance, conspiracy to distribute cocaine, and income tax evasion. According to Respondent, he pled guilty to at least 14 felony counts, among them, conspiracy, illegal distribution, and tax evasion, and he was sentenced to four years incarceration. However, the Deputy Administrator is unable to determine exactly what charges Respondent was convicted of, since no judgment order was entered into evidence. Further, while Respondent pled guilty to some charges and he admitted in his 1990 application for a DEA Certificate of Registration that he has been convicted of illegal distribution of controlled substances ''which stemmed from a problem of substance abuse,'' the Government did not present any evidence of the underlying fact of the investigation which led to Respondent's indictment and ultimate conviction. Therefore, the Deputy Administrator is unable to determine the extent and severity of Respondent's unlawful conduct.

Respondent consented to the suspension of his medical license during the period of his incarceration. Thereafter, on February 24, 1986, the Oklahoma State Board of Medical Examiners (Board) suspended Respondent's medical license. While incarcerated, Respondent participated in a drug rehabilitation program. His sentence was later reduced to three years incarceration because of his

cooperation with the Government, and he ultimately served approximately 20 to 22 months of his sentence before being released.

Upon his release, Respondent spent four months at a halfway house, where he was subject to random drug testing six times per month. Following his stay at the halfway house, Respondent was on court-ordered probation for four years, during which time he was randomly tested for drugs once or twice a month. According to Respondent, he never failed any of these drug tests, and the Government presented no evidence to the contrary. Following his incarceration, Respondent participated for several years in an impaired physicians group that met weekly. Respondent testified that he stopped participating in any drug rehabilitation programs or support groups in 1995, ''because I didn't seem to have any inclination to do drugs anymore.''

On May 19, 1987, the Board conditionally reinstated Respondent's medical license and placed it on probation for five years. Among the conditions imposed by the Board were that Respondent could not prescribe, administer or dispense controlled substances without specific approval from the Board; that he would submit to biological fluid testing at his expense; and that he would abstain from personally using alcohol or any controlled substance unless lawfully prescribed by his physician. Thereafter, on October 19, 1987, the Board modified its previous order, thereby allowing Respondent to prescribe, administer or dispense controlled substances ''for emergency room in-patients under the conditions that a fully licensed physician countersign the order within 36 hours and * * * that no controlled dangerous substances may be taken off the premises of the emergency room by any patient.'' Respondent complied with these conditions.

As a result, the Board terminated Respondent's probation effective October 26, 1989. In its ''Order Terminating Probation,'' the Board commended Respondent for his compliance with the terms and conditions of his probation. Once his probation was terminated, there were no restrictions on Respondent's ability to prescribe, dispense or administer controlled substances in the hospital, using the hospitals's DEA registration number. The pharmacist at the hospital testified that Respondent has never asked her to fill a controlled substance prescription for one of Respondent's outpatients.

On January 31, 1990, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN) found that Respondent was addicted to cocaine and had been convicted of a felony; denied Respondent's request for a state controlled substance registration at that time; but granted the registration with an effective date of June 1, 1990. There is no evidence that Respondent has misused his state controlled substance license since it was reinstated.

On June 8, 1990, Respondent submitted an application for a DEA Certificate of Registration. In investigating this application, a DEA investigator visited 16 area pharmacies to gather information Respondent's prescribing habits. During the course of this pharmacy survey, the investigator discovered a prescription written by Respondent on December 11, 1991, for Tussi-Organidin, a Schedule V controlled substance. Tussi-Organidin is a cough syrup that contains codeine phosphate. There is also a non-controlled substance called Tussi-Organidin DM, which contains dextromethorphan rather than codeine. Since Tussi-Organidin is a controlled substance, Respondent was not authorized at that time to issue a prescription for it for a clinic patient; but, he was authorized to prescribe Tussi-Organidin DM. Further, Respondent was authorized at that time to issue a prescription for Tussi-Organidin in a hospital setting. Therefore, is it possible that Respondent simply forgot to put the ''DM'' on the prescription for Tussi-Organidin. Had ''DM'' been written on the prescription, it would have been for a non-controlled substance and it would have been lawfully prescribed by Respondent for his clinic patient.

In investigating the origin of this prescription, the investigator was told by an unnamed person ''to discount it being written by Dr. Kinney * * * [it] was going to be changed to another physician's name and DEA number.'' Respondent was not informed that the prescription as written was inaccurate, and DEA did not contact the patient as part of the investigation. According to Respondent, the individual had been a patient of his for a number of years.

As a result of this investigation, an order to Show Cause was issued proposing to deny Respondent's 1990 application for a DEA Certificate of Registration. Before the case could proceed to a hearing however, Respondent withdrew his application. DEA has not conducted any investigation of Respondent since this 1991 investigation.

At some point following his reinstatement by the Board, Respondent practiced medicine part-time at a medical clinic owned by the local hospital. While there, Respondent prescribed injectable Nubain, a non-controlled substance, to his patients. At some point, the clinic manager told Respondent that she would no longer maintain a supply of Nubain because of Respondent's past licensing history. Because there are very few non-controlled analgesics that can be substituted for Nubain, Respondent began purchasing injectable Nubain from pharmacies to administer to his patients.

When Respondent left the clinic and only practiced at the hospital, he stopped purchasing Nubain, because the hospital pharmacy maintained a supply of it. In addition, the clinic where Respondent currently works also purchases Nubain for clinic use. According to Respondent, he has never self-administered Nubain, and the Government did not present any evidence that Respondent was using or abusing Nubain, or that he was unlawfully prescribing it for his patients.

Respondent submitted another application for registration with DEA dated October 16, 1996. According to Respondent, it is becoming increasingly difficult for him to treat patients, since he is unable to participate in many managed care programs without a DEA registration.

Currently, Respondent has staff privileges at the local hospital. At the hospital, Respondent also performs surgery, serves as anesthesiologist, works in the emergency room, and is the director of the Skilled Nursing Unit. Typically, Respondent is in surgery five days a week as the primary surgeon or the practicing anesthesiologist. Also, Respondent currently works at a clinic that is owned by the hospital.

Presently, Respondent tries to treat his clinic patients without the use of controlled substances. However, if a controlled substance is necessary, Respondent refers patients directly to another physician who is considered the ''patriarch'' of the hospital or Respondent asks him to consult on a case and to prescribe a controlled substance for the patient if necessary. However, this physician is 93 years old with significant health problems, and will likely not be practicing for too much longer. If Respondent does not have his own DEA registration and this other physician retires, Respondent will need to find another physician to examine his patients and prescribe controlled substances when necessary.

Respondent's handling of controlled substances at the hospital is subject to

several levels of review. Respondent's orders have never been questioned or reversed. Respondent has been ''in good standing'' with the hospital at all time.

The number of patients requiring medical care in the Sapulpa area has increased significantly in recent years. If Respondent is not granted a DEA registration, medical care in Sapulpa would suffer since he would be unable to treat a number of patients because he is not allowed to participate in managed care programs.

Based upon Respondent's testimony at the hearing, it is clear that he recognizes the unlawfulness of his prior conduct and appreciates the consequences of such activities.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that the Board suspended Respondent's medical license in 1986, but hen conditionally reinstated it in 1987 and placed it on probation for five years. Then in 1989, the Board lifted the restriction from Respondent's medical license and terminated the probationary period. It is also undisputed that the OBN initially denied Respondent's application for a state controlled substance registration, but then granted him such a registration in June 1990. Thus, Respondent has had an unrestricted medical license in Oklahoma since 1989 and has been authorized to handle controlled substances in that state since 1990. As Judge Randall stated, ''[b]y reinstating both these licenses, over eight years ago, the Board and the OBN have asserted their belief that the Respondent is not a threat to the health or safety of the citizens of Oklahoma.''

Factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, are clearly relevant in determining the public interest in this matter. Respondent admitted that he purchased and abused cocaine in the early 1980's. However, according to Respondent he has been drug-free since 1985.

In addition, based upon his guilty pleas to a number of criminal charges, there is evidence that Respondent illegally distributed Preludin in the early 1980s. However, without any evidence of the underlying facts that led to Respondent's guilty pleas, the Deputy Administrator is unable to determine the extent and severity of this illegal activity. Nonetheless, the Government has established that at least to some extent, Respondent improperly handled controlled substances and violated relevant controlled substance laws in the early 1980s.

More recently, the Government presented evidence that in 1991, Respondent issued a prescription for the controlled substance Tussi-Organidin to a clinic patient, when he was not authorized to do so. As Judge Randall stated, ''[c]onsiderd alone, this assertion satisfies the Government's *prima facie* burden.'' However like Judge Randall, the Deputy Administrator finds Respondent's evidence concerning this allegation compelling. Respondent was authorized to prescribe Tussi-Organidin in a hospital setting using the hospital's DEA registration number. Further, he was authorized to prescribe Tussi-Organidin DM, a non-controlled substance, to his clinic patients. Since this was the only improper prescription found during the DEA in investigator's survey of 16 pharmacies, Respondent's contention is credible that he simply forgot to write ''DM'' on the prescription for his clinic patients. As Judge Randall noted, ''the seizure of only one prescription indicates that there was no pattern of unauthorized prescribing by the Respondent during this time frame.'' The Deputy Administrator agrees with Judge Randall that ''the existence of this single prescription dated in 1991 for Tussi-Organidin lends little support to the Government's position that granting the Respondent's application in 1999 is inconsistent with the public interest.''

The Deputy Administrator finds that while Respondent's behavior in the early 1980s is troubling, it is also significant that other than the one prescription in 1991, there have been no allegations of any improper handling of controlled substances. In fact, Respondent has been handling controlled substances in a hospital setting using the hospital's DEA registration number for a number of years without any problems or questionable conduct.

As to factor three, it is undisputed that Respondent was convicted of charges related to the illegal distribution of a controlled substance and conspiracy. Respondent was incarcerated for 20 to 22 months, and after spending four months in a halfway house, he was placed on probation for four years. Respondent successfully completed his probation.

Regarding factor five, the Government argues that Respondent's purchase of Nubain during 1990 and 1991, is evidence of other conduct which may threaten the public health and safety. The Government contends that Respondent's explanation, that he purchased the Nubain to administer to his patients, was not credible. However, the Government has the burden of proof in these proceedings. The mere fact that Respondent purchased Nubain is not evidenced of any wrongdoing. The Government did not present any evidence that Respondent's purchase of this non-controlled substance was improper. To the contrary, Respondent was authorized to handle Nubain at that time. Respondent explained that he purchased the Nubain because the clinic where he was then employed stopped stocking the drug, and he ceased purchasing Nubain once it became available to him to dispense to his patients at the hospital.

Also relevant under this factor is Respondent's abuse of cocaine. While it is troubling that Respondent stopped actively participating in a recovery program in 1995, he has not illegally used drugs since August 1985.

The Deputy Administrator concludes that Respondent's conduct in the early 1980s and his lack of ongoing participation in a recovery program warrants concern as to whether Respondent can be trusted to responsibly handle controlled substances. However, Respondent has accepted responsibility for his past misconduct; he has complied with all of the terms of his criminal probation, as well as the restrictions placed on his medical license by the Board; there is only one instance of questionable prescribing since the early 1980s; and he has not abused controlled since 1985.

Additionally, the Deputy Administrator finds it significant that without a DEA registration, Respondent is unable to effectively contribute to the medical care of the Sapulpa community. There are only 14 active physicians employed by the sole hospital responsible for the care and treatment of approximately 58,000 people. Because Respondent cannot independently handle controlled substances and is unable to participate in managed care programs, the other physicians at the hospital must handle more than their share of the patients.

The Deputy Administrator concludes that based upon a review of the record, denial of Respondent's application is not warranted. However, the Deputy Administrator concurs with Judge Randall's conclusion that although, ''the Respondent should be allowed the opportunity to demonstrate that he can now handle the responsibilities of a DEA registrant, * * * the public interest would best be served by monitoring the Respondent's handling of controlled substances during the first registration period.'' Imposing conditions upon Respondent's registration, ''will allow the Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances.'' Steven M. Gardner, M.D., 51 FR 12576 (1986).

Therefore, the Deputy Administrator agrees with Judge Randall's recommendation that Respondent's application for registration be granted, pursuant to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) On a quarterly basis, Respondent shall provide the DEA Oklahoma City Resident Office with a log of his handling of controlled substances outside of the Bartlett Hospital setting. This log should include at a minimum the date the controlled substance was prescribed, administered, or dispensed; the patient's complaint; the name, dosage, and quantity of the controlled substance prescribed, administered, or dispensed; and the date that the medication was last prescribed, administered, or dispensed to that patient, as well as the amount last provided to that patient. If no controlled substance are prescribed, administered, or dispensed during a given quarter, Respondent shall indicate that fact in writing, in lieu of submission of the log.

(2) Respondent shall notify the DEA Oklahoma City Resident Office of any action taken by any state upon his medical license or upon his authorization to handle controlled substance in any state. Such notification shall occur within 30 days of any state action.

(3) Respondent shall notify the DEA Oklahoma City Resident Office within 30 days of any change in his employment.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Roger Lee Kinney, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20231 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawson and Associations; Denial of Application

On November 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lawson and Associates, of Nashville, Tennessee, notifying it of an opportunity to show cause as to why DEA should not deny its application for a DEA Certificate of Registration as a researcher pursuant to 21 U.S.C. 823(f), for reason that is not currently authorized to handle controlled substances in the State of Tennessee. The order also notified Lawson and Associates that should no request for a hearing be filed within 30 days of receipt of the Order to Show Cause, its hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on November 23, 1998. No request for a hearing or any other reply was received by the DEA from Lawson and Associates or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Lawson and Associates is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that DEA registers dog handlers as researchers pursuant to 21 U.S.C. 823(f). The Deputy Administrator further finds that there is a letter in the investigative file dated June 9, 1997, from the Tennessee Board of Pharmacy which indicates that Lawson and Associates was issued a license as a dog handler on November 15, 1995, but that the license expired on November 30, 1996, and has not been renewed. Lawson and Associates did not present any evidence to indicate that it was currently licensed in Tennessee as a dog handler.

The Deputy Administrator concludes that Lawson and Associates is not currently licensed as a dog handler in the State of Tennessee and therefore, it is reasonable to infer that it is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without states authority to handle controlled substances in the state in which it conducts its business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR. 16193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Lawson and Associates is not currently authorized to handle controlled substances in the State of Tennessee. As a result, it is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Lawson and Associates, be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20234 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 26, 1999, and published in the **Federal Register** on May 7, 1999, (64 FR 24679), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The firm intends to import the listed controlled substances to produce codeine phosphate, codeine sulfate, morphine sulfate, oxycodone and hyrocodone.

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 Noramco of Delaware, Inc. to import the listed controlled substances 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 Noramco of Delaware, 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 classes of controlled substances listed above.

Dated: July 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20228 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–18]

Vincent G. Rhoden, D.P.M.; Revocation of Registration

On January 21, 1999, the Deputy Assistant Administrator, Officer of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Vincent G. Rhoden, D.P.M. (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BR5050860 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California.

By letter dated March 1, 1999, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On March 8, 1999, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on March 29, 1999, alleging that Respondent is currently registered with DEA to handle controlled substances in the State of California, however he is currently without state authority to handle controlled substances in that state. On April 19, 1999, Respondent filed his response to the Government's motion requesting that the proceedings be stayed for ''at least 180 days so that [he] may explore all available judicial remed[ies] for a questionable decision that was rendered against [him]. In addition, Respondent stated that there have been no complaints regarding his use of his DEA Certificate of Registration and that he intends to return to the practice of medicine. However, Respondent did not deny that he was not currently authorized to handle controlled substances in California.

On April 22, 1999, Judge Bittner issued her Opinion and Recommended Ruling, finding that Respondent lacks authorization to handle controlled substances in the State of California; granting the Government's Motion for Summary Disposition; and recommending that Respondents DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on May 24, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Board of Pediatric Medicine, Department of Consumer Affairs, State of California, revoked Respondent's license to practice podiatric medicine effective January 14, 1998. Respondent does not deny that his medical license has been revoked. As a result, the Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the State of California, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of California. As a result, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is not currently authorized to handle controlled substances in California. Therefore, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial proceeding involving evidence and cross-examination of witnesses is not required. See Jesus R. Juarez, M.D., 62 FR 14945 (1997). The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. See Philip E. Kirk, M.D., 48 FR 32887 (1983), *affd; sub nom* Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BR5050860, previously issued to Vincent G. Rhoden, D.P.M., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20236 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–4]

Robert W. Shultice, M.D.; Revocation of Registration

On October 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert W. Shultice, M.D. (Respondent) of Cedar Rapids, Iowa. The Order to Show Cause notified Dr. Shultice of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS0126272 pursuant to 21 U.S.C. 824(a)(1) and (a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the public interest.

By letter dated November 12, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 24, 1998, Judge Bittner issued an Order for prehearing Statements. The Government filed its prehearing statement on December 15, 1998, and on January 4, 1999, Respondent filed a Motion of Continuance. In his motion, Respondent indicated that he had voluntarily surrendered his license to practice medicine with the Iowa Board of Medical Examiners (Medical Board), and asked for an indefinite continuance of the proceedings. Respondent attached to his motion a copy of a Statement of Charges, Settlement Agreement and Final Order which was approved by the medical Board of December 17, 1998, in which Respondent agreed to voluntarily surrender his medical license no later than December 11, 1998. On January 4, 1999, Judge Bittner denied Respondent's motion.

Thereafter, the Government filed a Motion for Summary Disposition on January 21, 1999, alleging that Respondent was no longer authorized to handle controlled substances in Iowa, where he is registered with DEA. The Government attached to its motion a copy of a letter dated January 14, 1999, from the Iowa Board of Pharmacy (Pharmacy Board) to Respondent informing him that based on the surrender of his medical license, the Pharmacy Board revoked his Iowa controlled substance registration. On February 5, 1999. Respondent filed his Response to the Government's Motion for Summary Disposition, indicating that he did not object to the Government's motion.

On February 8, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in Iowa; granting the Government's Motion for Summary Disposition, and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on April 6, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent voluntarily surrended his license to practice medicine in December 1998, and on January 14, 1999, the Pharmacy Board revoked his Iowa controlled substance registration. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Iowa, where he is registered with DEA.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in the State of Iowa. Since Respondent lacks this authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the State of Iowa. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F. 2d 634 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 44 F. 2d 432 (9th Cir. 1971).

According, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BS0126272, previously issued to Robert W. Shultice, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20241 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–17]

Clarence J. Sketch, D.D.S.; Denial of Application

On February 2, 1999, the Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration (DEA) issued an Order to Show Cause to Clarence Sketch, D.D.S. (Respondent) of Costa Mesa, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest. In a letter to DEA dated February 25, 1999, Respondent admitted that he abused his previous DEA Certificate of Registration,

indicated that he would not abuse his privileges in the future, stated that he needs a DEA registration in his practice of dentistry, and asked that his registration be reinstated. However, Respondent did not request a hearing on the issues raised by the Order to Show Cause.

Thereafter, the matter was docketed before Administrative Law Judge Gail A. Randall. By letter dated March 15, 1999, Judge Randall advised Respondent that he did not request a hearing in his February 25, 1999 letter. Nonetheless, Judge Randall told Respondent that he had until March 31, 1999, to request a hearing, and that failure to request a hearing by that date, would be deemed a waiver of his right to a hearing pursuant to 21 CFR 1301.43(d).

On April 13, 1999, Judge Randall issued an Order; Notice of Waiver of Hearing advising that she had not received a response to her letter to Respondent dated March 15, 1999. As a result, Respondent was deemed to have waived his opportunity for a hearing and Judge Randall terminated the proceedings before her.

Subsequently the mater was transmitted to the Deputy Administrator for issuance of a final agency decision. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46

The Deputy Administrator finds that DEA initiated an investigation of Respondent in May 1996 after receiving reports that Respondent had purchased large quantities of Schedule III through V controlled substances from a single distributor. A review of the distributor's invoices revealed that Respondent purchased over 58,000 dosage units of Schedule III through V controlled substances from this distributor between May 28, 1994 and April 23, 1996.

On May 2, 1996, during an interview with investigators, Respondent admitted that he ordered and received controlled substances, but claimed that he dispensed them to his patients. When asked for records of receipt and dispensation, Respondent stated that he did not maintain any records, except what was noted in the patient charts. It was also discovered that Respondent did not have any controlled substances on hand as of the date of the interview. Upon further questioning, Respondent admitted that the controlled substances were not given to his patients, but instead, he sold them on a monthly basis for two to three dollars per pill to a Mexican national. Respondent indicated that he was experiencing financial difficulties at the time. On May 6, 1996, Respondent surrendered his previous DEA Certificate of Registration.

Respondent then submitted a new application for registration with DEA dated July 15, 1998. He indicated on this application that he surrendered his previous DEA registration because ''[a]t that time I was not doing a proper job at keeping records.''

On October 13, 1998, a DEA investigator had a conversation with Respondent regarding his application for registration. During this conversation, Respondent indicated that he needs limited controlled substance privileges for the treatment of his patients; that he needs a DEA registration in order to be accepted as a provider by insurance companies; that he has no contact with the Mexican national; and that his financial problems have been resolved through bankruptcy proceedings.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D. 54 FR 16422 (1989).

The Deputy Administrator finds that there is no evidence in the investigative file regarding factors one and three. However factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable controlled substance laws, are clearly relevant in determining whether Respondent's registration with DEA would be in the public interest. By Respondent's own admission in 1996, he ordered controlled substances and then sold them to a Mexican national for no legitimate medical purpose. This is clearly a violation of 21 U.S.C. 841(a)(1). In addition, Respondent failed to keep complete and accurate records of his controlled substance handling as required by 21 U.S.C. 827. Therefore, the evidence supports a finding that Respondent diverted over 58,000 dosage units of controlled substances between May 1994 and April 1996.

As to factor five, the Deputy Administrator finds it particularly troubling that Respondent was less than forthcoming on his application for registration dated July 15, 1998. Respondent indicated on the application that he surrendered his previous DEA registration based upon his failure to keep proper records. Respondent does not mention the fact that he illegally sold controlled substances to a Mexican national.

The Deputy Administrator concludes that there is substantial evidence in the record to support a conclusion that Respondent's registration with DEA would be inconsistent with the public interest. The Deputy Administrator recognizes that Respondent has indicated that he needs to be able to handle controlled substances in order to adequately treat his patients; however, the Deputy Administrator is not convinced based upon the evidence in the record that Respondent can be trusted to responsibly handle controlled substances.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Clearance J. Sketch, D.D.S. on July 15, 1998, be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20233 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 12, 1999, and published in the **Federal Register** on April 27, 1999, (64 FR 22645), Stepan Company Natural Products Department,

100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

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 Stepan Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company 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 classes of controlled substances listed above is granted.

Dated: July 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20230 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–2]

Dietrich A. Stoermer, M.D.; Denial of Application

On June 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Dietrich A. Stoermer, M.D. (Respondent) of Las Vegas, Nevada. The Order to Show Cause notified Dr. Stoermer of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), based in part on the fact that he is not currently authorized to handle controlled substances in Nevada.

On October 26, 1998, Respondent filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 2, 1998, Judge Bittner issued an Order requiring Respondent to file a written statement indicating why his more than four month delay in filing a request for a hearing should not be considered a waiver of his right to a hearing. On November 12, 1998, Respondent filed a written statement asserting that he received the Order to Show Cause on August 6, 1998, and since it was more than thirty days after the Order to Show Cause had been issued he believed that he was precluded from responding. Respondent asserted that he received a second Order to Show Cause on September 30, 1998, and timely filed his request for a hearing on October 26, 1998. The Government did not file an objection to Respondent's explanation. Thereafter, on November 25, 1998, Judge Bittner issued a Memorandum and Order for Prehearing Statements finding that Respondent did not waive his right to a hearing.

In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition and Request for Stay of Deadline to File Prehearing Statement on December 15, 1998, alleging that Respondent is not authorized to handle controlled substances in Nevada, where he has applied to be registered with DEA. On December 31, 1998, Respondent submitted his response to the Government's motion, in which he did not deny that he was not currently authorized to handle controlled substances in Nevada.

On February 1, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in the State of Nevada; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her opinion, and on April 6, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that attached to the Government's Motion for Summary Disposition was a letter dated March 5, 1998, from a licensing specialist with the Nevada State Board of Pharmacy (Pharmacy Board), which indicated that Respondent's state registration was not renewed in October 1994, and that while Respondent reapplied for registration in June of 1996, he did not complete the registration process. In his response to the Government's motion, Respondent did not deny that he was not currently authorized to handle controlled substances in Nevada. However, he asserted that when he applied for a state registration in June 1996, he was told not to pursue state registration ''until the Federal problem is sorted out.'' Subsequently, by letter dated January 25, 1999, Respondent forwarded a copy of his application dated January 29, 1999, for a controlled substance registration filed with the Pharmacy Board.

The Deputy Administrator finds that Respondent does not dispute that he is not currently authorized to handle controlled substances in Nevada, where he has applied for registration with DEA. However, he asserts that the Pharmacy Board will not consider his application for state registration until he receives a DEA Certificate of Registration. Judge Bittner noted that ''[t]his agency has neither the authority nor the obligation to discover why Respondent is not registered with the Pharmacy Board, but only to ascertain if Respondent is authorized to handle controlled substances in the State of Nevada.'' Therefore, the Deputy Administrator concludes that Respondent is not currently authorized to handle controlled substances in Nevada.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in the State of Nevada. Since Respondent lacks this authority, he is

not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the State of Nevada. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D., 48 FR 32887 (1993), *aff'd sub nom* Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Dietrich A. Stoemer, M.D., be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20235 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Richard M. Wodka, M.D., Revocation of Registration

On February 26, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard M. Wodka, M.D., of Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BW3512173 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Arizona. The order also notified Dr. Wodka that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by registered mail to Dr. Wodka's DEA registered address in Tucson, Arizona, but was returned to DEA with a notation that Dr. Wodka had moved without leaving a forwarding address. A copy of the Order to Show Cause was also sent by regular mail to Dr. Wodka at his last known address in Marana, Arizona. This copy has not been returned and therefore is considered to have been delivered.

No request for a hearing or any other reply was received by the DEA from Dr. Wodka or anyone purporting to represent him in this matter. It is evident that Dr. Wodka is no longer practicing medicine at the address listed on his DEA Certificate of Registration. Dr. Wodka is therefore deemed to have waived his opportunity for a hearing. The Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Wodka currently possesses DEA Certificate of Registration BW3512173, issued to him in Arizona. On July 17, 1996, the Arizona Board of Medical Examiners (Board) placed Dr. Wodka's license to practice medicine in inactive status and totally revoked his prescribing privileges.

The Deputy Administrator concludes that Dr. Wodka is not currently licensed to practice medicine in the State of Arizona, and is not authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Wodka is not currently authorized to handle controlled substances in the State of Arizona. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BW3512173, previously issued to Richard M. Wodka, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20240 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2009–99; AG Order No. 2239–99]

Extension of the Registration Period for Hondurans and Nicaraguans Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On January 5, 1999, the Attorney General designated Honduras and Nicaragua under the Temporary Protected Status (TPS) program for a period of 18 months. Under the terms of the designation, applicants could apply for TPS during the registration period lasting from January 5, 1999, through July 5, 1999. this notice extends the registration period until August 20, 1999. Applications must be received with the appropriate fee for a fee waiver request by the Immigration and Naturalization Service (Service) service center with jurisdiction over the applicant's place of residence by close of business on August 20, 1999. The extension of the registration period does not extend the period of the designation. In order to be eligible for TPS under the Honduras or Nicaragua designations, applicants must demonstrate that they have been continuously present in the United States since January 5, 1999, and have continuously resided in the United States since December 30, 1998. The Service is extending the registration period to allow eligible applicants who have not yet filed an application an additional 45 days to register for TPS. There will be no further extension of the registration deadline.

DATES: This notice is effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

When did the Attorney General designate Honduras and Nicaragua under the TPS Program?

On January 5, 1999, the Attorney General designated Honduras and

Nicaragua under the TPS program for a period of 18 months in two separate **Federal Register** notices. See 64 FR 524; 64 FR 526. The registration period for these designations was limited to 180 days, from January 5, 1999, to July 5, 1999.

What authority does the Service have to extend the registration period?

Section 244(c)(1)(A)(iv) of the Immigration and Nationality Act, as amended (Act), authorizes the Attorney General to provide TPS applicants a ''registration period of not less than 180 days'' and requires aliens to register ''to the extent and in a manner which the Attorney General establishes.'' 8 U.S.C. 1254a(c)(1)(A)(iv). The registration period for Hondurans and Nicaraguans under the TPS Program initially lasted for 180 days, from January 5, 1999, to July 5, 1999. Under section 244(c)(1)(A)(iv) of the Act, the Attorney General has decided to extend the registration period for an additional 45 days, until August 20, 1999. 8 U.S.C. 1254a(c)(1)(A)(iv).

Why is the Attorney General extending the registration period?

The Attorney General is extending the registration period in order to provide those applicants hoe have not yet filed an application for TPS under the Honduras or Nicaragua programs with an additional 45 days in which to gather and submit the documentation necessary to provide eligibility for TPS. The Attorney General has been advised that Honduran and Nicaraguan applicants have been having difficulty obtaining nationality and identity documents. This action is not a redesignation of TPS and does not expand the designation to include Hondurans and Nicaraguans who entered the country after December 30, 1998. There will be no further extensions of the registration period.

Can I apply for TPS even if I do not have all of the necessary documentation?

Yes. Applicants do not need to wait to apply for TPS until they have obtained all of the evidence necessary to establish their eligibility. The application, Form I–821, Application for Temporary Protected Status, contains instructions for applicants who cannot obtain identity and nationality documentation. Applicants who do not submit appropriate documentation establishing identity or nationality with their applications must, under the regulations, submit an affidavit showing proof of unsuccessful efforts to obtain the documents, explaining why the consular process was unavailable to them, and affirming that they are nationals of Honduras or Nicaragua (or aliens having no nationality who last habitually resided in either Honduras or Nicaragua). Applicants who submit an affidavit and receive the proper documentation prior to adjudication may provide the missing documentation to the Service. While the Service encourages applicants to submit proper documentation with their applications, the Service will only accept and process applications received on or before the extended August 20, 1999, registration deadline. To be considered properly filed, an application must be received, with the appropriate fee or a fee waiver request, at the service center with jurisdiction over the applicant's place of residence by close of business on August 20, 1999.

What happens to an application that is submitted without the proper fee or the fee waiver request is denied?

Applications submitted without the proper fee will be rejected and returned to the applicant. The Service will also reject and return to the applicant any application in which a fee waiver request has been denied.

Can I apply for TSP after the end of the registration period?

In addition to timely registration, late registration is possible for some persons under 8 CFR 244.2. The requirements for late registration specify that at the time of the initial registration period the applicant must (1) have been in valid nonimmigrant status or been granted relief from removal, (2) have had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal, (3) have been a parolee or had a pending request for reparole, or (4) have been a spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2). An applicant for late registration must register no later than 60 days from the expiration or termination of the qualifying condition. 8 CFR 244.2(g).

Dated: July 25, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–20279 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 30, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E–Mail to Mills-Ira@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 295–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Revenue Quality Control-Tax Performance System.

OMB Number: 1205–0332.

Frequency: Annually.

Affected Public: State, Local, or Tribal govt.

Number of Respondents: 52.

Estimated Time Per Response: 1,750.

Total Burden Hours: 91,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Revenue Quality Control-Tax Performance System gathers and disseminates information on the timeliness and accuracy of State unemployment insurance tax operations. This submission proposes to extent the Revenue Quality Control program for three years.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–20319 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 29, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov. Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Noise Data Report Form and Calibration Records.

OMB Number: 1219–0037.

Frequency: Annually.

Affected Public: Business or other for-profit.s

Number of Respondents: 196,463.

30 CFR	Respondent	Frequency	Total responses	Average time per response	Burden hours	Hourly salary	Burden hour costs
70.506:							
Calibrator	971	Annually	971	3 min	49	$17	$833
Dosimeter	971	Annually	971	3 min	49	17	833
70.508(a):							
Survey	47,998	Semi-ann	95,996	15 min	24,000	43	1,032,000
Report	47,998	Semi-ann	95,996	6 min	9,600	17	163,200
70.508(b):							
Survey/Report	485	Semi-ann	970	6 min	97	17	1,649
70.509:							
Survey	963	Annually	963	15 min	241	43	10,363
Report	963	Annually	963	6 min	96	17	1,632
71.803(a):							
Survey	47,340	Semi-ann	94,680	15 min	23,670	43	1,017,810
Report	47,340	Semi-ann	94,680	6 min	9,468	17	160,956
71.803(b): Certify	478	Semi-ann	956	6 min	96	17	1,632
71.804(a):							
Survey	478	Annually	478	15 min	120	43	5,160
Report	478	Annually	478	6 min	48	17	816
Totals	196,463		388,102		67,534		2,396,884

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $423,040.

Description: Coal mine operators are required to report to NSHA when noise exposure surveys show noncompliance with permissible levels. Records are also required to be kept at the mine of when and by whom doismeters and acoustical calibrators are recalibrated.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–20320 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be

enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. AK990009 dated March 12, 1999.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision AK990008. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ990003 (Mar. 12, 1999)
NJ990004 (Mar. 12, 1999)

Volume II

West Virginia
WV990002 (Mar. 12, 1999)
WV990003 (Mar. 12, 1999)
WV990005 (Mar. 12, 1999)
WV990006 (Mar. 12, 1999)

Volume III

Alabama
AL990017 (Mar. 12, 1999)
AL990042 (Mar. 12, 1999)
Georgia
GA990003 (Mar. 12, 1999)
GA990022 (Mar. 12, 1999)
GA990031 (Mar. 12, 1999)
GA990032 (Mar. 12, 1999)
GA990034 (Mar. 12, 1999)
GA990040 (Mar. 12, 1999)
GA990053 (Mar. 12, 1999)
GA990065 (Mar. 12, 1999)
GA990073 (Mar. 12, 1999)
GA990084 (Mar. 12, 1999)
GA990085 (Mar. 12, 1999)
GA990086 (Mar. 12, 1999)
GA990087 (Mar. 12, 1999)
GA990088 (Mar. 12, 1999)
Kentucky
KY990001 (Mar. 12, 1999)
KY990002 (Mar. 12, 1999)
KY990003 (Mar. 12, 1999)
KY990004 (Mar. 12, 1999)
KY990007 (Mar. 12, 1999)
KY990025 (Mar. 12, 1999)
KY990027 (Mar. 12, 1999)
KY990029 (Mar. 12, 1999)
North Carolina
NC990001 (Mar. 12, 1999)
NC990003 (Mar. 12, 1999)

Volume IV

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IL990001 (Mar. 12, 1999)
IL990002 (Mar. 12, 1999)
IL990003 (Mar. 12, 1999)
IL990004 (Mar. 12, 1999)
IL990007 (Mar. 12, 1999)
IL990008 (Mar. 12, 1999)
IL990012 (Mar. 12, 1999)
IL990014 (Mar. 12, 1999)
IL990016 (Mar. 12, 1999)
IL990017 (Mar. 12, 1999)
IL990023 (Mar. 12, 1999)
IL990024 (Mar. 12, 1999)
IL990025 (Mar. 12, 1999)
IL990027 (Mar. 12, 1999)
IL990032 (Mar. 12, 1999)
IL990037 (Mar. 12, 1999)
IL990042 (Mar. 12, 1999)
IL990045 (Mar. 12, 1999)
IL990046 (Mar. 12, 1999)
IL990047 (Mar. 12, 1999)
IL990048 (Mar. 12, 1999)
IL990049 (Mar. 12, 1999)
IL990050 (Mar. 12, 1999)
IL990051 (Mar. 12, 1999)
IL990052 (Mar. 12, 1999)
IL990054 (Mar. 12, 1999)
IL990059 (Mar. 12, 1999)
IL990066 (Mar. 12, 1999)
IL990070 (Mar. 12, 1999)
Michigan
MI990004 (Mar. 12, 1999)
MI990039 (Mar. 12, 1999)
MI990042 (Mar. 12, 1999)
MI990064 (Mar. 12, 1999)
Ohio
OH990001 (Mar. 12, 1999)
OH990002 (Mar. 12, 1999)
OH990003 (Mar. 12, 1999)
OH990018 (Mar. 12, 1999)
OH990026 (Mar. 12, 1999)
OH990027 (Mar. 12, 1999)
OH990028 (Mar. 12, 1999)
OH990029 (Mar. 12, 1999)
OH990034 (Mar. 12, 1999)
OH990035 (Mar. 12, 1999)
OH990036 (Mar. 12, 1999)
OH990039 (Mar. 12, 1999)

Volume V

Iowa
IA990005 (Mar. 12, 1999)
IA990009 (Mar. 12, 1999)
Kansas
KS990006 (Mar. 12, 1999)
KS990008 (Mar. 12, 1999)
KS990012 (Mar. 12, 1999)
KS990016 (Mar. 12, 1999)
KS990022 (Mar. 12, 1999)
KS990069 (Mar. 12, 1999)
KS990070 (Mar. 12, 1999)
Oklahoma
OK990013 (Mar. 12, 1999)
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OK990037 (Mar. 12, 1999)
OK990038 (Mar. 12, 1999)
OK990040 (Mar. 12, 1999)
OK990041 (Mar. 12, 1999)
OK990043 (Mar. 12, 1999)

Volume VI

Alaska
AK990001 (Mar. 12, 1999)
AK990002 (Mar. 12, 1999)
AK990003 (Mar. 12, 1999)
AK990005 (Mar. 12, 1999)
AK990006 (Mar. 12, 1999)
AK990008 (Mar. 12, 1999)
Utah
UT990004 (Mar. 12, 1999)
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UT990020 (Mar. 12, 1999)
UT990023 (Mar. 12, 1999)
UT990033 (Mar. 12, 1999)
UT990034 (Mar. 12, 1999)

Volume VII

Arizona
AZ990001 (Mar. 12, 1999)
AZ990002 (Mar. 12, 1999)
AZ990003 (Mar. 12, 1999)
AZ990004 (Mar. 12, 1999)
AZ990005 (Mar. 12, 1999)
AZ990006 (Mar. 12, 1999)
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AZ990016 (Mar. 12, 1999)
AZ990017 (Mar. 12, 1999)
AZ990018 (Mar. 12, 1999)
California
CA990001 (Mar. 12, 1999)
CA990002 (Mar. 12, 1999)
CA990004 (Mar. 12, 1999)
CA990009 (Mar. 12, 1999)
CA990026 (Mar. 12, 1999)
CA990027 (Mar. 12, 1999)
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CA990036 (Mar. 12, 1999)
CA990037 (Mar. 12, 1999)
CA990038 (Mar. 12, 1999)
CA990039 (Mar. 12, 1999)
CA990040 (Mar. 12, 1999)
CA990041 (Mar. 12, 1999)
Nevada
NV990001 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990008 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those notes above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the US Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 29th day of July 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–19987 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Public Hearing

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of public hearing.

SUMMARY: This notice sets a date, time and place for a public hearing in connection with MSHA's accident investigation of the July 5, 1999 explosion at Kaiser Aluminum & Chemical Company's Gramercy Works facility in Gramercy, Louisiana.

The United States Department of Labor, Mine Safety & Health Administration will convene a public hearing as part of the Agency's accident investigation into the July 5, 1999 explosion at the Kaiser Aluminum & Chemical Company's Gramercy Works facility in Gramercy, Louisiana.

The hearing will begin at 9:00 A.M CDT on Wednesday, September 8, 1999, at the St. James Parish Courthouse, Council Chambers, 2nd Floor, 5800 LA 44, Convent, Louisiana 70723. It will continue at such time(s) and place(s) as MSHA designates.

The hearing is convened pursuant to Section 103(b) of the Federal Mine Safety & Health Act of 1977, 30 USC Section 813(b). The purpose of the hearing is to carry out MSHA's statutory responsibility to (1) determine the cause(s), including possible contributory causes, of the explosion; (2) identify and develop corrective actions, procedures and strategies to prevent the occurrence of similar accidents; and (3) determine whether federal safety standards were violated in relation to the explosion. The hearing will be non-adversarial and fact-finding in nature, and questioning will be limited to the statutory purposes. The hearing will not be subject to the provisions of the Administrative Procedure Act, 5 USC Section 554.

All of the questioning will be done by an MSHA panel comprised of Agency personnel, experts retained by MSHA, and representatives from the Department of Labor's Office of the Solicitor. Representatives of the operator, the miners or any other interested person may submit written questions or areas of inquiry for MSHA to consider. MSHA will determine—at its sole discretion—whether said supplemental questions will be asked. Such supplemental questioning will be conducted by the MSHA panel.

Representatives of the operator, representatives of miners at the facility, and any other interested persons are invited to provide the names of potential witnesses with relevant information concerning the accident. A brief description of the possible relevant testimony of the potential witness should be included when witness names are submitted. MSHA will make the final determination of which witnesses will be called to testify. Suggested questions and the names of potential witnesses should be provided to Edward Lopez at the address below.

Witnesses will be subpoenaed by the Agency. The subpoena will advise the witness of the date and time of his/her required appearance, as well as of the location of the hearing. Some witnesses

may be required to bring certain records with them at the time of their appearance. Witnesses are encouraged to review any records necessary to refresh or supplement their recollection prior to appearing to testify.

DATES: The hearing will begin at 9:00 A.M CDT, September 8, 1999.

ADDRESSES: The hearing will be held in St. James Parish Courthouse, Council Chambers, 2nd Floor, 5800 LA 44, Convent, Louisiana 70723.

FOR FURTHER INFORMATION CONTACT: Edward Lopez, Accident Investigations Program Manager, Mine Safety & Health Administration, 4015 Wilson Boulevard, Room 718, Arlington, VA 22203; telephone (703) 235–1565; Fax (703) 235–3686 (Arlington, Virginia) or telephone (225) 869–9636 (Lutcher, Louisiana).

Dated: August 3, 1999.

Marvin W. Nichols,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–20393 Filed 8–4–99; 2:06 pm]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Fellowship Panel, Literature section, to the National Council on the Arts will be held from September 13–16, 1999 in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The Translation Projects in Prose section will meet from 9:00 a.m. to 7:00 p.m. on September 13th and the Fiction/Creative Non-Fiction section will meet from 9:00 a.m. to 7:00 p.m. on September 14th and 15th and from 9:00 a.m. to 5:00 p.m. on September 16th. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on September 16th, will be open to the public for policy discussions.

The remaining portions of these meetings, from 9:00 a.m. to 7:00 p.m. on September 13th–15th and from 11:00 a.m. to 5:00 p.m. on September 16th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–20296 Filed 8–5–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision

2. The title of the information collection: Proposed rule, ''Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material'' (10 CFR Parts 30, 31, 32, 170, and 171).

3. The form number if applicable: NRC Form 653, Transfers of Industrial Devices Report

4. How often is the collection required: Quarterly, Annually, On Occasion.

5. Who will be required or asked to report: NRC licensees and Agreement State licensees.

6. An estimate of the number of responses: NRC licensee responses are 20,320 and Agreement States responses are 18,670, for a total of 38,990 responses.

7. The estimated number of annual respondents: 6,340.

8. An estimate of the total number of hours needed annually to complete the requirement or request: NRC licensees = 511, Agreement States = 602 for a total of 1,113 hours.

9. An indication of whether section 3504(h), Pub. L. 96–511 applies: Applicable.

10. Abstract: The proposed rule would include the addition of more explicit requirements concerning a registration requirement that the NRC plans to initiate through an earlier proposed rule (December 2, 1998; 63 FR 66942). This action proposes to include in the regulations the specific criteria for inclusion in the registration program and details about the information required. The amendments would also modify the quarterly transfer reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices and provide clarifications concerning provisions of the regulations applicable to all general licensees for byproduct material. The proposed rule is intended to allow the NRC to better track general licensees so that they can be contacted or inspected, to make sure that the devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by September 7, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room 2120 L Street NW, (lower level), Washington, DC. The proposed rule is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by September 7, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Md., this 12th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20271 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR PART 70—Domestic Licensing of Special Nuclear Material Revision, Proposed Rule.

3. The form number if applicable: Not applicable.

4. How often the collection is required:

(a) Event reports: NRC collects and evaluates required reports on a continuing basis as events occur.

(b) License applications: Certain existing licensees will make a one-time submittal of information in response to the revised rule. Applicants for new licenses may submit applications and licensees may submit amendments at any time. Generally, licensees submit applications for license renewals every 10 years.

(c) ISA Summary: Under the revised rule, licensees will also submit information about changes that they make to update information submitted in conjunction with their license applications. Licensees will submit revised pages to the integrated safety analysis summary within 90 days of a change. For the safety system required by 10 CFR 70.62 (*i.e.*, process safety information, integrated safety analysis, and management measures), every 12 months they will submit a summary of all changes made without prior Commission review and approval.

5. Who will be required or asked to report: Except for changes to § 70.50 [1], the proposed rule will apply to only certain licensees authorized to possess a critical mass of special nuclear material. The ones included are those that are or plan to be engaged in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, fabrication of mixed-oxide fuel or fuel assemblies, scrap recovery, decommissioning of facilities used for these activities, or any other activity that the Commission determines could significantly affect public health and safety. The licensees to which it applies at present operate the seven major fuel fabrication facilities. The rule does not apply to the U.S. Enrichment Corporation's (USEC) gaseous diffusion plants that are regulated under Part 76.

6. An estimate of the number of annual responses: 51.

7. The estimated number of annual respondents: 7.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 8,844 hours per year.

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Applicable.

[1] The proposed change to reporting requirements in § 70.50 could impact slightly a wider variety of part 70 licensees.

10. Abstract: The NRC is proposing to amend its regulations governing the domestic licensing of special nuclear material (SNM) for licensees authorized to possess a critical mass of SNM, that are engaged in one of the following activities: Enriched uranium processing; fabrication of uranium fuel or fuel assemblies; uranium enrichment (other than USEC's gaseous diffusion plants); enriched uranium hexafluoride conversion; plutonium processing; fabrication of mixed-oxide fuel or fuel assemblies; scrap recovery of special nuclear material; or any other activity involving a critical mass of SNM that the Commission determines could significantly affect public health and safety or the environment. The proposed amendments would identify appropriate consequence criteria and the level of protection needed to prevent or mitigate accidents that exceed these criteria; require affected licensees to perform an integrated safety analysis (ISA) to identify potential accidents at the facility and the items relied on for safety necessary to prevent these potential accidents and/or mitigate their consequences; require the implementation of measures to ensure that the items relied on for safety are available and reliable to perform their function when needed; require the inclusion of the safety bases, including a summary of the ISA, with the license application; and allow for licensees to make certain changes to their safety program and facilities without prior NRC approval.

Submit, by September 7, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. The proposed rule indicated in ''The title of the information collection'' will be or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of

the public may access the electronic OMB clearance package by following the directions for electronic access provided above and in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by September 7, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0009), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Md., this 21st day of July 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20272 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Inc.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by GPU Nuclear, Inc. (the licensee) to partially withdraw its February 7, 1997, application for an amendment, as supplemented October 24, 1998, to Facility Operating License No. DPR–50, issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 25, 1998, (63 FR 14486).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to incorporate certain improvements from the Revised Standard Technical Specifications for Babcock and Wilcox Plants, NUREG–1430, identify changes to plant systems and revisions to system descriptions not involving limiting conditions for operation, and make various editorial or typographical corrections.

Subsequently, the licensee informed the staff that the changes related to the hydrogen recombiner system on proposed TS page 4–38 in the amendment request were no longer required. Thus, that portion of the amendment application is considered to be partially withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated February 7, 1997, as supplemented October 24, 1998. The licensee's letter dated October 24, 1999, also partially withdrew the application for amendment.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, MD, this 8th day of July 1999.

For the Nuclear Regulatory Commission,

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20268 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of a Public Workshop to Discuss the Development of License Termination Plans and Other Guidance to Support the Decommissioning of Nuclear Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: This notice announces the schedule and agenda for a Public Workshop to address the issues associated with developing License Termination Plans (LTPs) to support the decommissioning of nuclear power reactors and guidance to support the decommissioning of all nuclear facilities. The purpose of this workshop is to provide a forum for NRC staff, the nuclear industry, other regulatory agencies, and interested stakeholders to discuss the issues that need to be addressed as nuclear power reactor licensees develop LTPs to support the termination of their NRC licenses, as well as the guidance being developed by the NRC to support the decommissioning of all nuclear facilities.

DATES: August 18 and 19, 1999.

ADDRESSES: Two White Flint North, 11545 Rockville Pike, Rockville, MD.

SUPPLEMENTARY INFORMATION: On October 21, 1998, (63 FR 56237) NRC announced that it was sponsoring a series of public workshops to support NRC staff's development of a Standard Review Plan (SRP) and other guidance for the decommissioning of nuclear facilities. On August 18 and 19, 1999, NRC staff will hold a workshop on the issues associated with the development of LTPs to support the decommissioning of nuclear power reactors and the guidance being developed by the NRC to support the decommissioning of all nuclear facilities. Presentations and discussions on August 18, 1999, will focus on LTPs, and on August 19, 1999, discussions and presentations will focus on decommissioning issues identified by State regulatory agencies and surveys to support decommissioning.

An agenda for the workshop, which was developed by NRC in conjunction with the Nuclear Energy Institute, the States, the Fuel Cycle Facility Forum and other industry stakeholders, has been posted on the NRC's Website at: *http://www.nrc.gov/NMSS/DWM/DECOM/decomm.htm* under the ''NRC Standard Review Plan for Decommissioning'' heading.

The workshop will be held at the NRC Headquarters Auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, MD. NRC strongly encourages interested stakeholders to attend and participate in this workshop, as it will offer a unique opportunity to provide NRC staff and the nuclear power industry with insights, perspectives, and information that stakeholders feel is important for the nuclear power industry to consider during the development of LTPs and for NRC to consider as it develops guidance for the decommissioning of licensed facilities.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749; Clayton L. Pittiglio, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6702, or Richard S. Clement, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6625.

Dated at Rockville, Md., this 30th day of July 1999.

For the Nuclear Regulatory Commission,

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20270 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23931; 812–11536]

American Skandia Advisors Fund, Inc. et al.; Notice of Application

July 30, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: American Skandia Advisors Funds, Inc. (''ASAF''), American Skandia Trust (''AST''), American Skandia Master Trust (''ASMT'') (each a ''Fund'' and collectively, the ''Funds''), on behalf of their respective series (''Portfolios'') and American Skandia Investment Services, Inc. (''Manager''), request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

FILING DATE: The application was filed on March 15, 1999 and amended on July 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC, 20549–0609. Applicants, c/o Eric Freed, Esquire, American Skandia Investment Services, Incorporated, One Corporate Drive, P.O. Box 883, Shelton, CT 06484.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. ASAF, a Maryland corporation, is registered under the Act as an open-end management investment company and is currently comprised of sixteen Portfolios, each of which has its own investment objectives, policies and restrictions.[1] Five ASAF Portfolios (the ''Feeder Portfolios'') invest all their assets in corresponding Portfolios of ASMT (the ''Core Portfolios''). ASMT, a Delaware business trust, is registered under the Act as an open-end management investment company and currently consists of the five Core Portfolios. Each Core Portfolio serves as a master fund in the master/feeder structure. ASAF offers the shares of all of its Portfolios for sale to the public. AST, a Massachusetts business trust, is registered under the Act as an open-end management investment company. AST consists of twenty-nine Portfolios, and offers its shares for sale through separate accounts that fund variable annuity and variable life insurance contracts of life insurance companies and directly to qualified retirement plans. The Manager, a Connecticut corporation, serves as the investment adviser to each of the Portfolios and is registered under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Manager has entered into investment management agreements with respect to each of the Portfolios (each a ''Management Agreement'') that were approved by the board of directors or trustees of the Funds (the ''Boards''), including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors or Trustees''), and the shareholders of the Funds. Under the terms of each Management Agreement, the Manager supervises the general business, administrative, investment advisory and portfolio management operations of the Portfolios. For its services, the Manager receives a management fee at an annual rate based on a percentage of the applicable Portfolio's average net assets.

3. The Manager seeks to achieve the investment objective of each Portfolio by selecting, subject to the oversight and approval of the Boards, one or more subadvisers (each a ''Subadviser'') to manage the assets of each Portfolio (''Manager/Subadviser Structure''). Under the Manager/Subadviser Structure, the specific investment decisions for each Portfolio are made by one or more Subadvisers, each of which has discretionary authority to invest all or a portion of the assets of particular Portfolio, subject to the general supervision of the Manager and the applicable Board. The Subadvisers are investment advisers registered or exempt from registration under the Advisers Act. Currently, each Portfolio has a single Subadviser.

4. The Manager selects Subadvisers based on a process that includes researching each Subadviser's investment performance record, conformity to investment objectives and policies, organizational structure, management team, compliance and operational capabilities, and assets under management. The Manager recommends to the Board for selection those Subadvisers that have distinguished themselves and reviews, monitors and reports to the Board regarding the performance and procedures of the Subadvisers. The Manager may recommend to the Board the reallocation of assets of a Portfolio among Subadvisers, if necessary, and may recommend hiring additional Subadvisers or the termination of Subadvisers in appropriate circumstances. Each Subadviser performs services pursuant to a written agreement with the Manager (the ''Sub-Advisory Agreement''). Subadvisers' fees are paid by the Manager out of its fees from the Funds.

5. Applicants request relief to permit the Manager, subject to the oversight of the applicable Board, to enter into and materially amend Sub-Advisory Agreements without shareholder approval.[2] The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Manager, other than by reason of serving as a Subadviser to one or more of the Portfolios (an ''Affiliated Subadviser'').

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment

[1] Applicants also request relief with respect to future portfolios of ASAF, AST and ASMT and any other registered open-end management investment companies that are: (a) advised by the Manager or any entity controlling, controlled by, or under common control with the Manager, and (b) which operate in substantially the same manner as the Funds and comply with the terms and conditions contained in the application. ASAF, AST and ASMT are the only existing investment companies that currently intend to rely on the other.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unit holders of any separate account for which the Portfolios serve as a funding medium.

adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without shareholder approval.

3. Applicants assert that under the Manager/Subadviser Structure, each Portfolio's shareholders rely on the Manager's experience to select and monitor one or more Subadvisers best suited to achieve the Portfolio's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements would impose expenses and unnecessary delays on the Portfolios, and may preclude the Manager from promptly acting in a manner considered advisable by the applicable Portfolio's Board. Applicants note that the Management Agreements between the Funds and the Manager will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Portfolio, within the meaning of the Act, which in the case of a Core Portfolio will be pursuant to voting instructions provided by shareholders of the Feeder Portfolio investing in such Core Portfolio or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable, and in the case of a Portfolio of AST will be pursuant to voting instructions provided by annuity and life insurance policy contract owners that are unit holders in insurance company separate accounts investing in such Portfolio. Before a Fund or Portfolio that does not presently have an effective registration statement may rely on the order requested in the application, the operation of such Fund or Portfolio in the manner described in the application will be approved in the manner described above or, in the case of such Fund or Portfolio whose shareholders (or, in the case of a Core Portfolio, the shareholders of its corresponding Feeder Portfolio or, in the case of a Portfolio of AST, annuity and life insurance policy contract owners that are unit holders of separate accounts investing in the Portfolio) purchase shares on the basis of a prospectus containing the disclosure contemplated by Condition 2 below, by the initial shareholder(s) before the shares of such Fund or Portfolio are offered to the public.

2. A Portfolio's prospectus, or in the case of a Core Portfolio, its offering documents and the corresponding Feeder Portfolio's prospectus will disclose the existence, substance and effect of any offer granted pursuant to this application. In addition, the Portfolios will hold themselves out as employing he Manager/Subadviser Structure described in the application. A Portfolio's prospectus, or in the case of a Core Portfolio, its offering documents and the corresponding Feeder Portfolio's prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to the Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio, and, subject to review and approval by a Portfolio's Board will (a) set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Portfolio's assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the investment performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

4. At all times, a majority of the Board of each Fund will be Independent Directors or Trustees, and the nomination of new or additional Independent Directors or Trustees will be placed within the discretion of the then-existing Independent Directors or Trustees.

5. Neither the Manager nor any Portfolio will enter into a Sub-advisory Agreement with any Affiliated Subadviser, without such Sub-advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio within the meaning of the Act, which in the case of Core Portfolio will be pursuant to voting instructions provided by shareholders of those Feeder Portfolios investing in such Core Portfolio that are registered under the Act, or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable, and in the case of a Portfolio of AST will be pursuant to voting instructions by annuity and life insurance contract owners that are unit holders in insurance company separate accounts investing in such Portfolio.

6. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser, the applicable Board, including a majority of the Independent Directors or Trustees, will make a separate finding, reflected in the minutes of the meeting of the applicable Board, that such change is in the best interests of the applicable Portfolio and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee, or officer of a Fund or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such director, trustee or officer) any interest in a Subadviser except for (i) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 90 days of the hiring of any new Subadviser, the Manager will furnish shareholders of the applicable Portfolio (or, in the case of a Core Portfolio, the shareholders of its corresponding Feeder Portfolio or, in the case of a Portfolio of AST, annuity and life insurance policy contract owners that are unit holders of separate accounts investing in the Portfolio) all the information that would have been

included in a proxy statement. Such information will include any changes caused by the addition of a new Subadviser. To meet this obligation, the Manager will provide shareholders of the applicable Portfolio (or, in the case of a Core Portfolio, the shareholders of its corresponding Feeder Portfolio or, in the case of a Portfolio of AST, annuity and life insurance policy contract owners that are unit holders of separate accounts investing in the Portfolio) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20251 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27057]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

July 30, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by August 23, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 23, 1999, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–6171)

Appalachian Power Company (''Appalachian'), 40 Franklin Road, Roanoke, Virginia 24011, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 9(a), 10 and 12(d) of the Act and rule 54 under the Act to its application-declaration previously filed under the Act.

By order dated June 30, 1978 (HCAR No. 20610) (''Order''), Appalachian was authorized to enter into an agreement of sale (''Agreement'') with Mason County, West Virginia (''County''). The Agreement provided for the construction, installation, financing and sale of certain pollution control facilities (''Facilities'') at Appalachian's Philip Sporn and Mountaineer Plants. Under the Agreement, the County may issue and sell its pollution control revenue bonds (''Revenue Bonds'') or pollution control refunding bonds (''Refunding Bonds''), in one or more series, and deposit the proceeds with the trustee (''Trustee'') under an indenture (''Indenture'') entered into between the County and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

The Order also authorized Appalachian to convey an undivided interest in a portion of the Facilities to the County, and to reacquire that interest under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in an amount, together with other monies held by the Trustee under the Indenture for that purpose, will enable the County to pay, when due, the interest and principal on the Revenue Bonds.

The County has issued and sold ten series of bonds contemplated by the Order. The last issuance was the Series J. Refunding Bonds, in the aggregate principal amount of $50 million, authorized by supplemental Commission order on October 7, 1992 (HCAR No. 25659).

It is now proposed that, under the terms of the Agreement, Appalachian will cause the County to issue and sell its Series K Refunding Bonds in the aggregate principal amount of up to $30 million. The Series K Refunding Bonds will bear interest semi-annually at a rate of interest not exceeding 8% per annum and will mature at a date not more than forty years from the date of issuance.

The proceeds will be used to provide for the early redemption of the entire outstanding aggregate principal amount of $30 million of the County's Series G Revenue Bonds, 7.40%, January 1, 2014.

National Fuel Gas Company, et al. (70–7512)

National Fuel Gas Company (''National''), a registered holding company, and its nonutility subsidiary, Data-Track Account Services, Inc. (''Data-Track''), both located at 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application under section 9(a), 10 and 13 of the Act.

By order dated May 6, 1988 (HCAR No. 24639) (''Order''), the Commission authorized National to acquire all of the common stock of Data-Track for $500,000, which was to be used as working capital. Data-Track was acquired to provide certain customer account collection services, at cost, for National's other subsidiaries. Subsequently, by order dated March 5, 1991 (HCAR No. 25265), Data-Track was authorized to expand the scope of its collection services and to borrow up to $500,000 from the National system money pool as an alternative method of meeting its working capital needs. Data-Track now proposes to provide the same types of collection services for nonassociate clients.

American Electric Power Company, Inc., et al. (70–9145)

American Electric Power Company, Inc. (''AEP''), a registered holding company, and its wholly owned nonutility subsidiaries AEP Resources, Inc. (''AEPR''), AEP Energy Services, Inc. (''AEPES''), and AEP Resources Services Company (''Resco''), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 45, 46, 54, 87 and 90 under the Act.

AEPR requests authority to establish, directly or indirectly, a company (''Management Company'') that would provide energy-related services to industrial, commercial and institutional customers in the United States. AEPR also requests authority to establish, directly or indirectly, a company (''Capital Company,'' and together with Management Company, ''New Ventures'') that would provide

financing to Management Company's customers for certain energy-related assets (defined below as ''Energy Facilities'') and for the purchase of service from Management Company. AEPR may establish intermediate subsidiaries to hold its interests in the New Ventures (''Intermediate Subsidiaries''), and Management Company and Capital Company may establish special purpose subsidiaries (''Special Purpose Subsidiaries'') to conduct the proposed activities.

Management Company Services

The energy-related services to be provided by Management Company would include energy facility management services, energy conservation services, procurement services, and other energy and incidental services. Energy facility management services include the day-to-day operations, maintenance, management, and other technical and administrative services required to operate, maintain and manage certain energy-related assets (''Energy Facilities''). Additionally, energy facility management services include long-term planning and budgeting for, and evaluation of, improvement to those assets. Energy Facilities includes facilities and equipment that are used by industrial, commercial and institutional entities to produce, convert, store, and distribute: (i) Thermal energy products, such as processed steam, heat, hot water, chilled water, and air conditioning; (ii) electricity; (iii) compressed air; (iv) processed and potable water; (v) industrial gases, such as nitrogen; and (vi) other similar products. Energy Facilities also include related facilities that transport, handle and store fuel, such as coal handling and oil storage tanks, and facilities that treat waste for these entities, such as scrubbers, precipitators, cooling towers and water treatment facilities.

Energy conservation services include: (1) Identification of energy and other resource efficiency opportunities; (2) design of facility or of process modifications or enhancements to realize identified energy and other resource opportunities; (3) management, or direct construction or installation, of conservation or efficiency equipment; (4) training of customer personnel in the operation of equipment; (5) maintenance of energy system; (6) design, management or direct construction and installation of new and retrofit heating, ventilating and air conditioning systems, electrical and power systems, motors, pumps, lighting, water and plumbing systems, and related structures, to realize energy and other resource efficiency goals or to otherwise meet a customer's energy-related needs; (7) system monitoring; (8) reporting of system results; (9) design and implementation of energy conservation programs; (10) provision of conditioned power services (i.e., services designed to prevent, control or mitigate adverse effects of power disturbances on a customer's electrical system to ensure the level of power quality required by the customer); and (11) other similar or related activities.

Procurement services include arranging as agent or broker for a customer to purchase electricity, natural gas, oil, propane and industrial gases (''Energy Commodities''). In addition, procurement services include purchasing other commodities and supplies used by, or distributed through, Energy Facilities on behalf of energy facilities management or energy conservation services customers described above. AEP and AEPR also request authority for Management Company to engage in the purchase and sale, as principal, of electricity, natural gas, and other Energy Commodities.

Other energy services include development, design, construction, ownership, sale of Energy Facilities, and of equipment used in, and improvements to, Energy Facilities. Incidental services include the sale of products and services incidental to the proposed sale of goods and services enumerated above and which are closely related to the consumption of energy and/or the maintenance of Energy Facilities; provided however, that Management Company would not be involved in the manufacture of energy related equipment.

Capital Company Services

Capital Company proposes to offer financing for existing Energy Facilities and improvements and to provide new capital for Energy Facilities for customers of Management Company through sale and leaseback, project financing or other creative financing mechanisms. Assets financed by Capital Company generally will be managed by Management Company. In addition, Capital Company will make its financing services available to customers of Management Company to assist Management Company in connection with its program to provide energy management and related services to its customers.

Financial Support

Resources will contribute the equity capital required by Management Company and Capital Company. Management Company may also obtain debt financing from American, Resources or unaffiliated third parties such as commercial banks. Loans from American or Resources to Management Company will be made at the cost of funds incurred by American or Resources, as the case may be, in accordance with rule 52.

Applicants state that Management Company, Capital Company and the Special Purpose Subsidiaries intend to issue ownership interests to third parties. In this regard, AEP requests authority, through December 31, 2002, to enter into guaranties of obligations that AEPR may incur under agreements with third parties to make capital investments of up to $250 million in Capital Company and $50 million in Management Company. In addition, AEP and AEPR request authority to enter into guarantees (''Subsidiary Guarantees'') through December 31, 2002, of the debt and other obligations of Management Company, Capital Company and the Intermediate Subsidiaries in aggregate amounts up to $250 million (''Guarantee Limit''). Further, AEP, AEPR, Management Company and Capital Company request authority to guarantee the debt and other obligations of the Special Purpose Subsidiaries through December 31, 2002 [1] in an amount that, combined with the aggregate outstanding amount of Subsidiary Guarantees, will not exceed the Guarantee Limit. Debt financing of Capital Company, Management Company, any Intermediate Subsidiary or any Special Purpose Subsidiary which is subject to the proposed guaranties will not exceed a term of 15 years.

Affiliate Transactions

AEPES and Resco request an exemption from the at cost requirements of section 13(b) for the sale of certain goods and services by AEPES, Resco, and other subsidiaries of Resources to Management Company, Capital Company, and the Special Purpose Subsidiaries. Any sale of services by any utility subsidiary of AEP or by American Electric Power Services Corporation, a service company subsidiary of AEP, to Management Company, Capital Company, and the Special Purpose Subsidiaries would be at cost. In addition, Management Company requests authority to provide services at fair market value, under certain circumstances, to any associate

[1] Any guarantee of the obligations of Management Company, Capital Company, any Intermediate Subsidiary or any Special Purpose Subsidiary outstanding on December 31, 2002 would expire in accordance with its terms.

company in the AEP system that is an exempt wholesale generator or foreign utility company, as each are defined in section 32 and 33 of the Act, respectively, or that is a qualifying facility.

Payment of Dividends

Further, AEP and AEPR request authority for Management Company, Capital Company, the Intermediate Subsidiaries and the Special Purpose Subsidiaries to declare and pay dividends from time to time out of capital or unearned surplus.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20299 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23939]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 30, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant 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 August 24, 1999, and should be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, NW, Washington, DC 20549–0506.

Midwest Equity Trust, Financial Securities Series 1 [File No. 811–7058]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On June 3, 1998, applicant made a liquidating distribution to its unitholders at net asset value per share. Expenses of approximately $9,600 were incurred in connection with the liquidation and were paid by applicant and NatCity Investments, Inc., applicant's depositor.

Filing Date: The application was filed on June 22, 1999.

Applicant's Address: 251 North Illinois Street, Suite 500, Indianapolis, Indiana 46204.

internet.com(TM) Index Fund, Inc. [File No. 811–9343]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on July 2, 1999.

Applicant's Address: c/o Reich & Tang Asset Management L.P., 600 fifth Avenue, New York, New York 10020.

Van Kampen Foreign Securities Fund [File No. 811–7571]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 6, 1998, applicant made a liquidating distribution to its sole shareholder at net asset value per share. Expenses of $800 incurred in connection with the liquidation were paid by Van Kampen Investments Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on June 30, 1999.

Applicant's Address: Van Kampen Investments Inc., 1 Parkview Plaza, PO Box 5555, Oakbrook Terrace, Illinois 60181–5555.

MAP-Government Fund, Inc. [File No. 811–3548]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 2, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $26,035 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on July 15, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102.

The Emerging Mexico Fund, Inc. [File No. 811–6134]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 10, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $69,100 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on July 9, 1999.

Applicant's Address: c/o Mitchell Hutchins Asset Management, Inc., 1285 Avenue of the Americas, New York, New York 10019.

Putnam Advisory International Trust [File No. 811–2862]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 2, 1984, applicant made a liquidating distribution to its sole shareholder at net asset value per share. To the best of applicant's knowledge, no expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 12, 1999.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

The PanAgora Institutional Funds [File No. 811–7464]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 1998, applicant made a liquidating distribution to its shareholders of its two series at the net asset value per share. Expenses of $41,325 were incurred in connection with the liquidation, of which applicant's two series, Asset Allocation Fund and International Equity Fund, paid $13,408 and $27,917, respectively.

Filing Date: The application was filed on July 15, 1999.

Applicant's Address: 260 Franklin Street, Boston, Massachusetts 02110.

Investors' Governmental Securities Income Trust, Series 1 and Subsequent Series [File No. 811–2834]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On October 22, 1997, applicant made a final liquidating distribution to its shareholders at net asset value per share. Each series of applicant terminated in accordance with the terms of its trust indenture, and no expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 8, 1999.

Applicant's Address: One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

Fidelity Advisor Emerging Asia Fund, Inc. [File No. 811–8308]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 15, 1998, applicant transferred its assets to Fidelity Advisor Series VIII: Fidelity Advisor Emerging Asia Fund based on net asset value. Expenses of approximately $159,000 were incurred in connection with the reorganization, with applicant paying $150,000 of the expenses, and Fidelity Management & Research Company, applicant's investment adviser, paying the remaining expenses.

Filing Dates: The application was filed on June 24, 1999, and amended on July 23, 1999.

Applicant's Address: 82 Devonshire Street, Boston, Massachusetts 02109.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20252 Filed 8–5–99: 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41683; File No. SR–DTC–99–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing the Fees for the Mortgage-Backed Securities Division

August 2, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on July 21, 1999, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the service fee schedule of DTC's Mortgage-Backed Securities (''MBS'') Division.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule

In its filing with the Commission, DTC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC 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 rule change revises the service fees for the MBS Division of DTC effective August 1, 1999, in order to more closely align the fees with current estimated unit service costs.[3] The revised fee schedule will result in an overall fee reduction for MBS Division services of approximately 15.5 percent. The fee decrease is a result of increased transaction volumes and decreased costs.

For these reasons, DTC believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act,[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulator Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance for the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 18b-4(f)(2) thereunder.[6] At any time within sixty 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.

[2] The Commission has modified parts of these statements.

[3] A copy of the revised MBS Division service fee schedule is attached as Exhibit 2 of DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference room or at DTC.

[4] 15 U.S.C. 78q–1(b)(3)(D).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning for foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC. All submissions should refer to the File No. SR–DTC–99–19 and should be submitted by August 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20302 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41678; File No. SR–DTC–99–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Procedures When Settling Banks Fail To Settle

July 30, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on June 11, 1999. The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–99–15) as described in Items, I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will restate and expand its procedures for a settling bank's failure to settle.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

Each DTC participant pays or receives the net debit or net credit balance in its DTC money settlement account at the end of each day. A settling bank employed by the participant sends or receives the net payment over Fedwire to or from DTC's account at the Federal Reserve Bank of New York. On a small number of occasions, a settling bank that settles only for itself (and not for any other participants) has been unable to settle with DTC due to an operational problem. On each of those occasions when the settling bank has a net debit balance, DTC completed money settlement by using deposits from its participants fund, and the settling bank was able to settle with DTC on the next day. On a few occasions, money settlement at DTC has been delayed with respect to DTC's settlement schedule due to an operational problem at a settling bank.

Although such incidents or failure to settle are infrequent, DTC has reviewed its procedures for when a settling bank fails to settle with DTC due to a financial or operational problem. Those procedures are currently stated in memorandum dated July 29, 1994, which was issued jointly with the National Securities Clearing Corporation and which described the planned conversion of DTC's money settlement system to an entirely same day funds settlement system. The purpose of the proposed rule change is to restate in greater detail the procedures that DTC will follow if a settling bank fails to settle with DTC.[3]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[4] and the rules and regulations thereunder applicable to DTC because the proposed rule chnge will facilitate completion of daily money settlement at DTC in the event of a settling bank's failure to settle with DTC. DTC has informed the Commission that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the settling bank failure to settle procedures supplement DTC's existing risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC discussed the proposed rule change with several of its largest settling banks. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

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 DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC submissions should refer to File No. SR–DTC–99–15 and should be submitted by August 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20303 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For example, the proposed procedures will (1) state the specific time by which settling banks must acknowledge settlement balances each day, (2) provide for notice of a settling bank's failure to settle to the participants that settle through the bank, and (3) set forth the extent to which DTC will require a participant to make settlement payment itself in the event of a settlement bank's continued failure to settle. A copy of the proposed procedures was attached as Exhibit 2 to DTC's filing, which is available for inspection and copying in the Commission's Public Reference Room and through DTC.

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41677; File No. SR–DTC–99–14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Establishment of an Automated Foreign Tax Reclaim Service

July 30, 1999.

On May 27, 1999, The Depository Trust Company; (''DTC'') filed with the Securities and Exchange Commission

(''Commission'') a proposed rule change (File No. SR–DTC–99–14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 21, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposed rule change, DTC will establish a service called ''TaxReclaim.'' Tax Reclaim is intended to assist DTC's participants in preparing foreign jurisdictions' tax reclaim forms that are required to reclaim tax withheld on income payments on foreign securities. Participants will access TaxReclaim through DTC's participant terminal system and will input data particular to the beneficial owner, foreign security, and payment details as required by the country of issuance. DTC will then process the information through a software application that includes the reclaim form and tax information template and will transmit back to the participant a file containing the completed tax reclaim form, reclaim calculation, and information on additional filing requirements and filing instructions. DTC will post a disclaimer of liability in connection with use of the TaxReclaim service.

DTC will charge a fee of $10 for each reclaim transaction on a printed reclaim form processed through TaxReclaim. A reclaim transaction will consist of the reclaim calculation applicable to one security, one beneficial owner, and one income payment date. For reclaim transactions that are not completed because the reclaimable amount fall below a threshold value established by the participant, the fee will be $2 per reclaim transaction.

II. Discussion

Section 17A(b)(3)(F) of the Act[3] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under section 17A(b)(3)(F) because it should improve the ability of DTC's participants to obtain tax reclaim payments with respect to positions in non-U.S. securities. As a result, the proposed rule change should increase the efficiency with which beneficial owners of positions in non-U.S. securities that are held at DTC are able to obtain tax reclaim payments to which they are entitled.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (Filed No. SR–DTC–99–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20304 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41525 (June 14, 1999), 64 FR 33124.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41673; File No. SR–EMCC–99–7]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Clearing Agency Cross-Guaranty Agreements

July 30, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 4, 1999, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–EMCC–99–07) as described in Items I, II, and III below, which items have been prepared primarily by EMCC. 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 purpose of the proposed rule change is to implement clearing agency cross-guaranty agreements between EMCC and other clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC 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

EMCC's Rule 21 authorizes EMCC to enter into ''clearing agency cross guaranty agreements.''[3] On June 2, 1999, EMCC entered into clearing agency cross-guaranty agreements with the National Securities Clearing Corporation (''NSCC''), the Government Securities Clearing Corporation (''GSCC''), and the International Securities Clearing Corporation (''ISCC''). According to EMCC, the form of agreement with each of these entities is substantially similar to the form of agreement approved by the Commission in rule changes previously submitted by NSCC, MBSCC, GSCC, and ISCC.[4]

Generally, the limited guaranty provided for by the clearing agency cross-guaranty agreements is invoked when a clearing entity ceases to act for a common member. This limited guaranty enables clearing agencies that have entered into limited cross guaranty agreements to benefit from a defaulting member's excess collateral at other clearing agencies in which the defaulting member was a participant. The guaranty provides that resources of the defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied may be used to satisfy and unsatisfied obligations to the other clearing agencies. The guaranty is limited to the extent of the resources relative to the defaulting common

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Under EMCC's Rule 1, ''clearing agency cross-guaranty agreement'' means an agreement between EMCC and another clearing entity relating to the guaranty by EMCC of certain obligations of a member to such clearing agency.

[4] Securities Exchange Act Release Nos. 37616 (August 28, 1996), 61 FR 46887 (September 5, 1996), and 39020 (September 4, 1997), 62 FR 47862 (September 11, 1997).

member remaining at the guaranteeing clearing agency.

EMCC believes that the clearing agency cross-guaranty agreements should be beneficial because the funds that may be made available to it may provide resources that may make a pro rata charge against its clearing fund unnecessary or lesser in amount.

The benefits accruing to EMCC from a Clearing agency cross-guaranty agreement are illustrated by the following example:

Broker-dealer BD upon insolvency owes EMCC a net of $5 million and is owed a net of $3 million by Clearing Entity X. BD is a member of both clearing agencies. In the absence of a clearing agency cross-guaranty agreement, Clearing Entity X would be obligated to pay $3 million to BD's bankruptcy estate, and EMCC would have a claim for $5 million against BD's bankruptcy estate as a general creditor with no assurance as to the extent of recovery. Under an effective cross-guaranty agreement, however, Clearing Entity X would pay to EMCC the $3 million it owed to BD. As a result, EMCC's net exposure to the defaulting common member BD would be reduced.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder because it promotes the safeguarding of securities and funds in the clearing agency's custody or control and for which it is responsible and fosters cooperation and coordination with other entities engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC 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 relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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 the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–7 and should be submitted by August 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20300 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41669; File No. SR–NYSE–99–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

July 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 1999, the New York Stock Exchange, Inc. (the ''Exchange'' or ''NYSE'') 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 Exchange proposes to extend the effectiveness of the pilot fees (''Pilot Fee Structure'') currently set forth in Exchange Rule 4512, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material,'' (collectively the ''Rules''). The rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on August 31, 1999. The Exchange proposes to extend the Pilot Fee Structure through November 1, 1999.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.[3] The Pilot Fee Structure has been modified and extended several times,[4] most recently by Commission order dated March 16, 1999.[5]

The Exchange recently submitted a proposed rule change to the Commission (''June Filing'') to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.[6] The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Filing also proposes to define the term ''nominee'' as it relates to the calculation of the nominee coordination fee. Because the issues presented by the June Filing are important and likely to impact many market participants, the Commission provided a 60 day public comment period for the June Filing, ending August 30, 1999.

The Exchange believes that an extension of the Pilot Fee Structure through November 1, 1999, will give the Commission additional time to fully consider the June Filing and the public comment letters regarding the June Filing, without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after August 31, 1999. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June filing, proposing to extend the revised Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirements under section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of the filing;[9] and the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with text of the proposal, at least five business days prior to the filing date; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C., will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–35 and should be submitted by August 27, 1999.

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[3] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[4] *See* Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50) 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); and 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999).

[5] *See* Securities Exchange Act Release No. 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999)

[6] *See* Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

[7] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[9] Although the proposed rule change seeking to extend the Pilot Fee Structure through November 1, 1999, is considered effective upon filing, it will not become operative until August 31, 1999, which is more than 30 days after the date of filing (July 27, 1999).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20301 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3108]

Finding of No Significant Impact: Portland Pipe Line Corporation Pipeline at North Troy, VT

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to convert, operate and maintain a pipeline to transport crude oil across the U.S.-Canada border.

SUMMARY: The Department of State has conducted an environmental assessment of the proposed conversion by Portland Pipe Line Corporation of an existing pipeline from natural gas service to crude oil service crossing the international boundary near North Troy, Vermont. Based on the environmental assessment, the Department of State has concluded that issuance of a Presidential Permit authorizing conversion of the existing pipeline will not have a significant effect on the existing vegetation and wildlife, water resources, land use, air quality and human populations within the United States. In reaching this conclusion, the Department of State considered several alternatives, including a no-action alternative. The return of the pipeline to crude oil transport would have no significant impact on the environment or population since no new construction or ground-disturbing activity is involved. The pipeline is constructed of steel and coated with coal tar to protect against corrosion. It is also cathodically protected with an impressed current system as a further protection against corrosion.

In accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13 and Department of State Regulations, 22 CFR 161.8(C), an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Bill Memler, Office of International Energy Policy, Room 3535, U.S. Department of State, Washington, DC, 20520, (202) 647–4557.

SUPPLEMENTARY INFORMATION: Portland Pipe Line Corporation, is a corporation formed under the laws of the State of Maine, with its principal place of business in South Portland, Maine. The proposed pipeline conversion involves a pipeline which is routed along an existing crude oil pipeline facility operated by Portland Pipe Line Corporation. Portland Pipe Line Corporation presently operates and maintains a 24-inch line for transporting crude oil between South Portland and the international boundary. The crude oil is transported and received by the applicant at a marine terminal in South Portland, Maine and is transferred at the US-Canada border into the pipeline owned and operated by MPL, which is regulated by the National Energy Board (NEB) of Canada.

Portland Pipe Line Corporation's earlier construction of the 18-inch pipeline transported crude oil successfully, safely and without any known detrimental environmental impact for throughout 35 years of service, period of 1951–1986. Since 1987, the 18-inch line has been operated in interstate natural gas transmission serve by Granite State Gas Transmission (Granite State) under the lease from Portland to Granite State. This current lease expires on April 30, 1999, with Portland to take custody of the line on June 1, 1999.

On April 7, 1999, the Department of State published a Notice of Application for a Presidential Permit in the **Federal Register**. No public comments were received and concerned agencies expressed no opposition to issuing the permit. A finding of no significant impact is adopted, and an environmental impact statement will not be prepared.

Dated: August 2, 1999.

Peter Bass,

Deputy Assistant Secretary of State, for Energy, Sanctions and Commodities.

[FR Doc. 99–20329 Filed 8–5–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28895]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of acceptance for review: Preliminary application for Niagara Falls International Airport, Niagara Falls, New York.

SUMMARY: The Federal Aviation Administration (FAA) has completed its review of the Niagara Falls International Airport (IAG) preliminary application for participation in the airport privatization pilot program. The preliminary application is accepted for review, with a filing date of July 1, 1999. The Niagara Frontier Transportation Authority (NFTA), the airport sponsor, may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption under the pilot program.

49 U.S.C. 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice in the **Federal Register** after review of a preliminary application. The FAA must publish a notice of receipt of the final application in the **Federal Register** for public review and comment for a sixty day period. The IAG preliminary application is available for public review in the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28895, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis (202–267–8741) Airport Compliance Division, AAS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Section 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. 104–264 (October 9, 1996) (1996 Reauthorization Act), adds a new section 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport

[12] 17 CFR 200.30–3(a)(12).

revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

NFTA issued its RFP on July 1, 1999, for Niagara Falls International Airport, Niagara Falls, New York and has not selected a private operator. The filing date of this preliminary application is July 1, 1999, the date the preliminary application was received by the FAA. NFTA may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption.

If FAA accepts the final application for review, the application will be published in the **Federal Register** for public review and comment for a sixty day period.

Issued in Washington, DC on July 30, 1999.

Paul Galis,

Acting Deputy Associate Administrator for Airports.

[FR Doc. 99–20293 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4603; Notice 2]

Ford Motor Company; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by Ford Motor Company, of Dearborn, Michigan, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d), and 30120(h) for a labeling noncompliance with 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.'' The basis of the application is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on January 26, 1999, and an opportunity afforded for comment (64 FR 3997).

Paragraph S4.5.1 (b)(3) of FMVSS 208 specifies ''Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, no other information shall appear on the same side of the sun visor to which the sun visor warning label is affixed.''

The noncompliance was created when Ford implemented a sun visor label running change on February 13, 1998, on 4x4 models of the Ford F-Series, Ford Expeditions, and Lincoln Navigators, and on 4x2 Navigators equipped with moonroofs. The sun visors are supplied to Ford by Lear Corporation, 21557 Telegraph Road, Southfield, Michigan. Prior to the change, the air bag alert label specified in FMVSS 208 S4.5.1(c), along with the utility vehicle label required by 49 CFR 575.105(c)(1) on 4x4 models and the garage door opener transmitter label on the moonroof equipped Navigator 4x4 and 4x2 models, were all affixed to the driver sun visor on the side visible with the visor in the stowed position. The air bag warning label on these vehicles (required by S4.5.1 (b)(2)) was affixed to the opposite side of the visor. The label running change eliminated the air bag alert, and the air bag warning label was relocated in its place on the side of the visor visible when stowed. However, the utility vehicle label already located on that side of the visor on the 4x4 models, and the garage door transmitter label located on the side directly below the transmitter controls on the moonroof-equipped Navigator visors, were not relocated away from the air bag warning label. This created a noncompliance which was not corrected until May 21, 1998.

Ford supported its application for inconsequential noncompliance with the following reasons:

The transmitter label on the Navigator vehicles (a stick-on label which directs the customer to the Owner Guide for instructions on the operation of the transmitter controls on the visor) is not intended to be permanent, but is designed as a temporary label with the expectation that it will be removed early in the life of the vehicle. Because its early removal is intended, Ford believes the stick-on label will be removed by the customer, or by the dealer after review with the customer during delivery of the vehicle. Ford suggests there is no need for a field action to remove the label.

In summary, Ford believes that the presence of the utility vehicle label or the garage door opener transmitter located two inches or more from the air bag warning label, does not constitute ''information overload,'' nor does it present any risk to motor vehicle safety. Ford requests that the agency find this noncompliance to be inconsequential to motor vehicle safety, and accordingly that Ford be exempted from the notice and remedy requirements of the stature.

No comments were received on the application.

The agency published a final rule, (64 FR 11724) modifying the rollover warning currently required for certain utility vehicles (49 CFR Section 575.105) to require a more noticeable, understandable warning label and modifying the sun visor air bag warning label requirement, S4.5.1(b)(3) of FMVSS 208, to permit the utility vehicle label to be placed on the same side of the sun visor. The agency stated at 11730:

> In response to comments and in light of the results of its literature review, the agency is allowing the utility vehicle label to be placed on either (1) the driver's side sun visor (ether side) or (2) the driver's side window. The agency believes that this will allow manufacturers two alternatives if it is not possible to place both the air bag label and the utility vehicle label on the same side of the sun visor. Allowing manufacturers to put the utility vehicle label on either side of the sun visor, they could choose to put the air bag label on the front, increasing its prominence, if it is not possible to put both labels on the front. Based on its research, allowing both labels on the sun visor should not result in information overload because: (1) There are only 2 hazards being warned about; (2) actions that would avoid both rollover and air bag hazards can be avoided from the driver's seating position; and (3) both hazards have the same degree of seriousness.

Clearly, the action by Ford of placing both the air bag warning label and the rollover warning label on the same side of the sun visor is consistent with the agency's recent final rule, which requires that a rollover alert label, similar to the air bag alert label, be placed on the front of the sun visor if the utility vehicle label is put on the back of the sun visor.

Accordingly, for the reasons expressed above by Ford and stated by the agency in the March 9, 1999 labeling final rule, which amended S4.5.1(b)(3)) FMVSS No. 208, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety, and the agency grants Ford's application for exemption from notification of the noncompliance as required by 49 U.S.C. 30118 and from remedy as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: August 2, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–20351 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6034; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM), of Warren, Michigan, has determined that a number of 1998 bi-fueled compressed natural gas (CNG) Chevrolet Cavaliers do not meet the requirements of S5.3 and S5.4 of 49 CFR 571.303, Federal Motor Vehicle Safety Standard (FMVSS) No. 303, ''Fuel System Integrity of Compressed Natural Gas Vehicles,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defects and Noncompliance Reports.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 303, S5.3 requires that CNG vehicles shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3⁄16 inch) high. S5.3.1 requires the statement: ''Service pressure _____kPa (_____psig),'' and S5.3.2 requires the statement ''See instructions on fuel container for inspection and service life.''

S5.4 requires that, when a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document. The information shall be in English and in not less than 10 point type.

GM has notified the National Highway Traffic Safety Administration that in model year 1998, it manufactured 385 bi-fueled CNG Chevrolet Cavaliers that did not fully comply with the labeling requirements specified in 49 CFR 571.303. GM stated that the noncompliance consists of deviations from the wording required on the CNG vehicle label and in the owner's manual.

GM supported its application for inconsequential noncompliance by stating that an out-of-date version of FMVSS No. 303, which did not contain specific requirements, was used by the supplier that prepared the label and owner's manual supplement. As a result the CNG vehicle label applied near the refueling connection, and the owner's manual for the subject vehicles, did not contain the exact statements required by FMVSS No. 303, S5.3 and S5.4.

GM stated that the refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. GM also placed an additional label under the hood, on the fan shroud, that would be visible during more frequent routine service, such as fluid check and oil changes. This additional label again specifies the service pressure and the tank expiration date. GM further stated that the owner's manual indicates the service life, inspection information, and also provides a form to record the expiration date. GM believes that the labels and owner's manual supplement provided with these vehicles are responsive to and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used.

The required words and actual words are shown as follows:

FMVSS paragraph	Required label wording	'98 CNG Cavalier label wording
S5.3	SERVICE PRESSURE 24820 kPa (3600 psig)	3600 PSI SYSTEM OPERATING PRESSURE.
S5.3	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	SEE CNG OWNERS MANUAL SUPPLEMENT FOR FUEL TANK SERVICE LIFE.
FMVSS paragraph	**Required owner's manual wording**	**'98 CNG Cavalier owner's manual wording**
S5.4	SERVICE PRESSURE 24820 kPa (3600 psig)	This system operates at pressures up to 3600 PSI (24.8 MPa). (p. iv) The CNG fuel system is designed to use a fill pressure of 3,600 psi (24.8 MPa). (P. 6–3)
S5.4	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	THE CNG FUEL TANK HAS A SERVICE LIFE OF 15 YEARS.

GM stated the following:

GM believes that the labels and owner's manual supplement information provided with these vehicles are responsive and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used. The actual labels and the owner's manual supplement provide equivalent information required by FMVSS 303, S5.3 and S5.4. The CNG refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. Both the refueling valve and the underhood labels include the service expiration date and the owners manual indicates the service life, inspection information, and provide a form to record the expiration date.

Additionally, virtually all CNG refueling stations incorporate an overfill protection system. Also, the subject vehicles are equipped with a CNG container validated up to 200 percent of the service pressure without leakage as required by FMVSS 304, S7.2.2 for such containers. GM has not received any reports of injuries or property damage associated with overfilling of these vehicles and believes it is extremely remote that these deviations from FMVSS 303 label and owner's manual requirements could contribute to an injury or property damage incident.

For all of these reasons, GM believes that this noncompliance is inconsequential to motor vehicle safety. Accordingly, GM petitions that it be exempted from the remedy and recall provisions of the Motor Vehicle Safety Act in this case.

Interested persons are invited to submit written data, views, and arguments on the application of described above. Comments should refer

to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 7, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 2, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–20350 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6045]

Pipeline Safety: Report of the Cost-Benefit Analysis Framework Working Group

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This notice announces a one day public meeting to be conducted by RSPA's Office of Pipeline Safety to review the final report of the Cost-Benefit Analysis Framework Working Group. This informal working group, consisting of representatives of the gas and hazardous liquid pipeline industry, the Federal government, and academics, developed a framework for use by RSPA to identify and compare the economic costs and benefits of alternative safety actions that could affect the regulated pipeline industry. RSPA invites representatives of the pipeline industry, state and local government, and the public to attend this meeting, make presentations, ask questions, and submit comments to the docket.

DATES: The public meeting will begin at 9:00 am on September 29, 1999, and end no later than 5:00 pm. Persons wishing to make a short presentation may pre-register by contacting Marvin Fell at (202) 366–6205 to be placed on the speakers list. Persons not pre-registered will be allowed to make comments after the registered speakers have completed their presentations.

ADDRESSES: The public meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Room 8236–40, Washington, DC. Non-federal employee visitors are admitted into the DOT headquarters building through the southwest entrance at Seventh and E Streets, SW.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting contact Marvin Fell at (202) 366–6205.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, or by e-mail (marvin.fell@rspa.dot.gov), regarding this notice. The report, A Collaborative Framework for Office of Pipeline Safety Cost-Benefit Analyses (Framework), will be available after August 11, 1999, for inspection and copying in the DOT Dockets Unit, 400 Seventh Street, SW, Washington, DC, between 8:30 am and 4:30 pm each business day. A copy of the Framework is also available over the Internet at the Office of Pipeline Safety's website, ops.dot.gov. A transcript of the public meeting will be available from the Dockets Unit approximately three weeks after the meeting.

Written comments may be mailed or hand-delivered to the DOT Dockets Unit, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments may also be sent by e-mail to dms.dot.gov. Please refer to the docket number in your submission. Comments must be submitted by November 1, 1999.

SUPPLEMENTARY INFORMATION: The Accountable Pipeline Safety and Partnership Act of 1996 requires RSPA to identify the costs and benefits associated with proposed gas and hazardous liquid pipeline regulations. Under the Act, the Secretary of Transportation must propose or issue a regulation only after making a reasoned determination that the benefits of the regulation justify its costs. OPS believes that a collaborative process is the optimal approach for meeting the statutory requirements for cost-benefit analysis and for improving the quality of information used in regulatory policy decisions.

In the spring of 1997, RSPA's Office of Pipeline Safety formed the Cost-Benefit Analysis Framework Working Group (Working Group) to collaboratively develop guidelines for performing cost-benefit analyses. Members in this working group included representatives of RSPA, the National Oceanic and Atmospheric Administration (NOAA), the Department of the Interior (DOI), the American Petroleum Institute (API), the Gas Research Institute (GRI), the American Gas Association (AGA), the Interstate Natural Gas Association (INGAA), the American Public Gas Association (APGA), and the Carnegie-Mellon Research Institute. A number of hazardous liquid, natural gas distribution, and natural gas transmission companies.

Members of the Working Group will discuss the cost-benefit framework report prepared by the Working Group at this public meeting. Members of the Working Group will also present a case study employing the cost-benefit framework to illustrate the application of the framework's process and guidance.

1. Potential Benefits for All Stakeholders

Initial objectives for the Working Group were to explore members' perspectives and experiences with government cost-benefit analyses and to provide members with enough background and knowledge to enable effective participation. In meeting these objectives, the Working Group concluded that RSPA needed a documented framework with which to carry out pipeline safety cost-benefit analyses. Such a framework, its process and guidance, the Working Group believed, is necessary to enable all stakeholders to participate effectively in future pipeline safety initiatives. The Working Group anticipates that the framework will produce the following results:

- More informed decision making in public policy transactions.
- Clearer regulatory priorities and transparent tradeoffs between alternative outcomes.
- Identification of important factors besides economic efficiency for decision makers to consider, such as distributional equity or the potential for irreversible or unintended consequences.
- More efficient regulations that solve actual problems.
- More informed stakeholders, more efficient and effective interactions among stakeholders, and decreased

potential for prolonged conflicts and litigations.

- Promotion of mutual understanding and interests.

2. Guiding Principles

In the early stages of their effort, the Working Group crafted a set of guiding principles for pipeline cost-benefit analyses. The Working Group agreed on fourteen principles that should guide the evaluation of pipeline safety cost-benefit analyses. RSPA intends to refine or modify these guiding principles whenever needed to be consistent with changes in economic theory and methods. Throughout the effort, the Working Group exercised care to ensure that the guiding principles and the cost-benefit framework reflect and are consistent with standard accepted economic concepts and practices. One major reference for the Working Group in developing the guiding principles and framework is the Office of Management and Budget's (OMB) guidance for economic analyses.

3. Framework

As envisioned by the Working Group, the framework consists of a process for interaction among stakeholders representing the government, industry, environmental, and safety constituencies, and the public. The Working Group's report, A Collaborative Framework for Office of Pipeline Safety Cost-Benefit Analyses, describes each of the major process components of the framework and gives detailed guidance to carry out each process component. The major process components in the framework are:

- Identifying and defining the target problem.
- Identifying all available alternatives for addressing the target problem.
- Defining the analytical baseline.
- Defining the scope of the analysis.
- Analyzing costs.
- Analyzing benefits.
- Interpreting and using cost-benefit results.
- Evaluating the value and effectiveness of the cost-benefit process.

4. Illustrative Case Study—Pipeline Mapping

Since extensive cost data are available for RSPA's voluntary pipeline mapping initiative, the Working Group elected to do a cost-benefit analysis of this initiative. This case study provided the Working Group a way to illustrate, test, and refine the framework. The Working Group report presents the analytical results of this case study, reviews the challenges inherent to the application of the framework to analyze the costs and benefits of the initiative, and describes the ''lessons learned.''

RSPA invites discussions and comments on the Cost-Benefit Analysis Framework Working Group's final report, A Collaborative Framework for Office of Pipeline Safety Cost-Benefit Analyses.

Issued in Washington, DC on August 2, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20295 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 29653 (Sub-No. 7)]

Transportacion Ferroviaria Mexicana—Pooling of Car Service Regarding Multilevel Cars

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of application.

SUMMARY: Transportacion Ferroviaria Mexicana (TFM) has filed an application seeking approval for its participation in an existing railroad agreement for the pooling of services related to multilevel cars used to transport motor vehicles and boxcars used to transport automobile parts. TFM is a common carrier engaged in the transportation of property by railroad in Mexico. Its participation in the pooling agreement will be limited to international traffic moving between points in Mexico, the United States, and Canada.

DATES: Any comments on the application must be filed by September 7, 1999.

ADDRESSES: Send an original plus 10 copies of any comments, referring to STB Finance Docket No. 29653 (Sub-No. 7), to the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of any comments to: (1) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (2) Jamie J. Rainey, 100 West Big Beaver, Suite 200, Troy, MI 48084.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 11322, the Board may approve pooling agreements that are voluntarily entered into by carriers, provided that the pooling or division of traffic, services, or earnings will be in the interest of better service to the public or of economy of operation and will not unreasonably restrain competition. The pooling agreement that TFM seeks to join was originally approved by the Board's predecessor, the Interstate Commerce Commission (ICC), in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (ICC served Aug. 29, 1981). That agreement applied only to multilevel cars. Subsequently, the ICC approved amendments to the agreement authorizing the pooling of railroad services in auto-parts boxcars in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (Sub-No. 3) (ICC served Apr. 18, 1986). Other modifications included adding additional carriers to the pool, such as Canadian Pacific Limited in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (Sub-No. 1) (ICC served Apr. 12, 1983), and Canadian National Railway Company in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (Sub-No. 2) (ICC served May 12, 1983). The agreement was last amended in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multilevel Cars*, Finance Docket No. 29653 (Sub-No. 6) (ICC served June 30, 1995). It was revised to enable railroads and shippers to obtain and use information that they otherwise would not have, thereby allowing pool members to increase the efficiency of distribution of the multilevel car fleet and minimize unnecessary investment.[1]

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 29, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–20053 Filed 8–5–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The U.S. Department of Justice (DOJ) initially objected to the amendment as it was originally proposed, but withdrew its objection after the railroads revised the amendment to meet DOJ's concerns.

Corrections

Federal Register
Vol. 64, No. 151
Friday, August 6, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

Interim OPM Criteria for IRS Broadbanding System

Correction

In notice document 99–18191 beginning on page 38486, in the issue of Friday, July 16, 1999, make the following correction(s):

1. On page 38489, in the second column, under the heading **Appendix A—Staffing Supplements**, in the paragraph designated C. 1., ''Staffing Factor = Maximum special rate for banded grades Unadjusted GS rate corresponding to that special rate'' should read as follows:

$$1.\ \text{Staffing Factor} = \frac{\text{Maximum special rate for banded grades}}{\text{Unadjusted GS rate corresponding to that special rate}}$$

2. On the same page, in the same column, under the same heading, in the paragraph designated C. 2., ''Broadbanding Basic Rate = Old GS adjusted rate (special or locality rate) Staffing Factor'' should read as follows:

$$2.\ \text{Broadbanding Basic Rate} = \frac{\text{Old GS adjusted rate (special or locality rate)}}{\text{Staffing Factor}}$$

[FR Doc. C9–18191 Filed 8–5–99; 8:45 am]
BILLING CODE 1505–01–D

Friday
August 6, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Rotorcraft Load Combination Safety Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 29277; Amendment No. 27–36 and 29–43]

RIN 2120–AG59

Rotorcraft Load Combination Safety Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness standards to provide improved safety standards for rotorcraft load combination (RLC) certification. Several accidents occurred in the past 15 years involving the carriage of humans external to the rotorcraft. These amendments provide an increased level of safety in the carriage of humans. Also, significant changes in equipment employed in external load operations have occurred. This document addresses those advances in technology and is harmonized to international standards.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, FAA, Fort Worth, Texas 76193–0111, telephone (817) 222–5123, fax 817–222–5959.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Using a modern and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access/gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on a mailing list for future Notices of Proposed Rulemaking (NPRM's) and final rules should request from ARM–1 a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page under ''Rulemaking (ARM)'' at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREF@faa.gov.

Background

On November 27, 1991, following an announcement in the **Federal Register** (56 FR 63546, December 4, 1991), the ARAC charged the External Load Working Group to recommend new or revised airworthiness standards for Class D rotorcraft external loads. The Working Group assigned to this task included technical specialists knowledgeable in all areas of external load design and operational requirements. This broad participation is consistent with FAA policy to involve all known interested parties early in the rulemaking process.

The working group researched a wide range of data developed by the FAA, the military, and other nations' airworthiness authorities. Copies of the research documents are included in the docket.

Although rotorcraft external load operations are routinely conducted in a safe manner, several preventable accidents and incidents have occurred during the preceding 15 years. For example, several preventable inadvertent releases of humans carried external to the rotorcraft have occurred. Also, significant changes in the equipment employed in external load operations have occurred such as new rigging devices. Rotorcraft are now more diverse in design, more maneuverable, and more powerful.

A study of the issues prompted the Working Group to recommend updated requirements for modern external load equipment and operational practices. The working group proposed requirements to (1) decrease the potential for future accidents and incidents; (2) provide that external cargo load carrying devices, their release mechanisms, their load carrying systems, and their flight performance reflect modern operational needs; (3) provide separate and increased levels of safety for nonhuman external cargo (NHEC) and human external cargo (HEC) RLC's; and (4) provide updated standards that harmonize with the Joint Airworthiness Regulations (JAR).

The FAA evaluated the ARAC recommendations and proposed external load standards for rotorcraft certificated under 14 CFR parts 27 and 29 in NPRM 98–6 published on July 13, 1998 (63 FR 37745). The FAA received comments from four commenters. All commenters were generally in favor of the proposals but offered the following comments:

Discussion of Comments

14 CFR 27.865(b) and 29.865(b)

A commenter recommended that §§ 27.865(b), 29.865(b), 27.865(b)(3)(ii), and 29.865(b)(3)(ii) be expanded to better define the lightning requirements for external loads. The commenter further recommended that operational limitations be required, particularly when environmental forecasts involve lightning. The FAA believes that the commenter's concerns are fully and adequately addressed by the current certification regulations and these proposals. The level of protection from lightning provided by the current certification regulations, §§ 27.610 and 29.610, and proposals §§ 27.865(b)(3)(ii) and 29.610(b)(3)(ii), clearly defines a reasonable level of safety for the entire RLC from random lightning strikes during operations. Any specific operational restriction for a given RLC that clearly relates to potential lightning strikes will become a flight manual limitation under current §§ 27.1583, 29.1583, and 133.45.

Another commenter states that the wording in proposed §§ 27.865(b)(3)(i) and 29.865(b)(3)(i) implies that the quick release system (QRS) must only be capable of releasing the rated load at 1G. The commenter recommended an improvement to the wording to require that the QRS be certified to the full limit load capability. The FAA intends that the QRS must function up to the applicable limit load defined by the vertical limit load factors and their application proposed in §§ 27.865(a) and 29.865(a). The proposal in §§ 27.865(b)(3)(i) and 29.865(b)(3)(i) is identical to current §§ 27.865(b)(3) and 29.865(b)(3). The wording is commonly understood and is defined in current advisory material as the maximum external limit load. However, the FAA agrees that the wording could be

improved and will insert the word ''limit'' in §§ 27.865(b0(3)(i) and 29.865(b)(3)(i).

14 CFR 27.865(c) and 29.865(c)

A commenter stated that § 29.865(c)(5) would require special procedures and abnormal piloting techniques and should be removed. The FAA disagrees. Special procedures are not required for any external load operation involving human external cargo. The only procedures necessary for external load operations (current or proposed) are those now required under current regulations such as §§ 29.1585 and 133.45. No abnormal piloting techniques are intended or foreseen.

A commenter stated that the requirement for performance information in the proposed § 29.865(c)(6) would be better placed in § 29.1587, *Performance information.* The FAA disagrees. Placing the performance criteria as proposed by the commenter was considered during formulation of the proposals and rejected. Specific external loads performance criteria is most readily available and useful in §§ 27.865(c)(6) and 29.865(c)(6). The FAA considers the proposed placement best for clarity, efficiency, and commonality with 14 CFR part 133 (part 133).

Two commenters recommended creating a new § 27.865(c)(6). The first commenter noted that part 27 has recently been amended (Amendment 27–33) to add a Category A performance provision and recommended that § 27.865(c)(6) be added to part 27. The second commenter recommended revising § 29.865(c)(6) to include multi-engine rotorcraft having Category A engine isolation design features and adding an identical § 27.865(c)(6) requirement. The second commenter also recommended that § 133.45(e)(1) be revised to include Class D operations with multi-engine part 27 rotorcraft having Category A engine isolation design features. The FAA agrees in principle that a multi-engine part 27 Category A rotorcraft could provide an adequate level of performance that would permit a safe Class D operation; however, changing § 133.45(e)(1) to permit this is beyond the scope of the proposals. The FAA will consider these changes for future rulemaking.

14 CFR 27.865(d) and 29.865(d)

One commenter was concerned that the proposed wording of §§ 27.865(d) and 29.865(d) would mandate flight testing of each critical configuration and airspeed for each proposed external load. The FAA did not intend such a requirement. When deemed sufficient, analysis alone or analysis supported by bench tests may be used for a given critical configuration and airspeed without the necessity for flight tests.

General Comments

A commenter stated that a number of the proposed requirements could benefit from an indication of what an ''acceptable means of compliance'' would be. The commenter recommended that AC 25.1309–1A be revised to include these elements. The FAA disagrees. Advisory Circular (AC) 25.1309–1A contains advisory material for part 25 airplanes. The AC's for parts 27 and 29 contain an acceptable means of compliance for rotorcraft.

The FAA adopts the proposals as proposed in NPRM 98–6 except for adding the word ''limit'' to §§ 27.865(b)(3(i) and 29.865(b)(3)(i) as previously discussed.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and JAA regulations, where they exist, and has identified or discussed similarities and differences in these amendments and foreign regulations.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, which are summarized below (and available in the docket), the FAA has determined that this final rule will generate benefits exceeding its costs and is not ''a significant regulatory action'' as defined in Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. In addition, this final rule will not have a significant impact on a substantial number of small entities, will not constitute a barrier to international trade, and will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually.

The FAA invited the public to provide comments (and related data) on the assumptions made in the regulatory evaluation for the NPRM. No comments were received on the preliminary regulatory evaluation.

Costs and Benefits

Costs

The costs of the rule, which will be borne by manufacturers and operators, are evaluated for the time period extending from its implementation date through the operating lives of 75 rotorcraft assumed to be produced under 4 new type certificates (involving 15-year production runs of 5 rotorcraft per year total under all 4 new type certificates) and placed into part 133 service. Over the course of this evaluation period, incremental costs will total approximately $679,000 (1998 dollars) or $449,000 discounted to present value (using an interest rate of 7 percent and letting ''present'' be the date of initial type certification application). Of the $679,000 total cost, $447,000 is attributable to incremental design, analysis, test, and other certification costs, $30,000 to incremental production costs (75 rotorcraft at $400 each), and $202,500 to incremental weight penalty fuel costs ($180 per year per rotorcraft over 15-year operating lives of 75 rotorcraft). On a per-rotorcraft basis, costs will average approximately $9,000 or $6,000 discounted. These incremental costs will be offset to some extent by potential cost savings associated with harmonizing these airworthiness standards with the JAA, streamlining certification approvals for part 133 operators, and relaxing some of the requirements for parts 27 and 29 manufacturers (see Benefits section, below).

Benefits

To estimate the safety benefits of the rule, the FAA reviewed records of accidents involving part 133 operators that occurred between mid-1983 and

1998 that could have been prevented or the losses reduced if the changes in the rule had been in effect. During this 15-year period, there were 22 such accidents involving fatal and/or non-fatal injuries or damage to equipment or both. Ten of the accidents resulted in harm to persons (either inside or outside of the rotorcraft), totaling nine fatalities and two serious injuries. Twenty of the 22 accidents involved either substantial damage (8) or destruction of the rotorcraft (12).

To provide a basis for comparing the safety benefits and costs of rulemaking actions, the FAA currently uses a minimum statistical value of $2.7 million for fatality avoided and $521,800 for a serious injury avoided. Applying these standards to the casualty losses summarized above and making allowances for the costs of rotorcraft damage, the total cost of the 22 accidents was approximately $31.1 million.

The FAA estimates that the final rule could prevent at least 50 percent of the type of accidents summarized above. Applying it retrospectively yields dollar benefits of approximately $15.5 million (One-half of $31.1 million). Over the 15-year accident evaluation period, the part 133 fleet averaged approximately 300 active rotorcraft. Therefore, the benefits averaged approximately $3,400 per year per rotorcraft ($15.5 million/15years/300 operating part 133 rotorcraft per year). Applying this per-rotorcraft safety benefit to the cumulative number of complying rotorcraft results in total safety benefits of $3.8 million (or $1.1 million discounted to present value). On a per-rotorcraft basis, these benefits average approximately $51,000 or $14,300 discounted to the present.

In addition to improving safety, the final rule provides some cost-relief in certain respects. New production rotorcraft will be delivered with standardized procedures for external load operations, and these procedures could result in a small savings to part 133 operators. Further, changes to the preceding regulations that relate to the primary and backup quick-release devices will reduce production costs for parts 27 and 29 rotorcraft manufacturers. The changes will also increase harmonization and commonality between U.S. and European airworthiness standards. Harmonization will eliminate unnecessary differences in airworthiness requirements, thus reducing manufacturers' certification costs.

Comparison of Costs and Benefits

The rule will generate benefits in the form of increased safety and cost relief (see preceding paragraph—the potential production cost relief has not been included in the cost/benefit calculation). On a per-rotorcraft basis, the life-cycle safety benefits will average approximately $14,300 (discounted) and the costs will average approximately $6,000 (discounted), yielding a benefit-to-cost ratio of 2.4 to 1. On this basis alone, the rule is cost-beneficial; additional quantified efficiency and harmonization benefits will increase this ratio.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The entities that will be affected by this rule consist of rotorcraft manufacturers (included in Standard Industrial Classification (SIC) 3721, Aircraft and Aircraft Parts Manufacturers) and external load operators (SIC 4512, 3413, 4522). Manufacturers will incur additional development, certification, and production costs. In addition to indirectly incurring all or part of these costs in the form of higher rotorcraft acquisition costs, operators will incur increased fuel costs resulting from weight penalties. Although the certification costs (non-recurring) will be either fully absorbed by the manufacturer(s), passed on in-total to operator(s) (purchasers), or more likely, absorbed in some proportion by both, the FAA in this analysis adopts a conservative approach and allocates total certification costs to each category in assessing significant economic impact. Incremental per-unit production costs, however, are assumed to be fully passed on to purchasers (operators.)

For manufacturers, a small entity is one with 1,500 or fewer employees. Only 5 rotorcraft manufacturers have 1,500 or fewer employees and therefore qualify as small entities. However, three of these are not currently producing new type-certificated rotorcraft, and a fourth does not produce rotorcraft used for external loads. The fifth small manufacturer produces specialized smaller rotorcraft, a minority of which are configured for external load operations. This producer does not compete with the larger manufacturers. The annualized certification costs imposed by the rule are estimated to be $10,800 per manufacturer for each certification and are not considered significant within the meaning of the RFA.

There are numerous external load operators. The FAA has not determined how many of these are small operators and if a substantial number will potentially be impacted by the rule. However, most external load operations involve specialized activities such as logging, offshore oil drilling, or emergency rescue operations. The demand for such operations is highly price-inelastic; the operators can readily pass on the incremental costs to their customers. Notwithstanding, the maximum annualized cost per rotorcraft will most likely not be greater than $618 (discounted) (includes manufacturers' certification and production costs passed on to the purchaser and increased fuel costs but excludes potential offsetting cost-savings). This amount probably equates to less than the cost of 4 hours' operating time (representing a de minimus portion of annual revenues) and is not considered significant within the meaning of the Act. In addition, no small manufacturer or small operator will bear a disproportionate cost burden nor have a greater likelihood of failing in business compared to larger entities.

Based on the findings delineated above and consistent with the objectives and requirements of the RFA as amended, the FAA certifies that this final rule will not have a significant

economic impact on a substantial number of small entities.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to United States' companies doing business in foreign markets, and foreign companies doing business in the United States. This final rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European JAR. The result will be a positive step toward removing impediments to international trade.

Federalism Implications

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this final rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

Energy Impact

The energy impact of the rulemaking document has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 27 and 29 of Chapter I, Title 14, of the Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

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

2. Amend § 27.25 by revising paragraph (c) to read as follows:

§ 27.25 Weight limits.

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with a jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established for any rotorcraft-load combination if—

(1) The rotorcraft-load combination does not include human external cargo,

(2) Structural component approval for external load operations under either § 27.865 or under equivalent operational standards is obtained,

(3) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load,

(4) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section, and

(5) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations under § 27.865(a) and (d) of this part.

3. The undesignated center heading preceding § 27.865 is revised as set forth below; and in § 27.865 the section heading, paragraph (a) introductory text and paragraph (b) are revised; paragraphs (c) and (d) are redesignated as (e) and (f) and revised; and new paragraphs (c) and (d) are added to read as follows:

External Loads

§ 27.865 External loads.

(a) It must be shown by analysis, test, or both, that the rotorcraft external load attaching means for rotorcraft-load combinations to be used for nonhuman external cargo applications can withstand a limit static load equal to 2.5, or some lower load factor approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which authorization is requested. It must be shown by analysis, test, or both that the rotorcraft external load attaching means and corresponding personnel carrying device system for rotorcraft-load combinations to be used for human external cargo applications can withstand a limit static load equal to 3.5 or some lower load factor, not less than 2.5, approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which

authorization is requested. The load for any rotorcraft-load combination class, for any external cargo type, must be applied in the vertical direction. For jettisonable external loads of any applicable external cargo type, the load must also be applied in any direction making the maximum angle with the vertical that can be achieved in service but not less than 30°. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(b) The external load attaching means, for jettisonable rotorcraft-load combinations, must include a quick-release system to enable the pilot to release the external load quickly during flight. The quick-release system must consist of a primary quick release subsystem and a backup quick release subsystem that are isolated from one another. The quick-release system, and the means by which it is controlled, must comply with the following:

(1) A control for the primary quick release subsystem must be installed either on one of the pilot's primary controls or in an equivalently accessible location and must be designed and located so that it may be operated by either the pilot or a crewmember without hazardously limiting the ability to control the rotorcraft during an emergency situation.

(2) A control for the backup quick release subsystem, readily accessible to either the pilot or another crewmember, must be provided.

(3) Both the primary and backup quick release subsystems must—

(i) Be reliable, durable, and function properly with all external loads up to and including the maximum external limit load for which authorization is requested.

(ii) Be protected against electromagnetic interference (EMI) from external and internal sources and against lightning to prevent inadvertent load release.

(A) The minimum level of protection required for jettisonable rotorcraft-load combinations used for nonhuman external cargo is a radio frequency field strength of 20 volts per meter.

(B) The minimum level of protection required for jettisonable rotorcraft-load combinations used for human external cargo is a radio frequency field strength of 200 volts per meter.

(iii) Be protected against any failure that could be induced by a failure mode of any other electrical or mechanical rotorcraft system.

(c) For rotorcraft-load combinations to be used for human external cargo applications, the rotorcraft must—

(1) For jettisonable external loads, have a quick-release system that meets the requirements of paragraph (b) of this section and that—

(i) Provides a dual actuation device for the primary quick release subsystem, and

(ii) Provides a separate dual actuation device for the backup quick release subsystem;

(2) Have a reliable, approved personnel carrying device system that has the structural capability and personnel safety features essential for external occupant safety;

(3) Have placards and markings at all appropriate locations that clearly state the essential system operating instructions and, for the personnel carrying device system, the ingress and egress instructions;

(4) Have equipment to allow direct intercommunication among required crewmembers and external occupants; and

(5) Have the appropriate limitations and procedures incorporated in the flight manual for conducting human external cargo operations.

(d) The critically configured jettisonable external loads must be shown by a combination of analysis, ground tests, and flight tests to be both transportable and releasable throughout the approved operational envelope without hazard to the rotorcraft during normal flight conditions. In addition, these external loads must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions.

(e) A placard or marking must be installed next to the external-load attaching means clearly stating any operational limitations and the maximum authorized external load as demonstrated under § 27.25 and this section.

(f) The fatigue evaluation of § 27.571 of this part does not apply to rotorcraft-load combinations to be used for nonhuman external cargo except for the failure of critical structural elements that would result in a hazard to the rotorcraft. For rotorcraft-load combinations to be used for human external cargo, the fatigue evaluation of § 27.571 of this part applies to the entire quick release and personnel carrying device structural systems and their attachments.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4. The authority citation for part 29 continues to read as follows:

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

5. Amend § 29.25 by revising paragraph (c) to read as follows:

§ 29.25 Weight limits.

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with a jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established for any rotorcraft-load combination if—

(1) The rotorcraft-load combination does not include human external cargo,

(2) Structural component approval for external load operations under either § 29.865 or under equivalent operational standards is obtained,

(3) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load,

(4) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section, and

(5) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations under § 29.865 (a) and (d) of this part.

6. The undesignated center heading preceding § 29.865 is revised as set forth below; and in § 29.865 the section heading, paragraph (a) introductory text and paragraph (b) are revised; paragraphs (c) and (d) are redesignated as (e) and (f) and revised; and new paragraphs (c) and (d) are added to read as follows:

External Loads

§ 29.865 External loads.

(a) It must be shown by analysis, test, or both, that the rotorcraft external load attaching means for rotorcraft-load combinations to be used for nonhuman external cargo applications can withstand a limit static load equal to 2.5, or some lower load factor approved under §§ 29.337 through 29.341, multiplied by the maximum external load for which authorization is requested. It must be shown by analysis, test, or both that the rotorcraft external load attaching means and corresponding personnel carrying device system for rotorcraft-load combinations to be used for human external cargo applications can withstand a limit static load equal to 3.5 or some lower load factor, not less than 2.5, approved under §§ 29.337

through 29.341, multiplied by the maximum external load for which authorization is requested. The load for any rotorcraft-load combination class, for any external cargo type, must be applied in the vertical direction. For jettisonable external loads of any applicable external cargo type, the load must also be applied in any direction making the maximum angle with the vertical that can be achieved in service but not less than 30°. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(b) The external load attaching means, for jettisonable rotorcraft-load combinations, must include a quick-release system to enable the pilot to release the external load quickly during flight. The quick-release system must consist of a primary quick release subsystem and a backup quick release subsystem that are isolated from one another. The quick release system, and the means by which it is controlled, must comply with the following:

(1) A control for the primary quick release subsystem must be installed either on one of the pilot's primary controls or in an equivalently accessible location and must be designed and located so that it may be operated by either the pilot or a crewmember without hazardously limiting the ability to control the rotorcraft during an emergency situation.

(2) A control for the backup quick release subsystem, readily accessible to either the pilot or another crewmember, must be provided.

(3) Both the primary and backup quick release subsystems must—

(i) Be reliable, durable, and function properly with all external loads up to and including the maximum external limit load for which authorization is requested.

(ii) Be protected against electromagnetic interference (EMI) from external and internal sources and against lightning to prevent inadvertent load release.

(A) The minimum level of protection required for jettisonable rotorcraft-load combinations used for nonhuman external cargo is a radio frequency field strength of 20 volts per meter.

(B) The minimum level of protection required for jettisonable rotorcraft-load combinations used for human external cargo is a radio frequency field strength of 200 volts per meter.

(iii) Be protected against any failure that could be induced by a failure mode of any other electrical or mechanical rotorcraft system.

(c) For rotorcraft-load combinations to be used for human external cargo applications, the rotorcraft must—

(1) For jettisonable external loads, have a quick-release system that meets the requirements of paragraph (b) of this section and that—

(i) Provides a dual actuation device for the primary quick release subsystem, and

(ii) Provides a separate dual actuation device for the backup quick release subsystem;

(2) Have a reliable, approved personnel carrying device system that has the structural capability and personnel safety features essential for external occupant safety;

(3) Have placards and markings at all appropriate locations that clearly state the essential system operating instructions and, for the personnel carrying device system, ingress and egress instructions;

(4) Have equipment to allow direct intercommunication among required crewmembers and external occupants;

(5) Have the appropriate limitations and procedures incorporated in the flight manual for conducting human external cargo operations; and

(6) For human external cargo applications requiring use of Category A rotorcraft, have one-engine-inoperative hover performance data and procedures in the flight manual for the weights, altitudes, and temperatures for which external load approval is requested.

(d) The critically configured jettisonable external loads must be shown by a combination of analysis, ground tests, and flight tests to be both transportable and releasable throughout the approved operational envelope without hazard to the rotorcraft during normal flight conditions. In addition, these external loads—must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions.

(e) A placard or marking must be installed next to the external-load attaching means clearly stating any operational limitations and the maximum authorized external load as demonstrated under § 29.25 and this section.

(f) The fatigue evaluation of § 29.571 of this part does not apply to rotorcraft-load combinations to be used for nonhuman external cargo except for the failure of critical structural elements that would result in a hazard to the rotorcraft. For rotorcraft-load combinations to be used for human external cargo, the fatigue evaluation of § 29.571 of this part applies to the entire quick release and personnel carrying device structural systems and their attachments.

Issued in Washington, DC, on August 3, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–20294 Filed 8–5–99; 8:45 am]

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Friday
August 6, 1999

Part III

Department of Education

34 CFR Parts 668 and 682

Student Assistance General Provisions, Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1845–AA02

Student Assistance General Provisions, Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs) and the Federal Family Education Loan (FFEL) Program regulations. The student financial assistance programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The Federal Family Education Loan Program regulations govern the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs).

These proposed regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 Public Law 105–244, (the 1998 Amendments) for the treatment of Title IV, HEA program funds when a student withdraws from an institution.

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Wendy Macias, U.S. Department of Education, P.O. Box 23272, Washington, DC 20202–3272. If you prefer to send your comments through the Internet, use the following address: returntiv@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Wendy Macias, U.S. Department of Education, 7th and D Street, SW, ROB–3, Room 3013, Washington, DC 20202. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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 person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or

groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations, over the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of negotiating Committee III on the issues addressed in this package of proposed rules. Committee III was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Education Finance Council
Legal Services Counsel (a coalition)
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Graduate/Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document, except for the proposed implementation of the ''50% discount'' on Title IV, HEA program grant funds that a student must return in § 668.22(h)(3)(ii).

Background

Section 485 of the Higher Education Amendments of 1998, Public Law 105–244, enacted October 7, 1998 (the 1998 Amendments) substantially revised the requirements of section 484B of the Higher Education Act of 1965, as amended (the HEA).

Prior to the 1998 Amendments, section 484B required all schools participating in the Title IV, HEA programs to use specific refund policies when a student who receives Title IV, HEA program funds ceases attendance. The refund policies determined the amount of institutional charges that an institution had earned when a student withdrew, and the amount that was unearned and had to be refunded. In addition, section 485(a) of the HEA specified an order of return of unearned funds from all sources of financial aid, not just the Title IV, HEA programs.

Under the 1998 Amendments, section 484B of the HEA does not dictate an institutional refund policy. Instead, section 484B prescribes the amount of Title IV, HEA program assistance a student has earned as of the time he or she ceases attendance. The amount of Title IV, HEA program assistance earned is based on the amount of time the student spent in academic attendance; it has no relationship to the student's incurred institutional charges.

Because section 484B now deals with only the earning of Title IV, HEA program funds, the order of return of unearned funds no longer includes funds from sources other than the Title IV, HEA programs.

The new requirements do not prohibit an institution from developing its own refund policy or complying with refund policies required by outside agencies.

Summary of Proposed Changes

A summary of the proposed changes to the regulations to implement these statutory changes and issues on which the Secretary particularly invites comments follows.

Section 668.22(a) General

The statute requires that if a recipient of Title IV grant or loan funds withdraws from an institution after beginning attendance, the amount of Title IV, HEA program assistance earned by the student must be determined. If the amount the student was disbursed is greater than the amount the student earned, unearned funds have to be returned. If the amount the student was disbursed is less than the amount the student earned, the student is eligible to receive a late disbursement in the amount of the earned aid that the student had not received.

At the negotiated rulemaking sessions, the Department's negotiator stated the Department's belief that this change to the statute makes clear that Title IV, HEA program funds are awarded to a student under the assumption that the student will attend an institution for the entire period for which the assistance is awarded. When a student ceases academic attendance prior to the end of that period, the student may no longer be eligible for the full amount of Title IV, HEA program funds that the student was originally scheduled to receive.

Title IV Grants and Loans

The statute requires that the calculation of earned Title IV, HEA program assistance include all Title IV grant and loan funds that were disbursed or that could have been disbursed to a student. The statute specifies that Federal Work-Study (FWS) funds are not included in the calculation. These proposed regulations would clarify when Federal Supplemental Educational Opportunity Grant (FSEOG) program funds should and should not be included in the calculation.

The committee agreed that only funds that are clearly Title IV, HEA grant or loan funds must be included in the calculation. These proposed regulations would exclude from the calculation the non-Federal share of FSEOG awards when an institution meets its FSEOG matching share by either the individual recipient method or the aggregate method. In other words, if an institution meets its matching share requirement by putting funds in the FSEOG fund (otherwise known as the fund-specific matching method), those funds must be included in the calculation; otherwise, the non-Federal share of FSEOG awards is excluded from the calculation.

Several negotiators asked for clarification of the treatment of funds from the Leveraging Education Assistance Partnership (LEAP) program, formerly known as the State Student Incentive Grant (SSIG) program. The Department's negotiator stated the Department's view that the guidance of Dear Colleague Letter GEN–89–38, which addresses the treatment of LEAP funds when a student withdraws, is still applicable. Although not specified in the proposed regulations, this longstanding policy provides that, if a State agency specifically identifies a student's State grant as LEAP funds, the State grant funds must be considered Title IV, HEA grant funds for purposes of this calculation. If an institution does not know whether a particular student's State grant contains LEAP funds, the

grant would not have to be included in the calculation. The committee agreed that this policy facilitates the accurate identification of Federal funds and agreed that the continuation of this policy was reasonable. The Department will provide updates to the guidance of GEN–89–38 once these regulations are final.

Title IV Aid Disbursed

For consistency and administrative clarity, the committee agreed that it is necessary to identify a point in time that institutions would use for all students who withdraw to determine the amount of aid that was disbursed, since this amount is critical to determining if a return of Title IV, HEA program assistance is required. During negotiated rulemaking, the committee discussed whether this ''snap shot'' should occur as of the student's withdrawal date. Some negotiators pointed out that an institution sometimes inadvertently disburses funds to a student who is no longer in attendance. For example, a student drops out on Friday. Because the institution is unaware that the student is no longer in attendance, the institution makes a scheduled disbursement of aid to the student on the next Monday. Some negotiators felt that this inadvertent overpayment should be included as disbursed aid in the calculation of the amount of aid earned. They felt it was unduly burdensome to require an institution to immediately return the inadvertent overpayment since a portion of those funds may have been earned and would have to be re-disbursed. If any of the overpayment were not earned, they suggested that it could be returned in accordance with the requirements of this section for the return of unearned funds.

The committee agreed to move the snap-shot point to the date of the institution's determination that the student withdrew to allow such inadvertent overpayments to be counted as disbursed aid. (The proposed definition of the ''date of the institution's determination that the student withdrew'' is addressed in the discussion of § 668.22(l).) Institutions are expected to have the administrative capability to prevent these types of overpayments on a routine basis, particularly if funds are being paid to the student rather than credited to a student's account. A pattern or practice of making these inadvertent overpayments would be questioned in a program review. The Secretary agreed to include these overpayments in the calculation of total aid disbursed only for purposes of easing an institution's administrative burden in what should be a very limited number of circumstances. This provision would not supercede the requirements of § 668.164(b)(1) and the applicable program regulations which require that an institution may disburse Title IV, HEA program funds only if the student is enrolled for classes for the payment period and is eligible to receive those funds.

In keeping with this snap-shot approach, when a return of Title IV, HEA program funds is due, these proposed regulations would prohibit additional disbursements to the student after the date of the institution's determination that the student withdrew. The negotiators discussed the possibility of permitting an institution to adjust a student's disbursed aid by making late disbursements of aid *before* applying the requirements for determining and returning any unearned Title IV, HEA program assistance. Some negotiators felt that this could benefit the student in some cases. For example, if the institution had disbursed loan funds before the student withdrew and could have also disbursed grant funds, the institution could disburse the grant funds after becoming aware that the student withdrew in order to replace the loan funds, thereby reducing the student's loan debt.

After much discussion by the committee, it was decided that there are too many variables involved to permit institutions to make case-by-case determinations of whether post-withdrawal adjustments to a student's aid disbursement are appropriate. The committee agreed that it is not appropriate for an institution to disburse additional funds to a student or to a student's account after the institution becomes aware that the student has withdrawn, unless the institution determines that more funds were earned than had been disbursed. The Title IV, HEA program funds were made available to the student with the expectation that the student would complete the period for which the funds were provided, and that expectation is no longer present once a student has withdrawn. Before disbursing any additional funds on behalf of a withdrawn student, the proposed regulations would require the institution to determine that the student has earned those funds under the provisions of these proposed regulations.

Late Disbursements

The committee agreed that the requirements for a late disbursement due under section 484B of the HEA should be as similar as possible to the requirements under Subpart K—Cash Management of the Student Assistance General Provisions regulations. However, in some cases, the committee acknowledged that the existing cash management provisions are inappropriate in this context, or are superceded by section 484B of the HEA.

These proposed regulations contain a provision that any late disbursement due under this section must meet the current required conditions for late disbursements found in § 668.164(g)(2). This cash management provision lists the conditions that must have been met prior to the date that the student became ineligible in order for an institution to make a late disbursement. For example, the institution must have received the student's Student Aid Report (SAR) or Institutional Student Information record (ISIR) with an official expected family contribution (EFC).

The committee agreed that § 668.164(g)(1) and (g)(3) are not applicable to a late disbursement resulting from a student's withdrawal. Section 668.164(g)(1) currently states that an institution *may* make a late disbursement to a student who became ineligible solely because of a change in enrollment status. The requirements of section 484B remove the discretion that is provided in § 668.164(g)(1) for an institution to determine whether a late disbursement should be made.

Section 668.164(g)(3) currently specifies that a late disbursement must be for incurred educational costs, and must be made within 90 days of the date that the student becomes ineligible. The committee agreed that this provision was inapplicable because, as mentioned previously, the determination of the amount of Title IV, HEA program assistance that the student has earned has no relationship to incurred educational costs. The committee agreed that 90 days is a reasonable amount of time for an institution to make a late disbursement. However, the committee believed that a late disbursement made as the result of a withdrawal should be made within 90 days of the date of the institution's determination that the student withdrew, rather than within 90 days of the date that the student becomes ineligible. This proposed timeframe is addressed later in this discussion.

These proposed regulations would reflect the cash management requirements for disbursing Title IV, HEA program funds. Specifically, these proposed regulations would allow an institution to credit a student's account with a late disbursement without the

student's (or parent's, in the case of a PLUS loan) permission for current charges for tuition, fees, and room and board (if the student contracts with the institution) up to the amount of outstanding charges. For other current charges for educationally-related activities, the institution would need a student's (or parent's for PLUS loan funds) authorization to credit the student's account. These proposed regulations would allow an institution to use a student's or parent's authorization that is obtained prior to the student's withdrawal date for this purpose, so long as that authorization meets the requirements of § 668.165(b). If the institution did not obtain authorization prior to the student's withdrawal, the institution would have to obtain authorization in accordance with § 668.165(b)(2) before the institution could credit the student's account for other current charges for educationally-related activities. The institution's request for the student's or parent's authorization must make clear that if the student or parent does not give permission for the institution to credit the student's account with the Title IV, HEA program funds, these funds will be disbursed directly to the student or parent, as applicable, if the student or parent accepts the funds.

The committee considered whether to require an institution to make a late disbursement directly to a student. They also discussed whether prior authorizations from the student to permit the institution to credit his or her account would apply or if the institution would have to obtain authorization from the student after the student's withdrawal. However for consistency between this section and the existing cash management requirements, the committee decided that the proposed regulation should generally mirror the current cash management requirements for the disbursement of funds.

However, these proposed regulations would deviate from the cash management provisions in Subpart K for the disbursement of Title IV, HEA program funds by not permitting an institution to credit a student's account for any prior award year charges. This is because section 484B of the HEA specifies that earned Title IV, HEA program funds must be determined for the payment period or period of enrollment in which a student withdraws. Therefore, Title IV, HEA program funds that are earned under section 484B are earned for current charges only.

These proposed regulations would mirror the current cash management provisions in § 668.165 that require an institution to provide notice to a student, or parent in the case of a PLUS loan, when the institution credits a student's account with Direct Loan, FFEL or Federal Perkins Loan Program funds.

The statute requires that earned funds in excess of those credited to a student's account must be provided to the student. However, in recognition of the difficulty an institution may have in trying to locate a student who has ceased attendance at the institution, these proposed regulations would require that an institution would have to offer in writing to the student (or parent for PLUS loan funds) any amount of a late disbursement that is not credited to a student's account. The committee agreed that the written notification must include the information necessary for the student or parent to make an informed decision as to whether the student or parent would like to accept any of the disbursement. These proposed regulations would base the requirements for notification on the cash management requirements for an institution's notification to a student or parent when an institution credits a student's account with Title IV, HEA loan funds (§ 668.165(a)). This notification would have to be provided for late disbursements of both Title IV grant and loan funds that are available for direct disbursement. The Secretary specifically requests comments on whether the proposed timeframes discussed below, which are based on the timeframes established in the cash management regulations, are appropriate for a student who has withdrawn from school.

The committee agreed that, although a student or parent always has the option of declining a direct disbursement of loan funds by returning or not endorsing the loan check, it is essential that this option be brought to the student's or parent's attention when the student has ceased attendance and may have compromised his or her ability to earn the funds necessary to repay additional loan debt.

Under these proposed regulations, an institution would be expected to send the notification as soon as possible, but no later than 30 calendar days after the date that the institution determines that the student withdrew. The notice would have to identify the type and amount of the Title IV, HEA program funds that make up the late disbursement, and explain that the student or parent may decline all or a portion of those funds. This information must be provided to permit a student or parent to determine which funds, if any, he or she wishes to decline.

The institution would have to advise the student or parent in the notification that the student or parent would have 14 calendar days from the date that the institution sent the notification to accept a late disbursement. The notification would have to make it clear that if the student or parent did not respond to the notification within the timeframe, the institution would not be required to make the late disbursement. However, an institution could choose to make a late disbursement based on acceptance by a student or parent after the 14 calendar days. Fourteen days is the same period of time that is permitted for a student or parent to respond to a notification of the ability to cancel a loan disbursement that is credited to the student's account. The committee agreed that this period of time provides sufficient response time for a student or parent and also meets the administrative needs of the institution.

This NPRM proposes that if a student or parent submits a timely response accepting all or a portion of a late disbursement, the institution must disburse the funds within 90 days of the date of the institution's determination that the student withdrew. The committee agreed that an institution's responsibility for paying a late disbursement should start when the institution first becomes aware that a student has ceased attendance at the institution. The proposed definition of the term ''date of the institution's determination that the student withdrew'' is addressed in the discussion of § 668.22(l). The Secretary notes that the date of the institution's determination that the student withdrew is the same date that would trigger the 30-day period that the institution has for notifying the student or parent of any late disbursement available for direct disbursement. Consequently, under this proposal, the sooner an institution sends the notification to a student or parent, the more time the institution would have to make any accepted late disbursement.

The Secretary believes that it would be reasonable to permit an institution to use one notification to (1) notify the student or parent that loan funds were credited to the student's account; (2) request permission to credit the student's account for other current charges for educationally-related activities, if prior authorization had not been obtained; and (3) notify the student or parent of the availability of any remaining earned Title IV, HEA program assistance.

To keep the student or parent properly informed about the Title IV, HEA program assistance that he or she received or did not receive, this NPRM proposes that an institution must inform a student or parent in writing or electronically concerning the outcome of any late disbursement request. For example, an institution must inform a student if it will not make a late disbursement because the student's request was not received within the 14-day timeframe.

Finally, this NPRM proposes that a late disbursement, whether credited to the student's account or disbursed to the student or parent directly, must be made from available grant funds before available loan funds since it is in the best interest of the student to minimize loan debt. ''Available'' grant or loan funds refers to Title IV, HEA program assistance that could have been disbursed to the student, but was not disbursed as of the date of the institution's determination that the student withdrew. For example, if a student is due a late disbursement of $500, and the student has received $400 of $1,000 in Federal Pell Grant funds that could have been disbursed, and $1,200 of the $2,000 in Federal Stafford Loan funds that could have been disbursed, the available undisbursed funds are $600 in Federal Pell Grant funds, and $800 in Federal Stafford loan funds. Any portion of the $500 late disbursement that the institution makes must be made from the $600 in available Federal Pell Grant funds.

The following example illustrates the major principles of the proposed late disbursement procedures. Michael drops out of school on November 5. On November 10, the institution becomes aware that Michael ceased attendance. Using these proposed regulations, the institution determines that because Michael has earned $900 in Title IV, HEA program assistance that he has not received, Michael is due a late disbursement of $900. When Michael withdrew, only $600 of the $1,000 in Federal Pell Grant funds that could have been disbursed to him had been disbursed. Of the $2,000 in Federal Stafford Loan funds that could have been disbursed, only $1,200 had been disbursed. The institution determines that Michael has $50 in outstanding tuition charges and $100 in outstanding parking fines for the payment period. The institution credits Michael's account with $50 of Michael's Federal Pell Grant funds. The institution wants to use another $100 of Michael's late disbursement to cover the outstanding parking fines. However, the institution has not received permission from Michael prior to his withdrawal to credit his account for educationally-related charges other than tuition and fees and room and board.

On November 12, the institution sends a notification to Michael that states that (1) he is due a late disbursement of $900, that comprises $400 in Federal Pell Grant funds and $500 in Federal Stafford Loan funds; (2) $50 of the Federal Pell Grant funds were credited to his account for tuition charges, so Michael has a remaining potential late disbursement of $850; (3) Michael may accept all, a portion, or none of the $850; (4) the institution is obligated to make a late disbursement of funds only if Michael accepts the funds by November 26, 14 days after the institution sent the notification; (5) the institution is requesting Michael's permission to credit his account with an additional $100 of the Federal Pell Grant funds to cover his unpaid parking fines; and (6) if Michael does not authorize the institution to credit his account with the $100 of Federal Pell Grant funds, those funds will be disbursed to Michael if he chooses to accept them. The institution could have sent the notification no later than December 10; that is, 30 days after the date of the institution's determination that the student withdrew.

Michael responds on November 19. Michael authorizes the institution to apply $100 of the Federal Pell Grant funds to his outstanding parking fines. Michael accepts the remaining $250 in Federal Pell Grant funds, but declines the $500 in Federal Stafford Loan funds to minimize his overall loan debt.

The institution sends Michael a check for the $250 in Federal Pell Grant funds and a letter confirming that $100 of the Federal Pell Grant funds will be credited to his account and no additional loan funds will be disbursed. The institution has until February 8, which is 90 days from the date of the institution's determination that the student withdrew, to disburse the $250 in Federal Pell Grant funds to Michael and to credit his account with the $100 of Federal Pell Grant funds to cover his outstanding parking fines.

Section 668.22(b) Determining a Student's Withdrawal Date at an Institution That Is Required To Take Attendance

These proposed regulations would limit the definitions of withdrawal date in § 668.22(b) and (c) to the determination of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal. An institution would not be required to use these withdrawal dates for their own institutional refund policies or for any other purpose. The committee agreed that this approach is consistent with the view that an institution's refund policy and other academic procedures are separate from these new procedures for determining the amount of Title IV, HEA program assistance earned when a student withdraws.

This proposed definition of withdrawal date (and the proposed definition of withdrawal date in § 668.22(c)) is for purposes of determining the amount of aid a student has earned. It is not necessarily the date that ''starts the clock'' for the return of the Title IV, HEA program funds by the institution. In § 668.22(j), this NPRM proposes a timeframe, beginning on the date of the institution's determination that the student withdrew, for the return of unearned Title IV, HEA program funds. The term ''date of the institution's determination that the student withdrew'' is discussed under § 668.22(l).

Last Date of Academic Attendance

Section 484B(c)(1)(B) of the HEA provides that, for institutions that are required to take attendance, the day the student withdrew is determined by the institution from the institution's attendance records. These proposed regulations would define this withdrawal date as the last date of academic attendance, as determined by the institution from its attendance records.

The committee discussed whether the statute could be interpreted to allow an institution to use a student's last date of attendance from the institution's attendance records as a *basis* for determining the student's withdrawal date, rather than as the actual withdrawal date. For example, if an institution's records show that a student's last date of academic attendance is November 15, but the institution is not aware that the student left until November 22, the institution might use November 22 as the student's withdrawal date. One negotiator felt that this approach was more equitable because it would take into account costs that are incurred by the student after the student's last date of attendance.

At the negotiated rulemaking sessions, the Department's negotiator made clear that the Department's view is that the goal in defining a student's withdrawal date is to identify the date that most accurately reflects the point when the student ceased academic attendance, and that this goal is best met by using the student's last date of academic attendance. The amount of Title IV, HEA program assistance that is

earned is a reflection of the amount of time a student spent in academic attendance, not a reflection of institutional costs that are incurred by the student. The committee agreed to define the withdrawal date for an institution that is required to take attendance as the last date of academic attendance as determined by the institution from its attendance records. Thus, in the example just cited, the withdrawal date would be November 15, not November 22.

Required To Take Attendance

At the negotiated rulemaking sessions, the committee discussed whether an institution that elects to take attendance should be considered an institution that is required to take attendance for purposes of calculating the amount of Title IV, HEA program assistance when a student withdraws. The committee decided that only an institution that is required to take attendance by an outside entity would be considered an institution that is required to take attendance. Examples of outside agencies that may require an institution to take attendance are an institution's accrediting agency or an institution's state licensing agency.

At the negotiated rulemaking sessions, the Department's negotiator also suggested that an institution that is required to take attendance for even a portion of the payment period or period of enrollment should be considered an institution that is required to take attendance. Some negotiators thought that the Department's interpretation was too restrictive. The negotiators cited an example in which an institution's State agency requires the institution to take attendance for the first two weeks of a program to establish a census of students. The negotiators did not believe that attendance records for census purposes would be appropriate for determining a student's withdrawal date. For this reason, the committee agreed that the proposed regulations should not include a reference to institutions that are required to take attendance for only a portion of the period. The Secretary requests comment on whether an institution that is required to take attendance for a longer portion of the payment period or period of enrollment should be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date under these proposed regulations. For example, should an institution that is required to take attendance just beyond the 60 percent point of the period (the point at which the student would earn 100 percent of his or her Title IV, HEA program assistance) have to use its attendance records to determine a student's withdrawal date?

Student Does Not Return From a Leave of Absence

The committee agreed that if a student does not return to the institution at the expiration of an approved leave of absence, the most appropriate withdrawal date for the student is also the last date of academic attendance as determined by the institution from its attendance records. Leaves of absence are addressed in the discussion of proposed § 668.22(d).

Section 668.22(c) Determining a Student's Withdrawal Date at an Institution That Is Not Required To Take Attendance

As mentioned in the discussion of proposed § 668.22(b), this NPRM proposes that the definitions of withdrawal date in §§ 668.22(b) and (c) apply only to the determination of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal.

The statute lists four types of withdrawal situations for students who withdraw from institutions that are not required to take attendance and defines a withdrawal date for each type. The four situations are: (1) the student began the withdrawal process prescribed by the institution; (2) the student otherwise provided official notification to the institution of his or her intent to withdraw; (3) the student leaves without beginning the institution's withdrawal process or otherwise providing official notification of his or her intent to withdraw (an ''unofficial withdrawal''); and (4) the student does not return to the institution by the expiration of a leave of absence. In addition, the statute contains a ''special rule'' definition of withdrawal date for withdrawals that occur because of circumstances that are beyond the student's control.

Last Date of Attendance at an Academically-Related Activity

The statute does not specifically allow an institution to use an earlier or later date than those described above, except in the case of a student who withdraws without providing official notification, in which case the midpoint is the withdrawal date (situation number 3, discussed above). In such cases, the statute allows an institution to document and use a date that is later than the midpoint of the period. However, as stated previously, the Secretary believes that a student's withdrawal date should reflect as accurately as possible the point when the student ceased academic attendance. The Secretary also believes that an institution should base its determination of that point on the best information available. Therefore, the committee agreed that these proposed regulations should allow an institution that is not required to take attendance always to be able to use a student's last date of attendance at an academically-related activity, as documented by the institution, as the student's withdrawal date, in lieu of the withdrawal dates listed above. Thus, if a student begins the institution's withdrawal process or otherwise provides official notification of his or her intent to withdraw and then attends an academically-related activity after that date, the institution would have the option of using that last actual attendance date as the student's withdrawal date provided that the institution documents that the student attended the activity. Similarly, an institution could choose to use an earlier date if it believes the last documented date of attendance at an academically-related activity is a more accurate reflection of the student's withdrawal date than the date on which that student began the institution's withdrawal process or otherwise provided official notification of his or her intent to withdraw.

The concept of using a last date of attendance at an academically-related activity as a student's withdrawal date is a longstanding one for the Title IV programs. Consistent with this longstanding policy, the proposed regulations would not require an institution to take class attendance in order to demonstrate academic attendance for this purpose. The regulations would define ''academically-related activity'' and list several examples of activities that meet the definition. An institution would be permitted to use documentation of a student's attendance at other activities if those activities met the definition of an academically-related activity.

An institution would be responsible for determining that the activity that the student attended is, in fact, academically-related. The committee agreed that an institution has demonstrated this responsibility if an employee of the school confirms that the activity is academically-related. The Secretary does not consider proof that a student is living in institutional housing nor proof that a student is participating in a student organized study group to be proof of academic attendance.

The Secretary notes that activities that meet this definition of an academically-related activity would not necessarily count as instructional time for purposes

of the ''12-hour rule'' found in the definition of ''academic year'' in § 668.2(b)(2) and in the definition of an eligible program in § 668.8(b).

Withdrawal Process Prescribed by the Institution

During negotiated rulemaking, the committee discussed whether to regulate the concept of ''began the withdrawal process.'' Some negotiators felt that the statute gave the institutions discretion to define the beginning of their own withdrawal procedure. The committee agreed to leave the definition of this term up to each institution. The Secretary notes that section 485(a)(1)(F) of the HEA, as modified by the 1998 Amendments, requires an institution to make available to students a statement of the requirements for officially withdrawing from the institution. The Secretary expects an institution to identify the beginning of its process as a part of this information. The Secretary also expects an institution to be able to demonstrate consistent application of its process, including its determination of the beginning of the process.

Official Notification

These proposed regulations would define ''official notification to the institution.'' The committee agreed that ''official notification to the institution'' occurs when a student notifies an office of the institution of his or her intent to withdraw. However, the committee noted that it could be administratively burdensome for an institution to have to track withdrawal notifications that could be made to any unspecified office of the institution. Therefore, these proposed regulations would allow an institution to designate the office or offices that a student must notify in order for the notification to count as official notification. An institution would have to designate at least one office for this purpose. For example, an institution could designate a dean's, registrar, or financial aid office.

Under these proposed regulations, official notification from the student could be written or oral. Under this proposal, acceptable notification would include notification by a student via telephone, through a designated web site, or notification that is provided orally in person. If provided orally, the Secretary would expect the institution to document the conversation with the student.

Resolving Instances Where Student Triggers Two Dates

During the negotiations, the Department's negotiator noted that a student might both begin the institution's withdrawal process and otherwise provide official notification to the institution of his or her intent to withdraw. For example, on November 1, a student calls the institution's designated office and states his or her intent to withdraw. Later, on December 1, the student begins the institution's withdrawal process by submitting a withdrawal form. The Department's negotiator stated that it is the Department's view that the earlier date more accurately reflects when the student withdrew. Ultimately, the committee agreed that if both dates are triggered, the earlier date would be the student's withdrawal date.

Several negotiators felt that the institution should have the discretion to choose the more appropriate date. The negotiators felt it was unfair to require the earlier date if the student continued to attend the institution after the first notification. Although the proposed regulations would permit an institution to document a later ''last date of academically-related attendance,'' negotiators felt that in this situation it was unreasonable to require the institution to confirm and document the later attendance. The committee agreed to extend negotiations beyond the five originally-scheduled sessions in order to continue to address this issue (and the issue of the determination of the amount of unearned aid to be returned). The committee agreed that the extension was necessary to continue its attempts to resolve differences between the Department's negotiator and other negotiators. After extensive discussions and consideration of several alternatives, the committee ultimately agreed to the original interpretation that the withdrawal date should be the earlier of the two dates (unless the institution chooses to document another last date of attendance at an academically-related activity), in conjunction with a provision that clarifies how a student's rescission of his or her notification of intent to withdraw would be treated (discussed below).

Student Does Not Return From a Leave of Absence

This NPRM proposes that if a student does not return to the institution at the expiration of an approved leave of absence, the student's withdrawal date is the date that the student began the leave of absence. The committee agreed that the date that the student began the leave of absence most accurately reflects the point when a student who does not return from the leave ceases academic attendance. Leaves of absence are addressed in the discussion of proposed § 668.22(d).

Circumstances Beyond the Student's Control

The committee's view was that the special rule that defines a withdrawal date for students who withdraw due to circumstances beyond the student's control should apply in two circumstances: (1) a student who would have provided official notification to the institution of his or her intent to withdraw was prevented from doing so due to those circumstances; and (2) a student withdrew due to circumstances beyond the student's control and a second party provided notification of the student's withdrawal on the student's behalf.

The committee agreed that for such students the institution should determine the withdrawal date that most accurately reflects when the student ceased academic attendance due to the circumstances beyond the student's control. This date would not necessarily have to be the date of the occurrence of the circumstance beyond the student's control. For example, if a student is assaulted, he or she may continue to attend school, but ultimately not be able to complete the period because of the trauma experienced. Because the student's withdrawal was the result of the assault, the withdrawal date would be the date that the student actually left the institution, not the date of the assault. The Secretary would expect the institution to document that the student left at the later date because of issues related to the assault.

Rescission of Intent To Withdraw

These proposed regulations would specify how a student's rescission of an intent to withdraw would affect the withdrawal date. A student's rescission would be valid only if the student attends through the end of the payment period or period of enrollment. As part of the rescission notification, a student would have to attest that he or she was continuing academic attendance and that he or she intends to complete the period. If the student did not complete the payment period or period of enrollment after the rescission, the withdrawal date would be the date when the student first provided notification to the school or began the withdrawal process, unless an institution chooses to use a documented last date of attendance at an academically-related activity as the student's withdrawal date.

This language was added to the proposed regulations to clarify how a

student's rescission would be treated. The negotiation of this proposed regulatory language occurred through discussions within a subgroup of the committee, including the Department's negotiator, after the final negotiating session (but prior to the reaching of consensus). Although the committee reached consensus on the proposed regulatory language, the Secretary wishes to explain the reasons for this provision. The Secretary is particularly concerned with a situation in which a student notified the institution of an intent to withdraw, decided to continue to attend the school, and then withdrew without providing further notification. The Secretary believes that a student who provides official notification of his or her intent to withdraw and actually withdraws should never be treated as a student who left the institution without providing notification, even if there was a rescission of the first notification.

Likewise, the Secretary does not believe that a student who provided notification, decided to continue to attend the school, and then provided subsequent notification of an intent to withdraw should have earned aid determined based on the later notification date.

The Secretary is concerned that some students, either on their own or in response to encouragement by the institution, would attend for a short period of time after their first notification and then drop out or provide a second notification in order to increase artificially the amount of Title IV, HEA program assistance earned.

Acceptable Documentation

During the negotiated rulemaking sessions, the committee considered whether to specify in the regulations what documentation would be acceptable to support an institution's determination of a student's withdrawal date. Several of the negotiators felt that institutions should have the flexibility to determine the type of documentation that would best support their determination of the student's withdrawal date. The negotiating committee agreed that acceptable documentation should not be delineated in the regulations. However, an institution would still be required to document all withdrawal dates and maintain the documentation. The committee agreed that it is reasonable to expect an institution to have such documentation available as of the date of the institution's determination that the student withdrew. The proposed definition of the ''date of the institution's determination that the student withdrew'' is addressed in the discussion of § 668.22(l).

Unapproved Leave of Absence

The Secretary notes that neither the statute nor the proposed regulations specify a withdrawal date for a student who takes an unapproved leave of absence. The Secretary requests comment on whether such a date should be specified in the regulations.

Section 668.22(d) Treatment of Leaves of Absence

The statute provides that a leave of absence must meet certain conditions to be counted as a temporary interruption in a student's education, rather than as a withdrawal. If a leave of absence does not meet the conditions, the student is considered to have ceased attendance at the institution (and therefore to have withdrawn from the institution) and the requirements of section 484B of the HEA would apply.

For purposes of § 668.22, a leave of absence refers to circumstances in which a student is not in academic attendance for a period for which academic attendance is scheduled as part of the student's program. It does not refer to non-attendance for a scheduled break in a student's program.

These proposed regulations refer to a leave of absence that does not have to be considered a withdrawal as an ''approved leave of absence.'' The statute gives an institution discretion in determining whether to treat an approved leave of absence as a withdrawal. That is, a student's leave of absence may meet all the requirements for an approved leave of absence, but the institution may still treat the leave of absence as a withdrawal.

The committee noted that term-based credit hour schools allow students to receive an ''incomplete'' status for coursework that can be, and is expected to be, completed within a reasonable timeframe after the term is over. For example, a student may request and receive an ''incomplete'' because the student failed to turn in an assigned paper. If a student is assigned an ''incomplete'' status but the institution determines that the student will likely complete the required coursework, the student could be considered not to have withdrawn. If the institution assigns a student a leave status other than a leave of absence as defined in these proposed regulations just to keep the student from having to re-apply the next semester, the student would be considered to have withdrawn, unless he or she was granted an approved leave of absence under the provisions of this section. The Secretary notes that under these proposed regulations, a student on an approved leave of absence must be permitted to complete the coursework he or she began prior to the leave of absence.

The Secretary specifically requests comment on whether the proposed definition of a leave of absence for purposes of this section should apply for purposes of determining whether a student's in-school status continues for Title IV, HEA program loan purposes.

Number of Leaves of Absence

The statute refers to a student who takes ''a'' leave of absence from an institution. The committee considered whether a student should be granted only one leave of absence in a 12-month period or whether the statute permits a student to take multiple leaves of absence in a 12-month period, as long as the total number of days did not exceed 180. The committee agreed that in some limited instances, it may be appropriate to permit a student to take more than one leave of absence within a 12-month period, as long as the total number of days of the leaves of absence does not exceed 180. This proposal seeks to strike a balance recognizing that it is often not in the best interest of most students to have multiple interruptions to their education, but that one leave of absence may not be sufficient to address the needs of some students. These proposed regulations do not specify the reasons for which a single leave of absence may be granted; rather, the institution would determine if the student's reason for requesting a single leave of absence is appropriate. Generally, the committee agreed that more than one leave of absence should be granted for unforeseen circumstances only. For example, an institution would be able to grant more than one leave of absence to a student who is unexpectedly called up for military-reserve duty, or for a student who meets the criteria covered under the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3), enacted February 5, 1993.

The circumstances that are covered under the FMLA, as applied to students, are:

- Birth of a son or daughter of the student and the need to care for that son or daughter (for 12 months beginning from the date of birth of the child),
- Placement of a son or daughter with the student for adoption or foster care (for 12 months beginning on the date of the placement),
- Need to care for the student's spouse, or a son, daughter, or parent, if the spouse, son, daughter, or parent has a serious health condition, and

• Serious health condition that makes the student unable to function as a student.

These proposed regulations would use definitions of terms taken from the FMLA and its implementing regulations (29 CFR part 825). The statutory language, with links to the implementing regulations, can be found on the Internet at http://www.dol.gov/dol/esa/public/regs/statutes/whd/fmla.htm

The Secretary specifically requests comments on other categories that commenters believe would warrant the granting of more than one approved leave of absence in a 12-month period.

The Secretary believes that it would be appropriate for a student to make only one request for multiple leaves of absence when those leaves are all requested for the same reason. For example, a student who will be receiving multiple chemotherapy treatments over the course of the student's enrollment could submit one request to cover the recovery time needed for each session.

12-Month Period

The statute requires that the leave of absence not exceed 180 days in any 12-month period. This NPRM proposes that the 12-month period would begin on the first day of the student's leave of absence. This proposal reflects the view that the use of a calendar year or academic year would not be appropriate. For example, if the use of a calendar year was permitted, an institution could grant one leave of absence of 180 days from July to December of one year and another leave of absence for 180 days from January to June of the following year. The committee did not believe that it would be appropriate to give a student more than 180 days on a leave of absence within any 12-month period.

Reasonable Expectation of Return

These proposed regulations set conditions for an approved leave of absence in addition to the minimum conditions required by the statute. The committee agreed that a leave of absence is an approved leave of absence if there is a reasonable expectation on the part of the institution that the student will be able to return to the institution. It was agreed that it is necessary to specify this condition in the regulations to prevent an institution from granting a student a leave of absence merely to delay the return of unearned Title IV, HEA program funds.

No Additional Charges

This NPRM proposes that an approved leave of absence may not involve additional charges by the institution. A leave of absence is a temporary break in the student's attendance during which, for purposes of determining if the provisions of this proposed rule apply, the student is considered to be enrolled. Since students are not assessed additional charges for continuing enrollment, any additional charges to a student, even *de minims* re-entry charges, indicate that the student is not considered to be on an approved leave of absence.

Completion of Coursework Upon Return

This NPRM proposes that in order for a leave of absence to be an approved leave of absence, the institution must permit the student to complete the coursework that he or she began prior to the leave of absence. Approved leaves of absence are viewed as temporary interruptions in a student's attendance. Therefore, when a student returns from a leave of absence, the student should be continuing his or her education where he or she left off.

Formal Policy

The statute provides that in order for a leave of absence not to be treated as a withdrawal, the institution has to have a formal policy regarding leaves of absence, the student has to follow the institution's policy in requesting a leave of absence, and the institution has to approve the student's request in accordance with the institution's policy.

For documentation purposes, these proposed regulations would further define a ''formal policy'' as one that requires a student to provide a written, signed, and dated request for a leave of absence prior to the leave of absence, unless unforeseen circumstances prevent the student from doing so. The committee agreed that, in most cases, it is possible to obtain a written request from a student prior to a leave of absence. However, in some cases, a student will not be able to provide a written, signed, and dated request prior to the beginning of the leave of absence. For example, if a student was injured in a car accident and needed a few weeks to recover before returning to school, the student would not have been able to request the leave of absence in advance. The regulations would permit the institution to grant the leave of absence if the institution documents its decision and collects the request from the student at a later date.

In addition, these proposed regulations would require that the institution put the policy in writing and publicize it to students. Because of the consequences of withdrawal, the committee agreed it is essential to provide students with the information they need to request and receive approval for an approved leave of absence. This requirement would be met by including the policy with the one-time dissemination of other consumer information under § 668.41.

Section 668.22(e) Calculation of Amount of Title IV, HEA Program Funds Earned by the Student

These proposed regulations would repeat (with minor changes for clarity) the statutory language that delineates the calculation of the amount of Title IV, HEA program funds earned, with the modifications discussed below.

The most significant modification is the addition of language in the calculation of the percentage earned to make clear that a student in a clock hour program cannot earn 100 percent of his or her Title IV, HEA program assistance unless the student actually completes more than 60 percent of the total clock hours in the payment period or period of enrollment. This is addressed in detail in the discussion of the percentage of the payment period or period of enrollment completed for a clock hour program in § 668.22(f).

Unearned Title IV Assistance To Be Returned

These proposed regulations would clarify the intent of the statute by defining the ''total amount of unearned Title IV assistance to be returned.'' The statute defines the percentage and amount of Title IV, HEA program assistance that is unearned. The statute requires that the unearned amount must be returned to the Title IV, HEA programs. However, the statute defines the total amount unearned by applying the percentage unearned to the total amount of program assistance that was disbursed or that could have been disbursed.

Negotiators pointed out that in situations in which all the Title IV, HEA program assistance that could have been disbursed was *not* disbursed, the only amount that needs to be returned is the amount of disbursed aid that exceeds the amount of earned aid. For example, a student's total ''disburseable aid'' (aid that was disbursed or could have been disbursed) is $3,250. It includes a $1,500 Pell Grant and $1,750 in a subsidized Stafford loan. When the student withdraws, the full amount of the loan ($1,750) has been disbursed, but only $1,000 of the Pell Grant has been disbursed. The total Title IV, HEA

program assistance that is earned by the student is calculated by multiplying total disburseable aid ($3,250) by the percentage earned. Assuming a percentage earned of 25%, the total earned Title IV, HEA program assistance would be $813 ($3,250×25%). If all the disbursable aid had been disbursed, the total unearned amount of Title IV, HEA program assistance of $2,437 ($3,250 − $813) would have to be returned to the Title IV, HEA programs. However, because only $1,000 of the $1,500 Pell Grant was actually disbursed, only $2,750 in Title IV, HEA program assistance was actually disbursed, so only $1,937 would have to be returned to the Title IV, HEA programs. This amount, $1,937, is the amount actually disbursed that exceeds the amount of Title IV, HEA program assistance that was earned by the student ($2,750 − $813).

The committee agreed that replacing total unearned aid with the total amount of unearned Title IV assistance to be returned clarifies that the only amount that needs to be returned is the amount of aid that was actually disbursed that exceeded the amount of earned aid.

Payment Period or Period of Enrollment

For students who withdraw from term-based educational programs, this NPRM proposes that an institution would always have to determine the treatment of the student's Title IV, HEA program assistance on a payment period basis. For students who withdraw from a non-term based educational program, the institution would have the choice of determining the treatment of the student's Title IV, program assistance on either a payment period basis or a period of enrollment basis. The committee believed that allowing an institution a choice of a period for non-term based educational programs only is consistent with the conference report language for the 1998 Amendments. The conference report states that the choice of using a period of enrollment, rather than a payment period, was added ''to provide that the earned amount may be the proportion of the period of enrollment at non-term based institutions.'' The Department's negotiator stated in negotiated rulemaking the Department's view that, generally, a payment period is the most appropriate period for most educational programs, including non-term based programs, because Title IV, HEA program funds are disbursed on a payment period basis. However, the committee recognized that in some cases, for an institution with non-term based programs, a period of enrollment may be the most appropriate period.

This NPRM proposes that an institution would have to choose either a payment period or period of enrollment for each non-term based educational program and use that period consistently for all students in the program. This provision is intended to prevent the potential for abuse that could otherwise occur if a school were permitted to choose a period on a student-by-student basis. If this were permitted, a payment period could be used when it results in the most aid earned for the students, but a period of enrollment could be used when that is the period that maximizes the amount of aid earned. For example, absent this provision, a school with a 900 clock hour program of two payment periods of 450 clock hours could choose to use payment periods for students who withdraw in the first payment period so that the point beyond 60 percent of the period (the point at which a student would earn 100 percent of his or her Title IV, HEA program assistance) occurs at hour 271. However, the institution could then choose to use the period of enrollment of 900 hours for all students who withdraw in the second payment period, so that the point beyond 60 percent for those students occurs at hour 541 of the program, rather than hour 721 (the point beyond the 60 percent point for the second payment period of 450 hours plus the first payment period of 450 hours). This approach could artificially inflate the amount of Title IV, HEA program assistance that a student has earned upon withdrawal from the institution.

The Secretary believes that the regulations implementing section 484B of the HEA should provide for accurately determining when a student ceased academic attendance and the corresponding amount of Title IV, HEA program assistance earned; not maximize that assistance. This approach requires that the same period be used for all students who withdraw from the same program.

The Secretary specifically requests comment on how the calculation of earned Title IV, HEA program assistance should be determined for students who transfer-in or re-enter an institution. For example, Matthew transfers into a 900 clock hour program. The payment periods for the program are two periods of 450 clock hours. Because of transfer credits, Matthew has only 300 hours to complete the program. Matthew withdraws from the program on the same date as Thomas, who had been in attendance since the beginning of the program. If the institution uses payment periods for determining earned Title IV, HEA program funds, what clock hours should be used to calculate Matthew's earned aid?

When discussing a non-term based institution's use of a period of enrollment, some of the negotiators pointed out that it was not possible to use the entire amount of Title IV, HEA program funds that the student would receive for the period of enrollment in the calculation if the withdrawal occurred during any payment period other than the last payment period of the period of enrollment. This is because Title IV, HEA program assistance that could have been disbursed does not include assistance that the student was not otherwise eligible to receive at the time he or she withdrew (the term ''could have been disbursed'' is addressed in the discussion of § 668.22(d)). If a student does not begin attendance in a subsequent payment period, the student is not eligible to receive Title IV, HEA program assistance for that payment period. For example, if a student withdrew in the first of two payment periods, the Title IV, HEA program assistance that the student would have received for the second payment period would not be included in the calculation of earned Title IV, HEA program assistance because the student did not begin attendance in the second payment period. Under these restrictions, the percentage of Title IV, HEA program assistance earned would be based on the period of enrollment, but that percentage would be applied only to the Title IV, HEA program funds that were disbursed or that could have been disbursed for the payment periods in which the student began attendance. The committee discussed this issue and acknowledged that using the full period of enrollment for determining the percentage of Title IV aid earned, but a shorter period (payment period(s)) for calculating the amount of Title IV aid that was disbursed or could have been disbursed, produces an ''apples and oranges'' situation and limits the desirability for an institution to choose to use a period of enrollment when calculating the amount of Title IV, HEA program assistance earned.

Some negotiators believed that the statute's use of aid ''awarded'' in some places allows an institution to use the amount awarded for the entire period of enrollment in the determination of the earned amount of Title IV, HEA program funds. The Department's negotiator pointed out that the statutory language that delineates how earned Title IV, HEA program assistance is calculated requires that the percentage earned be applied to ''the total amount of such grant and loan assistance that was

disbursed (and that could have been disbursed).'' As discussed above, aid that ''could have been disbursed'' does not include assistance that the student was not otherwise eligible to receive at the time of withdrawal.

The committee also discussed how institutional charges incurred for a payment period would be determined when the institution charges for a longer period. This issue is addressed in the discussion of proposed § 668.22(f).

Section 668.22(f) Percentage of Payment Period or Period of Enrollment Completed

The percentage of the payment period or period of enrollment completed determines the percentage of aid earned by the student.

Credit Hour Programs

The statute defines the calculation of the percentage of the period completed for a credit hour program as the number of calendar days completed in the payment period or period of enrollment divided by the total number of calendar days in the same period, as of the day the student withdrew. The simplest approach would be to include all days in the period in the total number of calendar days. However, the committee agreed to exclude extended breaks when the institution had not scheduled academic attendance for the student.

Accordingly, this NPRM proposes that the total number of calendar days in a payment period or period of enrollment includes all days within the period, except for scheduled breaks of at least five consecutive days. Days in which the student was on an approved leave of absence would also be excluded. Scheduled breaks of at least five consecutive days and days in which a student was on an approved leave of absence would be excluded from both the number of calendar days completed in the payment period or period of enrollment (the numerator), and from the total number of calendar days in the same period (the denominator).

Clock Hour Programs

The statute provides two calculations for determining the percentage of the period completed for a student who withdraws from a clock hour program. The denominator, the total number of clock hours in the payment period or period of enrollment, is the same for both calculations. The numerator is the number of clock hours completed by the student in that period as of the day the student withdrew, or, if the clock hours completed are not less than a certain percentage, it is the hours that were *scheduled* to be completed by the student in the period. The statute specifies that this percentage is to be determined by the Secretary in regulations.

The determination of this percentage was the subject of intense negotiations by the committee. The NPRM is proposing to establish an attendance threshold that will permit students who withdraw from clock hour institutions to earn Title IV, HEA program funds based upon the hours that were scheduled to be completed at the time they withdrew, so long as the actual hours attended were at least 70 percent of the hours that were scheduled to have been completed at the time they withdrew.

The Department's negotiator initially proposed that 90 percent be the measure used to determine whether scheduled hours could be used. Some negotiators argued for an alternative application of this portion of the law, under which a student would be paid for all scheduled hours at the time the student withdrew, provided that a specified minimum percentage of the total hours in the program were completed. Some negotiators described this measure as a type of ''cooling-off'' period for a student because the student would be paid only for completed hours during the early part of the payment period. For example, if the threshold were 10 percent, any student completing at least 45 hours of a 450 hour payment period would be paid for the hours scheduled to be completed at the time the student withdrew.

The Department's negotiator pointed out that this proposal would permit students with very low attendance rates to be paid a bonus for the scheduled hours they had not attended simply because the student managed to complete the relatively low number of hours during the time the student was enrolled. A student completing the 10 percent minimum number of hours would therefore continue earning Title IV, HEA program funds without further class attendance until he or she withdrew or was terminated by the institution. Some of the negotiators felt that this was not likely to happen because satisfactory academic progress requirements and accrediting agency oversight would limit the potential for abuse. The committee used a workgroup to focus on these issues, and the workgroup and committee reached agreement on the use of the 70 percent proposal.

Under this proposal, students who complete at least 70 percent of their scheduled hours before they withdraw would earn Title IV, HEA funds based upon their total scheduled hours for the time they were enrolled, rather than the hours the student completed. However, only students who actually completed more than 60 percent of the hours in the payment period or period of enrollment would earn 100 percent of the Title IV, HEA program funds. For example, if a student withdrew after completing 230 hours in a 450 clock hour payment period, and the student was scheduled to have completed 280 hours of the program at the time he or she withdrew, that student would have completed 82 percent of the scheduled hours (230/280) for the time he or she was enrolled. In this case, the student met the attendance threshold of 70 percent and, therefore, the institution would use the 280 scheduled hours, rather than the 230 hours that were actually completed, in the calculation of the percentage the period completed. If the same student had completed 230 clock hours while he or she was scheduled to have completed 335 hours at the point of withdrawal, the student's attendance rate would have been less than 70 percent (230/335=69 percent) and only the 230 completed hours would be used in the calculation.

The committee also considered an alternative proposal whereby the point for earning all of the Title IV, HEA program assistance (that is, the point beyond the 60 percent point) would have been based upon scheduled clock hours rather than completed clock hours. This alternate method was ultimately rejected by the committee because it would have effectively lowered the threshold for earning 100 percent of the aid by coupling it with the attendance percentage, and would have resulted in a student being able to earn 100 percent of the Title IV, HEA program assistance for a payment period or period of enrollment by exceeding as little as 42 percent of the total hours (60 percent $\times$ 70 percent = 42 percent).

The proposal in the regulations reflects the determination that the trigger for earning the last 40 percent of the Title IV, HEA program funds for a payment period or period of enrollment should be tied to the actual hours completed. In the example above in which the institution determined that the student may be paid for 280 scheduled hours in the 450 clock hour payment period, the percentage of the payment period completed would be 62 percent (280/450), even though the student actually completed only 51 percent of the total hours (230/450). However, the student would not earn 100 percent of the Title IV, HEA program funds because the 230 clock hours completed were less than 60 percent of the 450 clock hours in the

payment period, even though the 280 scheduled clock hours at the time of withdrawal were above the 60 percent point. The student would earn 62 percent of the Title IV, HEA program funds that were disbursed or that could have been disbursed.

The issue of whether excused absences should be counted as completed hours was not discussed with the committee during the negotiated rulemaking sessions. The Secretary believes that excused absences should not be counted as completed hours. The Secretary believes that the 70 percent scheduled to completed ratio measure is an extremely tolerant threshold and no additional adjustments should be made. The Secretary specifically requests comments on the treatment of excused absences.

The Secretary specifically requests comments on whether the proposed definitions of the percentage of the payment period or period of enrollment completed create problems for non-term credit hour programs, correspondence programs, or non-traditional programs.

Section 668.22(g) Responsibility of an Institution To Return Unearned Title IV, HEA Program Funds

When there is an amount of Title IV, HEA program assistance to be returned, the statute requires that the responsibility for the return be shared by the institution and the student. The statute defines the amount due from the institution as the lesser of the total unearned amount of aid, or the institutional charges incurred by the student multiplied by the percentage of unearned Title IV, HEA program assistance.

The committee considered whether an institution should be allowed to decide whether the institution or the student should return funds first. Some negotiators believed that this would allow the institution to minimize some students' immediate grant overpayment when a student has unearned Title IV, HEA program funds that must be returned. They also noted that many students will not have the immediate cash to repay the grant overpayment and will be prevented from receiving additional Title IV assistance if the students return to school. They further noted that if the student was permitted to return Title IV, HEA program funds before the institution, the student would be responsible for returning funds to the loan, which he or she would pay back over time in accordance with the promissory note, as specified in the statute. The institution would pay off, or pay down, the student's grant overpayment. These negotiators argued that a grant overpayment is more of a hardship for a student because there is a more immediate demand for repayment.

The Department's negotiator noted that the statute provides that the student's responsibility is the amount of unearned Title IV, HEA program funds minus the amount that the institution is required to return. The Department's negotiator explained that the statute therefore requires the student's repayment obligation to be determined after the institution's share is calculated. The committee ultimately agreed that the institution is required to return funds before the student. As a result, because the institution will return loan funds first, in some cases, a student must return grant funds in an overpayment situation rather than paying back loans in accordance with the terms of the promissory note. The Department believes this result is also consistent with the law, because the 50 percent ''discount'' of the grant repayment (discussed under § 668.22(h)) is available only to students and could not be used if the institution were required to return excess grant funds.

Although the statute and these proposed regulations use the term ''return of funds,'' the committee also agreed that an institution was not required to actually return its share before the student; rather, the amount of assistance that the institution is responsible for returning must be allocated between the Title IV, HEA program accounts first.

Institutional Charges

On January 7, 1999, the Secretary published guidance on the definition of institutional charges for the purpose of refund calculations. This guidance was published in the form of a policy bulletin on the Education Department's Information for Financial Aid Professionals (IFAP) web site. The guidance was initially developed to address requests for clarification of the definition of institutional charges as used in the pre-1998 Amendments refund requirements.

Some of the negotiators noted that in the pre-1998 Amendments requirements in section 484B of the HEA, refund provisions are used to determine the portion of institutional charges that an institution must return when a student withdraws. In the 1998 Amendments, institutional charges are used only to determine the portion of unearned Title IV, HEA program assistance that the institution is responsible for returning. Institutional charges do not affect the amount of Title IV, HEA program assistance that a student earns when he or she withdraws.

Some negotiators suggested that, because the impact of institutional charges is different under the new law, the guidance on the definition of institutional charges should be modified. The Secretary agreed to revisit the current guidance to determine whether revisions would be appropriate. Until further guidance is issued, the guidance of the January 7, 1999, policy bulletin remains in effect.

As stated in the discussion of § 668.22(e), for students who withdraw from a non-term based educational program, the institution would have the choice of determining the treatment of the student's Title IV, HEA program assistance on either a payment period basis or a period of enrollment basis. The committee also considered the situation in which an institution chooses to calculate the treatment of Title IV, HEA program assistance on a payment period basis for a non-term program, but the institution charges for a period longer than the payment period (most likely the period of enrollment) and there may not be a specific amount that reflects the actual institutional charges incurred by the student for the payment period.

These proposed regulations would address this issue by defining the institutional charges incurred by the student for the payment period when the student is charged for a period that is longer than the payment period. In general, a pro-rated amount of institutional charges for the longer period would most accurately reflect the charges incurred by the student for the payment period. However, the committee agreed that if an institution has retained Title IV, HEA program funds in excess of the pro-rated amount to cover institutional charges, then those charges are attributable to the payment period and are a better indicator of the student's incurred institutional charges. For example, institutional charges are $8,000 for a non-term based program that spans two payment periods of 450 clock hours each. The institution chooses to calculate the treatment of Title IV, HEA program funds on a payment period basis. A student withdraws in the first payment period. The pro-rated amount of institutional charges for each payment period is $4,000. However, the institution has retained $5,000 of the Title IV, HEA program funds for institutional charges for the payment period. Therefore, the institutional charges for the payment period are $5,000.

Several negotiators asked the Department to clarify the meaning of the

phrase, ''institutional charges incurred by the student.'' For purposes of this section, ''institutional charges incurred by the student'' would be charges for which the student was responsible that were initially assessed by the institution for the payment period or period of enrollment.

Section 668.22(h) Responsibility of a Student To Return Unearned Title IV, HEA Program Funds

The statute specifies that the student is responsible for all unearned Title IV, HEA program assistance that the institution is not required to return. Although this NPRM proposes that an institution must pay back any amount due to a Title IV loan program within the timeframe established in paragraph (j), the statute allows a student to pay back his or her portion of any unearned loan funds in accordance with the terms of the promissory note. In other words, the student will be repaying any unearned loan funds in the same manner that he or she will be repaying earned loan funds. These proposed regulations would not require the student to provide any additional assurances or affirmations.

The statute states that a student's unearned grant funds are an overpayment and are subject to repayment arrangements satisfactory to the institution or overpayment collection procedures prescribed by the Secretary. The negotiators reached consensus that these proposed regulations would apply the current regulatory requirements and corresponding sub-regulatory guidance for the collection of Federal Pell Grant and FSEOG overpayments for this purpose. Additional subregulatory guidance may be issued if further clarification is needed when institutions start applying these existing regulations in the return of funds context. Any future changes to these requirements will be made by proposing changes to the Federal Pell Grant and FSEOG regulations in accordance with applicable requirements of the Administrative Procedures Act.

Fifty Percent Discount

Section 484B(b)(2)(C) of the HEA states, ''a student shall not be required to return 50 percent of the grant assistance received by the student under this title, for a payment period or period of enrollment, that is the responsibility of the student to repay under this section.''

The implementation of this provision was the subject of extensive discussion among the negotiators. Because the difference between the Department's interpretation of the statute and most of the other negotiators' interpretation of the statute was so great, the committee agreed to exclude this provision from the call for consensus on the draft regulations. Because no consensus was reached on this issue, the proposed regulatory provision on this issue reflects the Secretary's view.

The Secretary interprets the statute to provide that a student does not have to repay 50 percent of the student's grant repayment amount. The Secretary believes that 50 percent of the student's grant repayment amount provides the level of relief to the student that the statute intended, while it requires a student to return a portion of the unearned grant assistance.

Some negotiators felt that the statute provided a student with a higher level of relief. These negotiators read the statute to relieve the student of 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student.

The Secretary did not agree with the negotiators' reading of the statute because he believes that it is inconsistent with the conference report for the 1998 Amendments which states that this statutory provision was added to ''[reduce] by half the amount of unearned grant assistance the student is responsible for returning.''

The following example illustrates the Secretary's interpretation of the statute. When Amanda withdrew, the amount of Title IV assistance that was disbursed or that could have been disbursed was $1,000 in Federal Pell Grant funds. Total Title IV funds to be returned is $750. The institution is responsible for returning $300 to the Federal Pell Grant. Amanda is responsible for returning the balance of the unearned funds, which is $450. However, because Amanda must return these funds to a Title IV grant program, she is not required to return 50 percent of the grant assistance received that it is her responsibility to repay. Under the Secretary's proposal, Amanda would have to repay $225 to the Federal Pell Grant program (50 percent of the amount that she is initially required to repay [$450]).

If the interpretation supported by several of the negotiators was used, Amanda's repayment amount would be ''discounted'' by 50 percent of the amount of Pell Grant funds that was disbursed or that could have been disbursed, 50 percent of $1,000, which is $500. Because this discount exceeds the initial amount that Amanda is required to repay ($450), she would not have to return any funds to the Federal Pell Grant program.

Section 668.22(i) Order of Return of Title IV, HEA Program Funds

The statute specifies by program the order in which an institution and a student must return Title IV, HEA program funds. Unearned Title IV, HEA program assistance is returned first to the Title IV loan programs (first to unsubsidized loans, then subsidized, Federal Perkins, and PLUS), and then to the Title IV grant programs. This provision continues the approach of the pre-1998 Amendments requirements of section 485(a) of the HEA that a student's Title IV loan debt should be reduced first when returning funds to the Title IV, HEA programs when a student withdraws.

Section 668.22(j) Timeframe for the Return of Title IV, HEA Program Funds.

The statute does not specify a timeframe for the return of Title IV, HEA program funds. However, the committee agreed that such a timeframe should be specified in the regulations. This NPRM proposes that an institution have 30 days from the date that the institution determines that the student withdrew to return all unearned funds for which it is responsible. Under the existing refund regulations, an institution must return Title IV funds within 30 days for all Title IV, HEA program funds except for most FFEL program funds, which must be returned within 60 days. The committee agreed that it is reasonable to expect institutions to return all Title IV, HEA program funds, including all FFEL funds, within 30 days because most FFEL funds are now delivered electronically.

These proposed regulations would set a timeframe for an institution to determine the withdrawal date for a student who withdrew without providing notification to the institution. An institution would have 30 days from the earlier of (1) the end of the payment period or period of enrollment as, applicable, (2) the end of the academic year, or (3) the end of the student's educational program. These proposed regulations would mirror the provisions of the current § 668.22 to recognize that some institutions may not know about drop-outs until the institution checks its records at the end of an academic period. However, the committee agreed that a timeframe is necessary so that unearned funds will be returned within a reasonable period of time.

Section 668.22(k) Consumer Information

The 1998 Amendments made modifications to section 485(a)(F) of the

HEA to address the changes to section 484B. Section 485(a)(F) describes the consumer information that an institution must provide to its students regarding the requirements of section 484B, any refund policies that the institution uses, and the requirements for officially withdrawing from the institution. The proposed regulations implementing section 485(a)(F) are included in a separate NPRM proposing changes to Subpart D-Institutional and Financial Assistance Information for Students of the Student Assistance General Provisions. These proposed regulations for § 668.22 would cross-reference the regulations for Subpart D.

Section 668.22(l) Definitions

Aid That Could Have Been Disbursed

The statute requires an institution to calculate the amount of earned Title IV, HEA program funds by applying a percentage to the total amount of Title IV, HEA program assistance that was disbursed, or that could have been disbursed. The committee agreed that the term ''could have been disbursed'' should be defined in the regulations. The amount of Title IV, HEA program funds that could have been disbursed does not include Title IV, HEA program funds that the student was not otherwise eligible to receive at the time he or she withdrew. For example, a first-year, first-time borrower who withdraws before the 30th day of the student's program of study would not have been eligible to receive any FFEL or Direct Loan funds at the time he or she withdrew (unless the institution is exempt from the ''30-day delay'' provisions in section 428G of the HEA). Therefore, for this student, no amount of an FFEL or Direct Loan may be included in the calculation of the treatment of Title IV, HEA program assistance.

The committee agreed that the amount of Title IV, HEA program funds that could have been disbursed would not include second or subsequent disbursements of FFEL or Direct loans that are prohibited under § 668.164(g)(2)(ii). Section 668.164(g)(2)(ii) prohibits late second or subsequent disbursements of FFEL or Direct Loan funds unless the student has graduated or successfully completed the period of enrollment for which the loan was intended.

In addition, the committee agreed that Title IV, HEA program funds that could have been disbursed would not include a second disbursement of a Title IV, HEA FFEL or Direct loan that is prohibited under § 682.604(c)(7) or (8) or § 685.301(b)(5) or (6). These sections provide that an institution may not make a second disbursement of a loan for attendance in a clock hour or non-standard term credit hour educational program until the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework or clock hours (as applicable) in the loan period.

The committee agreed that Title IV, HEA program funds would also not include subsequent disbursements of Federal Pell Grant funds that are prohibited under § 690.75(a). Section 690.75(a) prohibits subsequent disbursements of Federal Pell Grant funds for attendance in a clock hour or non-term credit hour program until the student has completed the required clock hours or credit hours for which he or she has already been paid a Federal Pell Grant.

Period of Enrollment

For consistency, the committee agreed that the term ''period of enrollment'' should be defined in the same manner as the term is defined for the FFEL and Direct Loan programs in § 682.200(b) and § 685.102.

Date of the Institution's Determination That the Student Withdrew

As noted in the discussion of the determination of a student's withdrawal date, some aspects of the withdrawal process cannot occur until the institution is aware that the student has withdrawn. For example, an institution cannot be expected to return Title IV funds for a withdrawn student unless the institution knows that the student is no longer in attendance. This NPRM proposes to define the ''date of the institution's determination that the student withdrew'' for all possible types of withdrawals. As noted previously, the ''date of the institution's determination that the student withdrew'' is not necessarily the same as a student's withdrawal date. The proposed definition of withdrawal date in § 668.22(b) and (c) is for purposes of determining the percentage of the payment period or period of enrollment completed and thus the amount of aid a student has earned. The ''date of the institution's determination that the student withdrew'' is the date that is used to determine the amount of Title IV aid that has been disbursed. The amount of Title IV assistance that had been earned is subtracted from the amount disbursed or could have been disbursed in order to determine the amount of Title IV assistance that is to be returned. The ''date of the institution's determination that the student withdrew'' is also the date that ''starts the clock'' for the return of the Title IV, HEA program funds by the institution.

For a student who provided notification of his or her withdrawal, the date of the institution's determination that the student withdrew would be the later of the student's withdrawal date or the date of notification of withdrawal. For a student who did not provide notification of his of her withdrawal, this date would be the date that the institution becomes aware that the student has ceased attendance. For a student who does not return from an approved leave of absence, this date would be the earlier of the date of the expiration of the leave of absence or the date the student notifies the institution that he or she will not be returning. For a student who rescinds his or her intent to withdraw, but does not complete the payment period or period of enrollment, this date would be the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment. (These withdrawal situations are addressed in the discussions of §§ 668.22(b) and (c)). The committee believes that this proposed definition of the date of the institution's determination that the student withdrew captures the point when an institution could reasonably be expected to know that a student has ceased attendance.

Section 682.207 Due Diligence in Disbursing a Loan

Foreign institutions that participate in the Title IV, HEA programs are also subject to the requirements of section 484B of the HEA for the treatment of Title IV, HEA program funds when a student withdraws. However, the statute allows lenders to make FFEL program loan disbursements directly to a student who is attending a foreign school. As a result, a foreign school may not know if an FFEL program loan has been disbursed to a student. These proposed regulations would require a lender making a direct disbursement to a student attending a foreign school to notify the foreign school that the disbursement was made. These proposed regulations also would require that the notification provide the information necessary for the institution to determine the amount of Title IV, HEA program funds that the student has earned if the student withdraws.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

- The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:
- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 668.22 *Treatment of Title IV funds when a student withdraws.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESS** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs and individual recipients of Title IV, HEA program funds. Institutions are defined as small entities, according to the U.S. Small Business Administration, if they are for-profit or nonprofit entities with total revenue of $5,000,000 or less, or entities controlled by governmental entities with populations of 50,000 or less. Individuals are not considered small entities for this purpose. These proposed regulations would not have a significant economic impact on small institutions. These proposed regulations would incorporate clarifying definitions and provisions, and institute timeframes consistent, to the maximum extent possible, with existing program rules, for the most practical and uniform implementation of the new statutory requirements for the return of Title IV aid when a student withdraws.

These proposed regulations would specify when FSEOG program funds must be included in the calculation of the amount of title IV, HEA program assistance earned by a student as of the time he or she ceases enrollment. The regulations would define ''the date of the institution's determination that the student withdrew'' to simplify the institution's calculation of total aid disbursed. To minimize administrative burden, these regulations would adopt late disbursement procedures fundamentally consistent with current Cash Management rules when a student is determined to have earned more title IV, HEA program assistance than had been disbursed at the time the institution determines the student withdrew. These regulations would also provide flexibility in the granting of approved leaves of absence for exceptional circumstances, for military service, and for circumstances covered by the Family and Medical Leave Act of 1993.

The proposed regulations would enable the Secretary to better safeguard the Federal fiscal interest and the interests of students without imposing administrative burden or having a significant economic impact on small institutions.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 668.22 and 682.207 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collection(s) of information in—

- Deciding whether the proposed collection(s) is [are] necessary for the proper performance of the functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection(s), including the validity of the methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, the Federal Pell Grant Program, and the LEAP Program are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program)

List of Subjects in 34 CFR parts 668 and 682

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements, education, Loan programs—education, vocational education.

Dated: August 3, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c–1, unless otherwise noted.

2. Section 668.22 is revised to read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards when an institution meets its matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2) If the amount of title IV grant and/or loan assistance that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(3) If the amount of title IV grant or loan assistance that the student earned as calculated under paragraph (e)(1) of this section is greater than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a late disbursement in accordance with paragraph (a)(4) of this section and § 668.164(g)(2).

(4)(i)(A) If outstanding current charges exist on the student's account, the institution may credit the student's account in accordance with § 668.164(d)(1), (d)(2)(i), and (d)(3) with all or a portion of the late disbursement described in paragraph (a)(3) of this section, up to the amount of the outstanding charges.

(B) If Direct Loan, FFEL, or Federal Perkins Loan Program funds are used to credit the student's account, the institution must notify the student, or parent in the case of a PLUS loan, and provide an opportunity for the borrower to cancel all or a portion of the loan, in accordance with § 668.165(a)(2), (a)(3), (a)(4) and (a)(5).

(ii)(A) The institution must offer any amount of a late disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section to the student, or the parent in the case of a PLUS loan, within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, by providing a written notification to the student, or parent in the case of PLUS loan funds. The written notification must—

(*1*) Identify the type and amount of the title IV funds that make up the late disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section;

(*2*) Explain the ability of the student or parent to accept or decline some or all of the late disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section; and

(*3*) Advise the student or parent that no late disbursement will be made to the student or parent if the student or parent does not respond within 14 days of the date that the institution sent the notification, unless the institution chooses to make a late disbursement in accordance with paragraph (a)(4)(ii)(D) of this section.

(B) If the student or parent submits a timely response that instructs the institution to make all or a portion of the late disbursement, the institution must disburse the funds in the manner specified by the student or parent within 90 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(C) If the student or parent does not respond to the institution's notice, no portion of the late disbursement that is not credited to the student's account in

accordance with paragraph (a)(4)(i) of this section may be disbursed.

(D) If a student or parent submits a late response to the institution's notice, the institution may make the late disbursement as instructed by the student or parent or decline to do so in accordance with applicable program regulations.

(E) An institution must inform a student or parent electronically or in writing concerning the outcome of any late disbursement request.

(iii) A late disbursement must be made from available grant funds before available loan funds.

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.* (1) For purposes of this section, for a student who ceases attendance or for a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, at an institution that is required to take attendance, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(3) An institution is ''required to take attendance'' if the institution is required to take attendance by an entity outside of the institution (such as the institution's accrediting agency or state agency).

(c) *Withdrawal date for a student who withdraws from an institution that is not required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is—

(i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;

(ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution of his or her intent to withdraw;

(iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);

(iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to such circumstance; or

(v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence.

(2)(i)(A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.

(B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student's rescission is negated and the withdrawal date is the student's original date under paragraph (c)(1)(i) or (ii), unless a later date is determined under paragraph (c)(3).

(ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student's withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.

(3)(i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity as documented by the institution.

(ii) An ''academically-related activity'' is one that has been confirmed by an employee of the school (such as an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution);

(4) An institution must document a student's withdrawal date determined in accordance with paragraph (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(5)(i) ''Official notification to the institution'' is a notice of intent to withdraw that a student provides to an office designated by the institution.

(ii) An institution must designate one or more offices at the institution that a student may readily contact to provide official notification of withdrawal.

(d) *Approved Leave of Absence.* (1) For purposes of this section, an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) It is the only leave of absence granted to the student in a 12-month period;

(ii) The leave of absence does not exceed 180 days in any 12-month period;

(iii) The institution has a formal policy regarding leaves of absence;

(iv) The student followed the institution's policy in requesting the leave of absence;

(v) The institution determines that there is a reasonable expectation that the student will be able to return to the school;

(vi) The institution approved the student's request in accordance with the institution's policy;

(vii) The leave of absence does not involve additional charges by the institution; and

(viii) Upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence.

(2) Notwithstanding paragraph (d)(1)(i), an institution may treat subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for military reasons or circumstances covered under the Family and Medical Leave Act of 1993.

(3) If a student does not resume attendance at the institution on or before the expiration of a leave of absence that meets the requirements of paragraph (d)(1) of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(4) For purposes of this paragraph—

(i) The number of days in a leave of absence are counted beginning with the first day of the student's leave of absence.

(ii) A ''12-month period'' begins on the first day of the student's leave of absence.

(iii) An institution's leave of absence policy is a ''formal policy'' if the policy—

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of

absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, provided that the institution documents its decision and collects the request at a later date.

(e) *Calculation of the Amount of title IV assistance earned by the student.*

(1) *General.* The amount of title IV grant or loan assistance that is earned by the recipient is calculated by—

(i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and

(ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

(2) *Percentage earned.* The percentage of title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours, or

(B) Clock hours completed during the payment period or period of enrollment for a program that is measured in clock hours; or

(ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours, or

(B) Clock hours completed during the payment period or period of enrollment for a program measured in clock hours.

(3) *Percentage unearned.* The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.

(4) *Total Amount of Unearned title IV Assistance to be Returned.* The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV aid that was disbursed to the student as of the date of the institution's determination that the student withdrew.

(5) *Use of payment period or period of enrollment.* (i) The treatment of title IV grant or loan funds when a student withdraws must be determined on a payment period basis for a student who attended a term-based educational program.

(ii)(A) The treatment of title IV grant or loan funds when a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for all students who withdraw from the same non-term based education program.

(f) *Percentage of Payment Period or Period of Enrollment Completed.* (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; and

(ii) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours—

(A) Completed by the student in that period as of the student's withdrawal date; or

(B) Scheduled to be completed as of the student's withdrawal date, if the clock hours completed in the period are not less than 70 percent of the hours that were scheduled to be completed by the student as of the student's withdrawal date.

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period except for scheduled breaks of at least five consecutive days.

(ii) The total number of calendar days in a payment period or period of enrollment does not include days in which the student was on an approved leave of absence.

(g) *Return of Unearned Aid, Responsibility of the Institution.* (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of—

(i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

(ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student, as described in paragraph (e)(3) of this section.

(2) For purposes of this section, ''institutional charges'' are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.

(3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, ''total institutional charges incurred by the student for the payment period'' is the greater of—

(i) The pro rated amount of institutional charges for the longer period; or

(ii) The amount of title IV assistance retained for institutional charges as of the student's withdrawal date.

(h) *Return of Unearned Aid, Responsibility of the Student.* (1) After the institution has returned the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

(2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.

(3) The student (or parent in the case of funds due to a PLUS Loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to—

(i) Any title IV loan program in accordance with the terms of the loan; and

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return 50 percent of the grant assistance received by the student for a payment period or period of enrollment that is the responsibility of the student to repay under this section.

(4)(i) An overpayment must be repaid to the institution or to the title IV, HEA programs and is subject to—

(A) Repayment arrangements satisfactory to the institution; or

(B) Overpayment collection procedures prescribed by the Secretary.

(ii) An institution must make reasonable efforts to contact the student and recover the overpayment in accordance with program regulations (34 CFR 673.5 for Federal SEOG funds and 34 CFR 690.79 for Federal Pell Grant funds).

(i) *Order of Return of title IV funds.* (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraphs (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Such funds shall be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

(vi) Federal PLUS loans received on behalf of the student.

(vii) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess shall be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Federal SEOG Program aid.

(iii) Other grant or loan assistance authorized by title IV of the HEA.

(j) *Timeframe for the return of title IV funds.* (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 30 days after the date that the institution determines that the student withdrew as defined in paragraph (l)(3) of this section.

(2) An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the expiration of the earlier of the—

(i) Payment period or period of enrollment;

(ii) Academic year in which the student withdrew; or

(iii) Educational program from which the student withdrew.

(k) *Consumer Information.* An institution must provide students with information about the requirements of this section in accordance with § 668.44.

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that ''could have been disbursed'' are determined in accordance with the late disbursement provisions in § 668.164(g).

(2) A ''period of enrollment'' is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The ''date of the institution's determination that the student withdrew'' is—

(i) For a student who provided notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his of her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the expiration of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(Authority: 20 U.S.C. 1091b)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071, to 1087–2, unless otherwise noted.

4. Section 682.207 is amended by adding a new paragraph (b)(1)(v)(E) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(E) If a lender disburses a loan directly to the borrower for attendance at an eligible foreign school, as provided in paragraph (b)(1)(v)(D)(1) of this section, the lender must, at the time of disbursement, notify the school of—

(*1*) The name and social security number of the student;

(*2*) The name of the parent borrower, if the loan disbursed is a PLUS loan;

(*3*) The type of loan;

(*4*) The amount of the disbursement, including the amount of any fees assessed the borrower;

(*5*) The date of the disbursement; and

(*6*) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

[FR Doc. 99–20352 Filed 8–5–99; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4/P.L. 106–38

National Missile Defense Act of 1999 (July 22, 1999; 113 Stat. 205)

H.R. 2035/P.L. 106–39

To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

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