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Contents

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 1999

Agriculture Department

See Forest Service

NOTICES

Meetings:

21st Century Production Agriculture Commission, 48759

Air Force Department

NOTICES

Meetings:

Scientific Advisory Board, 48809–48810

Army Department

NOTICES

Environmental statements; availability, etc.:

Base realignment and closure—

Fort Greely, AK, 48810

Centers for Disease Control and Prevention

NOTICES

Agency information collection activities:

Proposed collection; comment request, 48840–48841

Meetings:

Clinical Laboratory Improvement Advisory Committee; correction, 48841

Chemical Safety and Hazard Investigation Board

NOTICES

Meetings; Sunshine Act, 48759

Civil Rights Commission

NOTICES

Meetings; Sunshine Act, 48759

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 48759–48760

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Pakistan, 48808

Philippines, 48808–48809

Textile and apparel categories:

Illegal transshipment; entry denial

Reconsideration, 48809

Consumer Product Safety Commission

RULES

Flammable Fabrics Act:

Children's sleepwear (sizes 0-6X and 7-14); flammability standards—

Snug-fitting sleepwear; label and hangtag requirements; correction, 48704–48706

Practice and procedure:

Rulemaking petition procedures; correction, 48703–48704

Defense Department

See Air Force Department

See Army Department

NOTICES

Meetings:

Defense Intelligence Agency Science and Technology

Advisory Board; correction, 48897

Education Department

NOTICES

Meetings:

National Commission on Mathematics and Science

Teaching for 21st Century; correction, 48897

Energy Department

See Federal Energy Regulatory Commission

See Western Area Power Administration

NOTICES

Environmental statements; availability, etc.:

Los Alamos National Laboratory, NM—

Parallex Project; limited mixed oxide fuel manufacture and shipment to U.S.-Canada border, 48810–48813

Natural gas exportation and importation:

Milford Power Co., LLC, 48813

Environmental Protection Agency

RULES

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Maryland, 48714–48718

PROPOSED RULES

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Maryland, 48742

Air quality implementation plans; approval and promulgation; various States:

California, 48739–48741

Source-specific plans—

Navajo Nation, AZ, 48725–48739

Hazardous waste:

Identification and listing—

Dye and pigment industries, 48742–48743

NOTICES

Committees; establishment, renewal, termination, etc.:

Industrial Non-Hazardous Waste Policy Dialogue

Committee, 48827–48828

Meetings:

Microbial and Disinfectants/Disinfection Byproducts

Advisory Committee, 48828

Urban Wet Weather Flows Advisory Committee et al., 48828

Pesticide, food, and feed additive petitions:

FMC Corp., 48829–48836

Pesticide registration, cancellation, etc.:

S.C. Johnson & Sons, 48828–48829

Superfund; response and remedial actions, proposed settlements, etc.:

University of Florida Pentaborane Site, FL, 48836

Executive Office of the President

See Presidential Documents

Federal Aviation Administration**RULES**

Class E airspace, 48703

Class E airspace; correction, 48897

PROPOSED RULES

Airworthiness directives:

AlliedSignal Inc., 48723–48725

General Electric Co., 48721–48723

NOTICES

Advisory circulars; availability, etc.

Aircraft—

Systems and equipment guide for certification of normal, utility, acrobatic, and commuter category airplanes, 48889

Federal Communications Commission**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 48836–48837

Submission for OMB review; comment request, 48837–48838

Federal Deposit Insurance Corporation**PROPOSED RULES**

Assessments:

Risk classifications; capital component; reporting date change, 48719–48721

Federal Emergency Management Agency**NOTICES**

Disaster and emergency areas:

Minnesota, 48838–48839

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

CNG Power Services Corp. et al., 48815–48816

CU Power Ltd. et al., 48816–48818

Northern States Power Co. et al., 48818–48819

Puget Sound Energy, Inc., et al., 48820–48823

Environmental statements; availability, etc.:

Langan, Morgan J., 48823

Tapoco, Inc., 48823–48824

Remote Public Access System and Records Information Management System-Remote Public Access System; elimination, 48824–48825

Applications, hearings, determinations, etc.:

Central New York Oil & Gas Co., LLC, 48813–48814

Kansas Pipeline Co., 48814

Union Light, Heat & Power Co., 48814–48815

Federal Highway Administration**NOTICES**

Environmental statements; notice of intent:

Skagit County, WA, 48889–48890

Federal Mine Safety and Health Review Commission**RULES**

Procedural rules, 48707–48714

Federal Reserve System**NOTICES**

Banks and bank holding companies:

Change in bank control, 48839

Formations, acquisitions, and mergers, 48839–48840

Meetings; Sunshine Act, 48840

Federal Transit Administration**NOTICES**

Environmental statements; notice of intent:

Seattle, WA; Atlantic/Central Bus Base expansion project, 48890–48892

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:

Vicuna populations in South America, 48743–48757

Food and Drug Administration**RULES**

Animal drugs, feeds, and related products:

New drug applications—

Selamectin, 48707

NOTICES

Food for human consumption:

Food labeling—

Health claims and label statements; scientific data and information request, 48841–48842

Reports and guidance documents; availability, etc.:

Bioequivalence establishment; average, population, and individual approaches; industry guidance, 48842–48843

Medical devices—

Labeling for laboratory tests, 48843–48844

Forest Service**NOTICES**

Meetings:

Southwest Oregon Province Interagency Executive Committee Advisory Committee, 48759

General Services Administration**RULES**

Acquisition regulations:

Revision

Correction, 48718

NOTICES

Acquisition regulations:

Caution personnel record-restricted usage (SF 66B); cancellation, 48840

Employee request for pay allotment for credit to savings account with financial organization (SF 1198); stocking change, 48840

Geological Survey**NOTICES**

Grants and cooperative agreements; availability, etc.:

State Partnership Program, 48847–48848

Health and Human Services Department

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Care Financing Administration

See Health Resources and Services Administration

See Inspector General Office, Health and Human Services Department

Health Care Financing Administration

See Inspector General Office, Health and Human Services Department

NOTICES

Agency information collection activities:

Proposed collection; comment request, 48844

Health Resources and Services Administration**NOTICES**

Meetings:

Health Professions and Nurse Education Special
Emphasis Panels, 48844–48846

**Inspector General Office, Health and Human Services
Department****NOTICES**

Reports and guidance documents; availability, etc.:

Individual physicians and small group practices;
compliance program guidance; information and
recommendations, 48846–48847

Interior Department

See Fish and Wildlife Service

See Geological Survey

See Land Management Bureau

Internal Revenue Service**NOTICES**

Health Insurance Portability and Accountability Act of
1996; implementation:

Expatriation; individuals losing United States citizenship;
quarterly list, 48894–48896

International Trade Administration**RULES**

Antidumping and countervailing duties:

Preliminary critical circumstances findings, 48706–48707

NOTICES

Antidumping:

Brass sheet and strip from—

Netherlands, 48760–48767

Cold-rolled and corrosion-resistant carbon steel flat
products from—

Korea, 48767–48775

Cold-rolled carbon steel flat products from—

Netherlands, 48775–48778

Gray portland cement and clinker from—

Mexico, 48778–48783

Oil country tubular goods from—

Korea, 48783–48788

Sulfanilic acid from—

China, 48788–48793

Titanium sponge from—

Kazakhstan, 48793–48796

Antidumping and countervailing duties:

Administrative review requests; correction, 48897

Countervailing duties:

Cut-to-length carbon steel plate from—

Mexico, 48796–48805

Pure and alloy magnesium from—

Canada, 48805–48807

International Trade Commission**NOTICES**

Import investigations:

Compact multipurpose tools, 48850–48851

Petroleum wax candles from—

China, 48851

U.S. merchandise trade shifts in selected industries/
commodity areas, 48851–48852

Justice Department

See Justice Programs Office

Justice Programs Office**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 48852

Land Management Bureau**PROPOSED RULES**

Minerals management:

Mining claims or sites; location, recording, and
maintenance; reporting and recordkeeping
requirements

Correction, 48897

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 48848

Closure of public lands:

Nevada, 48848–48849

Oil and gas leases:

Utah, 48849

Public land orders:

Alaska, 48849–48850

Realty actions; sales, leases, etc.:

Colorado, 48850

Medicare Payment Advisory Commission**NOTICES**

Meetings, 48852

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

National Capital Planning Commission**NOTICES**

Meetings:

Memorials in Nation's Capital; joint task force discussion
on new policies, 48852–48855

National Highway Traffic Safety Administration**NOTICES**

Motor vehicle safety standards; exemption petitions, etc.:

Mercedes-Benz U.S.A., Inc., 48892–48894

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Fishery conservation and management:

Northeastern United States fisheries—

New England Fishery Management Council; meetings,
48757–48758

NOTICES

Meetings:

Gulf of Mexico Fishery Management Council, 48807

North Pacific Fishery Management Council, 48807

Western Pacific Fishery Management Council, 48807–
48808

National Transportation Safety Board**NOTICES**

Train accidents; hearings, etc.:

Collision and derailment of Amtrak Train No. 59 with
tractor semi-trailer truck near Bourbonnais, IL, 48856

National Women's Business Council**NOTICES**

Meetings; Sunshine Act, 48856

Nuclear Regulatory Commission**NOTICES**

Meetings:

Decommissioning standard review plan; workshop,
48857–48858

Meetings; Sunshine Act, 48858

Operating licenses, amendments; no significant hazards
considerations; biweekly notices, 48858–48875

Applications, hearings, determinations, etc.:

Commonwealth Edison Co., 48856–48857

Tennessee Valley Authority, 48857

Patent and Trademark Office**RULES**

Trademark Law Treaty Implementation Act;
implementation, 48899–48928

Postal Rate Commission**NOTICES**

Privacy Act:

Systems of records, 48875–48878

Presidential Documents**PROCLAMATIONS**

Maritime activities; contiguous zone of the U.S. (Proc.
7219), 48701–48702

EXECUTIVE ORDERS

Committees; establishment, renewal, termination, etc.:

Women in American History, President's Commission on
the Celebration of; amendment (EO 13136), 48929–
48931

Public Health Service

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Resources and Services Administration

Securities and Exchange Commission**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 48878

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 48882–48885

Boston Stock Exchange, Inc., 48885–48887

Chicago Board Options Exchange, Inc., 48888–48889

Applications, hearings, determinations, etc.:

Public utility holding company filings, 48878–48882

State Department**NOTICES**

Meetings:

Shipping Coordinating Committee, 48889

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile
Agreements

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Transit Administration

See National Highway Traffic Safety Administration

Treasury Department

See Internal Revenue Service

Western Area Power Administration**NOTICES**

Salt Lake City Area Integrated Projects; power allocation
procedures and call for applications; post-2004
resource pool, 48825–48827

Separate Parts In This Issue**Part II**

Department of Commerce, Patent and Trademark Office,
48899–48928

Part III

The President, 48929–48931

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

7219.....48701

Executive orders:

13090 (Amended by

EO 13136).....48929

13136.....48929

12 CFR**Proposed Rules:**

327.....48719

14 CFR

71 (2 documents) 48703,
48897

Proposed Rules:

39 (2 documents) 48721,
48723

16 CFR

1051.....48703

1615.....48704

1616.....48704

19 CFR

351.....48706

21 CFR

524.....48707

29 CFR

2700.....48707

37 CFR

1.....48900

2.....48900

3.....48900

6.....48900

40 CFR

62.....48714

Proposed Rules:

49 (2 documents) 48725,
48731

52 (3 documents) 48725,
48731, 48739

62.....48742

148.....48742

261.....48742

268.....48742

271.....48742

302.....48742

43 CFR**Proposed Rules:**

3830.....48897

48 CFR

552.....48718

553.....48718

570.....48718

50 CFR**Proposed Rules:**

17.....48743

648.....48757

Presidential Documents

Title 3—**Proclamation 7219 of August 2, 1999****The President****Contiguous Zone of the United States****By the President of the United States of America****A Proclamation**

International law recognizes that coastal nations may establish zones contiguous to their territorial seas, known as contiguous zones.

The contiguous zone of the United States is a zone contiguous to the territorial sea of the United States, in which the United States may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, and to punish infringement of the above laws and regulations committed within its territory or territorial sea.

Extension of the contiguous zone of the United States to the limits permitted by international law will advance the law enforcement and public health interests of the United States. Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 nautical miles of the baseline.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution of the United States, and in accordance with international law, do hereby proclaim the extension of the contiguous zone of the United States of America, including the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, as follows:

The contiguous zone of the United States extends to 24 nautical miles from the baselines of the United States determined in accordance with international law, but in no case within the territorial sea of another nation.

In accordance with international law, reflected in the applicable provisions of the 1982 Convention on the Law of the Sea, within the contiguous zone of the United States the ships and aircraft of all countries enjoy the high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft, and submarine cables and pipelines, and compatible with the other provisions of international law reflected in the 1982 Convention on the Law of the Sea.

Nothing in this proclamation:

- (a) amends existing Federal or State law;
- (b) amends or otherwise alters the rights and duties of the United States or other nations in the Exclusive Economic Zone of the United States established by Proclamation 5030 of March 10, 1983; or
- (c) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William Clinton

[FR Doc. 99-23460

Filed 9-7-99; 8:45 am]

Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 1999

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-37]

Modification of Class E Airspace; Delaware, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Delaware, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, a GPS SIAP to Rwy 28, and a VHF Omnidirectional Range (VOR) SIAP to Rwy 28, have been developed for Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, June 22, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Delaware, OH (64 FR 33234). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested

parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Delaware, OH, to accommodate aircraft executing the proposed GPS Rwy 10 SIAP, GPS Rwy 28 SIAP, and VOR Rwy 28 SIAP, at Delaware Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL OH E5 Delaware, OH [Revised]

Delaware Municipal Airport, OH
(lat. 40° 16' 47"N., long. 83° 06' 53"W)
Delaware NDB
(lat. 40° 16' 41"N., long. 83° 06' 33"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Delaware Municipal Airport and within 2.6 miles either side of 286° bearing from the Delaware NDB extending from the NDB to 8.3 miles northwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on August 23, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99-23293 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1051

Procedure for Petitioning for Rulemaking; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is amending its procedures for filing petitions to correct two references to sections that no longer exist.

DATES: The corrections become effective on September 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Patricia M. Pollitzer, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0980, extension 2219.

SUPPLEMENTARY INFORMATION:

This document corrects two references in the Commission's petition procedures. Section 1051.1 explains the scope of the petition procedures. Subsection 1051.1(c), discussing petitions under the Federal Hazardous Substances Act, refers to 16 CFR 1500.201 and 21 CFR 2.65. Neither of these references apply now. 16 CFR 1500.201 merely restated certain statutory provisions and was withdrawn on March 6, 1991 (56 FR 9276). 21 CFR 2.65 was replaced in 1979 with rules that apply only to the Food and Drug Administration (44 FR 22323). Therefore, the Commission is eliminating these references. Because these are technical corrections that do not make a substantive change, notice and comment is unnecessary. 5 U.S.C. 553(b). Nor is there any need to delay the effective date. 5 U.S.C. 553(d).

List of Subjects in 16 CFR Part 1051

Administrative practice and procedure, Consumer protection.

Accordingly, 16 CFR part 1051 is corrected by making the following correcting amendments:

PART 1051—PROCEDURE FOR PETITIONING FOR RULEMAKING

1. The authority citation for Part 1051 continues to read as follows:

Authority: 5 U.S.C. 553(e), 5 U.S.C. 555(e).

2. In § 1051.1(c), first sentence, remove the comma and the words "16 CFR 1500.201, and 21 CFR 2.65".

Dated: September 1, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99-23230 Filed 9-7-99; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Parts 1615 and 1616****Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Correction**

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission recently issued labeling requirements for tight-fitting children's sleepwear. Examples of the labels printed with the requirements did not conform completely to the requirements. This document provides correct illustrations of the labels. Also, the requirements specified Arial font for hangtags and package labels. To conform to ANSI guidelines referenced in the labeling rule and to allow greater flexibility, the Commission will allow either Arial or Helvetica font.

DATES: The corrections become effective on June 28, 2000.

FOR FURTHER INFORMATION CONTACT:

Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0400, extension 1370.

SUPPLEMENTARY INFORMATION: On June 28, 1999, the Commission issued labeling requirements amending the flammability standards for children's sleepwear. 64 FR 34533. The Commission required that tight-fitting

sleepwear bear a label and hangtag informing consumers why the garments should fit snugly. Sleepwear sold in packages must have a label similar to the hangtag. Illustrations printed in the **Federal Register** with the requirements did not show the correct scale and font of these labels. This document shows accurate illustrations.

The requirements called for the hangtag and package labels to be in Arial font. To allow more flexibility and to conform to the ANSI Standard Z535.4-1998 for Product Safety Signs and Labels, the corrected requirements will allow either Arial or Helvetica font. These two fonts are nearly identical in appearance, but some computers or printing systems may have only one type.

These corrections will become effective on the same date as the original labeling requirements, June 28, 2000.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Reporting and recordkeeping requirements, Sleepwear, Textiles, Warranties.

Accordingly, 16 CFR parts 1615 and 1616 are corrected by making the following correcting amendments:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569-570; 15 U.S.C. 1193.

2. In § 1615.1(o)(10)(i) and (ii) after the word "Arial" add "/Helvetica".

3. In § 1615.1(o)(10)(i) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

4. In § 1615.1(o)(10)(ii) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

5. In § 1615.1(o)(11) remove the illustration at the end of the text and add the following illustration in its place, including the caption:

WEAR SNUG-FITTING
NOT FLAME RESISTANT

Example in 10 pt Arial font

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority citation for part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. In § 1616.2(m)(10)(i) and (ii) after the word “Arial” add “/Helvetica”.

3. In § 1616.2(m)(10)(i) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

4. In § 1616.2(m)(10)(ii) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

5. In § 1616.2(m)(11) remove the illustration at the end of the text and add the following illustration in its place, including the caption:

WEAR SNUG-FITTING
NOT FLAME RESISTANT

Example in 10 pt Arial font

Dated: September 1, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99-23231 Filed 9-7-99; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 9908128228-9228-01]

RIN 0625-AA56

Regulation Concerning Preliminary Critical Circumstances Findings

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the "Department") is amending 19 CFR 351.206(c), which concerns preliminary findings of critical circumstances in antidumping and countervailing duty investigations. The critical circumstances provisions of the antidumping and countervailing duty laws and regulations ensure that the statutory remedies are not undermined by massive imports of dumped or subsidized merchandise following the filing of a petition. Normally, if an antidumping or countervailing duty order is issued, duties are assessed only on imports that enter the United States after the Department makes a preliminary determination of dumping or subsidization. However, where critical circumstances exist, duties are assessed retroactively on imports that enter up to 90 days prior to the preliminary determination. The amended regulation will ensure that the injurious effects of dumped or subsidized imports are remedied to the fullest extent provided by the law.

DATES: This rule is effective August 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Kathleen Hatfield, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482-1930, or Marguerite Trossevin, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482-5593.

SUPPLEMENTARY INFORMATION:

Background

The U.S. antidumping and countervailing duty laws, as well as the relevant agreements of the World Trade Organization (WTO), contain "critical

circumstances" provisions to ensure that the statutory remedies for unfair trade practices are not undermined by massive imports of dumped or subsidized merchandise following the filing of a petition. Normally, if an antidumping or countervailing duty order is issued, duties are assessed only on imports that enter the United States after the Department makes its preliminary determination of dumping or subsidization, which normally takes place about four months after the filing of the petition. However, where critical circumstances exist, duties may be assessed retroactively on imports that enter up to 90 days prior to the preliminary determination.

Sections 703(e) (countervailing duties) and 733(e) (antidumping duties) of the Tariff Act of 1930, as amended (the Act), provide that, if a petitioner alleges critical circumstances, the Department of Commerce (the Department) "shall promptly (at any time after the initiation of the investigation under this subtitle)" determine whether there is reasonable cause to believe or suspect that critical circumstances exist. Recent experience highlights the importance of making preliminary critical circumstances findings as early as possible to ensure that import surges do not undermine the statutory remedies. Therefore, on October 15, 1998, the Department published Policy Bulletin 98/4, stating that the Department will issue preliminary findings on critical circumstances as soon as possible after initiation. The Department is codifying that policy to ensure that the injurious effects of dumped or subsidized imports are remedied to the fullest extent provided by the law.

Explanation of the Regulation

The antidumping and countervailing duty laws state that critical circumstances exist where there are massive imports over a relatively short period and, as appropriate, either (1) there is a history of dumping and material injury, or the importer knew or should have known that the merchandise was dumped and injury was likely as a result, or (2) there is a countervailable subsidy inconsistent with the WTO Subsidies Agreement. Pursuant to 19 CFR 351.206(i), for the purpose of determining the existence of an import surge, the Department normally will consider a "relatively short period" as the period beginning on the date the petition is filed and extending for at least the following three months. Imports during the post-petition period are compared to a period of comparable duration immediately

preceding the petition. If imports increased by at least 15 percent in the post-petition period, the Department deems such a surge to constitute "massive imports over a relatively short period."

Because necessary shipment data is often not immediately available when the normal comparison periods are used, it is virtually impossible to make a preliminary critical circumstances finding before Commerce's preliminary determination on the existence of dumping or subsidies. However, 19 CFR 351.206(i) further provides that, if the Department finds that, at some time prior to the filing of a petition, importers, exporters or producers had reason to believe that a proceeding was likely, the Department may consider a period of at least three months from that earlier time. In cases where earlier base periods are deemed appropriate, an earlier preliminary finding on critical circumstances may be possible because the necessary data may be available. However, because the International Trade Commission's (ITC) preliminary determination of injury may be important to the critical circumstances analysis, normally the earliest point at which a preliminary critical circumstances finding would be made is after the ITC preliminary determination, which is normally 45 days after the filing of the petition.

Accordingly, the Department is amending 19 CFR 351.206(c)(2) to provide that, where earlier base periods are used, the Department will issue preliminary critical circumstances findings as soon as possible after initiation of an investigation, but normally not less than 45 days after the filing of the petition.

Classification

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(A), this rule of agency procedure is not subject to the requirement to provide prior notice and an opportunity for public comment. Further, because this rule of agency procedure is not substantive, it is not subject to the requirement in 5 U.S.C. 553(d) that its effective date be delayed 30 days.

E.O. 12866

This rule has been determined to be significant for purposes of Executive Order 12866.

Paperwork Reduction Act

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

E.O. 12612

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

Regulatory Flexibility Act

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. section 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 19 CFR Part 351

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

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES**Subpart A—Scope and Definitions**

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

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

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.206(c)(2) is revised to read as follows:

§ 351.206 Critical circumstances.

* * * * *

(c) * * *

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination; or

(iii) If, pursuant to paragraph (i) of this section, the period examined for purposes of determining whether critical circumstances exists is earlier than normal, the Secretary will issue the preliminary finding as early as possible after initiation of the investigation, but normally not less than 45 days after the

petition was filed. The Secretary will notify the Commission and publish in the **Federal Register** notice of the preliminary finding.

* * * * *

[FR Doc. 99-23208 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 524****Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin**

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 a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for an additional indication for control of tick (*Dermacentor variabilis*) infestations in dogs.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017-5755, filed supplemental NADA 141-152 that provides for topical veterinary prescription use of Revolution™ (selamectin) solution in dogs for the additional indication for control of tick (*D. variabilis*) infestations. The supplemental NADA is approved as of August 5, 1999, and the regulations are amended in 21 CFR 524.2098 in paragraphs (d)(1) and (d)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for nonfood-producing animals

qualifies for 3 years of marketing exclusivity beginning August 5, 1999, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, or any studies of animal safety, required for approval of the application and conducted or sponsored by the applicant.

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.

The 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.

§ 524.2098 [Amended]

2. Section 524.2098 *Selamectin* is amended in paragraph (d)(1) by removing the words "once a month" and in paragraph (d)(2) by revising the second sentence to read "Treatment and control of sarcoptic mange (*Sarcoptes scabiei*) and control of tick (*Dermacentor variabilis*) infestations in dogs."

Dated: August 27, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99-23336 Filed 9-7-99; 8:45 am]

BILLING CODE 4160-01-F

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**29 CFR Part 2700****Procedural Rules**

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This rule makes final various revisions to the procedural rules of the Federal Mine Safety and Health Review Commission (the "Commission"). In these final rules, the Commission has addressed various problems that were unforeseen when the procedural rules were last revised in 1993 (see 58 FR 12158 (March 3, 1993)), in a continued effort to ensure "the just, speedy, and inexpensive determination of all proceedings" before the Commission (29 CFR 2700.1(c)).

DATES: These revised rules will take effect on November 8, 1999.

The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases then pending, except to the extent that such application would be infeasible or unfair, in which event the present procedural rules would apply.

ADDRESSES: Questions may be mailed to Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is an independent adjudicative agency that provides administrative trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1994) ("Mine Act"). The Commission's rules of procedure govern practice and procedure in proceedings at both the trial and appellate levels.

The Commission initially adopted its procedural rules in June 1979. See 44 FR 38226 (June 29, 1979). In March 1993, the Commission published significant revisions to its procedural rules, reflecting more than 10 years' experience with the rules and evolving Commission case law. See 58 FR 12158 (March 3, 1993). In May 1998, the Commission published proposed revisions to various rules in an attempt to address problems that were unforeseen in 1993. See 63 FR 25183 (May 7, 1998). Those proposed rules included revisions relating to motion practice before the Commission, expansions of the requirements for certain pleadings, and revisions and

clarifications for filing pleadings in temporary reinstatement proceedings. See 63 FR 25183-87. For instance, the Commission proposed requiring moving parties to state in motions whether there is opposition to the motion (see proposed § 2700.10(c) (63 FR 25186)); instituting a page limit for petitions for discretionary review (see proposed § 2700.70(d) (63 FR 25187)); changing requirements for filing and serving requests for extensions of time and extensions of page limits (see proposed §§ 2700.9, 2700.70(d), 2700.75(f)) (63 FR 25186, 25187)); revising procedures for filing pleadings in temporary reinstatement proceedings (see proposed § 2700.45 (63 FR 25186-87)); and expanding the opportunities for filing and serving by facsimile transmission (see proposed §§ 2700.9, 2700.45(f) (63 FR 25186-87)).

Although notice-and-comment rulemaking under the Administrative Procedure Act does not apply to rules of agency procedure (see 5 U.S.C. 553(b)(3)(A)), the Commission permitted written comments on the proposed rules to be submitted on or before August 5, 1998. The only written comments received by the Commission were submitted by the Department of Labor's Office of the Solicitor on behalf of the Mine Safety and Health Administration ("MSHA"). MSHA commented on the following proposed revisions: (1) the proposed requirement that when filing is by facsimile transmission, service must be by facsimile or an equally expeditious means (proposed § 2700.7 (63 FR 25186)); (2) the proposed insertion that would permit the Commission to rule upon a motion prior to the expiration of the time for response (proposed § 2700.10(d) (63 FR 25186)); and (3) the proposed deadline for filing a motion requesting an extension of page limit (proposed §§ 2700.70, 2700.75 (63 FR 25187)). In addition, MSHA proposed that the procedural rules be revised in three ways not proposed in the **Federal Register** notice: (1) that subpart H be revised to include a requirement that all documents filed in review proceedings before the Commission in which MSHA is a party, be served on the Counsel for Appellate Litigation in the Mine Safety and Health Division of the Office of Solicitor; (2) that 29 CFR 2700.75(e) be revised to permit both opening briefs and response briefs to be up to 35 pages in length; and (3) that § 2700.75(e) be revised to specify that all briefs be typed double-spaced and using a typeface designated by the Commission. MSHA did not state any objections to the remainder of the proposed revisions.

Based upon those comments and other developments in Commission proceedings, the Commission published supplemental proposed rules, which clarified when service on an attorney or other authorized attorney is required (see proposed §§ 2700.3(c), 2700.7(d) (64 FR 24549)), added requirements for the format of pleadings (see proposed § 2700.5(f) (64 FR 24549)), and increased the page limit for response briefs (see proposed § 2700.75(c) (64 FR 24549-50)). See 64 FR 24547-50 (May 7, 1999).

The Commission permitted written comments on those supplemental proposed rules to be submitted on or before May 28, 1999. The Commission received comments from MSHA and from the Peabody Group. The majority of comments expressed support for the supplemental proposed revisions. The Commission received an objection to only the proposed requirements for the format of pleadings (see proposed § 2700.5(f) (64 FR 24549)).

The final rules retain much of the same text set forth in the proposed rules and in the supplemental proposed rules. As discussed in the section-by-section analysis, some changes have been made in response to the comments received, such as the service requirements when documents are filed by facsimile transmission (see §§ 2700.7(c), 2700.9(a), 2700.45(f), 2700.70(f), 2700.75(f)); and the deadline for filing requests for extension of page limit (see §§ 2700.70(f), 2700.75(f)). In addition, although not included in the proposed rules or supplemental proposed rules, the Commission made a revision clarifying when a motion for participation as *amicus curiae* and an *amicus curiae* brief must be filed (see § 2700.74). The Commission was unable to invite comments on the revisions to § 2700.74 because the proceedings that brought to light the need for such clarification arose after the supplemental proposed rules had been published in the **Federal Register**. Finally, certain rules have been changed to accord with related changes in others.

II. Section-by-Section Analysis

Set forth below is an analysis of the comments received on the Commission's proposed and supplemental proposed rules and the final actions taken. Minor editorial modifications to present or proposed rules are not discussed.

Subpart A—General Provisions

Section 2700.3 Who May Practice

Paragraph (c) retains the proposed language clarifying the manner of and

time that an attorney or other authorized representative may enter an appearance in Commission proceedings. The Commission received no objections to the proposed rule and adopts the proposed rule without change.

Currently, § 2700.3(c) provides that an entry of appearance by a representative of a party is made by, among other things, "signing the first document filed on behalf of the party." See 29 CFR 2700.3(c). The rule is somewhat ambiguous regarding the agency with whom the document must be filed, and whether the document refers only to pleadings.

In an effort to dispel this ambiguity, the Commission has revised § 2700.3(c) to provide that an entry of appearance shall be made when the first document filed on behalf of a party is filed with the Commission or Commission judge. Revised § 2700.3(c) also clarifies that the documents that may serve as an entry of appearance shall be only those filed with the Commission or Commission judge in a proceeding under the Mine Act or the Commission's procedural rules, rather than documents filed with MSHA.

The revisions to § 2700.3(c) are intended to be consistent with the definition of "party" set forth in § 2700.4(a). Section 2700.4(a) currently provides in part that "[a] person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party." 29 CFR 2700.4(a). Section 2700.3(c) refers to actions that may be taken by a representative of a "party" in order to enter an appearance. Thus, reading current § 2700.4(a) with revised § 2700.3(c), an entry of appearance by an attorney or other authorized representative cannot be made before the represented operator or individual achieves party status as defined in § 2700.4(a). In some circumstances, however, an entry of appearance may be made at the same time that an operator or individual achieves party status. For instance, upon the filing of a notice of contest of a citation or order with the Commission by an authorized representative on behalf of an operator (see 29 CFR 2700.20), the operator is named as a party, thereby achieving party status under current § 2700.4(a), and the attorney filing the contest enters an appearance under revised § 2700.3(c) by filing the document with the Commission.

Section 2700.5 General Requirements for Pleadings and Other Documents; Status or Informational Requests.

Paragraph (c) of the proposed rule added the requirement that all

documents include page numbers. The Commission received no comments concerning that revision and adopts it as proposed.

In addition, consistent with proposed revisions to §§ 2700.9(a) and 2700.45(f), paragraph (d) of proposed § 2700.5 added the provision that the filing of a motion for an extension of time and a petition for temporary reinstatement order is effective upon receipt, rather than upon mailing. The Commission received no comments concerning that revision.

The Commission adopts § 2700.5(d) as proposed with minor changes. For consistency and clarity in motion practice, the Commission has conformed the requirements for filing requests for extensions of page limit with the requirements for filing requests for extensions of time. Therefore, the Commission has added the provision that the filing of a motion to exceed page limit is effective upon receipt. In addition, the Commission has revised § 2700.5(d) to specify that express mail includes delivery by third-party commercial carrier. Therefore, when a document is filed by third party commercial carrier, filing is effective upon delivery to the third party carrier, except for documents specified in paragraph (d) for which filing is effective upon receipt.

The Commission received a comment requesting that § 2700.75(e) be revised to require that all briefs shall be double-spaced using a typeface designated by the Commission in order to ensure adherence with page limitations. Because the Commission believed that formatting requirements should apply to all pleadings filed with the Commission and its judges, the Commission proposed a supplemental rule setting forth formatting requirements in proposed § 2700.5(f), which applies to all pleadings, rather than in § 2700.75, which applies only to briefs before the Commission. The proposed formatting requirements included standards for margins, font size and spacing, and a general prohibition against excessive footnotes. In addition, the Commission proposed adding a provision permitting the Commission to reject a brief based on the failure to comply with the requirements of the subsection or on the use of compacted or otherwise compressed printing features. To avoid affecting basic appeal rights, the Commission limited the provision by allowing only the rejection of briefs, rather than petitions for discretionary review.

The Commission received a comment regarding proposed § 2700.5(f), in which the commenter stated that the

requirement that footnotes appear in the same type size as text may prove difficult for drafters because most word processing systems automatically size footnote print smaller than the print of a document's body. The commenter suggested that the rule should be further revised to institute a word limit for parties who have word processing systems with automatic word counting capabilities, retaining page limitations for only those parties who do not have such systems. In addition, the commenter expressed the hope that the Commission would provide ample warning before striking briefs for excessive footnotes.

The Commission declines further modification of the formatting requirements which were proposed in § 2700.5(f). Although a word processing system may automatically size footnote print smaller than the text of the body, most systems may be adjusted to conform the footnote size with the text of the body. If a party's word processing system is incapable of using the same size type for footnotes and the body of a document, that information may be provided to the Commission if the Commission were to reject a brief on that basis. The Commission believes that the proposed rule is clearer and more easily enforced than a rule which sets forth two standards of formatting requirements. Finally, the Commission anticipates that it will provide ample notice before rejecting a brief for noncompliance with formatting requirements.

Section 2700.7 Service

Proposed revisions to § 2700.7(c) referred to the circumstances in which requests for extensions of time (§ 2700.9) and pleadings in temporary reinstatement proceedings (§ 2700.45(f)) may be served by facsimile transmission. In addition, proposed paragraph (c) clarified that service by mail is effective upon mailing for all types of mail, including first class, express, registered or certified mail, return receipt requested. Proposed paragraph (c) also added the requirement that when filing is by facsimile transmission, the filing party must also serve by facsimile transmission or by a means as expeditious as facsimile.

The Commission received no comments to the proposed rule's reference to the circumstances under which requests for extensions of time and petitions for review of temporary reinstatement orders may be served by facsimile transmission, or to the clarification that service by mail is effective upon mailing for all types of

mail service. Consistent with revisions to § 2700.5(d), the Commission has conformed the requirements for serving requests for extensions of page limit with the requirements for serving requests for extensions of time. Therefore, the Commission has referred to the circumstances in which requests for extensions of page limits may be served by facsimile transmission. In addition, the Commission has revised § 2700.7(c) to specify that express mail includes delivery by third-party commercial carrier. Therefore, when a document is served by third-party commercial carrier, service is effective upon delivery to the third-party carrier.

The Commission received opposition to the requirement that when a document is filed by facsimile transmission, service must be by facsimile or an equally expeditious means. The commenter submitted that a significant percentage of parties participating in Commission proceedings do not have fax machines, and that the only means of providing equally expeditious service would be by hand delivery, which can only be accomplished in a small number of cases.

After further consideration, the Commission has revised proposed § 2700.7(c) to provide that when filing is by facsimile transmission, the filing party must also serve by facsimile transmission or, if serving by facsimile transmission is impossible, the filing party must serve by third-party commercial overnight delivery service or by personal delivery. Although a party receiving service by overnight delivery will receive a document after the document has been filed by facsimile, the Commission believes that such a delay is not prejudicial. Under current § 2700.8, which has not been revised, when service of a document is by mail, 5 days are added to the time allowed for filing a response. See 29 CFR 2700.8. Because delivery by third-party commercial carrier is a form of express mail, the party who is served a document by third-party commercial carrier receives an additional 5 days to respond. Moreover, the time for filing a response to documents that may be filed by facsimile begins to run upon service, rather than upon filing. See proposed §§ 2700.10(d), 2700.45(f).

Proposed paragraph (d) provided that service is required on an attorney or other authorized representative only after that attorney or representative has formally entered an appearance on behalf of the party in the manner prescribed in proposed § 2700.3(c). The Commission received no objections to

the revision and adopts paragraph (d) as proposed.

The Commission published proposed paragraph (d) in the supplemental notice of proposed rulemaking based on proceedings before the Commission which revealed that its current procedural rules should be revised to clarify when service on an attorney or other authorized representative is required, particularly in circumstances in which a person or operator has retained counsel prior to issuance of the initial document in a proceeding. See *Roger Richardson*, 20 FMSHRC 1259 (Nov. 1998) (involving proceeding under 30 U.S.C. 820(c), in which proposed penalty assessment was mailed to individual's former residence rather than to counsel who was retained prior to issuance of proposed penalty assessment).

Currently, § 2700.7(d) provides that "[w]henver a party is represented by an attorney or other authorized representative, subsequent service shall be made upon the attorney or other authorized representative." 29 CFR 2700.7(d). The current rule is somewhat ambiguous regarding whether service is required after a representative has entered an appearance on behalf of the party, or whether service is required after a party has retained that representative. Under revised § 2700.7(d), it is clear that, even if an operator or individual retains counsel prior to the initiation of a proceeding under the Mine Act, that counsel need not be served until after he or she makes a formal entry of appearance pursuant to § 2700.3(c).

Section 2700.9 Extensions of Time

Paragraph (a) of the proposed rule instituted the requirements that a motion for extension of time shall be filed no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and that the motion for an extension of time must conform with proposed § 2700.10. Proposed § 2700.9(a) also provided that the motion and any opposition to the motion may be filed and served by facsimile transmission, and that service must be by an equally expeditious means as filing. Paragraph (b) of proposed § 2700.9 added a provision allowing the Commission to grant a motion for an extension of time in exigent circumstances, even though the request was filed late. The proposed rule was designed to alleviate the situation that arises under current § 2700.9, in which the Commission receives a request for an extension of time on or shortly before the expiration of the due date for filing or serving of

the document, requiring disposal of the motion prior to the expiration of the time for a response. See 29 CFR 2700.9 ("A request for an extension of time shall be filed before the expiration of the time allowed for the filing or serving of the document.").

The Commission received no comments to proposed § 2700.9(a) and adopts it as proposed with a minor modification. Consistent with revisions to proposed § 2700.7(c), the Commission inserted the qualification in paragraph (a) that, if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

Section 2700.10 Motions

The proposed rule added the requirement that, prior to filing a procedural motion, a moving party must confer or make reasonable efforts to confer with the other parties and to state in the motion if any party opposes or does not oppose the motion. In addition, proposed § 2700.10 added the provision that, where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response, and that a party adversely affected by the ruling may seek reconsideration.

Under current practice, before the Commission disposes of a procedural motion, it must wait for the expiration for the period of the time for filing a statement in opposition. See 29 CFR 2700.10(c). For some motions requiring prompt or immediate disposition, the Commission must contact other parties or, if such parties are unavailable, dispose of the motion without a response. The proposed revisions were designed to more efficiently and fairly dispose of such motions.

The Commission received opposition to the revision which would permit a motion to be ruled upon prior to the expiration of the time for response. The commenter suggested that if it is necessary to rule on a motion before the response time has expired, the Commission or judge should give adequate warning of the shortened time so that any opposition may be filed prior to disposition of the motion.

The Commission has determined that no further modification is warranted and adopts the proposed rule. In motion practice before the Commission, there is usually insufficient time to give advance warning that the Commission must rule upon a motion prior to the expiration of the time for a response, particularly with requests for extensions of time or extensions of page limits. Even if the Commission were to dispose of a motion before expiration of the time for a

response, under revised § 2700.10(c), in most circumstances, the Commission will be informed by the motion whether opposition exists. Moreover, under these final rules, an opposing party has more opportunities for filing an opposition by facsimile transmission. See §§ 2700.9(a) (statements in opposition to requests for extension of time); 2700.45(f) (responses to petitions for review of temporary reinstatement orders); 2700.70(f) and 2700.75(f) (statements in opposition to motions for extension of page limit). In any event, the Commission has provided an avenue of relief to a party deprived of the opportunity to file an opposition by providing in paragraph (d) that any party adversely affected by the ruling may seek reconsideration.

Subpart E—Complaints of Discharge, Discrimination, or Interference

Section 2700.45 Temporary Reinstatement Proceedings

Paragraph (f) retains the proposed language to: (1) allow any pleadings in a temporary reinstatement proceeding to be filed and served by facsimile transmission (*see also* paragraph (a)); (2) provide that the filing of a petition for review of a temporary reinstatement order is effective upon receipt; (3) require that any response to a petition must be filed within 5 days following service of the petition, rather than 5 days following receipt of the petition, as the rule currently provides (*see* 29 CFR 2700.45(f)); and (4) clarify that the Commission's ruling on a petition shall be based on the petition and any response, and that any further briefing will be entertained only at the express direction of the Commission. The Commission also adopts the language proposed in paragraph (f), which codifies the holding in *Secretary of Labor on behalf of Bowling v. Perry Transport, Inc.*, 15 FMSHRC 196 (Feb. 1993), by explicitly providing that the Commission will grant a motion to stay the effect of a temporary reinstatement order only under extraordinary circumstances.

Although the Commission received no comments to the proposed rule, the comment received regarding facsimile transmission in proposed § 2700.7(c) is indirectly applicable to proposed § 2700.45(f), and prompted the Commission to revise the final rule. As with proposed § 2700.9(a), the Commission qualified the requirement that a pleading under the rule must include proof of service on all parties by a means of delivery no less expeditious than that used for filing with the proviso that if service by facsimile transmission

is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. In addition, consistent with this revision, the Commission specified in paragraph (a) that a document filed with the Commission in a temporary reinstatement proceeding may be served by express mail, as well as by personal delivery, including courier service, by certified or registered mail, return receipt requested, or, as specified in paragraph (f), by facsimile transmission.

Subpart H—Review by the Commission

Section 2700.70 Petitions for Discretionary Review

Proposed § 2700.70(a) added the clarification that procedures governing petitions for review of temporary reinstatement orders may be found in § 2700.45(f). The Commission received no comments to the proposed revision and adopts it as proposed.

Proposed § 2700.70(d) added a 35-page limit for petitions for discretionary review to promote concision. In addition, consistent with proposed changes to § 2700.75, proposed § 2700.70(d) instituted a 10-day deadline for filing a motion requesting an extension of page limit.

The Commission received no objection to the 35-page limit and adopts it as proposed. However, the Commission received an objection to the proposed requirement that a motion for an extension of page limit for a petition for discretionary review be filed no less than 10 days prior to the date the petition is due to be filed. The commenter stated that in many cases, a party does not know 10 days before its petition is due whether the petition will exceed the page limit. The commenter suggested that the proposed revision may result in an increase in the filing of protective motions.

The Commission reconsidered the proposed paragraph, deleted the reference to the 10-day deadline in paragraph (d) and added a new paragraph (f), setting forth the requirements for motions to exceed page limit. In new paragraph (f), the Commission revised the deadline for filing requests for extensions of page limits to not less than 3 days prior to the date the petition is due to be filed. In order to permit the Commission to dispose of the motion within sufficient time to afford the petitioner time to submit a conforming petition, the Commission has added a receipt requirement, so that the motion must be received by the Commission by the deadline. Therefore, as with requests for extensions of time (*see* proposed

§ 2700.9(a)), the filing of requests for extensions of page limit are effective upon receipt, and the filing and serving of the motion and any opposition to the motion may be accomplished by facsimile transmission. Although a 3-day time limit may not allow sufficient time for the filing of an opposition, the Commission likely will be informed in the request for extension of page limit, in accordance with § 2700.10(c), whether the opposing party opposes or does not oppose the request. In addition, under § 2700.10(d), the Commission may rule upon the motion prior to the expiration of the time for a response, and any party adversely affected by the Commission's ruling may seek reconsideration. Consistent with revisions to other procedural rules (*see* §§ 2700.7(c), 2700.9(a), 2700.45(f), 2700.75(f)), the Commission added the provision that the motion to exceed page limit and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party must serve by third-party commercial overnight delivery, or by personal delivery.

Section 2700.74 Procedure for Participation as Amicus Curiae

Under current § 2700.74, a motion to participate as amicus curiae may be filed after the Commission has directed a case for review (*see* 29 CFR 2700.74(a)), and the brief of an amicus curiae "should normally be filed within the briefing period allotted to the party whose position the amicus curiae supports." 29 CFR 2700.74(b). In recent proceedings before the Commission, the Commission received a motion to participate as amicus curiae in support of the petitioner's position during the period allotted to the petitioner for filing a reply brief. It is somewhat unclear under the present rule whether a motion for participation as amicus curiae may be filed during the period allotted for the filing of a reply brief.

The Commission revised paragraph (b) of existing § 2700.74 to clarify that the brief of an amicus curiae must be filed during the initial briefing period allotted to the party whose position the amicus curiae supports. In addition, the Commission set off a portion of paragraph (b) as a new paragraph (c) and clarified in new paragraph (c) that the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), as long as the amicus curiae's motion for participation is filed within the initial briefing period

allotted to the party whose position the amicus curiae supports. The Commission has retained the provisions of paragraph (a) so that a motion for participation as amicus curiae may be filed after the Commission has directed a case for review. Reading all paragraphs of revised § 2700.74 together, therefore, a motion to participate as an amicus curiae must be filed after the Commission has directed a case for review and before expiration of the initial briefing period allotted to the party whose position the amicus curiae supports. The Commission was unable to invite comments on the revisions to § 2700.74 because the proceedings that brought to light the need for such clarification arose after the supplemental proposed rules had been published in the **Federal Register**. See also 5 U.S.C. 553(b)(3)(A) (providing that notice-and-comment publication is not required under the Administrative Procedure Act for rules of agency procedure).

Section 2700.75 Briefs

Proposed paragraph (c) was revised in response to a comment that the page limit for response briefs should be increased from 25 to 35 pages. The Commission agrees that revising the page limit for response briefs to correspond with the page limit for opening briefs is appropriate given the similar substantive requirements for opening and response briefs. In addition, it agrees that such a revision is particularly appropriate in view of the opportunity for a petitioner to file an additional 15 pages in the form of a reply brief. Therefore, the Commission adopts paragraph (c) as proposed.

Proposed § 2700.75(d) added the requirement that a motion for extension of time must comply with the requirements of proposed § 2700.9. The Commission received no comments to paragraph (d) and adopts it as proposed.

Proposed § 2700.75(f) added requirements for filing a motion to exceed page limit that conformed to the requirements for filing a motion to exceed page limit for a petition for discretionary review (see proposed § 2700.70(d) (63 FR 25187)). Consistent with comments received to proposed § 2700.70, the Commission received an objection to the 10-day deadline. The Commission deleted the reference to a 10-day deadline in proposed § 2700.75(f), and added the same requirements for a motion to exceed page limits as that set forth in § 2700.70(f).

Section 2700.76 Interlocutory Review

Proposed § 2700.76(a) added the clarification that procedures governing petitions for review of temporary reinstatement orders may be found in proposed § 2700.45(f). The Commission received no comments to the addition and adopts the rule as proposed.

Miscellaneous

The Commission declines to adopt the suggestion that subpart H be revised to include a requirement that all documents filed in review proceedings before the Commission in which MSHA is a party, be served on Counsel for Appellate Litigation in the Mine Safety and Health Division of the Office of the Solicitor. The Commission believes that less formal means exist to address any misdirection of pleadings to MSHA's counsel, and intends to explore such means.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Ex parte communications, Lawyers, Penalties.

For the reasons stated in the preamble, the Commission amends 29 CFR Part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 823.

2. Section 2700.3 is amended by revising paragraph (c) to read as follows:

§ 2700.3 Who may practice

* * * * *

(c) *Entry of appearance.* A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the

party with the Commission or Judge; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

* * * * *

3. Section 2700.5 is amended by revising paragraphs (c), (d) and (f) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge and all other parties.

(d) *Manner and date of filing.* A notice of contest of a citation or order, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be filed by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent documents that are filed with a Judge or the Commission may be filed by first class mail, express mail, or personal delivery. Express mail includes delivery by a third-party commercial carrier. When filing is by personal delivery, filing is effective upon receipt. When filing is by mail, filing is effective upon mailing, except that the filing of a petition for discretionary review, a petition for review of a temporary reinstatement order, a motion for extension of time, and a motion to exceed page limit is effective upon receipt. See §§ 2700.9, 2700.45(f), 2700.70(a), (f), and 2700.75(f). Filing by facsimile transmission is permissible only when specifically permitted by these rules (see §§ 2700.9, 2700.45(f), 2700.52, 2700.70(a), (f), and 2700.75(f)), or when otherwise allowed by a Judge or the Commission. Filing by facsimile transmission is effective upon receipt.

* * * * *

(f) *Form of pleadings.* All printed material shall appear in at least 12 point type on paper 8½ by 11 inches in size, with margins of at least one inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced.

Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this paragraph or the use of compacted or otherwise compressed printing features will be grounds for rejection of a brief.

* * * * *

4. Section 2700.7 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2700.7 Service.

* * * * *

(c) *Methods of service.* A notice of contest of a citation or order, a proposed penalty assessment, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be served by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent papers may be served by first class mail, express mail, or personal delivery, except as specified in §§ 2700.9, 2700.45, 2700.70(f), and 2700.75(f) (extensions of time, temporary reinstatement proceedings, and extensions of page limit). Express mail includes delivery by a third-party commercial carrier. Service by mail, including first class, express, or registered or certified mail, return receipt requested, is effective upon mailing. Service by personal delivery is effective upon receipt. When filing by facsimile transmission (see § 2700.5(d)), the filing party must also serve by facsimile transmission or, if serving by facsimile transmission is impossible, the filing party must serve by a third-party commercial overnight delivery service or by personal delivery. Service by facsimile transmission is effective upon receipt.

(d) *Service upon representative.* Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to § 2700.3(c), service thereafter shall be made upon the attorney or other authorized representative.

* * * * *

5. Section 2700.9 is revised to read as follows:

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time, including a facsimile transmission, is

effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. A motion requesting an extension of time and a statement in opposition to such a motion may be filed and served by facsimile. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

6. Section 2700.10 is amended by redesignating paragraph (c) as (d), revising newly redesignated paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 2700.10 Motions.

* * * * *

(c) Prior to filing a procedural motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 10 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

7. Section 2700.45 is amended by revising paragraphs (a) and (f) to read as follows:

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties by personal delivery, including courier service, by certified or registered mail, return receipt requested, express mail or, as

specified in paragraph (f) of this section, by facsimile transmission.

* * * * *

(f) *Review of order.* Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The filing and service of any pleadings under this rule may be made by facsimile transmission. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 days following service of a petition. Pleadings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

* * * * *

8. Section 2700.70 is amended by revising paragraphs (a), (d) and (e), by redesignating paragraphs (f) as (g) and (g) as (h), and by adding a new paragraph (f) to read as follows:

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review, including a facsimile transmission, is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

* * * * *

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except by permission of the Commission and for good cause shown, petitions for discretionary review shall not exceed 35 pages. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition to petition.* A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit shall be received not less than 3 days prior to the date the petition for discretionary review is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. A motion requesting an extension of page limit and a statement in opposition to such a motion may be filed and served by facsimile. Filing of a motion requesting an extension of page limit, including a facsimile transmission, is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

* * * * *

9. Section 2700.74 is amended by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 2700.74 Procedure for participation as amicus curiae.

* * * * *

(b) The brief of an amicus curiae shall be filed within the initial briefing period (see § 2700.75(a)(1)) allotted to the party whose position the amicus curiae supports.

(c) In the interest of avoiding duplication of argument, however, the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), provided that the amicus curiae's motion for participation as an amicus curiae is filed within the initial briefing period (see § 2700.75(a)(1)) allotted to the party whose position the amicus curiae

supports. If the Commission grants any such motion, the Commission's order shall specify the time within which a response or reply may be made to the amicus curiae brief.

10. Section 2700.75 is amended by revising paragraphs (c) and (d), by redesignating paragraph (f) as (g), and by adding a new paragraph (f) to read as follows:

§ 2700.75 Briefs.

* * * * *

(c) *Length of brief.* Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) *Motion for extension of time.* A motion for an extension of time to file a brief shall comply with § 2700.9. The Commission may decline to accept a brief that is not timely filed.

* * * * *

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. A motion requesting an extension of page limit and a statement in opposition to such a motion may be filed and served by facsimile. Filing of a motion requesting an extension of page limit, including a facsimile transmission, is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

* * * * *

11. Section 2700.76 is amended by revising paragraph (a) to read as follows:

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary

reinstatement orders are found at § 2700.45(f).

* * * * *

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 99-23244 Filed 9-7-99; 8:45 am]

BILLING CODE 6735-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD-091-3041a; FRL-6433-7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the municipal solid waste (MSW) landfill 111(d) plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment (MDE), on March 23, 1999. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Maryland plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective November 8, 1999 unless within October 8, 1999 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Walter Wilkie, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Air Radiation Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I—V, and answers the questions posed below.

I. General provisions

What action is EPA approving?

What is a State 111(d) plan?

What pollutant(s) will this action control?

What are the expected environmental and public health benefits from controlling landfill gas (LFG) emissions?

II. Federal Requirements the Maryland Department of the Environment (MDE) 111(d) Plan Must Meet for Approval

What general EPA requirements must the MDE meet to receive approval of its landfill 111(d) plan?

What does the Maryland plan contain?

Does the Maryland plan meet all EPA requirements for approval?

III. Requirements for Affected MSW Landfill Owners/Operators

How do I determine if my MSW landfill is subject to the Maryland 111(d) plan?

What general requirements must I meet as an affected landfill owner/operator who is subject to the EPA approved plan?

If my landfill is subject to the plan's requirement for installation of a LFG collection and control system, what emissions limits must I meet, and in what timeframe?

Are there any operational requirements for my installed LFG collection and control system?

What are the testing, monitoring, recordkeeping, and reporting requirements for my landfill? If I modify or expand the capacity of my landfill, what additional requirements must I meet?

IV. Final EPA Action

V. Administrative Requirements

I. General Provisions

Question (Q): What action is EPA approving?

Answer (A): We are approving the Maryland landfill 111(d) plan, as submitted by the Maryland Department of the Environment (MDE) to EPA on March 23, 1999, for the control of non-methane organic compound (NMOC) emissions from municipal solid waste (MSW) landfills. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

Q: What is a State 111(d) plan?

A: Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under section 111(b) standards of performance for new stationary sources, must also be controlled at existing sources (i.e., designated facilities) in the same source category. Furthermore, section 111(d) requires EPA to establish procedures for state submittal and EPA approval of state plans that implement state adopted emissions guidelines (EG) for the

control of designated pollutants and facilities. State 111(d) plans, approved by EPA, implement and provide for federal enforceability of the EG requirements.

Q: What pollutant(s) will this action control?

A: The promulgated March 12, 1996 EPA EG (61 FR 9919) are applicable to existing municipal solid waste (MSW) landfills (i.e., the designated facilities) that emit landfill gas (LFG). LFG consists primarily of carbon dioxide, methane, and nonmethane organic compounds (NMOC). MSW landfills are the largest manmade source of methane emissions in the United States. The designated pollutant, NMOC, is a mixture of more than 100 different compounds, including volatile organic compounds (VOC), and hazardous pollutants (HAP), such as vinyl chloride, toluene, and benzene. A collateral benefit in the control of landfill NMOC is the control of methane.

Q: What are the expected environmental and public health benefits from controlling landfill gas (LFG) emissions?

A: Studies indicate that MSW landfill gas (LFG) emissions at certain levels can have adverse effects on both public health and welfare. EPA presented its concerns with the health and welfare effects of landfill gases in the preamble to the proposed MSW landfill regulations (56 FR 24468). As noted above, MSW landfills emit NMOC that contains HAP, and VOC, which include odorous compounds. Exposure to HAP can lead to cancer, respiratory irritation, and damage to the nervous system. VOC emissions contribute to the formation of ozone which can result in adverse effects on human health and vegetation. Methane contributes to global climate change and can also result in fires or explosions, if the gas accumulates in structures, on or off the landfill site. The Maryland 111(d) plan will serve to significantly reduce these potential problems associated with LFG emissions.

II. Federal Requirements the Maryland Department of the Environment (MDE) 111(d) Plan Must Meet for Approval

Q: What general requirements must the MDE meet to receive approval of its landfill 111(d) plan?

A: EPA promulgated detailed procedures for submitting and approving State plans in 40 CFR part 60, subpart B. Also, EPA promulgated the MSW landfill EG (subpart Cc) and related NSPS (subpart WWW) on March 12, 1996, and amended them on June 16, 1998 and February 24, 1999. More

specifically, the Maryland plan must meet the requirements of (1) 40 CFR part 60, subpart Cc, sections 60.30c through 60.36c, and the related subpart WWW; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

States were required to submit their MSW landfill 111(d) plans to EPA on December 12, 1996, pursuant to the provisions of section 111(d) of the CAA and 40 CFR part 60, subpart B, and the March 16, 1997 promulgated MSW landfill EG, subpart Cc. As a result of litigation over the landfill rule, on November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association v. Browner, et al.*, No. 96–1152 (D.C. Cir.), in accordance with section 113(g) of the Act. See 62 FR 60898. Pursuant to the proposed settlement agreement, EPA published, in the **Federal Register**, a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. The proposed settlement did not vacate or void the March 12, 1996 MSW landfill EG or NSPS. Furthermore, as stated in the June 16, 1998, preamble, the amendments to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. See 63 FR 32743–32753, 32783–32784. In part, these amendments clarified the EG regulatory text with respect to landfill mass and volume applicability and Title V permit requirements. On February 24, 1999 (64 FR 9258), EPA again amended the MSW landfill rule to further clarify the regulatory text and correct errors with respect to the due date for the submittal of the initial landfill design capacity and emissions rate reports, and the definition of landfill "modification."

Q: What does the Maryland plan contain?

A: Consistent with the requirements of 40 CFR part 60, subparts B and Cc, as amended, the Maryland plan contains the following:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. COMAR 26.11.19.20 as the enforceable mechanism;
3. A source inventory of known designated facilities, including NMOC emissions rate estimates;
4. Emission collection and control requirements that are no less stringent than those in Subpart Cc;
5. A description of the Maryland process for the review and approval of site-specific gas collection and control design plans;

6. A source compliance schedule, including increments of progress, that requires final compliance no later than 30 months from the date the NMOC emissions rate was first calculated to be 55 tons (50 megagrams) or more per year;

7. Source testing, monitoring, recordkeeping, and reporting requirements;

8. Records of the public hearings on the State Plan; and

9. A provision for State submittal to EPA of annual reports on progress in plan enforcement.

On February 5, 1998, the MDE adopted a regulation, Code of Maryland Regulation (COMAR) 26.11.19.20, Control of Landfill Emissions from Municipal Solid Waste Landfills. The regulation applies to existing MSW landfills and incorporates by reference (IBR) related and applicable subpart WWW requirements. On March 2, 1999, Maryland adopted COMAR 26.11.19.20 amendments to ensure that the MDE reporting, calculation methods, and all other requirements were consistent with EPA guidance.

Q: Does the Maryland plan meet all EPA requirements for approval?

A: Yes. The MDE has submitted a 111(d) plan that conforms to all EPA subpart B and Cc requirements cited above. Each of the above listed plan elements is approvable. Details regarding the approvability of plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

The plan includes an amended MDE landfill regulation that incorporates a substantive provision of the EPA June 1998 EG amendments. Specifically, the MDE landfill rule establishes a landfill applicability requirement, consistent with the amendments, based on landfill mass "and" volume. Furthermore, the MDE has submitted a letter to EPA confirming that its Title V permitting requirements are also consistent with those of the June 1998 EG amendments, and its July 1996 EPA approved Title V Program (61 FR 34739).

Other substantive EPA EG amendments relate to the definition of landfill "modification" and the due date for submittal of the initial design capacity and emission rate reports. These two amendments were further clarified by EPA's February 24, 1999 EG technical amendments. The MDE has not submitted a 111(d) plan revision that incorporates the provisions of the February 24, 1999 EG amendments. With respect to the definition of landfill

"modification," the amendments have significance only when the landfill NSPS applicability requirements are triggered. Therefore, the State need not incorporate this definition into its MSW regulation 111(d) plan definitions. NSPS requirements are self-implementing. However, when considering the due date for submittal of the initial design capacity and emissions rate reports, it is important to note that subpart B, 60.24(g)(2) allows states to impose compliance schedules requiring final compliance at earlier times than those specified in the EG. Although, the Annotated Code of Maryland section 2-302 contains language restricting the stringency of the air quality standards and emission standards, there is no reference to compliance schedules. Accordingly, the MDE has the authority to impose earlier reporting and compliance requirements than those stipulated in the EG.

III. Requirements for Affected MSW Landfill Owners/Operators

Q: How do I determine if my MSW landfill is subject to the Maryland 111(d) plan?

A: If your MSW landfill was constructed, reconstructed or modified before May 30, 1991, and received MSW on or after November 8, 1987, then it is subject to the 111(d) plan.

Q: What general requirements must I meet as an affected landfill owner/operator who is subject to the EPA approved plan?

A: The plan requires you to submit an initial design capacity report, and possibly a NMOC emissions rate report. If the design capacity of your landfill is equal to or greater than 2,750,000 tons (2.5 million megagrams) and 3,260,000 cubic yards (2.5 million cubic meters) of MSW, the plan requires you to also submit, concurrently with the design capacity report, an initial NMOC emissions rate report. The NMOC emissions rate must be calculated according to methods specified in the regulation. If your calculated landfill NMOC emissions rate is 55 tons (50 megagrams) or more per year, you are required to install a MSW landfill gas collection and control system that meets design and operational requirements specified in COMAR 26.11.19.20.G, which IBR all related and applicable NSPS requirements.

Q: If my landfill is subject to the plan's requirement for installation of a LFG collection and control system, what emissions limits must I meet, and in what timeframe?

A: You must install a landfill gas collection and control system to reduce the collected NMOC emissions by 98

weight-percent, or reduce the emissions from the control device to a concentration of 20 parts per million by volume, or less, for an enclosed combustor. The installation of the required collection and control system must be completed within 30 months from the date the NMOC emission rate was first calculated to be 55 tons (50 megagrams) or more per year. Details regarding compliance schedules are stipulated in COMAR 26.11.19.20.E and H(1).

Q: Are there any operational requirements for my installed LFG collection and control system?

A: Yes, there are operational requirements. These requirements are summarized below:

1. Operate the collection system wellheads at negative pressure;
2. Operate the interior collection wellheads with a landfill gas temperature less than 55°C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent;
3. Operate the collection system so that the methane gas concentration is less than 500 parts per million above background at the surface of the landfill;
4. Operate the collection system so that the collected gases are vented to the control system; and
5. Operate the collection and control system at all times.

Details regarding all operational requirements are stipulated at COMAR 26.11.19.20.G(3), which IBR the related and applicable NSPS requirements.

Q: What are the testing, monitoring, recordkeeping, and reporting requirements for my landfill?

A: Your testing, monitoring, recordkeeping, and reporting requirements are summarized below:

1. Performance testing, to determine compliance with 98 weight-percent efficiency, or the 20 ppmv outlet concentration level, must be completed within 180 days after construction completion on the collection and control system. Performance and source test methods must be consistent with EPA test methods, as referenced in the MDE landfill regulation.

2. Monitoring of control device temperature on a continuous basis is required for enclosed combustion control devices, and flares. Measurement of the gas flow rate from the collection system to an enclosed combustion device, or flare, is required at least once every 15 minutes, unless the bypass line valves are secured in a closed position. Monthly monitoring requirements are specified in the regulation for the gas collection system. Gas wellhead monitored parameters

include gauge pressure, nitrogen or oxygen concentration, and temperature. Quarterly monitoring is required of methane gas surface concentrations.

3. Reporting requirements are stipulated for landfill design capacity and NMOC emissions rates; submittal of a collection and control system design plan; system start-up; performance testing; system operations; closure notification; and equipment removal.

4. On-site recordkeeping is required with respect to maximum design capacity, current amount of solid waste in-place, year-by-year waste acceptance rate; life of the control equipment, as measured during the initial performance test or compliance determination; and control device specifications until removal.

Details regarding testing, monitoring, recordkeeping, and reporting requirements are stipulated in COMAR 26.11.19.20.D, F, G, and H, which IBR all related and applicable NSPS requirements.

Q: If I modify or expand the capacity of my landfill, what additional requirements must I meet?

A: Any MSW landfill that commences construction, modification, or reconstruction on or after May 30, 1991 is subject to the EPA NSPS for landfills, 40 CFR part 60, subpart WWW.

IV. Final EPA Action

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Maryland MSW landfill 111(d) plan for the control of landfill gas emissions from affected facilities. As provided by 40 CFR 60.28(c), any revisions to the Maryland section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the MDE in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective November 8, 1999 without further notice unless the Agency receives relevant adverse comments by October 8, 1999. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule

will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 8, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review." Because today's rule does not create a mandate on state, local or tribal governments, it 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. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children. 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 E.O. 13084 do not apply to this rule. Under the Regulatory Flexibility Act (RFA), because the Federal 111(d) 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.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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.

B. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule pertaining to the Maryland MSW landfill 111(d) plan does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: August 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR Part 62, Subpart I, is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart V—Maryland

2. Subpart V is amended by adding an undesignated center heading and sections 62.5150, 62.5151, and 62.5152 to read as follows:

Landfill Gas Emissions from Existing Municipal Solid Waste Landfills (Section 111(d)) Plan

§ 62.5150 Identification of plan.

On March 23, 1999, the Maryland Department of the Environment submitted to the Environmental Protection Agency a 111(d) Plan to implement and enforce the requirements of 40 CFR part 60, subpart Cc, Emissions Guidelines for Municipal Solid Waste Landfills.

§ 62.5151 Identification of sources.

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

§ 62.5152 Effective date.

The effective date of the plan for municipal solid waste landfills is November 8, 1999.

[FR Doc. 99-23189 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-P

**GENERAL SERVICES
ADMINISTRATION****48 CFR Parts 552, 553, and 570**

RIN 3090-AE90

**General Services Administration
Acquisition Regulation**

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Correction to Interim rule.

SUMMARY: This document corrects the interim final rule, which published July 9, 1999 (64 FR 37200), by adding an authority citation in 3 places.

DATES: Effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division (202) 208-6726.

SUPPLEMENTARY INFORMATION: GSA published a document in the **Federal Register** of July 9, 1999 (64 FR 37200) which was missing an authority citation in 3 separate places. This document corrects the error.

In rule document 99-15961 published in the **Federal Register** July 9, 1999, beginning on page 37200, insert the authority citation at the end of the Table of Contents for Parts 552 and page 37230 and 570 on page 37266, and at the end of the paragraph for part 553 page 37265 to read as follows:

Authority: 40 U.S.C. 486(c).

Dated: September 1, 1999.

J. Les Davison,

*Acting Deputy Associate Administrator for
Acquisition Policy.*

[FR Doc. 99-23255 Filed 9-7-99; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AC31

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the FDIC (Board) is proposing several changes to the FDIC's regulation governing assessments. The Board is proposing to change the reporting date used to determine the capital component of the assessment risk classifications assigned to FDIC-insured depository institutions. The proposal is to move that date closer by one calendar quarter to the assessment period for which the capital component is assigned. This change would permit the FDIC to use more up-to-date information in determining institutions' assessment risk classifications. The proposed date would coincide with the date currently used to determine the supervisory component of the assessment risk classification.

To permit the use of more up-to-date capital information, the Board is further proposing to shorten from 30 days to 15 days the prior notice that the FDIC sends to institutions advising them of their assessment risk classifications for the following semiannual assessment period. The same reduction is proposed for the invoice sent by the FDIC each quarter showing the amount of the assessment payment due for the next quarterly collection. At the other end of the process, the Board is proposing to increase from 30 days to 90 days the time within which an institution may request review of its assessment risk classification.

Additionally, to reflect a shift of certain assessment functions within the FDIC, the Board is proposing to revise two of the references in the regulation to FDIC offices or officials. Finally, the proposal would correct a typographical

error in the form of a misstated cross-reference to another FDIC regulation.

DATES: Written comments must be received by the FDIC on or before October 25, 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 7:00 a.m. and 5:00 p.m. on business days. Comments may also be faxed to (202) 898-3838, or sent via the Internet to comments@fdic.gov. Comments will be available for inspection and photocopying at the FDIC Public Information Center, Room 100, 801 17th Street, NW, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James W. Thornton, Senior Banking Analyst, Division of Insurance, (202) 898-6707; or Claude A. Rollin, Senior Counsel, Legal Division, (202) 898-8741, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Capital Group Determination Date

At present, the FDIC's risk-based assessments regulation specifies that the capital component of the assessment risk classification assigned to each FDIC-insured institution for each semiannual assessment period will be determined on the basis of data reported by an institution in its Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (collectively, call reports) for the quarter ending six months earlier (12 CFR 327.4(a)(1)). As a result, an institution's capital group is assigned on the basis of information that is approximately six months old when the assessment period begins. While the FDIC has long preferred to use more current information, it has been constrained from doing so because of the time needed to process the capital data submitted by institutions in their call reports.¹ However, recent

developments, such as improvements in the FDIC's internal processing procedures and an increase in the number of institutions filing reports electronically, now permit more rapid processing of the data. Accordingly, the Board is proposing to base capital group determinations on data reported by institutions in their call reports for the quarter ending three months before the beginning of the assessment period to which the determination will apply.

For ease of reference, the dates for capital group determinations would be stated in terms of actual dates—that is, March 31 for the semiannual period beginning the following July 1, and September 30 for the semiannual period beginning the following January 1. At present, the capital date is described by reference to other dates rather than specifically stated.

It is anticipated that this change would be effective beginning with the semiannual assessment period that commences July 1, 2000. For that period, the capital component of an institution's assessment risk classification would be determined based on data reported as of March 31, 2000, rather than as of December 31, 1999.

Change in Notice Dates for Assessment Risk Classifications and Quarterly Payment Invoices

The Board also is proposing to shorten—from 30 days to 15 days—the time between the date institutions are notified of their assessment risk classifications for the upcoming semiannual assessment period and the date the assessment is collected for the first quarter of that upcoming period. The same reduction is proposed, for both the first and second quarters of each semiannual assessment period, in the time between the date of the quarterly assessment invoice and the date the invoiced amount is collected.

Currently, the FDIC's assessments regulation specifies that notice of the assessment risk classification applicable to a particular semiannual period is to

as omitted information) and then input into the FDIC's automated system. Only after this has been done can the calculations be performed to determine the appropriate capital group assignment for each of the more than 10,000 insured institutions. These functions must be performed in time to prepare and mail notices to each institution before the beginning of the next semiannual assessment period.

¹ Institutions have 30 days (or 45 days for institutions with foreign branches) from quarter-end to file their call reports. Once the FDIC receives the reports, they are checked for obvious errors (such

be provided to the institution at the same time as the invoice showing the amount of the assessment payment due from the institution for the first quarter of that semiannual period (12 CFR 327.4(a)). This invoice and notice are to be provided no later than 30 days before the first-quarter payment date (12 CFR 327.3(c)). The regulation further requires that an invoice showing the amount of the assessment payment due for the second quarter of the semiannual period is to be provided no later than 30 days before the second-quarter payment date (12 CFR 327.3(d)).

The Board is proposing to reduce to 15 days each of these 30-day periods. For the first-quarter notice and invoice, the reduction is necessary to permit the use of more current capital data in determining an institution's capital group and, based on that determination, to calculate the institution's first-quarter assessment payment.

For example, if the date of the data used as a basis for capital group assignments for the assessment period beginning July 1 is changed from December 31 to March 31, and the prior-notice date remains May 30 (which is 30 days before the June 30 payment date), the FDIC would have as little as 15 to 30 days to receive the data, scan the reports, input the information into the FDIC's system, perform capital group calculations for more than 10,000 institutions, and prepare and mail the assessment notices. Although the call report filing deadline for most institutions is 30 days after the end of the quarter (April 30 in this example), the deadline for institutions with foreign offices is 15 days later (here, May 15). Although internal processing improvements and increased electronic filing allow the FDIC to perform these functions more quickly, the FDIC cannot perform them in 30 days.

For consistency, the same reduction in the invoicing period is proposed for both the first-and second-quarter assessment payments.

It is not anticipated that reduction of the notice and invoice periods would have a significantly adverse impact on insured institutions. The risk-based assessment system has been in place since 1993 and the industry is quite familiar with it. Institutions typically know (or can anticipate with substantial certainty) the assessment risk classification and corresponding assessment rate² they will be assigned

for the next assessment period. For the second quarter of a semiannual period, institutions will have known their capital category for three months. An institution also knows the amount of its assessment base for each quarter, since that amount is calculated from data reported by the institution. By multiplying its rate by its assessment base, an institution can very closely estimate its payment well before it receives a FDIC assessment notice.

The proposed change should have little effect on the small number of institutions that believe they have received an incorrect assessment classification. Even with the existing notice and invoice dates, requests for review of assessment ratings that result in favorable changes for requesting institutions can only rarely be decided before the date on which the institution is required to pay the invoiced amount.

Institutions are also able to anticipate their Financing Corporation (FICO) assessment, which the FDIC bills and collects on FICO's behalf. Although the FICO assessment rate varies from one quarter to the next, the variation is typically small. Thus, under normal circumstances, institutions can estimate with reasonable accuracy the amount of their assessment payments well in advance of the payment date. However, the Board recognizes that there might be some instances in which significant developments could reduce that accuracy, such as significant changes in the assessment base for one or both of the deposit insurance funds that might cause material changes in the FICO assessment rates. In these cases, the FDIC intends to provide notice as early as possible through such means as mailings to insured institutions.

An example of a development expected to cause significant changes in FICO assessments is the statutory equalization of the FICO assessment rate applicable to deposits insured by the Bank Insurance Fund (BIF) with the rate for deposits insured by the Savings Association Insurance Fund (SAIF). However, under existing law, that change is to become effective on January 1, 2000, six months before the anticipated implementation of the changes proposed here. Thus, there would be sufficient time to adjust to the newer, equalized FICO rates before the shorter notice period is implemented.

days before the assessment payment date). Under the proposal to move the assessment notice date closer to the payment date, an adjustment announcement would come at least 30 days before the assessment payment date.

Extension of Period for Requesting Reclassification

Another change proposed by the Board is to lengthen the period during which an institution may seek a change in its assessment risk classification. At present, the FDIC's assessments regulation requires that a request that the FDIC review an institution's classification be submitted within 30 days of the date of the notice by which the FDIC informs the institution of its classification (12 CFR 327.4(d)). Based on the FDIC's experience with the review process and the proposed reduction of the existing prior-notice period, the FDIC has concluded that a longer period would be beneficial. Thus, the Board is proposing to expand the time for requesting review to 90 days.

Redesignations Resulting From Internal FDIC Reorganization

In order to reflect reorganizations within the FDIC, the Board is further proposing to amend the assessments regulation to provide that requests for review of assessment risk classifications be submitted to the Director of the Division of Insurance, instead of the Director of the Division of Supervision. Similarly, the Board proposes to move from the Director of the Division of Supervision to the Director of the Division of Insurance the existing delegation of authority in 12 CFR 327.4(d) to act on most such requests. However, the authority to act on requests for changes in the supervisory subgroup assignment would remain with the Director of the Division of Supervision if the request is based on the appropriateness of that assignment as of the date set for determining supervisory subgroup assignments. This delineation of the delegated authority is represented by the phrase "as appropriate" in the proposed revision, which reads as follows: "Upon completion of a review, the Director of the Division of Insurance (or designee) or the Director of the Division of Supervision (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether reclassification is warranted."

Correction of Cross Reference

Section 327.5(f) of the FDIC's assessments regulation imposes disclosure restrictions regarding the supervisory subgroup assigned by the FDIC. At present, this section gives an erroneous cross-reference to another, nonexistent, section of the FDIC's regulations to identify the category of exempt information into which the

² In the event the Board makes a limited adjustment to the assessment rate schedule pursuant to the FDIC's assessments regulation at 12 CFR 327.9(c), the adjustment is to be announced no later than 15 days before the assessment notice date (which under the existing regulations is, in turn, 30

supervisory subgroup information fits. The proposal corrects this erroneous cross-reference.

Request for Comment

The Board requests comment on the proposed regulatory amendments described above. In particular, comment is requested regarding any adverse impact the shorter notice periods might have. If it is believed that a 15-day notice period would be insufficient, comment is requested as to what period would be minimally sufficient to prove reasonable notice.

Comment is further requested on any alternative means of permitting the use of more up-to-date capital data without shortening the notice periods. Possible alternatives might include, for example, moving the assessment payment date to a later date. It is requested that suggestions for alternative means to those proposed by the Board include a discussion of any benefits and disadvantages associated with the alternatives suggested.

The comment period has been set at 45 days to allow the proposal, if adopted, to be implemented beginning with the second semiannual assessment period of 2000 and to give insured institutions as much time as possible before implementation to adjust to the changes. The Board wishes to address the proposal expeditiously because of its belief that the use of more current capital data would be of significant benefit for both the industry and the risk-based assessment system.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No new or increased reporting, recordkeeping, or other compliance requirements would be imposed by the proposed rule. Of the changes proposed, only one—lengthening the time for filing requests for review of assessment risk classifications—addresses actions to be initiated by insured institutions. The remaining proposals address actions to be undertaken by the FDIC. The proposal addressing actions to be initiated by institutions would relax an existing time restriction, and it is expected that any impact on insured institutions, of whatever size, would be positive rather than adverse.

Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed amendment would not affect

family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Section 327.3 is amended by removing the phrase “30 days” and adding in its place the phrase “15 days” in paragraphs (c)(1) and (d)(1), respectively.

3. Section 327.4 is amended by removing the citation to “309.5(c)(8)” in paragraph (e) and adding in its place the citation “309.5(g)(8)”, and by revising paragraphs (a)(1) introductory text and (d) to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) Capital factors. Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the following July and as of September 30 for the assessment period beginning the following January 1.

* * * * *

(d) Requests for review. An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 90 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (a) of this section. The request shall be submitted to the Corporation's Director of the Division of Insurance in Washington, DC, and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of

the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance (or designee) or the Director of the Division of Supervision (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether reclassification is warranted. Notice of the procedures applicable to reviews will be included with the assessment risk classification notice to be provided pursuant to paragraph (a) of this section.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–23266 Filed 9–7–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This proposal would require replacement of the fuel tube connecting the flowmeter to the Integrated Drive Generator (IDG) and the fuel tube(s) connecting the Main Engine Control (MEC) or Hydromechanical (HMU) to the flowmeter with improved fuel tubes. This proposal is prompted by reports of fuel leaking in the core cowl cavity under high pressure that can be ignited by the hot engine case temperatures. The actions specified by the proposed AD are intended to prevent high-pressure fuel leaks caused by improper seating of fuel tube flanges, which could result in an engine fire and damage to the airplane.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-24-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, c/o Commercial Technical Publications, 1 Neumann Way, Room 230, Cincinnati, OH 45215-1988; telephone (513) 552-2005, fax (513) 552-2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7178, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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-NE-24-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-24-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) received reports of 21 incidents of fuel leaks on General Electric Company (GE) CF6-80C2 series engines at the fuel tube flanges at either the tube connecting the Main Engine Control (MEC) or Hydromechanical Unit (HMU) to the fuel flowmeter or the tube connecting the fuel flowmeter to the Integrated Drive Generator (IDG) cooler. Five of the incidents resulted in in-flight engine shutdowns, with the majority directly attributable to incorrect flange seating of one of the fuel tube flanges. One of these events resulted in an engine fire on a Boeing 747-400 aircraft. This engine fire was caused by fuel leaking due to improper fuel tube flange seating at the inlet mating flange end of the tube connecting with the IDG cooler. The improper fuel tube flange seating condition, if not corrected, could result in high-pressure fuel leaks, which could result in an engine fire and damage to the airplane.

The FAA has reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. 73-A224, Revision 2, July 9, 1997, that describes procedures for replacing the fuel flowmeter to IDG cooler fuel tube with an improved tube; and ASB No. 73-A0231, Revision 1, May 3, 1999, that describes procedures for replacing the MEC or HMU to fuel flowmeter fuel tubes with improved tubes.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, the proposed AD would require replacement of the fuel flowmeter to IDG cooler fuel tubes and MEC or HMU to fuel flowmeter fuel tubes with improved tubes. The improved design fuel tube prevents hang-up of the flange on the tube, thus allowing proper flange seating. The replacement would be required at the next time the tubes are disconnected, or the next shop visit after the effective date of this AD, whichever occurs first. The actions are required to be

accomplished in accordance with the ASBs described previously.

There are approximately 2,693 engines of the affected design in the worldwide fleet. The FAA estimates that 581 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 0.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Of the 581 engines, some have already complied with the ASBs. Required parts for complying with ASB 73-A224 would cost approximately \$659 per engine for the remaining 35 domestic engines. To comply with ASB 73-A0231, required parts would cost \$2,858 per engine for the remaining 204 domestic Full Authority Digital Engine Control (FADEC) engines, and \$1,229 per engine for the remaining 204 domestic Power Management Control (PMC) engines. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$856,813.

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:

General Electric Company: Docket No. 99-NE-24-AD.

Applicability: General Electric Company (GE) CF6-80C2 A1/ A2/ A3/ A5/ A8/ A5F/ B1/ B2/ B4/ B6/ B1F/ B2F/ B4F/ B6F/ B7F/ D1F turbofan engines, installed on but not limited to Airbus Industrie A300-600/ 600R series and A310-200Adv/ 300 series, and Boeing 747-200/ 300/ 400 series and 767-200ER/ 300/ 300ER/ 400ER and McDonnell Douglas MD-11 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent improper fuel tube flange seating, resulting in high pressure fuel leaks, which could result in an engine fire and damage to the airplane, accomplish the following:

(a) At the next time the tubes are disconnected for on-wing maintenance, or the next shop visit after the effective date of this AD, whichever occurs first, replace the old configuration fuel tubes with the improved tubes, as follows:

(1) Replace the fuel flowmeter to Integrated Drive Generator (IDG) cooler fuel tube, part number (P/N) 1321M42G01, with a serviceable part in accordance with paragraph 2 of GE Alert Service Bulletin (ASB) No. 73-A224, Revision 2, July 9, 1997 and perform a leak check after accomplishing the replacement.

(2) Replace Main Engine Control (MEC) to fuel flowmeter fuel tube, P/N 1334M88G01, and bolts, P/N MS9557-12, with serviceable parts, in accordance with paragraph 3A for engines with Power Management Controls, or Hydromechanical Unit (HMU) to fuel flowmeter fuel tubes, P/Ns 1383M12G01 and 1374M30G01 with serviceable parts, in accordance with paragraph 3B for engines with Full Authority Digital Electronic Controls, in accordance with GE ASB No. 73-A0231, Revision 1, May 3, 1999; and perform a leak check after accomplishing the replacement.

Note 2: Information on performing the leak check can be found in the Aircraft Maintenance Manual, 71-00-00.

(b) For the purpose of this AD, a shop visit is defined as any time an engine is removed from service and returned to the shop for any maintenance.

(c) For the purpose of this AD, a serviceable part is defined as any part other than tube, P/N 1321M42G01, for the fuel flowmeter to IDG cooler; tube; P/N 1334M88G01, and bolt, P/N MS9557-12, for the MEC to fuel flowmeter tube; and tubes, P/Ns 1383M12G01 and 1374M30G01, for the HMU to fuel flowmeter fuel tubes.

(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, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

Issued in Burlington, Massachusetts, on August 30, 1999.

David A. Downey,

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

[FR Doc. 99-23254 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99-NE-34-AD]

RIN 2120-AA64

Airworthiness Directives; AlliedSignal Inc. 36-300(A), 36-280(B), and 36-280(D) Series Auxiliary Power Units

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 AlliedSignal Inc. 36-300(A), 36-280(B), and 36-280(D) series Auxiliary Power Units (APUs). This proposal would require installation of an external load compressor containment shield, or installation of a load compressor impeller with lower stress

concentrations. This proposal is prompted by reports of load compressor impeller failures. The actions specified by the proposed AD are intended to prevent an uncontained APU failure and damage to the airplane.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-34-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64-3/2101-201, P.O. Box 29003, Phoenix, AZ 85038-9003; telephone (602) 365-2493, fax (602) 365-5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; telephone (562) 627-5251, 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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-34-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-34-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of load compressor impeller cracks on AlliedSignal Inc. 36-300(A), 36-280(B), and 36-280(D) series Auxiliary Power Units (APUs). In three incidents, the load compressor impellers separated, resulting in uncontained APU failures and debris entering the APU compartment. Uncontained APU failures potentially could damage wiring, control and fluid lines, and airplane structure. Investigation revealed that the outboard rim of the load compressor impeller can crack at the damper ring groove location. Cracks propagate circumferentially, leading to loss of sections of the rim from the impeller. The load compressor impeller was designed with a damper ring. The damper ring retention groove was machined into the impeller with a tight radius at the corners. The resulting high stress concentrations caused cracking which progresses circumferentially allowing pieces of the rim to fail radially outward. The condition is most acute on impellers that were originally manufactured with a 0.005 inch radius. Some of these parts were subsequently modified to 0.035 inch radius and carry a 3822270-4 part number (P/N) designation. All of the parts that have failed in service accumulated a portion of their operating time with the 0.005 inch radius condition. The P/N 3822270-5 configuration was originally manufactured with the 0.035 inch radius. Although none of the -5 parts have failed in service, the stress concentration at the 0.035 inch radius is sufficiently high to initiate low cycle fatigue cracking at higher service times. Four -5 configuration parts have been tested to failure by the manufacturer

confirming the identical failure modes with the -4 parts, the difference being initiation time taking longer on the -5 part. This condition, if not corrected, could result in an uncontained APU failure and damage to the airplane.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36-49-7471, dated April 20, 1999, GTCP36-49-7472, dated March 31, 1999, and GTCP36-49-7473, dated March 31, 1999, that describe procedures for installation of an external load compressor containment shield.

Since an unsafe condition has been identified that is likely to exist or develop on other products of the same design, the proposed AD would require installation of an external load compressor containment shield at the next shop visit, or 6 months after the effective date of this AD, whichever occurs first. The 6 month time frame is based upon engineering assessment of the risk of operating without containment. An additional compliance option would be installation of a load compressor impeller, P/N 3822270-5, to extend cyclic service life to 26,000 cycles-since-new (CSN) before mandatory installation of the containment shield. Operators cannot operate with a load compressor installed, P/N 3822270-5, past 26,000 CSN unless they have installed an external containment shield. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 1,044 APUs of the affected design in the worldwide fleet. The FAA estimates that 465 APUs installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 6 work hours per Model 36-300(A) APU (85 units) to accomplish the proposed actions, and 8 work hours per Model 36-280(D) APU (380 units), and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$3,103 per APU. Fifteen installations on domestic Boeing 737 aircraft (Model 36-280(B)) would require a tube assembly kit, which would cost approximately \$1,042. The manufacturer has informed the FAA that it may offset some of these costs thereby lowering the total cost to operators. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be \$1,725,270.

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:

AlliedSignal Inc.: Docket No. 99-NE-34-AD.

Applicability: AlliedSignal Inc. 36-300(A), 36-280(B), and 36-280(D) series Auxiliary Power Units (APUs), installed on but not limited to Airbus Industrie A319, A320, and A321 series; Boeing 737-300, -400, -500 series; and McDonnell Douglas MD-80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification,

alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained APU failure and damage to the airplane, accomplish the following:

(a) For APUs with load compressor impellers, part number (P/N) 3822270-4, at the next shop visit, or within 6 months after the effective date of this AD, whichever occurs first, accomplish either of the following:

(1) Install an external load compressor containment shield in accordance with AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36-49-7471, dated April 20, 1999, GTCP36-49-7472, dated March 31, 1999, and GTCP36-49-7473, dated March 31, 1999, as applicable; or

(2) Install load compressor impeller, P/N 3822270-5.

(b) For APUs with load compressor impellers, P/N 3822270-5, install an external load compressor containment shield within 6 months after the effective date of this AD, or prior to exceeding 26,000 cycles-since-new (CSN), whichever occurs later, in accordance with AlliedSignal Inc. SBs No. GTCP36-49-7471, dated April 20, 1999, GTCP36-49-7472, dated March 31, 1999, and GTCP36-49-7473, dated March 31, 1999, as applicable.

(c) Operators cannot operate with a load compressor, P/N 3822270-5, installed, past 26,000 cycles unless they have installed an improved external containment shield.

(d) For the purpose of this AD, a shop visit is defined as when the APU is inducted into a shop for any reason.

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

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

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

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

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99-23284 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-13-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL-6432-8]

Source Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona.

DATES: Comments must be received on or before October 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR-8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR-8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1246.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - A. Action
 - B. Facility
 - C. Attainment
 - D. Visibility
 - E. Jurisdictional Issue
- II. Basis for Proposed Action
 - A. EPA's Authority to Promulgate a FIP in Indian Country
 - B. Relation to Tribal Authority Rule
- III. Navajo Generating Station—Facility Description
- IV. Summary of FIP Provisions
 - A. State Standards
 - B. Visibility FIP
 - C. Acid Rain Requirements
 - D. Proposed FIP Standards
 - E. Summary of Changes from State Standards
 - F. Compliance Schedule
- V. Solicitation of Comments
- VI. Administrative Requirements
 - A. Executive Order 12866
 - B. Regulatory Flexibility
 - C. Unfunded Mandates Reform Act
 - D. Paperwork Reduction Act
 - E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - F. Executive Order 12875: Enhancing the Intergovernmental Partnership
 - G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
 - H. National Technology Transfer and Advancement Act

I. Background

A. Action

In today's action, EPA proposes to federalize standards from the Arizona state implementation plan (SIP) and permits issued pursuant to the SIP, applicable to the Navajo Generating Station. Where necessary, EPA's proposed emission standards and associated requirements modify those extracted from Arizona's regulatory programs to ensure comprehensive emission control and federal consistency.

B. Facility

NGS is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation. Through lease agreements, the facility utilizes real property held in trust by the federal government for the Navajo Nation. The facility operates three units, each with a capacity of 750 megawatts (MW).

NGS is located just east of Page, Arizona, approximately 135 miles north of Flagstaff. Operations at the facility produce emissions of sulfur dioxide (SO₂), nitrogen dioxide (NO_x) and particulate matter (PM).

C. Attainment

NGS is located in the Northern Arizona Intrastate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). 40 CFR 81.303. As the NGS proposed FIP merely federalizes the regulatory scheme with which the plant has been complying, EPA believes that air quality, and hence the attainment status, in this area will not be negatively impacted by this action.¹

D. Visibility

Sections 169A and 110(c) of the Act require EPA to take appropriate measures to remedy certified visibility impairments in mandatory Class I areas where the visibility impairment is reasonably attributed to a specific source. On September 5, 1989, EPA preliminarily attributed a significant portion of wintertime visibility impairment in the Grand Canyon National Park to NGS (54 FR 36948). On October 3, 1991, EPA revised the visibility FIP for the state of Arizona to include an SO₂ emission limit for NGS to remedy visibility impairment in the

¹ A different conclusion may be reached by EPA, however, if, for example, there were evidence that the source to be regulated by the FIP is causing or contributing to violations of the applicable NAAQS, or was located in an area that is designated nonattainment for such NAAQS.

Grand Canyon National Park. 56 FR 50172, 40 CFR 52.145. Under the visibility FIP, NGS is required to phase-in compliance with the SO₂ emission limit, by unit, in 1997, 1998, and 1999.

The visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the visibility FIP.

E. Jurisdictional Issue

Historically, emissions of air pollutants from the NGS facility have been regulated under provisions of the Arizona air pollution control program, in accordance with the Arizona SIP. However, States are generally precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Both the Navajo Nation and members of the regulated community have queried EPA concerning the jurisdictional issue of who has authority under the Act to regulate air emissions from NGS. Upon review of the circumstances surrounding the location and operation of NGS on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation. EPA met with representatives of the State of Arizona, the Navajo Nation and NGS to discuss this jurisdictional issue. All parties have expressed agreement with this conclusion.

II. Basis for Proposed Action

A. EPA's Authority To Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over NGS lies with EPA and the Navajo Nation necessarily leads to the conclusion that a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will in essence federalize the Arizona SIP and permit requirements with which the facility has been complying.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as states. See CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section

301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR".

In the preamble to the proposed² and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254-7259; 59 FR 43958-43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands. See 63 FR 7262; 59 FR 43960-43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA

"shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan." 63 FR at 7273 (codified at 40 CFR 49.11(a)).³

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR 43961.

The Navajo Nation has expressed a strong interest in seeking authority

under the TAR to regulate sources of air pollution located on the Reservation under the Clean Air Act. Based on discussions with the Tribe, however, EPA believes that it will be at least several months before the Tribe will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, when they do so, the Tribe intends to build its capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. The Tribe has advised EPA that it continues to support EPA's efforts to impose such controls on NGS as are necessary to ensure continued compliance with the substantive requirements of the Arizona SIP and permits, notwithstanding the recent promulgation of the TAR.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a federal implementation plan in order to remedy an existing regulatory gap under the Act with respect to NGS. Although the facility has been historically regulated by Arizona for the most part since its construction, the state lacks jurisdiction over the facility or its owners or operators for CAA compliance or enforcement purposes. The Tribe has not submitted a tribal implementation plan to address emissions from NGS and has indicated to EPA that it prefers to have EPA address the emissions from NGS at this time. Since the Navajo Nation does not presently have a federally approved TIP, in the absence of a comprehensive FIP the applicable regulatory requirements arising under state law would not be enforceable. EPA's FIP will federalize requirements contained in the Arizona SIP that were applicable to NGS and permits issued pursuant to the SIP. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are both necessary and appropriate to protect air quality on the Reservation.

B. Relation to Tribal Authority Rule

As discussed above, under section 301(d) of the Act, a tribe may develop and implement one or more of its own air quality programs under the Act through a Tribal Air Program. On February 12, 1998, EPA promulgated regulations under Section 301(d) of the Act which provide the framework for tribes to obtain authority to administer federally-approved and federally-enforceable programs under the Act, including tribal implementation plans. See 59 FR 43956, August 25, 1994

² See 59 FR 43956 (August 25, 1994).

³ In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two year period for tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR 7264-7265.

(proposed rule) and 63 FR 7254, February 12, 1998 (final rule).

The Navajo Nation now has the option of assuming responsibility for the development and implementation of federally enforceable air quality programs under the Clean Air Act. Until a federally approved Navajo Nation TIP is in place with regulations which cover NGS, however, EPA has exclusive jurisdiction to regulate the source under the Act. Once final, the regulations proposed today will remain in effect until a TIP governing NGS is in place and the FIP is withdrawn.

III. Navajo Generating Station—Facility Description

The NGS is a 2250 MW coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona. The NGS is a baseload generating station consisting of three 750 MW units which became operational between 1974 and 1976. The Salt River Project (SRP) is the operating agent for NGS which is jointly owned by SRP, the Los Angeles Department of Water and Power, the Arizona Public Service, the Nevada Power Company, and the Tucson Electric Power Company. Existing pollution control equipment at NGS includes electrostatic precipitators for PM removal and specific burners designed for NO_x control. Furthermore, the visibility FIP for the State of Arizona includes an SO₂ emission limit for the NGS. NGS installed limestone wet scrubbers on each unit to reduce SO₂ emissions by 90%. These scrubbers are now fully operational. Compliance with the SO₂ emission limit in the visibility FIP will be determined on a plant-wide annual rolling average basis (see 40 CFR 52.145).

IV. Summary of FIP Provisions

A. State Standards

The standards in this FIP proposal are generally based on the state standards under which the facility has been operating (NGS must also continue to comply with all other applicable federal requirements). These standards, derived from the Arizona SIP and operating permit, are summarized as follows:

1. Particulate matter emissions were limited to 17.0 times $Q^{0.4320}$ pounds per hour where Q is million BTU per hour of heat input to the boilers.

2. Opacity was limited to 40 percent.

3. Sulfur oxides emissions were limited to one pound per million BTU, per unit, three-hour average.

B. Visibility FIP

Under the visibility FIP, SO₂ emissions are limited to 0.1 pounds per

million BTU on a plant-wide rolling annual basis, and scrubbers must be installed and operable on all three units by August 19, 1999. The scrubbers were installed and operating on the last of the three units in February, 1999.

The SO₂ scrubbers will substantially lower the SO₂ emissions from Navajo Generating Station. When the scrubbers are operating, SO₂ emissions will be less than .1 pounds per million BTU. The visibility FIP standards are an annual average, as this was determined to be protective of visibility resources in the Grand Canyon.

The visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the visibility FIP.

C. Acid Rain Requirements

NGS is subject to Acid Rain requirements. They elected to comply early as a Phase I NO_x facility; this means they have a NO_x limit of .45 pounds per million BTU, per unit, on an annual basis. This limit applies until 2008, when it will be lowered to .40 pounds per million BTU. NGS also has specific SO₂ allowances per unit.

D. Proposed FIP Standards

1. Particulate matter is limited to 0.060 pounds per million BTU averaged over a six hour period, on a plant-wide basis.

2. Opacity is limited to 40 percent averaged over a six minute period, excluding water vapor.

3. SO₂ emissions are limited to 1 pound per million BTU averaged over a three hour period, on a plant-wide basis.

E. Summary of Changes From State Standards

1. The particulate emissions standard was changed from 17.0 $Q^{0.4320}$ pounds per hour (where Q is million BTU per hour) to 0.060 pounds per million BTU because this standard is a generally recognized form for the particulate standard and it is more reliably measured. The stringency of the new standard approximates the old standard: Using EPA policy of conducting emissions tests at 90 percent to 100 percent of the facility's full load, the original Arizona equation yields estimated allowable emissions of between .057 and 0.061 pounds per million BTU. Thus, a limit of .060 lb/MMbtu is appropriate.

The FIP we are proposing specifically states that the particulate standard will be measured on a plant-wide basis.

Although the Arizona permit did not state this explicitly, this was the way that Arizona determined compliance at the NGS historically.

2. The proposed opacity standard specifically excludes water vapor. NGS has opacity monitors on each of its stacks; water vapor, which will be present in all stacks because of the SO₂ scrubbers, causes inaccurate excess emission readings on the opacity monitors.

3. The standard for SO₂ is slightly changed. The method of compliance determination has been changed from one based on the sulfur content of coal to one based on continuous emission monitoring (CEM). The facility has experienced difficulty with the analysis of the sulfur content of coal, and the federal acid rain regulations require CEM monitoring. CEM monitoring is generally recognized as being more accurate and precise than monitoring the sulfur content of coal.

Compliance with the Arizona permit limits was determined on a per-unit basis. NGS complied with these limits by using very low sulfur coal. Now, because of the presence of the scrubbers, NGS will be able to comply with its short-term limits by removing sulfur from the exhaust stream. This will allow them to purchase slightly higher sulfur coal; additionally, the plant-wide average allows one scrubber to be down for periodic maintenance (lasting usually 30 to 40 days) without requiring the purchase of specific low sulfur coal for use during the maintenance. Nevertheless, the actual emissions will remain 90% lower on an annual basis than they were before the scrubbers were installed.

4. A number of other changes were made relative to the Arizona SIP making the FIP specific to NGS and to conform to EPA excess emissions and other reporting and quality assurance procedures.

F. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, since the emission limits established by the proposed FIP are presently being achieved at the facility.

V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from NGS. Interested parties should submit comments to the address cited in the front of this proposed rule. Public comments postmarked by

October 8, 1999 will be considered in the final action taken by EPA.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all “regulatory actions” that are “significant” are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A “regulatory action” is defined as “any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking.” A “regulation or rule” is defined as “an agency statement of general applicability and future effect, * * *.”

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a “regulatory action” under E.O. 12866.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000. The federal implementation plan for the Navajo Generating Station proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency’s certification need only consider the rule’s impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today’s action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written

statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain “federal mandates” 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 in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no federal mandates on state, local or tribal governments, because it will not impose any enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of \$100 million or more by the private sector in any one year. Although the proposed FIP would impose enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not

apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today’s proposed action.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for “answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.” 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) Is determined to be “economically significant” as that term is defined in 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The NGS FIP is not subject to E.O. 13045 because it implements previously promulgated health or safety-based federal standards.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA’s prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA’s position 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."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will 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. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 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."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of NGS. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

As discussed above, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (e.g. materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

A consensus standard, ASTM D6216-98, appears to be practical for use in lieu of EPA Performance Specification 1 (see 40 CFR part 60, appendix B) for the opacity monitoring to be required for this facility. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216-98 into Performance Specification 1 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. EPA plans to complete this action in the near future. As it would be impractical for EPA to act independently from rulemaking activity already undergoing notice and comment, EPA defers taking action in the current rulemaking that would immediately adopt D6216-98, and we will therefore require use of EPA Performance Specification 1 in the interim.

In regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60 appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to

incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 through 5

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring

SO₂—EPA Method 6C and Performance Specification 2 for Continuous SO₂ Monitoring

List of Subjects

40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 27, 1999.

Carol M. Browner,
Administrator.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

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

2. Part 49 is proposed to be amended by adding § 49.20 to read as follows:

§ 49.20 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) in the Navajo Indian Reservation located in the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon promulgation unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Administrator* means the Administrator of the Environmental Protection Agency or his/her authorized representative.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a

defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(3) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises NGS, any of the fossil fuel-fired, steam-generating equipment at NGS, or the auxiliary steam boilers at NGS.

(5) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler.

(6) *Shutdown* shall be the period from cessation of coal fires in the boiler until the electrostatic precipitator is de-energized. The precipitator shall be maintained in service until boiler fans are disengaged.

(d) *Emissions Standards*—(1) *Sulfur Oxides*—No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2 or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate Matter*—No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu averaged over a six (6) hour period, on a plant-wide basis.

(3) *Fugitive Dust*—Each owner or operator shall operate and maintain the existing dust suppression methods for controlling fugitive dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Administrator a description of the dust suppression methods for controlling fugitive dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities.

(4) *Opacity*—No owner or operator shall discharge or cause the discharge of emissions into the atmosphere exhibiting greater than 40% opacity,

excluding water vapor, averaged over any six (6) minute period.

(e) *Testing and Monitoring*. (1) Effective sixty (60) days after promulgation of this section, the owner or operator shall maintain and operate CEMS and COMS in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of 40 CFR part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, appendix A.

(3) The owner or operator shall conduct an initial mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the two auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. The test shall then be conducted annually or after 720 hours of operation, whichever is later. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, appendix A.

(4) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(5) All emissions testing and monitor evaluation required pursuant to this section shall be conducted in accordance with the appropriate method found in 40 CFR part 60, appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter (PM_{2.5} and PM₁₀), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR part 58, manufacturer's specification, and "Quality Assurance Handbook for Air Pollution Measurements Systems", Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be made available to the Administrator upon request. All particulate matter samplers shall operate at least every third day, coinciding with the national particulate sampling schedule.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7413, and enforce against any violation of the Clean Air Act or this section.

(f) *Reporting and recordkeeping requirements*. Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Administrator required by this section shall be submitted to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1138, (415) 744-1076 (facsimile). For each unit subject to the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Administrator and postmarked within 60 days of testing.

(2) For excess emissions or a malfunction, notify the Administrator by telephone or in writing within one business day. A complete written report of the incident shall be submitted to the Administrator within fifteen (15) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) The time and duration or expected duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; and

(vii) The steps that were taken or are being taken to limit excess emissions.

(3) Notify the Administrator verbally within one business day whenever an exceedance of the NAAQS has been measured by a monitor operated in accordance with this section. The notification to the Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

(i) The time, date, and location of the exceedance;

(ii) The pollutant and concentration of the exceedance;

(iii) The meteorological conditions existing 24 hours prior to and during the exceedance;

(iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 40% for the 24 hours prior to and during the exceedance; and

(v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances. Compliance with this paragraph (f)(3)(v) shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7 (c) and (d) and appendix F of 40 CFR part 60. Excess opacity due to uncondensed water vapor in the stack does not constitute a reportable exceedance.

(g) *Compliance Certifications.* Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment operations.* The owner or operator shall operate all equipment or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671, *et seq.*

Subpart D—Arizona

2. Subpart D is proposed to be amended by adding § 52.141 to read as follows:

§ 52.141 Federal Implementation Plan for Navajo Generating Station, Navajo Nation.

The Federal Implementation Plan regulating emissions from the Navajo Generating Station near Page, Arizona is codified at 40 CFR 49.20.

[FR Doc. 99–23276 Filed 9–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL–6432–6]

RIN 2060–AF42

Source Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico.

DATES: Comments must be received on or before October 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1246.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - A. Action
 - B. Facility
 - C. Attainment
 - D. Jurisdictional Issue
- II. Basis for Proposed Action
 - A. EPA's Authority to Promulgate a FIP in Indian Country
 - B. Relation to Tribal Authority Rule
- III. Four Corners Power Plant—Facility Description
- IV. Summary of FIP Provisions
 - A. State Standards
 - B. Acid Rain Program Requirements
 - C. Proposed FIP Standards

- D. Summary of Changes From State Standards
- E. Compliance Schedule
- V. Solicitation of Comments
- VI. Administrative Requirements
 - A. Executive Order 12866
 - B. Regulatory Flexibility
 - C. Unfunded Mandates Reform Act
 - D. Paperwork Reduction Act
 - E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - F. Executive Order 12875: Enhancing the Intergovernmental Partnership
 - G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
 - H. National Technology Transfer and Advancement Act

I. Background

A. Action

In today's action, EPA proposes to federalize standards from the New Mexico state implementation plan (SIP) applicable to the FCPP. Where necessary, EPA's proposed emission standards and associated requirements modify those extracted from New Mexico's regulatory programs to ensure comprehensive emission control and federal consistency.

B. Facility

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. Through lease agreements, the facility utilizes real property held in trust by the federal government for the Navajo Nation. The facility operates five units with a total capacity in excess of 2000 megawatts (MW). Operations at the facility produce emissions of sulfur dioxide (SO₂), nitrogen dioxide (NO_x) and particulate matter (PM).

C. Attainment

FCPP is located in the Four Corners Interstate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). 40 CFR 81.332. As the proposed FCPP FIP merely federalizes the regulatory scheme with which the plant has been complying, EPA believes that air quality, and hence the attainment status, in this area will not be negatively impacted by this action.¹

D. Jurisdictional Issue

Historically, emissions of air pollutants from the FCPP facility have

been regulated under provisions of the New Mexico air pollution control program, in accordance with the New Mexico SIP. However, States are generally precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Both the Navajo Nation and members of the regulated community have queried EPA concerning the jurisdictional issue of who has authority under the Act to regulate air emissions from FCPP. Upon review of the circumstances surrounding the location and operation of FCPP on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation. EPA met with representatives of the State of New Mexico, the Navajo Nation and FCPP to discuss this jurisdictional issue. All parties have expressed agreement with this conclusion.

II. Basis for Proposed Action

A. EPA's Authority to Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over FCPP lies with EPA and the Navajo Nation necessarily leads to the conclusion that a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will in essence federalize the New Mexico SIP requirements with which the facility has been complying.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as states. See CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR".

In the preamble to the proposed² and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes

that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254-7259; 59 FR 43958-43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands. See 63 FR 7262; 59 FR 43960-43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA 63 FR at 7273 (codified at 40 CFR 49.11(a)),³ "shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan."

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR at 43961.

The Navajo Nation has expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on the Reservation under the Clean Air Act. Based on discussions with the Tribe, however, EPA believes that it will be at least several months before the Tribe will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, when they do so, the Tribe intends to build its capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. The Tribe has advised EPA that it continues to support EPA's efforts to impose such controls on FCPP as are necessary to

³In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two year period for tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR 7264-7265.

¹A different conclusion may be reached by EPA, however, if, for example, there were evidence that the source to be regulated by the FIP is causing or contributing to violations of the applicable NAAQS, or was located in an area that is designated nonattainment for such NAAQS.

²See 59 FR 43956 (August 25, 1994).

ensure continued compliance with the substantive requirements of the New Mexico SIP, notwithstanding the recent promulgation of the TAR.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a federal implementation plan in order to remedy an existing regulatory gap under the Act with respect to FCPP. Although the facility has been historically regulated by New Mexico since its construction, the state lacks jurisdiction over the facility or its owners or operators for CAA compliance or enforcement purposes. The Tribe has not submitted a tribal implementation plan to address emissions from FCPP and has indicated to EPA that it prefers to have EPA address the emissions from FCPP at this time. Since the Navajo Nation does not presently have a federally approved TIP, in the absence of a comprehensive FIP the applicable regulatory requirements arising under state law would not be enforceable. EPA's FIP will federalize requirements applicable to FCPP contained in the New Mexico SIP. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are both necessary and appropriate to protect air quality on the Reservation.

B. Relation to Tribal Authority Rule

As discussed above, under Section 301(d) of the Act, a tribe may develop and implement one or more of its own air quality programs under the Act through a Tribal Air Program. On February 12, 1998, EPA promulgated regulations under Section 301(d) of the Act which provide the framework for tribes to obtain authority to administer federally-approved and federally-enforceable programs under the Act, including tribal implementation plans. See 59 FR 43956, August 25, 1994 (proposed rule) and 63 FR 7254, February 12, 1998 (final rule).

The Navajo Nation now has the option of assuming responsibility for the development and implementation of federally enforceable air quality programs under the Clean Air Act. Until a federally approved Navajo Nation TIP is in place with regulations which cover FCPP, however, EPA has exclusive jurisdiction to regulate the source under the Act. Once final, the regulations proposed today will remain in effect until a TIP governing FCPP is in place and the FIP is withdrawn.

III. Four Corners Power Plant—Facility Description

The FCPP is a 2040 MW coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. The FCPP consists of three 190 to 253 MW units and two 818 MW units all of which became operational between 1962 and 1970. The Arizona Public Service Company (APS) is the operating agent for FCPP which is jointly owned by the APS, the Southern California Edison Company, the Salt River Project Agricultural Improvement and Power District (SRP), the Public Service Company of New Mexico, the El Paso Electric Company and the Tucson Electric Power Company. Existing pollution control equipment at FCPP units 4 and 5 includes baghouses and lime spray towers for SO₂ control and specific burners designed for NO_x control. Units 1, 2 and 3 each have a venturi scrubber for particulate and SO₂ control.

IV. Summary of FIP Provisions

A. State Standards

The standards in this FIP proposal are generally based on the state standards under which the facility has been operating (FCPP must also continue to comply with all applicable federal requirements). These standards, derived from the New Mexico SIP, are summarized as follows:

1. SO₂ emissions are limited to 28 percent of the SO₂ produced in coal burning or 17,900 pounds per hour based on an averaged three hour period (AQCR 602).
2. Particulate emissions are limited to 0.05 pounds per million BTU (AQCR 504).
3. Excess emissions notification requirements are specified (AQCR 801).

B. Acid Rain Program Requirements

The Federal Acid Rain Program requires that low-NO_x burners be installed on all five units. By the year 2000, Units 1, 2 and 3 (wall-fired boilers) must comply with a .46 lb/MMBtu annual average of NO_x. Units 4 and 5 (cell-fired boilers) must meet a limit of .68 lb/MMBtu.

Emissions of SO₂ are regulated through an allowance system. FCPP has sufficient allowances to cover current emissions.

C. Proposed FIP Standards

1. SO₂ emissions are not to exceed 28 percent of the SO₂ produced in the burning of sulfur-bearing coal (averaged over successive thirty boiler operating day periods station-wide) and not to exceed 17,900 pounds of total SO₂ per

hour averaged over any consecutive three hour period station-wide.

2. Particulate emissions are not to exceed 0.050 pounds per million BTU of heat input.

3. Opacity is limited to 20 percent averaged over a six minute period, for Units 4 and 5.

4. APS will develop a plan to monitor, record and report operating parameters indicative of good operation of the scrubbers for control of particulate matter on Units 1, 2, and 3.

5. Nitrogen oxides are not to exceed 0.85 pounds per million BTU of input for Units 1 and 2, and 0.65 pounds per million BTU of input for Units 3, 4, and 5, averaged over any successive 30 boiler operating day period; nor shall they exceed 335,000 lb per 24-hour period on a station-wide basis. When any one unit is not operating, the limits are reduced by 1542 pounds per hour for units 1, 2, and 3, and by 4667 pounds per hour for units 4 and 5.

D. Summary of Changes From State Standards

1. The NO_x requirements are more stringent than those contained in the New Mexico SIP. These requirements were submitted to EPA, Region 6, on November 4, 1991 as a New Mexico SIP revision, and were not acted on as the SIP has no effect over FCPP.

2. The SIP particulate emissions sampling methods, which were based in part on an analysis of fine particulates, have been changed to EPA methods referenced in federal code (40 CFR part 60, appendix A, Methods 1–5). The fine particulate analysis was not being routinely performed and the EPA methods were in use at the facility. Further, EPA believes that the particulate matter limit is the more stringent of the two emission limits.

3. The standard for opacity has been added in order to confirm Units 4 and 5 are in continuous compliance and are properly operated and maintained. These units operate with baghouses for particulate control and therefore are able to meet this limit.

4. The opacity limit is not being applied to Units 1, 2 and 3. The scrubbers currently in operation on Units 1, 2 and 3 were designed for control of particulate, and were later redesigned to also control sulfur dioxide. However, FCPP cannot currently meet a continuous opacity limit of 20 percent at Units 1, 2 and 3. EPA is proposing that FCPP design and enact a plan to monitor operating parameters such as pressure drop and scrubber liquid flow for the scrubbers. This will yield information about continuous proper operation of the

scrubbers for particulate control. This information could then be used to determine appropriate parameters, which could be included in FCPP's Title V permit as indicators for good particulate matter control practice.

5. The standard for SO₂ is unchanged but the method of compliance determination has been changed to a method based on CEM rather than on stack sampling.

6. A number of other changes were made relative to the New Mexico SIP making the FIP specific to FCPP, and to conform to EPA excess emissions and other reporting and quality assurance procedures.

E. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, since the emission limits established by the proposed FIP are presently being achieved at the facility.

V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from FCPP. Interested parties should submit comments to the address listed in the front of this proposed rule. Public comments postmarked by October 8, 1999 will be considered in the final action taken by EPA.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A "regulatory action" is defined as "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking." A "regulation or rule" is defined as "an agency statement of general applicability and future effect, * * *."

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a "regulatory action" under E.O. 12866.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or

final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The federal implementation plan for the Four Corners Power Plant proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain "federal mandates" 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 in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no federal mandates on state, local or tribal governments, because it will not impose

any enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of \$100 million or more by the private sector in any one year. Although the proposed FIP would impose enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * * ." 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) Is determined to be "economically significant" as that term is defined in 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The FCPP FIP is not subject to E.O. 13045 because it implements previously promulgated health or safety-based federal standards.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position 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."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will 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. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 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."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of FCPP. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12 (10 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable voluntary consensus standards (VCS). For the measurement of the sulfur in the coal for calculating the efficiency of the SO₂ scrubbers for FCCP, EPA proposes to require use of ASTM standards. FCCP would have the ability to choose an applicable ASTM standard for both the coal sample collection and the sulfur in coal analysis.

Another consensus standard, ASTM D6216–98, appears to be practical for use in lieu of EPA Performance Specification 1 (see 40 CFR part 60, appendix B) for the opacity monitoring to be required for this facility. On September 23, 1998, EPA proposed

incorporating by reference ASTM D6216–98 into Performance Specification 1 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. EPA plans to complete this action in the near future. As it would be impractical for EPA to act independently from rulemaking activity already undergoing notice and comment, EPA defers taking action in the current rulemaking that would immediately adopt D6216–98, and we will therefore require use of EPA Performance Specification 1 in the interim.

In regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60 appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR part 60, appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 through 5.

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring.

SO₂—EPA Method 6C and Performance Specification 2 for Continuous SO₂ Monitoring.

NO_x—EPA Method 7E and Performance Specification 2 for Continuous NO_x Monitoring and Performance Specification 6 for Flow Monitoring.

List of Subjects

40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting

and recordkeeping requirements, Sulfur oxides.

Dated: August 27, 1999.

Carol M. Browner,
Administrator.

Title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

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

2. Part 49 is proposed to be amended by adding § 49.21 to read as follows:

§ 49.21 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant ("the Plant") in the Navajo Indian Reservation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon promulgation unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Administrator* means the Administrator of the Environmental Protection Agency (EPA) or his/her authorized representative.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(3) *Air pollution control equipment* includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

(4) *Boiler operating day* means a 24-hour period during which coal is combusted in a Unit for the entire 24 hours.

(5) *Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

(6) *Excess emissions* means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(7) *Heat input* means heat derived from combustion of fuel in a Unit and

does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources.

(8) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(9) *Owner or Operator* means any person who owns, leases, operates, controls, or supervises the Plant or any of the coal burning equipment designated as Units 1, 2, 3, 4, or 5 at the Plant.

(10) *Oxides of nitrogen (NO_x)* means the sum of nitric oxide (NO) and nitrogen dioxide (NO₂) in the flue gas, expressed as nitrogen dioxide.

(11) *Shutdown* means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, shutdown begins when the unit drops below 40 MW net load with the intent to remove the unit from service. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(12) *Startup* means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, startup ends when the unit reaches 40 MW net load. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

(13) *Station-wide basis* means total stack emissions of any particular pollutant from all coal burning equipment at the Plant.

(14) *24-hour period* means the period of time between 12:01 a.m. and 12:00 midnight.

(d) *Emissions Standards.*—(1) *Sulfur Dioxide.* No owner or operator shall discharge or cause the discharge of sulfur dioxide (SO₂) into the atmosphere in excess of:

(i) 28% of that which is produced by the Plant's coal burning equipment, averaged over any successive thirty (30) boiler operating day period, determined on a station-wide basis; and

(ii) 17,900 pounds of total sulfur dioxide emissions per hour averaged over any consecutive three (3) hour period, determined on a station-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the

atmosphere in excess of 0.050 pound per million British thermal unit (lb/MMBtu) of heat input (higher heating value), as averaged over six (6) hours of sampling.

(3) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20% opacity, excluding water vapor, averaged over any six (6) minute period (except for one six (6) minute period per hour of not more than 27% opacity, excluding water vapor).

(4) *Oxides of nitrogen.* No owner or operator shall discharge or cause the discharge of NO_x into the atmosphere:

(i) From either Unit 1 or 2 in excess of 0.85 lb/MMBtu of heat input per unit, and from either Units 3, 4, or 5 in excess of 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating day period;

(ii) In excess of 335,000 lb per 24-hour period when coal burning equipment is operating, on a station-wide basis; for each hour when coal burning equipment is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) *Testing and monitoring.* Upon completion of the installation of continuous emissions monitoring systems (CEMS) software as required in this section, compliance with the emissions limits set for SO₂ and NO_x shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section. Compliance with the emissions limit set for particulate matter shall be determined annually, or at such other time as requested by the Administrator, based on data from testing conducted in accordance with 40 CFR part 60, appendix A, Methods 1 through 5, or any other method receiving prior approval from the Administrator. Upon completion of the installation of continuous opacity monitoring systems (COMS) software as required in this regulation, compliance with the emissions limits set for opacity shall be determined by using data from a COMS except during saturated stack conditions (condensed water vapor). If the baghouse is operating within its normal operating parameters and a high opacity reading occurs it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered an excess emission.

(1) The owner or operator shall maintain and operate CEMS for SO₂, NO or NO_x, a diluent and, for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and appendix B of 40 CFR part 60. Within six (6) months of promulgation of this regulation, the owner or operator shall install CEMS and COMS software which complies with the requirements of this regulation. The owner or operator of the Plant may petition the Administrator for extension of the six (6) month period for good cause shown. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required thereunder shall be submitted to the Administrator. The owner or operator shall provide the Administrator notice in accordance with 40 CFR 75.61.

(2) *Sulfur Dioxide.* (i) For the purpose of determining compliance with this section, the sulfur dioxide inlet rate (in lb/MMBtu) shall be calculated using the daily average percent sulfur and Btu content of the coal combusted. The inlet sulfur concentration and Btu content shall be determined in accordance with American Society for Testing and Materials (ASTM) methods or any other method receiving prior approval from the Administrator. The analyses shall be done on as fired daily fuel samples collected before the coal pulverizers using ASTM methods or any other method receiving prior approval from the Administrator. The inlet sulfur dioxide concentration shall be calculated using the following formula:
 $I_s = 2(\%S_f)/GCV \times 10^4$ English units
 Where:

I_s = sulfur dioxide inlet concentrations in pounds per million Btu;
 $\%S_f$ = weight percent sulfur content of the fuel; and
 GCV = Gross calorific value for the fuel in Btu per pound.

(ii) The outlet SO₂ emissions shall be determined from CEMS data gathered in accordance with this section.

(3) *Particulate Matter.* Particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90% of maximum operation in accordance with 40 CFR 60.8 and appendix A to 40 CFR part 60. The owner or operator may test Units 1 and 2 together when both units are operating or may test them separately when one unit is out of service since Units 1 and 2 share a common stack. The owner or operator shall submit written notice of the date

of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Administrator, and the notice is provided as soon as practicable after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Administrator) in advance of the new date of testing.

(4) *Oxides of nitrogen.* The total daily station-wide oxides of nitrogen emissions in pounds of NO₂ per day shall be calculated using the following formula:

$$TE = \sum_{i=1}^n \sum_{j=1}^m (E_{ij} \times H_{ij})$$

Where:

TE = total station-wide nitrogen dioxide emissions (lb NO₂/day);

E_{ij} = hourly average emissions rate of each unit (lb NO₂/MMBtu);

H_{ij} = hourly total heat input for each unit (MMBtu);

n = the number of units of coal burning equipment operating during the hour;

m = the number of operating hours in a day, from midnight to midnight.

(5) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring sulfur dioxide, NO_x, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. The one-hour averages shall be calculated using these data points. At least two data points must be used to calculate the one-hour averages. When emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days. NO_x emissions rates and quantities shall be reported as NO₂ concentrations. When CEMS data is not available because of malfunctions, the unavailable NO_x data will be replaced with a calculated value based on the average of the last valid data point and the next valid data point for purposes of calculating total station-wide nitrogen dioxide emissions.

(6) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7414, and enforce against any violation.

(8) In order to provide reasonable assurance that the scrubbers for control of particulate matter from Units 1, 2, and 3 are being maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions, the owner or operator shall comply with the following provisions:

(i) The owner or operator shall develop a plan to monitor, record, and report parameter(s) indicative of the proper operation of the scrubbers to provide a reasonable assurance of compliance with the particulate matter limits in paragraph (d)(2) of this section. The owner or operator shall submit this plan to the Administrator no later than December 31, 1999. The owner or operator shall implement this plan within 30 days of approval by the Administrator and shall commence reporting the data generated pursuant to the monitoring plan in accordance with the schedule in paragraph (e)(8)(v) of this section.

(ii) In the event that the owner or operator is unable to develop the plan required in paragraph (e)(8)(i) of this section due to technical difficulties, fails to submit the plan by December 31, 1999, or the Administrator disapproves the plan, the owner or operator shall install and operate devices to measure the pressure drop across each scrubber module and the total flow of scrubbing liquid to the venturi section of each scrubber module. The data from these instruments shall be monitored and recorded electronically. A minimum of one reading every 15 minutes shall be used to calculate an hourly average which shall be recorded and stored for at least a five-year period. The owner or operator shall report in an electronic format either all hourly data, or one-hour averages deviating by more than 30% from the levels measured during the last particulate matter stack test that demonstrated compliance with the limit in this regulation. The owner or operator shall implement this requirement no later than February 28, 2000 if it fails to submit the plan by December 31, 1999; or no later than 60 days after the Administrator's disapproval of the plan.

(iii) The monitoring required under paragraphs (e)(8)(i) and (e)(8)(ii) of this section shall apply to each Unit at all times that the Unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(iv) The owner or operator may petition the Administrator for an extension of the December 31, 1999 deadline. Such extension shall be granted only if the owner or operator demonstrates to the satisfaction of the Administrator that:

(A) The delay is due to technical infeasibility beyond the control of the owner or operator; and

(B) The requested extension, if granted, will allow the owner or operator to successfully complete the plan.

(v) The owner or operator shall submit to the Administrator reports of the monitoring data required by this regulation quarterly. The reports shall be postmarked within 30 days of the end of each calendar quarter.

(vi) The owner or operator shall develop and document a quality assurance program for the monitoring and recording instrumentation. This program shall be updated or improved as requested by the Administrator.

(vii) In the event that a program for parameter monitoring on Units 1, 2, and 3 is approved pursuant to the Compliance Assurance Monitoring rule, 40 CFR part 64, such program will supersede the provisions contained in paragraph (e)(8) of this section.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Administrator required by this section shall be submitted to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California, 94105, (415) 744-1138, (415) 744-1076 (facsimile). For each unit subject to the emissions limitation in this regulation and upon completion of the installation of CEMS and COMS as required in this regulation, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this regulation, comply with the notification

and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d), and the CEMS data assessment report requirements of 40 CFR part 75.

(2) Furnish the Administrator with reports describing the results of the annual particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

(i) The test date;

(ii) The test method;

(iii) Identification of the coal burning equipment tested;

(iv) Values for stack pressure, temperature, moisture, and distribution of velocity heads;

(v) Average heat input;

(vi) Emissions data, identified by sample number, and expressed in pounds per MMBtu;

(vii) Arithmetic average of sample data expressed in pounds per MMBtu; and

(viii) A description of any variances from the test method.

(3) *Excess emissions report.* (i) For excess emissions, the owner or operator shall notify the Administrator by telephone or in writing within one business day ("initial notification"). A complete written report of the incident shall be submitted to the Administrator within ten (10) business days of the initial notification. The complete written report shall include:

(A) The name and title of the person reporting;

(B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;

(C) The time and duration or expected duration of the excess emissions;

(D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;

(F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into

compliance with the applicable emissions limit(s) or other requirements.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Administrator in writing of the exact time and date when the excess emissions stopped.

Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

2. Subpart GG is proposed to be amended by adding § 52.1641 to read as follows:

§ 52.1641 Federal Implementation Plan for Four Corners Power Plant, Navajo Nation.

The Federal Implementation Plan regulating emissions from the Four

Corners Power Plant near Farmington, New Mexico is codified at 40 CFR 49.21.

[FR Doc. 99-23277 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 229-0177; FRL-6433-9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions, and are applicable only to the Imation Corp. facility in Camarillo, CA (Imation) as part of the EPA's Imation XL Project. See 64 FR 37785, July 13, 1999. By this document, EPA solicits comment on the proposed rule.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) and to facilitate implementation of the XL Project at Imation. Such implementation will result in superior environmental performance and, at the same time, provide Imation with greater operational flexibility.

EPA's final action on this proposed rule will incorporate the rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before October 8, 1999.

ADDRESSES: *Comments.* Written comments should be submitted in duplicate to: David Albright, Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Docket. A docket containing supporting information used in developing this rulemaking, including copies of the State submittal, the rule, and EPA's evaluation report of the rule

are available for public inspection and copying at U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA during normal business hours. Copies of the rule and related documents are also available for inspection at the following location: Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA.

FOR FURTHER INFORMATION CONTACT:

David Albright, Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1627 or Daniel Reich, Office of Regional Counsel (RC-2-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1343. In addition, the proposed rule and supporting documents are also available on the world wide web at the following location: <http://www.epa.gov/ProjectXL>.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Ventura County Air Pollution Control District, VCAPCD, Rule 37 "Project XL." This rule was submitted by the California Air Resources Board to EPA on July 30, 1999.

II. Background

The proposed California SIP revision is designed to implement a pilot project developed under Project XL, an important EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—for "eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). In addition, on April 22, 1997, EPA modified its guidance on Project XL, solicited new XL proposals, clarified EPA definitions, and described changes intended to bring greater efficiency to the process of developing XL projects. See 62 FR 19872 (April 22, 1997). The Imation XL Project was the subject of a recent **Federal Register** notice announcing the proposed implementation of the project, making available the proposed Final Project Agreement (FPA), and soliciting public comment on the FPA and the project overall. See 64 FR 37785, July 13, 1999.

EPA is proposing SIP approval of Rule 37 under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its

regulations. See 40 CFR part 51, appendix V. If the proposed revision is substantially changed in areas other than those identified in the proposed rulemaking, EPA will evaluate those changes and may publish another proposed rule. If no substantial changes are made other than those areas cited in the proposal, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by California and submitted formally to EPA for incorporation into the SIP. On August 23, 1999, EPA reviewed Rule 37 for completeness and found that the rule conforms to the completeness criteria in 40 CFR part 51, appendix V (criteria for plans submitted explicitly for parallel processing).

The submitted rule authorizes Imation to implement a plantwide applicability limit (PAL) for reactive organic compounds (ROCs).¹ The rule establishes conditions for setting, evaluating, renewing, and complying with the VOC PAL. The rule also establishes requirements for emission reduction credit (ERC) banking and offsetting under the PAL, applying control technology, conducting health risk assessments, and implementing any facility changes that are pre-approved in Imation's part 70 permit. Finally, the rule exempts Imation from District Rules 10 (Permits Required) and 26–26.10 (New Source Review) for facility changes implemented in accordance with Rule 37.

III. EPA Evaluation and Proposed Action

The proposed SIP revision would establish an alternative approach that would replace the VCAPCD New Source Review (NSR) program for new and modified emission sources at Imation. The SIP revision, which is only applicable to the operations at Imation, is a critical element of the Imation XL Project as it will ensure that operations at the Imation facility that are implemented in accordance with the XL project are not in conflict with federally enforceable SIP requirements.

The proposed SIP revision is comprised of several of the most critical terms and conditions from the proposed Imation Final Project Agreement (FPA), a document that represents the intentions of all parties to the XL Project agreement but that is not legally enforceable. By incorporating these terms and conditions into a VCAPCD

rule that the VCAPCD Board adopts and which is approved into the SIP, the main tenets of the FPA will be made enforceable by EPA, the State, and citizens. A key element of the proposed SIP revision, and the Imation XL project, is the authorization of a PAL for volatile organic compounds (VOCs). The VOC PAL, a voluntary VOC emissions cap accepted by Imation, is based on actual emissions and provides Imation with the flexibility to add and modify emissions units below the PAL level without triggering traditional new source review requirements. The proposed revision also institutes several unique requirements and procedures for operations at the facility, and exempts specified Imation activities from two existing VCAPCD rules—Rule 10 (Permits Required) and Rule 26 (New Source Review).

Section 110(a)(2)(C) of the Act requires state programs to institute a preconstruction review program, generally referred to as “minor NSR.” VCAPCD's NSR program (See Rule 26) requires new source review permitting for “any new, replacement, modified, or relocated emissions unit which would have a potential to emit any * * * Reactive Organic Compounds.” Such permitting under Rule 26 would typically require BACT for any ROC emissions (no threshold) and offsets for ROC emissions above 5 tpy. In order to provide Imation flexibility with regard to Rule 26, EPA is today proposing approval of this source-specific SIP revision that will apply only to the operations at Imation. The source-specific SIP revision would exempt Imation from the requirements of Rules 10 and 26, but require the source to keep their emissions below the VOC PAL, apply California BACT² for facility modifications, and follow specified procedures for adding new equipment or modifying existing equipment. The requirements contained in the source-specific SIP revision, in conjunction with Imation's transfer of VOC emission reduction credits (ERCs) to the District, assure that any new construction or equipment modification allowed under the source's title V permit will be carried out in a manner that is at least as environmentally protective as what would have been required under Rules 10 and 26. EPA has prepared a Technical Support Document (TSD) for this proposed rulemaking which further describes the requirements of Rule 37 and EPA's evaluation of the rule. The TSD is available as described in the

ADDRESSES and FOR FURTHER INFORMATION CONTACT sections of this document.

EPA is proposing to approve the site-specific California SIP revision for Imation, which was submitted on July 30, 1999. This proposed plan revision is not intended to address any outstanding issues with the Ventura County APCD NSR program that will be the subject of a future EPA rulemaking on District Rule 26. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action. Copies of the proposed site-specific SIP revision and EPA's evaluation of the revision are available in the docket for today's action and are also available on the world wide web at <http://www.epa.gov/ProjectXL>.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA and EPA regulations. Therefore, Ventura County APCD Rule 37—Project XL—is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

IV. 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

¹ The VCAPCD term reactive organic compound “ROC” is functionally equivalent to EPA's term volatile organic compound “VOC.” In this document, the terms “volatile organic compound” and “VOC” are used.

² CA BACT, as defined in VCAPCD rules, is equivalent to federally defined lowest achievable emissions rate (LAER).

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 consults 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. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and

therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 24, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99-23280 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[MD-091-3041b; FRL-6433-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions from Existing Municipal Solid Waste Landfills**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA proposes to approve the municipal solid waste landfill 111(d) plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment (MDE) on March 23, 1999 for the purpose of controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by October 8, 1999.

ADDRESSES: Comments may be mailed to Walter Wilkie, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov. While additional information may be obtained via e-mail, comments must be submitted in writing to the address provided above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the rules section of the **Federal Register**.

Dated: August 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99-23190 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 148, 261, 268, 271, and 302**

[SWH-FRL-6434-3]

Extension of Comment Period for the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Wastes**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed listing determination for dyes and pigments, which appeared in the **Federal Register** on July 23, 1999 (64 FR 40192). The public comment period for this proposed rule was to end on September 21, 1999. The purpose of this notice is to extend the comment period to end on October 21, 1999.

DATES: EPA will accept public comments on this proposed listing determination until October 21, 1999; comments postmarked after this date will be marked "late" and may not be considered.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F-1999-DPIP-FFFFF, RCRA Information Center (5305W), U.S. EPA, 401 M Street, SW., Washington, DC. To hand-deliver comments, the address is U.S. EPA, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. You may also submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. See the beginning of Supplementary Information for instructions on electronic submission.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. See the Supplementary Information for information of viewing public comments and supporting materials.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Mr. Narendra Chaudhari, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-0454 (chaudhari.narendra@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: This proposed rule was issued under section 3001(b) of RCRA. EPA proposed to list as hazardous certain wastes generated from the production of certain dyes and pigments because these wastes present a substantial present or potential risk to human health or the environment. See 64 FR 40192 (July 23, 1999) for a more detailed explanation of the proposed rule.

The comment period for this proposed rule was scheduled to end on September 21, 1999. However, several commenters have requested that EPA extend the comment period by 30 days. EPA is extending the comment period until October 21, 1999.

As noted in the proposed rule, you should identify any comments in electronic format with the docket number F-1999-DPIP-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Supporting documents in the docket for this Notice are also available in electronic format on the Internet. Follow these instructions to access these documents.

WWW: <http://www.epa.gov/epaoswer/hazwaste/id/dyes/index.htm>
FTP: <ftp://ftp.epa.gov>
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA.

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic,

will be in a document in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page.

Dated: August 31, 1999.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 99-23278 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE04

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Certain Vicuña Populations From Endangered to Threatened and a Proposed Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify vicuña (*Vicugna vicugna*) populations of Argentina, Bolivia, Chile and Peru from endangered to threatened under the U.S. Endangered Species Act (Act or ESA). The recently re-introduced population of Ecuador, treated as a distinct population segment under the Act in accordance with the Service's Policy on Distinct Vertebrate Population Segments (61 FR 4722), will remain listed as endangered. The Service also proposes to establish a special rule (under Section 4(d) of the Act) allowing the importation into the United States of wool and legal vicuña products produced with wool from vicuña populations listed both as threatened under the Act and in Appendix II of the

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), except that the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina are specifically excluded from the special rule until such time as their conservation benefit for wild vicuña populations has been demonstrated adequately. It is proposed that importation into the United States of wool and legal vicuña products made from wool that originated from threatened and approved Appendix II populations will require valid CITES export permits from the country of origin and also the country of re-export, when applicable. Should the conservation or management status of threatened vicuña populations change in one or more range countries, the potential would remain to repeal the special rule or reclassify the population as endangered, should that become necessary for the conservation of the vicuña. The Service invites information and comments on this proposed rule. The analysis of the information and comments received could lead to a final decision that would differ substantially from this proposal.

DATES: Comments must be received by December 7, 1999. Public hearing requests must be received by October 25, 1999.

ADDRESSES: Comments and relevant information concerning this proposal should be sent to the Chief, Office of Scientific Authority; mail stop: Arlington Square, room 750, U.S. Fish and Wildlife Service; Washington, DC 20240, or via E-mail to: r9osa@fws.gov. Comments and materials received will be available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Chief, Office of Scientific Authority, at the above address, or by phone (703-358-1708), fax (703-358-2276), or E-mail (r9osa@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

The vicuña (*Vicugna vicugna*) was listed as endangered under the U.S. Endangered Species Act on June 2, 1970. Among other things, the effect of that listing was the prohibition of U.S. interstate or international commerce in vicuña products. All populations of the vicuña were included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna

and Flora (CITES) on July 1, 1975 (the date of entry into force of the CITES Convention), which thereby prohibited all primarily commercial, international trade in vicuña products. Certain populations of vicuña in Chile and Peru were subsequently transferred to CITES Appendix II at the sixth meeting of the CITES Conference of the Parties (COP6) in 1987. The remaining vicuña populations in Peru were transferred to Appendix II in 1994 at CITES COP9, and certain populations in Argentina and Bolivia were transferred to Appendix II in 1997 at CITES COP10. These transfers to Appendix II, reflecting improved conservation status for specified vicuña populations, allow the international trade under carefully controlled conditions, of products manufactured from vicuña wool. This international trade, however, is still excluded from the United States, because of the species' listing under the Endangered Species Act. The United States supported the CITES transfers of the populations to Appendix II, based on the information received at the aforementioned meetings of the Conference of the Parties, where the CITES Parties voted to adopt the proposed transfers to Appendix II. The information in the relevant CITES listing proposals is available on request from the Office of Scientific Authority (see **ADDRESSES** Section).

We received a petition on October 5, 1995, from the President of the International Vicuña Consortium, requesting that the vicuña be removed from the U.S. list of endangered and threatened wildlife, or reclassified with a special rule that would allow for a commercial trade that would benefit the conservation of the species. The petitioners cited the following as reasons for the requested ACTION: (1) Improved management of vicuña populations, (2) improved enforcement and trade controls, and (3) recognition that regulated commerce could be beneficial to both rural communities that share landscapes with vicuñas and the vicuñas themselves. The petitioners provided limited supportive documentation.

Our 90-day finding on whether the petition presents substantial scientific data is subsumed within this proposed rule, which finds that: (1) Reclassification of the vicuña from endangered to threatened is warranted for all range countries except Ecuador; and (2) that a special rule (also referred to as a 4(d) rule) is warranted for all Appendix II populations, with the exception of the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces

in Argentina, which are specifically excluded until such time as their conservation benefit for wild vicuña has been demonstrated adequately.

We base this finding and the proposed rule on information provided in the submissions of the petitioner, other documents including those submitted in support of the aforementioned CITES listing proposals, and the Service's status review for the vicuña, which included interviews with knowledgeable personnel from the vicuña range states, responses to questions asked of each range country, and a 1997 on-site assessment of vicuña populations and management in Argentina, Bolivia, Chile and Peru by a contractor working for the National Fish and Wildlife Foundation (Dr. Henry L. Short, Amherst, Massachusetts). All personal communications and responses to questions asked of range countries cited in the text were received by Dr. Short, unless otherwise noted (see References Cited Section). The Service contracted with the National Fish and Wildlife Foundation in 1997 to evaluate the conservation and management status of vicuña populations, and to make recommendations about the species' status, through a fact-finding mission to vicuña range countries.

The vicuña produces a wool that is of very fine texture (about 12 microns in diameter) that can be woven into luxury garments. Raw wool from vicuña has been legally auctioned at \$500 per kg (\$200 per lb) and an average vicuña fleece provides about 0.2 kg (0.5 lbs) of fiber. Individual vicuña in the high Andean plateaus of South America thus have a fleece that is worth many times that of a sheep and several times that of other species in the family Camelidae, such as alpacas and llamas. This high value, in a resource-poor area, can represent both a threat to the species and an opportunity if the species is managed sustainably. The threat comes from illegal hunting if protection and incentives for management are poor; the opportunity exists if proceeds from the sale of vicuña wool from live-shorn animals are substantially used to enhance the status of native people in the Andean uplands and to encourage them to conserve and protect vicuña.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to, changing the status of any listed species, or deleting species from the list of endangered and threatened wildlife. A species shall be listed or

reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or human-made factors affecting its continued existence.

We base this proposed rule on an assessment of the five listing factors within the Act. The assessment considers the present biological status of the vicuña within the range countries of Argentina, Bolivia, Chile and Peru. No assessment of the status of the species is made for the small population that has recently been reintroduced into Ecuador. That is a protected population, that will not be exploited in the foreseeable future. We do not propose to change that population's endangered classification under the Act.

Some scientists recognize two subspecies of vicuña—*V. v. mensalis* in the northern portion of the range and *V. v. vicugna* to the south. These are putative subspecies in that they have been described on the basis of slight differences in size and color, and the lack of a prominent chest fringe in *V. v. vicugna* (Canedi and Pasini 1996), rather than on distinct, measured genetic differences between the two. Because the distribution of the vicuña is more or less continuous from north to south within its range, it is possible that these two subspecies simply represent the endpoints of a continuum of physical and genetic variation within the species from north to south. As a consequence, it would be very difficult to draw a definite boundary between the two subspecies for purposes of management or listing under the Act. Therefore, the subspecies are not differentiated in this rule and the term vicuña, used herein, refers to populations of both putative subspecies throughout their total range.

(A) The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Approximately 190,000 vicuña are estimated to occur at varying densities on approximately 20,500,000 ha of Andean highlands extending in a rather narrow strip from central Peru through Bolivia, and into northwest Argentina (between 8–30 degrees South latitude). The historical range of the vicuña may have been twice the present

distributional area. A small, disjunct, recently-reintroduced population also occurs in Ecuador.

Vicuña habitats occur in both the Altoandina and Puna Ecoregions. The Altoandina Ecoregion comprises high Andean foothills, escarpments and outcroppings and the Puna Ecoregion represents areas of high plains or tablelands between mountain ranges. The habitats vary climatically on both altitudinal and latitudinal scales but are generally arid and cold, resulting in limited vegetation cover. The habitat of the vicuña in the high Andean plateau region varies from 3,200 to 4,800 m above sea level. This highland habitat has been somewhat degraded by humans and their domesticated livestock, but still represents an extensive habitat for vicuña. The low average density of 1 vicuña per 103 ha reflects the limited carrying capacity of the high Andean habitats as well as the fact that many vicuña habitats are understocked. National Reserves, National Parks, Protected Areas, or Provincial Reserves where vicuña are protected are scattered throughout vicuña habitat in each of the four countries considered in this proposed rule.

Argentina

Vicuña distribution in Argentina includes portions of the northwestern provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan. Vicuña habitats in the Puna and Altoandina Ecoregions of Argentina cover a surface area of about 10,000,000 ha (Canedi 1997, pers. comm.). The area of available habitat has been reduced since the arrival of Europeans in South America, because the species is no longer present in the Patagonian regions of Argentina.

Vicuña habitat in Argentina is bounded to the west by the volcanic chain of the Andean Cordillera in Chile, in the east by the eastern Cordillera and the Sierra Pampeanas mountains, in the north by contiguous vicuña habitat in Bolivia, and in the south, vicuña habitat extends into the Province of San Juan. The general area is characterized by blocks of uplifted mountains surrounding extensive valleys featuring alkaline or saline flats and a rolling topography. Aridity is a common and constant feature of the Puna. Many water courses are temporary but there are occasional areas of damp ground where surface water and green vegetation in the form of rushes, grasses and a variety of succulent plants occur. Much of the thin vegetation cover over most of the Puna consists of grasses and xerophilous half-shrubs (Comisión Regional de la Vicuña, 1994).

Temperatures are cold and frost can occur each day of the year. The carrying capacity of the humid Puna may be as much as two vicuña per ha but in the drier Puna habitats the carrying capacity may only be one vicuña per 30 ha.

The Provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan have created reserves and other protected areas for vicuña. In Jujuy Province, Los Pozuelos Reserve was created in 1980 and consists of 308,000 ha. About 15,000 ha of this Reserve have been incorporated into the UNESCO Man and Biosphere program as a natural area of international significance. The vicuña population in the Reserve in 1997 was estimated to be 2,750 (CITES 1997a). The Olaró-Cauchari Flora and Wildlife Reserve was created in 1981 to enhance vicuña populations and consists of 543,300 ha. The vicuña population in the Reserve in 1994 was estimated to be 6,500 and growing (CITES 1997a). Other areas where vicuña are protected in Jujuy Province include Vilama (97,000 ha), Santa Victoria (54,600 ha), Palca de Aparzo (55,800 ha), Caballo Muerte (18,500 ha), Casa Colorado (31,000 ha), Abra de Zenta (69,000 ha) and Serranías del Chani (158,900 ha) (CITES 1997a; V. Lichtschein, Management Authority of Argentina, pers. comm. with K. Johnson, Office of Scientific Authority (OSA), 1999). These areas are not listed in the WCMC Protected Areas Database, so we are unclear as to their actual protective status (i.e., whether they are national, provincial, local or private protected areas). The high altitude experimental station (Campo Experimental de Altura or CEA) is located at Abra Pampa in Jujuy Province. This experimental station of 3,000 ha is dedicated to the development of appropriate management procedures to enhance fiber production of vicuña, assure the survival of the species, and to enhance the economic well-being of certain Puna ranchers. The human population is very low throughout the Reserves and protected areas of the Province.

In Salta Province, the Los Andes Wildlife Reserve of 1,440,000 ha was created in 1980. The rigorous climate restricts the human population to very low densities. Agriculture does not exist in this area and the ranching of cattle, sheep, goats and llamas is rudimentary. Although the carrying capacity for vicuña in the Reserve is estimated to be one individual per 30 ha, a partial census in 1993 counted only 2,000 vicuña (CITES 1997a). In Catamarca Province, the Laguna Blanca Wildlife Reserve was created in 1979 and enlarged in 1982 to 973,270 ha at which time it became recognized by the UNESCO Man and Biosphere program

as a natural area of international significance. The human population is very sparse and scattered in the general area of the Reserve. The 1993 vicuña population in Laguna Blanca Reserve was estimated to be 3,505 (CITES 1997a). In La Rioja Province, the Laguna Brava Reserve for Vicuñas and the Protection of Ecosystems was created in 1980 and consists of 405,000 ha. Human habitations do not exist in the Reserve, which is contiguous with the San Guillermo Faunal Reserve in San Juan Province. The 1996 vicuña population in the Reserve was estimated to be 2,187 (CITES 1997a). San Guillermo Faunal Reserve was created in 1972 and consists of 880,260 ha. In 1982 it became part of the UNESCO Man and Biosphere program as a natural area of international significance. This was the first Provincial Reserve dedicated primarily to the protection of the vicuña. This area is devoid of human and domestic animal populations. Although the area has a carrying capacity estimated to be one vicuña per 7 ha of habitat, the 1992 vicuña population in the Reserve was estimated to be only 7,100 (CITES 1997a).

We have virtually no quantitative information on the extent or condition of vicuña habitats outside protected areas in Argentina. Anecdotal information suggests that overgrazing by domestic livestock (leading to soil compaction and desertification) and direct competition for forage with domestic livestock may be important factors limiting the growth of vicuña populations outside protected areas (CITES 1997a). Other information indicates that some competition with domestic herbivores occurs in the arid Puna where precipitation is <300 mm per year but that competition is not as much of a problem in the humid Puna where precipitation may exceed 500 mm per year. A program to combat desertification has apparently been initiated in Jujuy Province (CITES 1997a).

The limited quantitative information presently available to us indicates that vicuña populations throughout Argentina are not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. However, they remain threatened by this factor (especially overgrazing and direct competition with domestic livestock) throughout Argentina. Through this proposed rule, we seek additional, quantitative information on the status of vicuña habitats throughout Argentina. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic

livestock) and protective measures (for example, antipoaching efforts) within protected areas, and on efforts to manage habitat outside protected areas (including programs to combat desertification and to reduce competition with domestic livestock).

Bolivia

Vicuña occur in western and southwestern Bolivia in the Departments of La Paz, Oruro, Potosí, and Cochabamba (CITES 1997b). They have also been reported from the Department of Tarija, but the reports have not been confirmed (CITES 1997b). It has been suggested (DNCB 1997, pers. comm.) that vicuña may once have ranged over 13,000,000 to 16,700,000 ha in the Puna and high plateau region of the Bolivian Andes, before colonization by the Spaniards.

The Bolivian government has established Vicuña Conservation Units (VCU) for administrative and management purposes (CNVB 1996). Eight VCUs were originally established by the Instituto Nacional de Fomento Lanero (INFOL 1985); a ninth unit was subsequently added as a result of the National Vicuña Census of 1996 (CNVB 1996). These nine VCUs encompass all of the vicuña's geographic range within Bolivia. The National Vicuña Census of 1996 recorded vicuña populations in 76 "registered census areas" totaling 3,428,356 ha within the nine VCUs. These registered census areas are distributed throughout the Bolivian highlands at an elevation range between 3,600 and 4,800 m. Thirty of these registered census areas did not have any vicuña in the previous national census (1986), indicating a significant increase in the vicuña's distribution within Bolivia over a 10-year period. Sixty-nine percent of the vicuña counted in 1996 (23,393 of 33,844) occurred in the Conservation Units of Lipez-Chichas, Mauri-Desaguadero and Ulla Ulla.

Vicuña are found in a number of protected areas in Bolivia. Within the National System of Protected Areas (Sistema Nacional de Areas Protegidas, or SNAP), vicuña occur in the Ulla Ulla National Fauna Reserve (150,000), the Eduardo Avaroa National Andean Fauna Reserve (714,000 ha), and Cerro Sajama National Park (100,230 ha) (information from WCMC Protected Areas Database 1999). Other protected areas with vicuña are the Huancaroma Vicuña Reserve (140,429 ha), Huancaroma Wildlife Refuge (11,000 ha), Llica National Park (97,500 ha), Yura National Fauna Reserve (96,853 ha), Altamachi Vicuña Reserve (100,000 ha), and the Incakasani-Altamachi Andean Fauna Reserve (23,000 ha).

(information from WCMC Protected Areas Database 1999).

The area where vicuña are presently found in Bolivia is expanding, but will likely never equal the former distribution range because of habitat changes caused by overgrazing by sheep and other domestic livestock, and human-caused developments such as roads and cities. Vicuña generally occur on communal property lands in Bolivia. In the northern highlands vicuña share habitats mainly with alpacas, in the central highlands with cattle, sheep, llamas, alpacas and agriculture, and in the southern highlands with llamas (CITES 1997b). Overgrazing, especially by sheep, has reduced range carrying capacity in many areas.

The limited quantitative information presently available to us indicates that vicuña populations throughout Bolivia are not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. However, overgrazing by domestic livestock and direct competition for forage with domestic livestock are still considered to threaten vicuña populations throughout Bolivia. Through this proposed rule, we are seeking additional, quantitative information on the status of vicuña habitats throughout Bolivia. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and actual protective measures (for example, antipoaching efforts) within protected areas, on the status of development of Vicuña Management Plans and Soil Use Plans in the three pilot areas of the National Vicuña Conservation Program (Lipez-Chichas, Mauri Desauadero, and Ulla Ulla), and on current efforts to manage habitat on lands which are not within either the three aforementioned conservation units or officially-designated protected areas. We also seek more information on the National Program for the Fight Against Desertification and Drought.

Chile

The vicuña occurs in extreme northeastern Chile in the Regions of Tarapaca, Antofagasta, and Atacama. Over 96 percent of the vicuña (19,169 of 19,848) in Chile are found within the Caquena Management Zone, Lauca National Park, and the Vicuña National Reserve within this Province (Galaz 1997, pers. comm.). These areas have typical vicuña habitats and limited human populations.

Most vicuña in Chile are found within protected areas. These include the aforementioned Caquena Management

Zone (90,146 ha), Lauca National Park (137,883 ha) and the Vicuña National Reserve (209,131 ha) within Parinacota Province. A few vicuña also occur in Salar de Surire Natural Monument in Parinacota Province (11,298 ha), and Isluga Volcano National Park in Iquique Province, Tarapaca Region (174,744 ha).

Information presently available to the Service indicates that vicuña populations in Chile are probably not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. This is because the overwhelming majority of vicuña in Chile occur in protected areas where there is some measure of control over domestic livestock grazing. However, overgrazing by domestic livestock and direct competition for forage with domestic livestock may still threaten vicuña populations in Chile. Through this proposed rule, we seek additional, quantitative information on the status of vicuña habitats throughout Chile. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and protective measures (for example, antipoaching efforts) within protected areas, and on effort to manage habitat outside protected areas (including programs to combat desertification and to reduce competition with domestic livestock).

Peru

Vicuña in Peru in 1997 were estimated to occur on about 6,361,000 ha throughout the 15,000,000 to 17,000,000 ha of suitable habitat in the Peruvian high plains. Factors that could impact future areas of vicuña habitat include increased urbanization, successful reintroductions of vicuña into present areas of suitable but unoccupied habitat, and the replacement of domestic livestock by vicuña. Vicuña are better adapted to the rigorous climate and ecological conditions of the Puna, than are many species of domestic livestock. Overgrazing by domestic livestock remains the greatest threat to habitat conditions in the Puna.

Vicuña occur in 782,186 ha of Peruvian protected areas, including Huascarán National Park (340,000 ha), Pampa Galeras National Reserve (75,250 ha) and the Salinas and Aguada Blanca National Reserve (366,936 ha) (Hoces R. 1997, pers. comm.).

Information presently available to the Service indicates that vicuña populations in Peru are not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. This assessment is based on the overall size of Peru's vicuña

population, plus the large number of community-based management programs there. Overgrazing by domestic livestock and direct competition for forage with domestic livestock may still threaten certain vicuña populations in Peru. Through this proposed rule, we are seeking additional, quantitative information on the status of vicuña habitats throughout Peru. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and protective measures (for example, antipoaching efforts) within protected areas, and on efforts to manage habitat outside protected areas (including programs to combat desertification and to reduce competition with domestic livestock).

(B) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Vicuña wool was valued by the Incas and estimates suggest there may have been 1,000,000 to 1,500,000 vicuñas in the region during the Incan period. Although utilized by the Incas, there is no evidence that the species was exploited at unsustainable levels. After destruction of the Inca Empire by Europeans, vicuñas were slaughtered in large numbers for both their meat and wool. In the 1950's populations may still have totaled 400,000, but hunting pressures and livestock competition may have reduced the total population to about 6,000 individuals by 1965 (Nowak 1991). Other authors suggest somewhat different numbers but similar trends.

Vicuña numbers in individual range countries have apparently fluctuated as political and economic stability has fluctuated. For example, vicuña numbers in Peru were low in 1965, gradually built to high levels in 1990, were significantly reduced by illegal hunting during the 1992-94 period of civil unrest, and have since recovered to 1990 levels. The major breakthroughs in the potential management of vicuña in Peru were new laws transferring the custodianship of vicuña to campesinos (peasants) and campesino communities, giving the campesinos the responsibility to protect vicuñas, the implementation of protective measures, the determination that it was not necessary to kill vicuña in order to obtain wool from their hides, and the development of management techniques to herd, capture and shear living vicuña (Wheeler and Hoces R. 1997). The key factor has been allowing the benefits of vicuña management and utilization to accrue collectively to campesino communities (rather than to middlemen

or other individuals) (Wheeler and Hoces R. 1997).

The vicuña remains a potentially easily exploited resource. It has great economic value and is a highly visible, diurnal occupant of open landscape. Some poaching for skins or subsistence hunting for meat probably still occurs, as does killing of vicuñas because of perceived competition with domestic livestock. This appears to be a source of mortality that could potentially seriously impact vicuña numbers, as it has done in the past.

Vicuña Population Status: Argentina

The vicuña population of Argentina is currently estimated to be approximately 32,000 individuals and increasing, based on censuses completed in various protected areas between 1992 and 1996 (CITES 1997a). Data appear to be most complete for Jujuy Province, where the Olaróz-Cauchari Reserve has been surveyed regularly since 1973–74, and estimates are available for a number of other areas where vicuña are protected (CITES 1997a). The population of Jujuy Province was estimated to be approximately 18,000 individuals in 1997 (CITES 1997a). A population survey was recently completed in Salta Province (V. Lichtschein, pers. comm. with K. Johnson, OSA, 1999), but the results are not yet available to us. Data from other provinces are somewhat dated and incomplete (CITES 1997a).

As previously mentioned, the vicuña population of Argentina is believed to be increasing. Data from the Olaróz-Cauchari Reserve (where numbers increased from about 330 individuals in 1973 to 6,500 in 1995) Laguna Brava Reserve, and Laguna Blanca Reserve all show substantial population increases over the past 10 to 20 years (CITES 1997a). Possible causes for the population increases are the newly developed support for vicuña by the campesino communities of the Puna, the creation of protected areas and the control of illegal hunting activities (Canedi 1997, pers. comm.). It is anticipated that some transplanting will occur from certain areas if populations grow to exceed carrying capacity.

Vicuña Utilization: Argentina

Poaching does not appear to be a major problem at present (V. Lichtschein, pers. comm. with K. Johnson, OSA, 1999; E. Hoffman, journalist, pers. comm. with K. Johnson, OSA, 1999). Sport hunting of vicuña is not permitted in Argentina and no permits have been issued for the capture of wild vicuña for scientific or educational purposes.

The vicuña utilization scheme in Argentina consists of a developing effort to sustainably use wild populations in Jujuy Province, and an effort to develop semi-captive populations in the provinces of Catamarca, Jujuy, La Rioja, Salta, and San Juan. This model has been developed to be relevant to the conditions of the Argentine Puna where lands are owned by individual ranchers, human populations are very sparse and vast areas of potential habitat with limited vicuña populations exist (CITES 1997a).

Experimental efforts to develop management programs under semi-captive conditions are conducted at the National Institute of Agriculture and Cattle Technology (INTA) at their High Altitude Experiment Station (CEA) at Abra Pampa. Studies have emphasized efficient fences to contain vicuña, the determination of the carrying capacity of different range types, and the capturing and shearing of vicuña and wool processing procedures.

The experimental results have direct applications because a limited number of vicuña ranching operations have been established in Jujuy and Salta Provinces. These ranch operations have used vicuña donated from the Abra Pampa semi-captive herd and donated fencing materials. Vicuña family units are placed into a fenced area. Individual ranchers who have been trained in vicuña management have the responsibility to protect and provide for the vicuña. Young vicuña, produced under these semi-captive conditions, are either used as replacement stock or are returned to CEA as compensation for the initial vicuña donation. The semi-captive herds are sheared at two year intervals using the techniques developed at CEA. At the time of shearing, representatives of INTA, the Department of Renewable Natural Resources, the Gendarmes (military police), a Doctor of Veterinary Medicine, and the wool buyer are present to observe and/or supervise the operation. The wool buyer in 1997 was an Argentine wool processing company that donated the fencing materials. The wool purchase is used to retire the debt on the fencing materials and to provide immediate payment to the individual rancher. The wool, at the time of shearing, is weighed, bagged, marked, sealed, recorded and stored in a sealed warehouse until all commercial authorizations have been completed.

The production of vicuña wool under semi-captive conditions benefits the individual campesino rancher and is a program growing in popularity. It is claimed that this program enhances the status of vicuña because the ranchers

support the program and support the presence of non-captive vicuña in the provinces, and it has enhanced the gendarme-rancher relationship which has improved protective measures for vicuña. However, we continue to have concerns over the appropriateness and effectiveness of this approach as a conservation tool for wild populations of vicuña. The captive population at Abra Pampa has been developed from a limited number of founder animals (16 females and 6 males). As such, there is concern over the genetic fitness of animals in this population. There is also concern about possible genetic and disease consequences if vicuña from the Abra Pampa population are translocated to different provinces and subsequently escape to mingle with the wild population. We are concerned that semi-captive populations may be established in the most favorable vicuña habitat areas, thus potentially depriving wild vicuña populations of important resources such as water or forage. Finally, we have no information showing a demonstrable link between establishment of semi-captive vicuña populations and improved conservation status of wild populations (for example, a demonstrable reduction in poaching of wild vicuña in areas with semi-captive populations, or a demonstrable improvement in habitat conditions as a result of decreased domestic livestock numbers in areas with semi-captive populations). The Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces are specifically excluded from the proposed special rule until their conservation benefit for wild vicuña is demonstrated adequately. With this proposed rule, we seek substantive information demonstrating the conservation value (for wild vicuña) of semi-captive vicuña populations.

The vicuña is not considered to be endangered by previous or current overutilization in Argentina. It is, however, considered to be threatened by overutilization throughout Argentina, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover, based on successful conservation and management. Through this proposed rule, we seek additional information on the status of wild vicuña populations throughout Argentina.

Vicuña Population Status: Bolivia

Vicuña populations in Bolivia were recorded as 33,844 in the country-wide census of 1996 and current populations are estimated at about 35,500 (DNCB 1997, pers. comm.). The population is

generally thought to be increasing, and perhaps has reached carrying capacity in a few areas. Population data determined by direct and total counts of individuals on selected habitat areas are best for the three experimental pilot areas—Ulla Ulla, Mauri-Desaguadero and Lipez Chichas whose populations were transferred to CITES Appendix II in 1997. Periodic censuses have occurred over a 30-year period for Ulla Ulla, and over a 15-year period for the other two pilot areas. The growth in the total vicuña population has been both in density within well-known habitat areas and in the number of habitat areas with vicuña. It is believed that the principal reason for the growth in the general vicuña population is the protection provided by the campesino communities, especially those that have government supported game wardens.

Vicuña Utilization: Bolivia

Some campesino communities are hostile to vicuñas because of crop depredation or perceived competition with domestic livestock and the fact that no economic benefits are presently realized from vicuña. This may result in the killing of vicuña, although we have no substantive information which directly supports this conclusion. The granting of custodianship to the local communities and the delegation of monitoring to the provincial governments is expected to provide the mechanism to address this issue.

Poaching of vicuña is known to occur in Bolivia (CITES 1997b), and may be at a level that is of concern. One individual was recently arrested outside La Paz with 324 vicuña skins in his possession (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999). Vicuña products, including rugs made from many skins, can be seen for sale in the San Francisco Plaza in La Paz (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999). Local traditional authorities use vicuña ponchos, scarves and blankets, especially at traditional celebrations (CITES 1997b). The wool used in these products comes from animals killed illegally (CITES 1997b). Tour operators in remote areas claim to encounter skinned vicuña carcasses on a regular basis (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999).

Vicuña are not captured in Bolivia for educational or scientific purposes. There is no intent to have commercial meat operations as the only authorized commerce will be in wool and wool products from live-shorn vicuñas from wild populations. At present, there is no trade in wool as Bolivia has a zero quota under CITES.

Bolivia, as well as the other signatory countries to the Convenio para la Conservación y Manejo de la Vicuña (Convention for the Conservation and Management of the Vicuña, or the Vicuña Convention), has agreed not to export fertile specimens of vicuña. The sole exception has been a 1993 export of 100 vicuñas to the Republic of Ecuador to aid in their vicuña recovery efforts. This was accomplished within the multilateral frameworks of both the Vicuña Convention and the CITES Convention.

Bolivia's National Program for the Conservation of Vicuña is in very early stages of implementation. Bolivia is developing pilot programs for harvesting and marketing wool from live-shorn vicuña that borrow significantly on the successful management program in Peru. The initial step of the National Vicuña Conservation Program was to transfer three substantial vicuña populations in areas where campesino interest and commitments were high (Ulla Ulla, Mauri-Desaguadero, Lipez Chichas) from CITES Appendix I to II, so that pilot management and shearing programs could be perfected prior to expanding the management programs to other vicuña habitats. The second step has been the development of an agreement between the Programa Quinoa Potosi (PROQUIPO) and the DNCB to operate the Pilot Center of Sud Lipez to actually develop and demonstrate those management and shearing programs to enable the sustainable use of the vicuña through live shearing to be realized eventually.

Vicuña population trends throughout Bolivia are encouraging, and populations appear to have recovered to the extent that they are no longer endangered by previous and current overutilization. We consider that the vicuña is threatened by overutilization throughout Bolivia, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover, based on successful conservation and management. Through this proposed rule, we seek additional information on the status of wild vicuña populations throughout Bolivia. We especially seek information on the magnitude of poaching.

Vicuña Population Status: Chile

Over 96 percent of the vicuña (19,200 of 19,850) in Chile occur in Parinacota Province in the extreme northeastern portion of the country. The populations in the Caquena Management Zone (3,700 vicuña on 101,380 ha) and in the National Vicuña Reserve (8,050 vicuña

on 288,970 ha) in this Province were transferred to CITES Appendix II in 1987, and would be the only populations utilized commercially should a program to capture and shear live vicuña be instigated (Galaz 1997, pers. comm.). The adjacent population in Lauca National Park (7,410 vicuña on 153,380 ha) was retained on Appendix I to provide further control over vicuña in this protected natural area. The vicuña population in Parinacota Province is believed to be at or near carrying capacity in typical vicuña habitat. The remaining four percent of Chile's vicuñas occur elsewhere in the upper Andean tablelands in northeastern Chile. About 650 vicuña are believed to occur in small scattered groups over about 215,000 ha elsewhere in the Tarapaca Region and in the neighboring Antofagasta and Atacama Regions.

Vicuña Utilization: Chile

The hunting, capture and sale of vicuña and vicuña products is unlawful in Chile and, at present, there is no national or international trade in vicuña fiber, no exports of living vicuña and no known illegal trade in vicuña products. Poaching is not considered to be a problem in Chile (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999). In summary, protected areas have been established in locations with a high density of vicuñas, a conservation and management plan has been developed for vicuña, legal provisions have been developed to protect the species and adequate protection is being provided for the species, especially in Lauca National Park and the National Vicuña Reserve.

The vicuña is not considered to be endangered by previous or current overutilization in Chile. However, as a vicuña wool industry could potentially be approved in Chile, overutilization is still considered to threaten the Chilean population until such time as control mechanisms for harvest and commercialization are demonstrated to be adequate.

Vicuña Population Status: Peru

The 1997 census in Peru estimated a population of 103,650 vicuña on 6,361,000 ha of habitat (Hoces R. 1997, pers. comm.) in the high Andean tablelands of the departments of Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Cusco, Huancavelica, Huanuco, Junín, La Libertad, Lima, Moquegua, Pasco, Puno and Tacna. Vicuña populations have been increasing since 1994. This is believed to be due to the increased efforts to control vicuña poaching and

the development of a vicuña wool utilization program. Several campesino communities now participate in the protection, management and utilization of vicuña in cooperation with the National Council of South American Camelids (CONACS) and the National Institute of Natural Resources (INRENA), which is the designated CITES Management Authority for Peru.

Vicuña Utilization: Peru

As mentioned previously, vicuña numbers in Peru have fluctuated greatly in recent years as a result of political and economic instability. Vicuña numbers were low in 1965, gradually built to high levels in 1990, were significantly reduced by illegal hunting during the 1992–94 period of civil unrest, and have since recovered to 1990 levels.

At present, legislation in Peru permits the taking of vicuña if properly authorized and technically supported. Some culling of vicuñas (about 1,000 per year) did occur from 1977 to 1983 but no quotas have been declared and little if any legal take has occurred since that date. Any take for scientific studies is rare and, when authorized, is tightly controlled. There is no legal utilization of vicuña for meat or parts.

Commercialization of vicuña wool products will likely not result in overutilization of vicuña because of the system of controls that exist in monitoring wool collections, governmental supervision by CONACS and INRENA, and the involvement of local campesino communities. CONACS and INRENA have the responsibility to protect and monitor vicuñas within protected areas such as Huascaran National Park, Pampa Galeras National Reserve and the Salinas and Aguada Blanca National Reserve. The protection and monitoring of vicuñas in the rural communities is a major responsibility of participating campesino communities in coordination with CONACS and INRENA.

CONACS has developed techniques, at Pampa Galeras, for capturing and harvesting wool from living wild vicuña. Capture methods are based on the traditional “chaku, a surround technique used by the Incas to capture and shear vicuñas (Wheeler and Hoces R. 1997). CONACS has taught and supervised campesino communities in this technique and other aspects of vicuña management. At Pampa Galeras and in other areas of the Peruvian Puna, vicuñas occur on communal lands and campesinos represent an abundant and important work force.

The process used to capture and shear vicuñas was observed in August 1997 by

Dr. Short (on behalf of the National Fish and Wildlife Foundation). Vicuñas to be shorn were slowly herded across a wide habitat area and “pushed” into a V-shaped funnel trap. The vicuña were eventually crowded into a corral where they were sorted by hand to identify adults with adequate fleeces; this is a consideration because it takes about 18 months to grow a fleece that will yield shorn fibers that are 2 cm (0.78 in) long. All animals were ear-tagged, identified, weighed and cursorily examined for general condition. Each animal to be clipped was restrained and the fleece along the back and flanks was removed in a single mass, using electric clippers. That portion of the fleece was placed in a plastic bag. The shoulder, rump and leg wool was then clipped and placed in a separate bag. Both bags of wool from an individual animal were tagged, sealed, weighed and recorded at the field location immediately after clipping was completed. Belly and chest hair were left intact on the animal in the belief that it would subsequently insulate the animal when it was resting on cold ground. The capture, handling, clipping and the securing of the vicuña fleece was accomplished by campesinos under the supervision of personnel from CONACS and the Sociedad Nacional de la Vicuña (SNV). Upon the completion of the clipping effort the shorn animal was released. Clipping took about two minutes per animal. No significant injuries were observed from the capture, handling or clipping of the live wild vicuñas under these observed conditions.

Cleaning of guard hairs and dirt from vicuña fleeces is usually accomplished by women from the campesino communities. Such cleaning takes about 2–3 woman-days per 250-gram (9 ounce) fleece. Up to 100 women from the Lucanas campesino community near Pampa Galeras may be employed during the time period required to process an annual harvest of up to 2,000 fleeces. Careful weights are kept as fleeces are unsealed, cleaned, re-bagged and resealed prior to auction. A single auction supervised by CONACS serves all campesino communities producing vicuña wool.

Vicuña management essentially provides full-time employment for many members of the Lucanas community—building fences, obtaining and cleaning fleeces, providing protection to vicuña and providing instruction to other communities wishing to establish a vicuña industry. It was reported that as part of the arrangement between the Lucanas community and the government, 500 vicuñas are used to restock vicuña

habitats in neighboring communities, in exchange for both a hydro-electric project and other economic assistance.

The Pampa Galeras experience is the model for other campesino communities in Peru and will likely be the model for similar efforts in Bolivia. Campesino communities in both countries benefit by having some initial funds to develop a vicuña management infrastructure—either from the national government, as in Peru, or the European Community in aid to Bolivia.

Efforts are apparently underway in Peru to develop ranching of vicuña (i.e., fencing of natural areas to produce semi-captive populations) (Wheeler and Hoces R. 1997). Although translocation of animals does not appear to be involved in this case, we still have many of the same concerns as previously expressed for the semi-captive populations in Argentina. We reiterate our desire to receive substantive information demonstrating the conservation value (for wild vicuña) of semi-captive vicuña populations.

The vicuña is not considered to be endangered by previous or current overutilization in Peru. It is, however, considered to be threatened by overutilization, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover, based on successful conservation and management.

(C) Disease or Predation

Vicuñas, like most mammals, suffer from a variety of endo- and ectoparasites. Mange caused by parasitic mites can result in skin lesions and loss of hair, especially in those populations that coexist with domestic livestock, especially during drought conditions. Drought conditions or extremely degraded ranges adversely impact vicuña by causing movements to new habitats with the possible dissolution of some family groups and reductions in reproductive rates and successes, and perhaps increased mortalities. Major predators on vicuña include the puma (*Felis concolor*), the Andean fox or zorro (*Dusicyon culpaeus*) and perhaps the Andean condor (*Vultur gryphus*), which may kill newborn and very sick animals.

Vicuña populations in the four range countries are not believed to be endangered from the impacts of disease or predation, in part because the numbers of individuals within each population are considered to be increasing. Likewise the vicuña populations are not likely to be threatened by these factors if the benefits from the commercialization of vicuña wool products are used to

enhance the standard of living in campesino communities, with concomitant effective protection and enforcement. We remain concerned about the potential for disease transmission from animals that are translocated for the development of semi-captive populations or for release to the wild to supplement wild populations, and seek additional information on this issue.

(D) The Inadequacy of Existing Regulatory Mechanisms

The regulatory mechanisms in place vary significantly among the four range countries. Those in Peru are very substantive and involve the establishment of new governmental agencies, new mechanisms to enhance inter-community coordination, enhanced vicuña management procedures and a regulated and active vicuña wool industry that currently returns economic benefits to campesino communities. Argentina has also developed regulatory mechanisms to allow the development of a vicuña wool industry that currently benefits a small number of local ranchers. Bolivia is currently developing mechanisms to develop a wool industry and is building on many of the procedures that are apparently successful in Peru. Chile has no current plans for developing a wool industry but has conceptualized how such an industry might be successfully managed.

Regulatory Mechanisms: Argentina

In Argentina, the First Interprovincial Technical Conference on the Conservation of the Vicuña met in 1972 and agreed to develop methods to capture, transport and recolonize vicuña habitats and develop a plan for the management, shearing and the manufacture of handicrafts from vicuña fiber. Additional meetings integrated the provincial vicuña programs, established a national program, and established the "Vicuña Regional Commission" as a mechanism to attain national coordination on the vicuña management program (Comisión Regional de la Vicuña, 1994). Argentina ratified the CITES Convention in 1981. In 1988 Argentina signed the Vicuña Convention and has since carried out its programs within the context of this agreement. Argentine National Law for the Conservation of Wildlife 22,421 and its Regulatory Decree No. 691, provides for vicuña protection. The Constitution of Argentina, reformed in 1994, assures the rights of the provinces over their respective natural resources, assures the rights of indigenous people to use these natural resources in traditional ways,

and embraces the conservation of biological diversity and the sustainable development of natural resources.

Several laws and decrees within the various Provinces list the vicuña as a protected species, establish protected areas for the species, prohibit hunting, and prohibit commercialization, transportation, or manufacturing of parts or products from hunted animals, regardless of origin. Laws and decrees also allow the installation of captive breeding operations and the commercialization and industrialization of products from captive-bred animals (Canedi 1997, pers. comm.).

The Departments of Renewable Natural Resources for Jujuy, Salta, Catamarca and La Rioja Provinces have signed agreements with the Secretariat of Natural Resources and Human Environment and the National Gendarmes, a Federal Law Enforcement group, to enforce provisions of Provincial and National laws that prohibit illegal hunting and smuggling. The Gendarmes conduct extensive patrols in rural areas and on the borders, and have officers at the ports, airports and borders. They are capable of conducting inspections and investigations involving the illegal trafficking of vicuña wool. They also have an environmental division which meets with campesinos and tries to promote the vicuña program. Although both the Department of Renewable Natural Resources and the Gendarmes may not have adequate resources at their disposal, they are thought to be working effectively with the campesino communities of the Puna as evinced in the increase of vicuña populations of the Puna (Canedi 1997, pers. comm.).

The only legal wool at the present time is that obtained from the shearing of live vicuña at the officially authorized semi-captive population facilities. We understand that a registry of authorized semi-captive populations is maintained by the national Dirección de Fauna y Flora Silvestres (V. Lichtschein, pers. comm. with K. Johnson, OSA, 1999). Wool from shorn fleeces is bagged, tagged, weighed, sealed, recorded, and the government agency that supervised the shearing is identified on the bag. Wool from officially authorized breeders (ranchers) can be directly auctioned for direct export, or the ranchers (if artisans) can retain the wool, and make and sell cloth. Either the wool buyer or the rancher-artisan would need a transport permit and that transport permit would need to be presented when the CITES export permit is requested. Fabric or products manufactured by rancher-artisans will need to be marked with the

official seals or stamps. Such fabrics or products, expected to be limited in numbers, can only be sold to licensed outlets recognized and approved by the government. The check on whether fabrics or products are made from legal vicuña wool is determined by comparing weights of fleeces harvested under supervised shearing operations, the weight of raw wool that is retained by the authorized rancher-artisan and the weights of woollen products produced by that artisan. At present it is not clear to us which government agency supervises shearing, which approves licensed outlets for vicuña products, and which conducts checks of producers to ensure that only legal wool is used in artisanal products. There is apparently no national legislation that covers all aspects relating to the trade in vicuña or the administrative aspects relating to this trade (CITES 1997a).

Wild populations of vicuña in the Province of Jujuy and semi-captive populations of vicuña in the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan were transferred from CITES Appendix I to Appendix II at CITES COP10, effective September 18, 1997. Exports are limited to wool shorn from live animals, cloth and articles made from that cloth, luxury handicrafts and knitted articles. The reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-ARGENTINA-ARTESANIA." All specimens not meeting the above conditions are subject to the prohibition against primarily commercial trade. Articles bought by a foreign tourist at a government authorized store will be exportable as personal accompanying baggage only after a CITES export permit has been obtained. The only apparent control of artisan goods sold to residents of Argentina and later resold to foreign tourists is the requirement that the tourist have a CITES export permit upon his/her return to his/her country of origin. This is a requirement for importation of any personal effects or personal accompanying baggage by U.S. residents, under the conditions of the special rule accompanying this petition finding. If the wool from an authorized captive breeder is sold at auction, the buyer, presumably a wool processing company, would get a permit from the Provincial Natural Resources Department which the buyer would present to the National Secretary for Natural Resources and Human Environment to obtain the required CITES permit for export.

The National Police (Gendarmes) are expected to aid provincial authorities in the control of poaching, illegal trade and

transport of unauthorized products within the country and the routine inspection of products of legal origin to certify their origin. Collaboration will also be provided by the National Aeronautical Police at the country's airports to intensify inspections of commercial products and passengers.

The vicuña does not appear to be endangered by inadequate regulatory mechanisms in Argentina. The species, however, is considered to be threatened by this factor because many of the regulatory mechanisms are in early stages of implementation, and we are still unclear about several aspects related to the control of trade in raw vicuña wool and artisanal products. The vicuña will remain threatened by this factor until appropriate conservation mechanisms are fully implemented and the populations fully recover. Through this proposed rule, we seek detailed information on the control of trade in vicuña wool and wool products in Argentina, and on the status of national legislation to control trade.

Regulatory Mechanisms: Bolivia

Bolivia's National Program for the Conservation of Vicuña is in very early stages of implementation. Bolivia is developing pilot programs for harvesting and marketing wool from live-shorn vicuña that borrow significantly on the successful management program in Peru. The Ministry of Sustainable Development and the Environment is the organization responsible for planning and coordinating the conservation of natural resources with the major plans for national development. The DNCB (Dirección Nacional de Conservación de la Biodiversidad Unidad de Vida Silvestre) is located within this Ministry and is the technical body whose objective is the conservation and sustainable use of biological resources. The wildlife unit with responsibilities for executing the National Vicuña Conservation Program is located within the DNCB.

Several laws and decrees are relevant to vicuña management in Bolivia. Bolivia and Peru signed the Treaty of La Paz in 1969 to provide a measure of international protection for vicuña and this treaty was a precursor to what is presently known as the Vicuña Convention. Bolivia has also been a signatory to CITES since 1979. The Agrarian Reform Act of 1953 enabled some rural communities to have private lands and other rural communities to have unfenced communal lands which are advantageous to free-roaming vicuñas. Law 1654 decentralized executive power to regional

departments. Law 1715, passed in 1996, created the National Institute for Agrarian Reform and promoted the sustainable use of land, the promotion of practices favoring conservation and the protection of biodiversity, and the concept that lands where conservation is practiced would not be subject to expropriation. Other laws legalized traditional social organizations, authorized rights for using renewable natural resources and authorized the establishment of the Secretariat for Sustainable Development in each Bolivian Department to enhance vicuña management at regional levels.

Supreme Decree 24529 passed in March 1997, authorized regulations for the protection and management of vicuñas in Bolivia. The Decree grants custodianship of vicuña populations to the rural communities and gives the rural communities the exclusive rights to use vicuña fibers, subject to the listed regulations (DNCB 1997, pers. comm.). Regulations promulgated under this Decree will affect all activities dealing with the management, protection, capture, shearing and the commercialization of vicuña products (as described in subsequent paragraphs). The regulations are similar to existing legislation in the other countries that also signed the Vicuña Convention. At present, we are unclear if these regulations have been approved and fully implemented, although we were previously told that the DNCB had begun implementation of regulations by holding workshops in campesino communities to explain the regulations, by publishing print media guides describing the regulations and by helping campesino communities begin their compliance with the regulations (DNCB 1997, pers. comm.). We were also told that the DNCB had begun coordinating with the National Police and military to help curb illegal activities dealing with vicuña and their products. The National Program for Vicuña Conservation emphasizes the management of wild free-ranging populations of vicuña and emphasizes a desire to improve habitat quality.

Any vicuña wool presently in commerce in Bolivia is considered illegal wool. Under the regulations, all existing vicuña wool products including those in the domestic market are to be inventoried and registered and all new products or wool fibers will also be registered. Any non-registered vicuña products will in the future be considered illegal. The only wool that will be allowed for commercial purposes will be that obtained from live-shorn vicuña that have been captured according to regulations. Only

raw wool for the manufacture of cloth will be exported. Bolivia does not have a textile industry with the capability to manufacture vicuña wool cloth (DNCB 1997, pers. comm.).

Under the regulations, the harvesting of vicuña wool will only be allowed in organized campesino communities which (1) have the rights to capture and shear vicuña and utilize vicuña wool and (2) have delegated authority to work with government authorities in the management and conservation of the vicuña. These campesino communities are the only legal benefactors of the sale of vicuña wool. The National Vicuña Conservation Program will be carried out in these communities and will contain habitat and vicuña management plans and vicuña census and distribution data. This information will be basic to decisions to conduct vicuña drives, and in the conduct of capture and shearing operations. Monitoring information will be provided by game guards and recommendations for management actions will be produced in the campesino communities. Government authorities will be present when vicuña capturing and shearing occurs. The authorities will register the number of vicuña captured, the number shorn, the weights of fleeces, etc., and supervise the bagging, weighing, marking and sealing of vicuña wool. This information is provided to the CITES authorities for reference purposes and information later provided in support of export permit applications must correspond to the on-site records. The Netherlands government has provided financial support to underwrite initial efforts to implement the National Vicuña Conservation Program.

The initial effort of the National Vicuña Conservation Program will be at the Pilot Center of Sud Lipez and its objective will be to demonstrate the potential worth of the vicuña. The pilot project will include the capture and shearing of live vicuñas and the manufacture of fabric and eventually the sale of vicuña fiber for the manufacture of textiles to demonstrate the potential economic benefit to campesino communities. The vicuña populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lipez Chichas were transferred from CITES Appendix I to Appendix II at COP10, effective September 18, 1997. A zero annual export quota presently exists. Future exports will be limited to wool shorn from live animals and to cloth and articles made from such cloth, including luxury handicrafts and knitted articles. The reverse side of cloth and cloth products must bear the

logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-BOLIVIA-ARTESANIA." All specimens not meeting any of the above conditions will be deemed to be subject to the prohibition against primarily-commercial trade.

The regulations also establish the System for the Protection of the Vicuña (SVV) which provides for the development of an inter-community network for the management and protection of the species. These persons will have direct control over activities such as wool sales, and will also have responsibilities for determining status and trends in vicuña populations. The SVV will be composed of game guards who will be responsible for the protection and control of vicuña in each conservation unit, made up of local vicuña protection officers and Park Rangers who are the enforcement officers within protected areas such as National Parks. Protection and control efforts will also be supported by special units of the National Police. The military will also assist in patrols, inspections and the seizures of illegal products. Customs will assist in the control of the export and import of wool at the ports of entry, border posts and airports to assure that CITES requirements are fulfilled. The Secretariat for Natural Resources and the Environment (SNRNMA) will regulate and coordinate the activities and participants within the SVV.

The vicuña does not appear to be endangered by inadequate regulatory mechanisms in Bolivia. The species, however, should be considered threatened by this factor because many of the regulatory mechanisms are in early stages of implementation, and we are still unclear about the status of proposed regulations dealing with the management, protection, capture and shearing of vicuña, and the commercialization of vicuña products. The vicuña will remain threatened by this factor until appropriate conservation mechanisms are fully implemented and the populations fully recover. Through this proposed rule, the Service seeks information on the status of proposed regulations and the implementation of other regulatory mechanisms, such as SVV, within Bolivia.

Regulatory Mechanisms: Chile

The existing regulatory mechanisms in Chile are presently dedicated to the protection of vicuña. Chile has not yet authorized the capture of vicuñas to develop a vicuña wool industry and the only exports of raw wool have been to obtain analyses of the wool's physical

properties. It is illegal to possess vicuña parts and products so no mechanisms have been developed for registering or identifying raw wool, or for establishing warehouses for storing wool (SAG 1997, pers. comm.).

Law No. 4.601 passed in 1929, modified by law No. 19.473 passed in 1996, indefinitely closed the hunting season for vicuña throughout the Republic of Chile. The hunting, capturing and selling of vicuña (and vicuña parts) is outlawed. Persons possessing, transporting or involved in commercial operations with vicuña products need to prove their actions are authorized by these laws. The Servicio Agrícola y Ganadero (SAG) of the Ministry of Agriculture is the CITES Management Authority, and has a Department for the Protection of Renewable Natural Resources and a Wildlife Division. Authorized customs officers (uniformed police), accredited officials from SAG, and representatives of the National Forest Corporation provide protection to vicuñas within the National System of Protected Wild Areas.

Preliminary plans, should a vicuña wool industry become authorized, indicate that the responsible party would need to provide an application to SAG indicating, among other things, the likely number of animals to be captured and sheared, the expected yield of the wool harvest, the logistics of the capture and shearing operation, where and how the wool would be stored and its eventual destination. SAG, should they approve the application, would oversee the capture process, register the quantity of harvested wool, and seal the warehouse where the wool is stored. SAG would also provide the necessary export permits, after determining that the quantities for export correspond to quantities authorized and actually harvested. Preliminary plans also suggest that a mechanism would be established to deal with the production and sale of luxury handicrafts and knitted articles. That organization would be responsible for receiving the wool, registering and offering the wool products for sale, for recording the sale of registered craft items and providing an accounting of the sale of registered craft items (SAG 1997, pers. comm.).

Chile has succeeded in having certain vicuña populations in the Paranicota Province, Region of Tarapaca (specifically, the populations in the Caquena Management Zone and the Vicuña National Reserve) transferred from CITES Appendix I to Appendix II in 1987 (at COP6). Any future export of vicuña products would be limited to wool sheared from live animals in

Appendix II populations and to cloth and items made from that cloth including luxury handicrafts, and knitted articles. The reverse side of cloth and cloth products would need to bear the logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-CHILE-ARTESANIA." All specimens not meeting any of the above conditions would be deemed to be subject to the prohibition against primarily-commercial trade.

The vicuña is not considered to be endangered by inadequate regulatory mechanisms in Chile. However, as a vicuña wool industry could potentially be approved in Chile, the vicuña remains threatened by this factor until such time as regulatory mechanisms for harvest and commercialization are demonstrated to be adequate.

Regulatory Mechanisms: Peru

A complex regulatory mechanism exists for Peru and it controls commerce in vicuña wool products. The infrastructure promoting vicuña management includes the National Council of South American Camelids (CONACS) which is a public decentralized organization of the Ministry of Agriculture in charge of the promotion, standardization, and control of activities with the South American camelids. CONACS has offices in Lima and throughout the vicuña range, and is the proprietor of the trademarks "VICUÑA-PERU" and "VICUÑA-PERU-ARTESANIA." The Institute of Natural Resources (INRENA) is also a public decentralized organization of the Ministry of Agriculture, and is in control of all renewable natural resources in Peru, and is the CITES Management Authority for Peru. The National Society of the Vicuña (SNV) is a private organization which represents the 660 campesino communities and coordinates vicuña management within and between campesino communities ("Communal Committees of the Vicuña") and with CONACS at both regional and national levels (Hoces R. 1997, pers comm.).

Several national laws protect vicuña and regulate its management. Law 26496 is especially important as it promotes protection and provides penalties for the illegal hunting of vicuña, gives the custodianship of vicuña herds that occupy campesino community lands to those campesino communities and allows the campesinos to be responsible for the conservation, management and the utilization of the species. The law also establishes the Official Registry of the Vicuña which provides a record keeping process that

controls and tracks volumes of wool from the time of vicuña shearing in the field to the time that fiber is sold as cloth or merchandise on the international market. Other laws recognize the Vicuña Convention and the CITES Convention.

Pertinent laws are implemented through the 660 "Communal Committees of the Vicuña" which form the basis for the National System of Conservation. There is a system of park rangers shared by groups of communities and these park rangers can access the National Ecological Police and Peruvian Army units to help control the illegal killing of vicuña. CONACS and INRENA authorize and control management activities, including vicuña capture; since 1996 they manage a limited captive breeding program where enclosures of approximately 1,000 ha ("Modules of Sustainable Use"), each with about 250 vicuña, are developed or are to be developed within individual campesino communities.

The shearing, collecting, processing and commercialization of vicuña wool from wild vicuñas or from groups contained within the permanent enclosures, is controlled by CONACS and INRENA. The processing and commercialization of the wool is done by a single company that obtained that right through a competitive bidding process at a supervised auction. A cooperative agreement exists between the SNV and the company winning the competitive bid, apparently to ensure that campesino communities will be correctly represented in the distribution of monies from the sale of vicuña wool and wool products. There is an authorized season for shearing and the act of shearing is supervised by personnel representing CONACS, SNV and INRENA. Pertinent information is gathered at the time of shearing and a report describing the shearing operation (numbers of animals, wool weights per animal, etc.) signed by representative of the Communal Committee and CONACS, becomes part of the record at the Official Registry of the Vicuña. A second source of legal wool is from vicuña that die from natural causes or are found or obtained by campesinos or park rangers, or from skins that are seized in successful anti-poaching operations. Such specimens, to become legal, must be declared to SNV and CONACS and entered into the vicuña registry. Legal wool is gathered and stored in private warehouses belonging to the campesino communities, registered in the vicuña registry, and is under the control of CONACS. Illegal wool is prevented from entering commerce because it is not registered

with the vicuña registry, and consequently not included in the wool stores represented in the single legal auction. The vicuña registry records weights of wool sheared or collected, carded or cleaned, and these weights are used by CONACS and SNV throughout the processing and commercialization process to indicate whether final products likely only contain legal wool. The CITES Management Authority controls commerce by requiring records of wool weights and opinions from CONACS before any products (fiber, cloth or articles) can be legally either imported or exported from Peru.

The processing of vicuña fiber and the commercialization of vicuña products involves a joint venture "Association in Participation" between SNV and the consortium that won the auction for vicuña wool. The SNV provides the wool to the consortium which includes a Peruvian company that fabricates cloth from the vicuña fibers, which is then sent to an Italian manufacturing plant where luxury clothing items are produced. A second Italian firm then handles the promotion and marketing of the finished vicuña products (Hoces R. 1997, pers. comm.). CONACS supervises production to guarantee that all articles will contain 100 percent vicuña wool. This process is designed to maximize the financial returns from the vicuña fibers; the profits from the final sales are distributed, under the supervision of CONACS and INRENA, to the campesino participants. Raw vicuña wool currently sells for \$500/kg of fiber and additionally a percentage of the final sale price on the completed product goes to the campesino communities.

The vicuña populations of Pampa Galeras National Reserve and Nuclear Zone, Pedregal, Osconta and Sawacocha (Province of Lucanas), Sais Picotani (Province of Azangaro), Sais Tupac Amaru (Province of Junin), and Salinas Aguada Blanca National Reserve (Provinces of Arequipa and Cailloma) were transferred from CITES Appendix I to Appendix II in 1987 (at COP6). All remaining Peruvian vicuña populations were transferred to Appendix II in 1994 (COP9), effective February 16, 1995. All exports are limited to cloth fabricated from the 3,294 kg (7,260 lbs) of stored wool present in November 1994 or from the wool stores obtained from the recent authorized shearing of live animals or from dead animals listed in the vicuña registry, and items made from that cloth and to certain luxury handicrafts and knitted articles produced in Peru. The reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Vicuña Convention and

the words "VICUÑA-PERU-ARTESANIA." This trademark will also occur on all luxury artisan products and knitted articles of vicuña wool. Peru also plans to add to the produced articles, a seal or identification tag with codes indicating the origin of the product, the assigned trademark or label and the CITES permit number. All specimens not meeting any of the above conditions will be subject to the prohibition against primarily commercial trade.

The vicuña is not considered to be endangered by inadequate regulatory mechanisms in Peru. The species is, however, considered to be threatened by this factor, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover.

E. Other Natural or Human-Made Factors Affecting Its Continued Existence

The great potential threat to the vicuña is that pelts can be easily obtained from poached animals and that the wool industry may actually prefer the longer fibers that can be obtained by soaking and pulling hairs from pelts, rather than the clipped hairs from legal fleeces (Canedi 1997, pers. comm.). The vulnerability of the vicuña to political instability is well documented. For example, vicuña populations in Peru were estimated at about 60,000 in 1980 and 1981 but were overexploited and in 1982 populations were reduced to about 25,000. A slow recovery was observed until 1988 when populations were again estimated at about 60,000. Vicuña populations were again reduced to low levels from 1989 to 1993 when vicuña wool from poached animals was used to help finance guerilla activities in some countries.

The vicuña represents one of the most significant economic resources available in many Andean highlands that have limited human populations with limited economic resources at their disposal. Indigenous people fully realize that a poached vicuña can be used once but that the managed, live-sheared vicuña can be used repeatedly (Wheeler and Hoces R. 1997). Assigning the responsibility of vicuña management to campesino ranchers and/or campesino communities and granting those people the opportunity to legally realize economic gains from their management and protection efforts represents a significant bio-political decision. It is also significant that governments in four range countries have cooperated in the development of a vicuña wool industry and that scarce resources have been

devoted to the management of this species. Vicuña management, as described herein, is one of the better examples of the economic gains to be realized from the sustainable use of a biological resource.

Distinct Vertebrate Population Segment

The definition of "species" in section 3(16) of the Act includes "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Distinct vertebrate population segments for purposes of listing under the Act are defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?). International borders may be used to delineate discrete population segments where there are significant differences in: (1) The control of exploitation; (2) management of habitat; (3) conservation status; or (4) regulatory mechanisms on each side of the border (61 FR 4722). Discrete population segments can also be defined by marked physical, physiological, ecological, or behavioral separation from other populations of the same taxon.

We recognize the vicuña population of Ecuador as a distinct vertebrate population segment for purposes of listing under the ESA. The vicuña population of Ecuador is geographically isolated and separate from other vicuña in Argentina, Bolivia, Chile, and Peru. Historically, the vicuña was eliminated from Ecuador. A small, disjunct population has been recently reintroduced to Ecuador. The population was established from 100 animals exported from Bolivia in 1993. This was accomplished within the multilateral frameworks of both the *Convenio para la Conservación y Manejo de la Vicuña* (Convention for the Conservation and Management of the Vicuña, or the Vicuña Convention) and the CITES Convention. It should be noted that Ecuador is also a Party to the Vicuña Convention. Ecuador's population remains listed in CITES Appendix I, and there is no plan to commercially utilize the species in the

near future. Furthermore, the Parties to the Vicuña Convention view this as a separate population, worthy of special recovery efforts. Although the countries of the region that are Parties to the Vicuña Convention view this as an "experimental" population, that should not be seen in the domestic U.S. context of experimental populations under the Act, where criteria and definitions differ. For these reasons, the Ecuadoran population of vicuña satisfies the discreteness and significance criteria of the DVPS Policy, and, therefore, merits treatment as a distinct population segment under the ESA.

In contrast to the rather strict requirements for listing entities (species, subspecies, or distinct vertebrate population segments) under the ESA, CITES has retained a degree of flexibility in the listing process through the use of annotations. There is no specific requirement that populations be delimited by national borders or marked biological differences. CITES Article I defines a species as "any species, subspecies, or geographically separate population thereof", and different populations of a species can be listed in different CITES Appendices. Thus, it has been possible to transfer sub-national populations of vicuña in Argentina, Bolivia, and Chile from Appendix I to Appendix II. This accounts for the lack of perfect symmetry between populations proposed for threatened status and those currently listed in Appendix II of CITES.

Summary of Findings

The Service finds that the vicuña is a highly vulnerable species whose populations are generally increasing over a large area of very specific habitat—the high Andean tablelands of Argentina, Bolivia, Chile and Peru. The current status of the vicuña and its future potential seems directly attributable to recent bio-political decisions made in the range countries to turn over the custodianship of the species to the native people sharing these landscapes. Laws, decrees and infrastructures have been or are being developed to help the campesinos manage and protect the species. In return the campesinos are or are likely to receive critical financial benefits from that management that will benefit both individuals and their communities. The management and protection accorded to the vicuñas, by campesinos in cooperation with governmental entities, provides the best opportunity for the vicuña to survive as a species and as a very important part of the Puna and Altoandina ecosystems.

Specifically, we find that the vicuña is threatened by the (1) present or threatened destruction, modification, or curtailment of its habitat or range, (2) previous or current overutilization, and (3) the possibility of inadequately controlled illegal harvest pressures including poaching, in Argentina, Bolivia, Chile, and Peru. A reclassification of the vicuña from endangered to threatened under the Act will, with the attendant special rule, allow carefully regulated commerce of vicuña products into the United States. Funds generated by opening the United States market will help provide the resources necessary to further manage the species.

In response to the petition submitted by the International Vicuña Consortium, we find that: (1) Reclassification of the vicuña from endangered to threatened is warranted for all range countries except Ecuador; and (2) that a special rule is warranted for all Appendix II populations, with the exception of the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina, which are specifically excluded until such time as their conservation benefit for wild vicuña is demonstrated adequately. The present publication provides a 12-month finding on that petition and includes a proposed special rule.

Description of the Proposed Special Rule

The intent of the proposed special rule is to enhance the conservation of the vicuña through support for properly designed and implemented programs for vicuña conservation throughout their native range. The proposed special rule is intended to support the conservation efforts of the four range states of Argentina, Bolivia, Chile, and Peru, by acknowledging and deferring to certain of their management programs that allow utilization of vicuña wool from wild, live-sheared animals, with benefits accruing to indigenous communities.

The proposed special rule clarifies that only properly identified vicuña products can be imported into the United States. The vicuña products that can be imported are only those items of either raw (unprocessed) vicuña wool or cloth, or items made from that wool, including luxury handicrafts and knitted articles, that are properly identified, and have accompanying valid, legal CITES Appendix II export permits or re-export certificates. Under the proposed special rule, an endangered or threatened species permit for individual shipments would not be required under 50 CFR part 17. To be

imported, vicuña products must originate in populations that are listed both as threatened under the Act and in Appendix II of CITES, with the exception that Appendix II semi-captive populations in Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina are excluded from the proposed special rule until such time as their conservation benefit for wild vicuña populations is demonstrated adequately. If adequate information is presented during the public comment period, these populations may be included under the final special rule.

We are aware that there have been poaching and illegal trade problems with this highly valuable species in the past, and any loss of control would seriously undermine the conservation programs of these countries, thereby potentially jeopardizing vicuña populations. Therefore, we propose not to allow the import of vicuña products from threatened and approved Appendix II populations if the countries of origin or the countries of manufacture or re-export have been determined by the CITES Conference of the Parties or the CITES Standing Committee to be not effectively implementing the Convention. Specifically, the proposed special rule would prohibit importation from countries of export or re-export that have either failed to designate a Management Authority or Scientific Authority, or have been identified by the Conference of the Parties to the Convention, the Convention's Standing Committee or in a Notification from the Secretariat as a country from which Parties should not accept CITES permits.

Commerce with the United States in vicuña products, if the proposed special rule is adopted as final at the conclusion of the regulatory process, will only be allowed with countries that have both designated CITES Management and Scientific Authorities, and that are not subject to a Schedule III Notice of Information for all wildlife or all CITES-listed species. In the case where vicuña products are exported to a second country, for manufacturing purposes, and the finished products are re-exported to the United States, then neither the country of origin nor the country of re-export can be subject to Schedule III Notice of Information based on the criteria described in the special rule if imports are to be allowed. The U.S. Management Authority will provide on request the list of those countries subject to a Schedule III Notice of Information to those manufacturers in the country of re-export and to importers so that they may be advised of restrictions on vicuña

products. At present, no countries are subject to a Schedule III Notice of Information for all wildlife or all CITES-listed species.

For vicuña and vicuña products, there is no personal effects exemption in the proposed special rule. That is, items purchased by travelers overseas or personal items owned by people moving to the United States will require appropriate CITES export documents (permits or re-export certificates) to be imported legally into the United States. This is based on analysis of the annotation for the vicuña in the official CITES Secretariat list of the CITES Appendices, and dialogue with the CITES Secretariat in Geneva. The vicuña annotations in the CITES Appendices are unique, and require that only certain products be exported from the range countries, under very strict conditions. For Peru, for example, the only products that can be exported (even non-commercially) are those manufactured from the stockpile held at the time of the ninth meeting of the Conference of the Parties, in November 1994, and they all require CITES Appendix II export permits. In Argentina, for example, articles bought by a foreign tourist at a government authorized store can be exported as personal accompanying baggage only after a CITES export permit has been obtained. In countries of re-export as well, very strict controls are required. The items manufactured from vicuña wool are very expensive luxury articles, and illegal trade poses a serious risk to the species and the conservation programs of the range states. Furthermore, all range countries require CITES permits for export of vicuña products, and do not recognize any personal effects exemption. It would be inappropriate and unfair to require export documents from range countries but not from countries of manufacture (re-export). Therefore, in this proposal, tourist souvenirs or other personal items require a CITES export document from the country of export or re-export in order to be legally imported into the United States.

All products must comply with all product annotations as described in the CITES Secretariat's official annotated list of the CITES Appendices. If those product annotations change at a future meeting of the Conference of the Parties (COP) to CITES, the Service will have to re-evaluate its 4(d) finding. The criteria for determining if a vicuña product is properly identified are drawn from the CITES Appendices, and the product annotations for vicuña contained therein. For cloth and cloth products, the only products that can be imported are those where the reverse side of cloth

and cloth products bear the logo adopted by countries signatory to the *Convenio para la Conservación y Manejo de la Vicuña* (Vicuña Convention), and the words "VICUÑA—(Country of Origin)—ARTESANIA" (country of origin is the name of the original exporting country where the vicuña wool in the products originated, either Argentina, Bolivia, Chile, or Peru). For finished vicuña products (including luxury handicrafts and knitted articles) and any bulk shipments of raw wool, the product or shipment must have a seal or identification tag with codes describing the origin of the vicuña product, the trademark or label ("VICUÑA—(Country of Origin)—ARTESANIA") and the CITES export permit number. This proposed special rule, and these criteria for properly identified vicuña products, are derived from the CITES Appendices themselves. The product annotations were proposed by the range countries and adopted by the CITES Conference of the Parties. Therefore, we are proposing to align U.S. importation practices with those approved by the CITES Parties, in order to facilitate effective conservation of the vicuña in range countries. In our judgment the protective regulations set out in the proposed rule contain all of the measures that are necessary and advisable to provide for the conservation of the vicuña in Argentina, Bolivia, Chile, and Peru.

Public Comments Solicited

We intend that any action resulting from this proposal be as effective as possible. Therefore, we are soliciting any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal. We are particularly seeking comments concerning biological or commercial trade impacts on any vicuña population, or other relevant data concerning any threat (or lack thereof) to the wild populations of vicuña in South America.

Final action on the proposed reclassification of the vicuña, and the promulgation of the special rule will take into consideration the comments and any additional information we receive. Such communications may lead to adoption of final regulations that differ from those in the proposed rule.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of

3. Paragraph (k) is added to § 17.40 and reads as follows:

§ 17.40 Special rules—mammals.

* * * * *

(k) *Vicuña* (*Vicugna vicugna*)—(1) *Prohibitions.* All provisions of § 17.31 (a) and (b) and § 17.32 of this part shall apply to vicuña and vicuña products from both populations listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina. Except as provided in paragraph (k)(2) of this section, it is unlawful for any person to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (k)(1)(i)–(ii) of this section with vicuña from all other populations listed in Appendix II of CITES:

(i) Import, export, and re-export.

(ii) Sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity.

(2) *Exceptions.* The import, export, or re-export of, or interstate or foreign commerce in vicuña products, consisting of either raw wool or items and cloth made, or partially made, from vicuña wool, may be allowed without a threatened species permit issued pursuant to 50 CFR 17.32 when the provisions in parts 13, 14, and 23 and the applicable paragraphs set out below have been met:

(i) The vicuña product must comply with all CITES product annotations as given in the CITES Secretariat's official list of the CITES Appendices and found at 50 CFR 23.23, and be identified as follows:

(A) *Cloth and cloth products:* The reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the "Convenio para la Conservación y Manejo de la Vicuña", and the words "VICUÑA-(Country of Origin)-ARTESANIA", where country of origin is the name of the original exporting country where the vicuña wool in the products originated.

(B) *Finished vicuña products (including luxury handicrafts and knitted articles) and any bulk shipments of raw wool:* The product or shipment must have a seal or identification tag with codes describing the origin of the vicuña product, the trademark or label ("VICUÑA-(Country of Origin)-ARTESANIA") and the CITES export permit number, where country of origin is the name of the original exporting

country where the vicuña wool in the products originated.

(ii) The accompanying CITES permit or certificate must contain the following information:

(A) The country of origin, its export permit number, and date of issuance.

(B) If re-export, the country of re-export, its certificate number, and date of issuance.

(C) If applicable, the country of last re-export, its certificate number, and date of issuance.

(iii) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a particular shipment must not be subject to a Schedule III Notice of Information pertaining to all wildlife or to all CITES-listed wildlife that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, ARLSQ Room 700, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(3) *Notice of Information.* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue a Schedule III Notice of Information that identifies a restriction on trade in specimens of vicuña addressed in this paragraph (k) if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as lacking both designated Management and Scientific Authorities that issue CITES documents or their equivalent.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked to not accept shipments of specimens of any CITES-listed species from the country in question.

Dated: August 23, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99-23333 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 083099A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on September 21, 22, and 23, 1999, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 21, 1999, at 9:30 a.m., and Wednesday and Thursday, September 22 and 23, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Seaport Inn Conference Center, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997-1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Tuesday, September 21, 1999

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the Administrator, Northeast Region, NMFS, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. Following reports, the Chairman of the Groundfish Committee will recommend approval of final action on Framework Adjustment 31 to the Northeast Multispecies Fishery Management Plan (FMP). The framework includes mid-season adjustments to the Gulf of Maine (GOM) cod fishery that also could carry forward to the 2000-2001 fishing year and modification of the Georges Bank cod trip limit adjustment mechanism. After a noon break, the Groundfish Committee and Council will continue their discussions until the meeting is adjourned for the day.

Wednesday, September 22, 1999

The Scallop Plan Development Team Chairman will make a presentation on the Sea Scallop Stock Assessment and Fishery Evaluation (SAFE) Report. The report will include an update of the 1998 stock assessment with 1999 fishing year data and projections, as well as recommended management options. The Council's Scientific and Statistical Committee will then provide its review of the assessment and analyses contained in the SAFE Report. After a noon break, the Sea Scallop Committee will recommend management alternatives and approval of initial action on Framework Adjustment 12 to the Atlantic Sea Scallop FMP (the annual framework adjustment), based on the information in the SAFE report and recommendations from industry advisors. Framework Adjustment 12 will specify scallop management measures for the 2000 fishing year (March 2000 through February 2001). The day will conclude with a review and approval of a scallop research proposal to be funded through the 1-percent scallop total allowable catch set-

aside established for the Georges Bank Sea Scallop Exemption Program.

Thursday, September 23, 1999

The Whiting Committee will approve initial action on a framework adjustment to the Northeast Multispecies FMP to address unresolved small mesh multispecies management issues. Measures may include options for a mesh size/possession limit call-in enrollment system and options for the use of a net strengthener with 2.5-inch (6.4-cm) mesh size. The committee also will review its discussions about limited entry in the whiting fishery. There will be general discussion of issues to be addressed in an upcoming amendment to the Northeast Multispecies FMP, which will remove whiting, red hake, offshore hake, and ocean pout from the Multispecies FMP and establish a separate Small Mesh Species FMP. The Capacity Committee will ask the Council for preliminary identification of issues and options for future consideration. Following a noon break, the Habitat Committee will report on ongoing issues. The meeting will conclude after the Council addresses any other outstanding business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 1, 1999.

Bruce C. Morehead,

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

[FR Doc. 99-23302 Filed 9-2-99; 3:25 pm]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 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 September 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 September 21, 1999, at the Wyndham Hotel Northwest Chicago, 400 Park Boulevard, Itasca, Illinois 60143 from 9:00 CDT–5:00 CDT; September 23, 1999, at the Montgomery Civic Center, 300 Bibb Street, Montgomery, Alabama 36104, from 9:00 CDT–5:00 CDT; and September 25, 1999, at the Lackawanna Junior College Auditorium, 501 Vine Street, Scranton, Pennsylvania 18509, from 9:00 EDT–5:00 EDT.

FOR FURTHER INFORMATION CONTACT: Timothy M. Peters (202–720–4860), Assistant Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: September 1, 1999.

Keith J. Collins,
Chief Economist.

[FR Doc. 99–23308 Filed 9–7–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on September 22, 1999 at Prospect Ranger Station on Highway 62 at Prospect, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Update on current litigation affecting Bureau of Land Management and Forest Service; (2) Port Orford Cedar root rot management; (3) Management proposal for Highway 62 corridor; (4) Coyote Creek Experimental Forest; (5) Riparian Reserve width adjustment; and (6) Public comment.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541) 858–2322.

Dated: August 31, 1999.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 99–23235 Filed 9–6–99; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of the explosion and fire at the TOSCO Refining Company's Avon Refinery in Contra Costa County, California, on February 23, 1999, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Board of Inquiry beginning at 9:00 a.m. local time on September 15, 1999, at the Contra Costa County Board of Supervisors Chambers, County Administration Building, 651 Pine Street, Martinez, California. This meeting will be open to the public. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External

Relations, (202) 261–7600, or visit our web site at www.csb.gov.

Phillip Cogan,

Special Assistant for External Relations.

[FR Doc. 99–23365 Filed 9–2–99; 4:48 pm]

BILLING CODE 6350–01–P

UNITED STATES COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, September 17, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

- I. Approval of Agenda
- II. Approval of Minutes of July 9, 1999 Meeting
- III. Announcements
- IV. Staff Director's Report
- V. Executive Session—Security Procedures
- VI. Schools and Religion Project
- VII. State Advisory Committee Report
 - Civil Rights Enforcement Efforts in North Dakota (North Dakota)
- VIII. State Advisory Committee Appointments for Louisiana
- IX. Future Agenda Items

FOR FURTHER INFORMATION CONTACT:

David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–23424 Filed 9–3–99; 2:32 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: 2000–2002 American Community Survey.

Form Number(s): ACS–1, ACS–1(GQ), ACS–3(GQ), ACS–290.

Agency Approval Number: 0607–0810.

Type of Request: Revision of a currently approved collection.

Burden: 603,550 hours.

Number of Respondents: 2,945,400.

Avg Hours Per Response: 37 minutes.

Needs and Uses: The Census Bureau is developing a methodology to collect and update every year demographic, social, economic, and housing data that is essentially the same as the “long-form” data that the Census Bureau traditionally has collected once a decade as part of the decennial census. This methodology is called continuous measurement (CM). Since the Census Bureau collects the long-form data only once every ten years, the data become out of date over the course of the decade. Also, there is an increasing need for data describing lower geographic detail. CM will provide current data throughout the decade for small areas and small subpopulations.

The American Community Survey (ACS) is the data collection vehicle for CM. The Census Bureau began a test and demonstration of the capabilities of the survey collection and processing system in 1995. Presently, the ACS is conducted in 36 counties. In November of 1999, as part of the decennial program to make a transition from the Census 2000 long form to collecting long-form data throughout the decade, we will begin ACS data collection in 1,203 counties. This data collection will allow for comparison of estimates from Census 2000 with estimates from the ACS for all states, large cities, and population subgroups, and will help data users and the Census Bureau understand the differences between estimates from the ACS and the Census 2000 long form. Current plans are to put the ACS fully in place in 2003.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk

Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–23295 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order: Brass Sheet and Strip From the Netherlands

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 brass sheet and strip from the Netherlands. This review covers imports of brass sheet and strip from one producer/exporter during the period of review (POR), August 1, 1997 through July 31, 1998.

We preliminarily determine that sales of the subject merchandise have not been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company. If these preliminary results are adopted in our final results of this administrative review, we will revoke the antidumping duty order, based on three consecutive review periods of sales at not less than normal value by Outokumpu Copper Strip B.V., the sole producer and exporter of subject merchandise from the Netherlands (*see* 19 CFR 351.222(b)(i)). *See Intent to Revoke* section of this notice.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Jarrod Goldfeder, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4126r (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (1999).

Background

On August 12, 1988, the Department published in the **Federal Register** the antidumping duty order on brass sheet and strip from the Netherlands (53 FR 30455). On August 11, 1998, we published in the **Federal Register** the notice of “Opportunity to Request an Administrative Review” of this order, for the period August 1, 1997 through July 31, 1998 (63 FR 42821). On August 31, 1998, in accordance with 19 CFR 351.213(b), Outokumpu Copper Strip B.V. (OBV), the sole producer/exporter requested an administrative review of its exports of the subject merchandise to the United States for the POR August 1, 1997 through July 31, 1998. In addition, OBV requested that the Department revoke the antidumping duty order against brass sheet and strip from the Netherlands, pursuant to 19 CFR 351.222(b), based on the absence of dumping and the fact that OBV is not likely to sell the subject merchandise at less than normal value in the future. On September 23, 1998, in accordance with 19 CFR 351.221, the Department initiated this administrative review (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 63 FR 51893 (September 29, 1998)).

On October 2, 1998, the Department issued an antidumping questionnaire¹ to OBV. After several extensions, OBV submitted its response to sections A, B, and C in October and November 1998. The Section D questionnaire response was received in December 1998. The Department issued and received responses to Sections A, B, and C supplemental questionnaires in January 1999. On February 5, 1999, the Department extended the time limit for completion of the preliminary results of this administrative review by 120 days, or until August 31, 1999. *See Brass*

¹ Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value of the merchandise under review.

Sheet and Strip from the Netherlands: Notice of Extension of Time Limits for the Sixth Antidumping Duty Administrative Review, 64 FR 5766. In April 1999, the Department issued a Section D supplemental questionnaire. The response to the supplemental cost questionnaire was received by the Department in May 1999.

Scope of Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Included in the scope are coiled, wound-on-reels (traverse wound), and cut-to-length products. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Verification

As provided in section 782(i) of the Act, the Department verified sales and cost information provided by OBV. The cost verification was conducted from May 31 to June 6, 1999 and the sales verification was conducted from July 12 to July 16, 1999. The Department used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Verification results are outlined in the verification reports placed in the case file.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and home markets that were identical with respect to the following characteristics: (1) type (alloy); (2) gauge (thickness); (3) width; (4) temper; (5) coating; and (6) packed form. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we

compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

For purposes of the preliminary results, we have used differences in merchandise adjustments based on the difference in the variable cost of manufacturing between each U.S. model and its most similar home market model.

Date of Sale

During the POR, OBV reported making sales in the home market pursuant to frame agreements, which are non-binding arrangements with customers containing estimates of the types and quantities of merchandise the customer expects to order over a certain period of time. See Response to Section A of the Department's Questionnaire, dated October 23, 1998, at A-16. In addition, although the frame agreements contain a fabrication price, which is the price charged by companies such as OBV to transform raw materials into finished brass sheet and strip, such agreements do not contain the price OBV charges for the necessary raw materials (i.e., the "metal price"). As such, the quantity to be purchased and the total price to be paid by the customer are not established in the frame agreements.

In the immediately preceding review, the Department used the invoice date as the date of sale rather than the frame agreement date because we found in that review that the invoice date was the first date on which all material terms of sale (i.e., quantity, metal price, and fabrication price) were established. See *Brass Sheet and Strip from the Netherlands: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25821, 25822 (May 11, 1998); see also *Brass Sheet and Strip from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 63 FR 49544 (September 16, 1998) (*Final Results* 96/97). The record in this review, including our findings at the sales verification of OBV's submitted data, supports the same conclusion. Therefore, in accordance with 19 CFR 351.401(i) and Department practice, we have preliminarily determined that the invoice date is the appropriate date of sale for OBV.

Comparisons to Normal Value

To determine whether OBV's sales of brass sheet and strip were made to the United States at less than normal value, the Department compared the export price (EP) to the normal value (NV), as described in the "Export Price" and

"Normal Value" sections of this notice. In accordance with section 771A(d)(2) of the Act, the Department calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and CEP methodology was not otherwise warranted.

We calculated EP based on the packed, delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Act, where appropriate, we deducted from the starting price international freight expense, marine insurance, U.S. brokerage and handling expenses, and U.S. Customs duties.

We made corrections to the U.S. packing costs and recalculated U.S. credit expenses based on our verification findings. See Sales Verification Report, dated August 31, 1999 (Sales Verification Report). In addition, per the Department's instructions, OBV reported a transaction to the United States which the company characterized as a sample sale to a non-U.S. customer. Based on the evidence on the record of this review, including our findings at verification, we preliminarily determine that this transaction constitutes a sample sale to a non-U.S. customer and, therefore, have removed this sale from our calculations. See Sales Verification Report.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared OBV's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, since OBV's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like products were first sold in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, the Department deducted early-payment discounts and

rebates. We also deducted inland freight expense (plant-to-customer), inland insurance, and packing expense from the home market price in accordance with section 773(a)(6)(B) of the Act. We used the revised packing expenses provided to us at verification. We made adjustments, where appropriate, for differences in credit expenses between the U.S. and home market sales in accordance with section 773(a)(6)(C)(iii) of the Act.

We increased normal value by U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. To the extent there were comparisons of U.S. merchandise to home market merchandise that was not identical but similar, the Department made adjustments to NV for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Cost of Production Analysis

Because we disregarded sales that failed the cost test in the most recently completed review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been made at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. *See Final Results 96/97*. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by OBV.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication employed in producing the foreign like product, plus the costs for selling, general, and administrative expenses (SG&A), including interest expense, and packing costs.

We relied on the home market sales and COP information that OBV provided in its questionnaire responses, except as follows:

1. Use of Quarterly Cost Data

OBV calculated and reported quarterly per-unit manufacturing costs because of the significant and consistent decline in metal prices (*i.e.*, copper and zinc) throughout the POR. On August 11, 1999, however, OBV requested that the Department calculate weighted-average costs on a monthly basis for use in the sales-below-cost test. According to OBV, in this case the Department should deviate from its preferred method of calculating a single weighted-average POR cost in order to prevent distortions in the margin calculations

that would result from the metal price fluctuations, since these metal inputs account for approximately 70 percent of the cost of manufacturing brass sheet and strip.

Our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted-average cost for the entire period of review except in unusual cases where this preferred method would not yield an appropriate comparison in the margin calculation. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*; 64 FR 30664, 30676 (June 8, 1999) (concluding that weighted-average costs for two periods were permissible where major declines in currency valuations distorted the margin calculations); *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8925 (February 23, 1998) (calculating quarterly weighted-average costs due to a significant and consistent price and cost decline in the market); *Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*; 58 FR 15467, 15476 (March 23, 1993) (determining that the Department may use quarterly weighted-average costs where there exists a consistent downward trend in both U.S. and home market prices during the period); *Final Determination of Sales at Less than Fair Value: Erasable Programmable Read Only Memories from Japan*; 51 FR 39680, 39682 (October 30, 1986) (finding that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of quarterly weighted-average costs).

We have reviewed the information on the record of this case and note that both OBV's sales prices for the subject merchandise and the cost of metal used in the manufacture of this merchandise correspondingly and consistently declined on a quarterly basis throughout the POR. Since the metal costs represent a significant percentage of the total cost of producing brass sheet and strip and the cost of the metal dropped consistently throughout the POR, computing a single POR weighted average cost would distort the results of the cost test. In order to avoid this distortion, we have preliminarily relied upon the submitted quarterly weighted-average costs rather than calculating single weighted-average POR costs. We did not recalculate OBV's submitted

COP and constructed value (CV) data on a monthly weighted-average basis because the monthly changes in selling prices and input metal costs do not appear significant enough to require such a short averaging period. As such, we compared weighted-average quarterly COP figures for OBV, adjusted where appropriate (*see below*), to home market sales of the foreign like product in the same quarter, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP.

2. Startup Adjustment

OBV claimed a startup adjustment to costs pursuant to section 773(f)(1)(C)(ii) of the Act, covering a nine-month startup period from January 1998 through September 1998 for its new continuous strip casting line, which replaced OBV's ring casting mill. We preliminarily determine that OBV's new continuous strip casting mill constitutes a new facility and that the new production facility required substantial additional investment, within the meaning of section 773(f)(1)(C)(ii)(I) of the Act. The new vertical continuous strip casting mill represents an investment in a new technology for the production of brass sheet and strip. Consequently, the continuous strip casting mill, which entirely replaced the former ring casting mill, required the construction of an addition to OBV's plant containing mostly new equipment that was custom made for OBV for installation in this new mill, thereby also requiring considerable investment. Secondly, we preliminarily determine that OBV's production levels at the new facility have been limited due to technical factors associated with the initial phase of commercial production, as required under section 773(f)(1)(C)(ii)(II) of the Act. OBV specifically identified these limiting technical factors in a proprietary memorandum to the Department in support of its startup cost adjustment dated February 2, 1999. We examined these factors at the verification of OBV's submitted cost data (*see Cost Verification Report*, dated August 2, 1999) and have preliminarily determined that OBV has satisfied the criteria for receiving a startup adjustment.

Regarding the startup period, we have accepted for the preliminary results the submitted startup period that ends on September 30, 1998. We based this preliminary finding, in large part, on a review of the quantity of material input (*i.e.*, production starts) at the new facility during the POR. Specifically, the production starts represent the best

measure of the facility's ability to produce at commercial production levels. Based upon our analysis of OBV's production starts, we preliminarily find that OBV attained commercial production levels in October 1998. Accordingly, we have accepted OBV's submitted startup cost adjustment.

3. General and Financial Expenses

We used the revised general and administrative (G&A) and financial expense rates that OBV provided on the first day of the cost verification, which the company revised to correct for clerical errors made in originally calculating these items. In addition, we included in G&A expenses the loss OBV recognized in the ordinary course of business from holding metals in inventory.

B. Test of Home Market Prices

After calculating COP, we tested to see whether home market sales of subject brass sheet and strip were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts and rebates, where appropriate.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of OBV's home market sales for a model were at prices less than the COP, we did not disregard below-cost sales of that model because the Department determined that the below cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of OBV's home market sales of a given product were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2)(C) of the Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we compared home market prices to the weighted-average COP for the POR. When we found that below-cost sales had been made in "substantial quantities" and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

Since there were sufficient sales that passed the cost test, it was unnecessary to calculate CV in this case.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or, if applicable, CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) 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.

To determine whether comparison market sales are at different LOT's than EP, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales are at a different LOT, and the differences affect 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, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Act.

OBV claims that the Department can match U.S. sales to identical sales at the same LOT in the home market and that a LOT adjustment is therefore not necessary. OBV manufactures to order and ships directly to original equipment manufacturers (OEMs) in the United States and home market, and also ships directly to a home market trading company. In order to determine whether U.S. sales were made at the same LOT as sales in the home market, we examined OBV's questionnaire responses with regard to its distribution system, including selling functions, class of customer and selling expenses. We examined the chain of distribution and the selling activities associated with sales reported by OBV to its two home market customer categories (*i.e.*, OEMs and trading company). We found that the two home market customer categories did not differ significantly from each other with respect to selling activities, although there were slight differences between them for sales process/marketing support and freight and delivery. Based on our overall analysis, we found that the two home market categories constituted one LOT.

OBV reported EP sales to its unaffiliated customers in one customer category, OEM's, and therefore only had

one level of trade for U.S. sales. We examined the channel of distribution and the selling activities associated with sales reported by OBV to the single LOT in the Netherlands and in the United States and found that the LOT in these two markets were similar. Therefore, all price comparisons are at the same LOT and a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is unwarranted.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Intent To Revoke

On August 31, 1998, OBV submitted a letter stating that OBV was the sole producer of brass sheet and strip from the Netherlands, and requested that pursuant to 19 CFR 351.222(b), the Department revoke the antidumping duty order currently in place against certain brass sheet and strip from the Netherlands. OBV submitted, along with its revocation request, a certification stating that: (1) the company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i)); and (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years. *See* 19 CFR 351.222(e)(1)(ii).²

The Department "may revoke, in whole or in part" an antidumping duty

² On September 1, 1999, OBV amended its request for revocation to include a certification that, if the Department finds that OBV is not the sole producer and exporter from the Netherlands, the company agrees to immediate reinstatement in the order if, subsequent to revocation, the Department concludes that the company sold the subject merchandise at less than normal value (*see* 19 CFR 351.222(b)(iii)). Since the Department has concluded that OBV is the sole producer and exporter from the Netherlands, the revocation decision is whether to revoke the order on brass sheet and strip from the Netherlands in whole.

order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that each exporter and producer covered by the order submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities (see 19 CFR 351.222(e)(1)). Upon receipt of such a request, the Department may revoke an order, if it concludes that each exporter and producer covered at the time of revocation: (1) sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV; see 19 CFR 351.222(b)(1)).

On February 2, 1999, the Department established a time frame for parties to submit factual information relating to the Department's consideration of OBV's request for the revocation of the antidumping duty order on brass sheet and strip from the Netherlands. See *Brass Sheet and Strip From The Netherlands; Notice of Extension of Time Limits for Sixth Antidumping Duty Administrative Review*, 64 FR 5766 (Feb. 5, 1999). OBV and the petitioners submitted comments on April 1, 1999 and rebuttal comments on May 6, 1999.

Petitioners' Comments: The petitioners argue that the Department should not revoke the order from the Netherlands because the factual information presented by OBV does not support its position that (1) it has sold subject merchandise in the United States in commercial quantities during the last three annual review periods; and (2) it has demonstrated that it is not likely to resume dumping in the future if the antidumping order is revoked. The petitioners state that recent determinations issued by the Department indicate that the "commercial quantities" requirement applies with respect to both the volume of sales as well as the number of sales made by a party requesting revocation. See *Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12978 (Mar. 16, 1999) (*Magnesium from Canada*). See

also *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (Jan. 13, 1999) (*Certain Plate from Canada*). The petitioners argue that the number and quantity of sales of subject merchandise (radiator strip brass) reported by OBV in the last three administrative reviews is a small fraction of the volume and number of U.S. sales made prior to the original investigation. They suggest that the only reasonable inference that can be drawn from such a substantial decrease in sales is that OBV withdrew from the U.S. market for the products that it was selling during the original investigation (both radiator strip and electrical connector strip) because it could not sell these products without dumping. According to the petitioners, the fact that OBV has chosen to source a large part of its radiator strip sales in the United States from production by its American affiliate, Outokumpu American Brass (American Brass), despite the fact that such merchandise currently would be subject to a 0% *ad valorem* cash deposit rate, according to the petitioner is further proof of OBV's inability to sell subject merchandise in the United States without dumping. The petitioners argue that in a similar situation, the Department denied revocation to a German company who had shifted sourcing to its United States subsidiary (see *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727, 49730 (Sept. 23, 1996) (*Brass from Germany*)).

Finally, in order for the Department to make an objective determination of the likelihood of future dumping if the order were revoked, the petitioners requested that the Department undertake an analysis of OBV's past practices as well as future competitive conditions that would affect OBV's prices and costs in the United States and the home market. Specifically, for both OBV and American Brass, they requested that the Department obtain, for each product category of subject merchandise, historical shipment data in both the United States and the home market, production capacities, and fabrication prices. The petitioners claim that this necessary information was noticeably absent from OBV's otherwise voluminous submission supporting revocation and that it is otherwise not available to the petitioners.

Respondent Comments: OBV claims that it is a well-established past practice

of the Department to make revocation determinations on a case-by-case basis, taking into consideration the industry in question, relevant market conditions, and the record evidence. See *Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 62 FR 39809, 39812 (July 24, 1997) (*DRAMS from Korea*). In addition to three years of no dumping, when evidence is placed on the record relating to the likelihood of future dumping, the Department is required to consider the evidence. See *Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986, 17988 (April 13, 1998) (*Wire Rope from Korea*). In *Wire Rope from Korea*, the Department considered information placed on the record which included conditions and trends in the domestic and home market industries, currency movements, and the ability of the respondent to compete in the U.S. market without dumping. OBV argues that the information it has placed on the record, as supported by an economic report that it commissioned from LECG, Inc. (LECG Report), demonstrates that its sales have in fact been made in commercial quantities,³ and that it is not likely to sell at below normal value in the future if the order were revoked.

OBV notes that in *Certain Plate from Canada* the Department stated that "the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue." OBV claims that in fact the company shipped at historical levels over the period covered by the first three administrative reviews, *i.e.*, February 8, 1988 through July 31, 1991, discontinued shipments from 1992 until 1995, but resumed shipments when it began servicing certain niche markets in the United States. Upon review and consideration of the "unusual occurrences which might affect the potential for production and exportation" in deciding commercial quantities (see *Notice of Proposed*

³ OBV further argued that the "commercial quantities" factor cited in 19 C.F.R. 351.222 (d)(1) applies only to antidumping reviews in which the "middle" year does not involve a review. In that regard, it contends that the Department's reliance upon "commercial quantities" in *Magnesium From Canada* notwithstanding, it is OBV's position that the quantity of imports is only one of many factors the Department may consider in making a "likelihood" determination.

Rulemaking and Request for Public Comment, 61 FR 7308, 7320 (February 27, 1996) (*Proposed Regulations*)), OBV contends that the Department will find that the shipments made during this and the previous two administrative reviews were made in commercial quantities.

In evaluating the question of "commercial quantities" and "likelihood," OBV argues that it is essential to understand that OBV's decision to discontinue shipments of subject merchandise to the United States in 1991 was not because OBV was unable to sell in the United States at above normal value prices. Rather, it was due to the acquisition of American Brass, a major United States producer of brass sheet and strip products (and supporter of the revocation of this order), by OBV's parent company, Outokumpu Oyj (Outokumpu). OBV claims that this event caused a significant and permanent structural change in the U.S. industry, vis-a-vis OBV, which makes it unlikely that OBV would resume dumping in the United States.

OBV states that following the acquisition of American Brass, production of subject merchandise was shifted from the Netherlands to American Brass for a variety of management reasons unrelated to pricing. Due to its obvious proximity to OBV's customers in the United States, and the need to address the uncertainty brought about by the on-going antidumping order, American Brass was required by Outokumpu to produce in-scope brass radiator strip, while OBV continued to supply thinner gauge radiator strip not covered by the scope of the order. OBV resumed shipments of in-scope radiator strip in 1995 to service a niche market for certain United States customers who prefer brass strip with more exacting tolerances, which for a variety of reasons cannot be produced efficiently by American Brass. OBV claims that as a result of a significant investment made in innovating radiator strip production at its facilities, which has strengthened OBV's position as the world cost leader in the production of radiator strip, Outokumpu intends to shift production of in-scope radiator strip for its United States customers back to the Netherlands. This shift in production would also allow American Brass, in which Outokumpu has also made significant new investment in equipment, to focus on non-radiator strip production, where it has its best efficiency, and away from radiator strip which is not suited to its production process.

OBV claims that the LECG economic report clearly shows that it is unlikely

that OBV will resume pricing in-scope radiator strip, or any other subject brass, in the United States market at less than normal value even as it increases its shipments of radiator strip from the Netherlands, for the following reasons: (1) The recent investment in the vertical strip caster at OBV has made OBV the world cost leader in radiator strip; (2) there is no direct competition to drive-down prices from any integrated United States mill for in-scope radiator strip; (3) the parent company to both OBV and American Brass would never allow OBV to compete with American Brass in non-radiator strip where American Brass has a comparative advantage. Thus, OBV will not export any product to the United States except radiator strip; (4) OBV is already operating at full capacity servicing its worldwide customer base. Further, OBV could not significantly increase its production of non-radiator strip brass, or shift production to other types of subject merchandise, without significant additional investment; (5) many United States customers of radiator strip are multinational producers who would not tolerate price discrimination among their worldwide affiliated entities; (6) the Dutch guilder has been weaker against the U.S. dollar and is more likely to continue to fall rather than to appreciate; (7) any increase in radiator strip exports beyond servicing the current OBV/American Brass customer base would be moderated by the limited market for radiator brass, given the ongoing advance of aluminum as the preferred substitute for brass. OBV's conclusion based on the LECG report is that selling at prices below normal value in the future would be irrational and self-injurious.

Department Position: In determining whether to revoke an antidumping order, we must conclude, pursuant to 19 CFR 351.222(b)(1), that: (1) all producers and exporters have sold the subject merchandise at not less than normal value to the United States in commercial quantities for three consecutive reviews; and (2) it is not likely that those persons will in the future sell the subject merchandise at less than NV.

In the present case, the Department preliminarily finds that OBV is the only exporter or producer of subject merchandise shipped to the United States. This determination was based on an examination of 1997 and 1998 United States import statistics for the HTSUS item numbers (7409.21 and 7409.29) which cover the subject merchandise as well as information obtained during verification. See "memorandum of "Shipments of Brass

Sheet & Strip from the Netherlands," dated August 31, 1999, from John Brinkmann to the file (*OBV Shipment Memorandum*); see also Verification Report, dated August 31, 1999. The Department also preliminarily finds that OBV had zero or *de minimis* dumping margins for three consecutive reviews. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. See *Certain Plate from Canada*, 64 FR at 2175; see also *Magnesium from Canada*, 64 FR at 12979. This practice has been codified in section 351.222(d)(1) of the Department's regulations, which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in *commercial quantities* of the subject merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added); see also 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether OBV made sales of subject merchandise to the United States in commercial quantities, we find that OBV's aggregate sales to the United States were made in commercial quantities during all segments of this proceeding. Although both the quantity and number of OBV's shipments to the United States of subject merchandise have decreased since the imposition of the antidumping duty order, we find that the Outokumpu acquisition of American Brass and the subsequent transfer of in-scope radiator strip production to the United States is reflective of the type of "unusual occurrence" contemplated by the Department, in promulgating its regulations, as an acceptable explanation of why exports of subject merchandise have declined. See *Proposed Regulations*, 61 FR 7307, 7320 (Feb. 27, 1996). Prior to this acquisition, in 1989 and 1990, OBV continued to ship in similar quantities to the pre-order period and the subsequent

cessation of shipments until 1995 was an immediate result of the 1991 acquisition. Based upon these circumstances, it is reasonable to conclude that the company's commercial practices were permanently changed in 1991, and that 1991, rather than the pre-order period, should be the benchmark for measuring whether the company's sales during the three years without dumping were made in commercial quantities. Examination of shipments of subject merchandise from OBV from 1991 to the present shows that shipments began again in 1995 and increased in quantity and number of sales each year through 1998 (*see OBV Shipment Memorandum*). Thus, we can reasonably conclude that the "zero" margins calculated for OBV in each of the last three administrative reviews are reflective of the company's normal commercial experience.

With respect to 19 CFR 351.222(b)(1)(ii), the likelihood issue, "when additional evidence is on the record concerning the likelihood of future dumping, the Department is, of course obligated to consider the evidence by the parties which relates to the likelihood of future dumping." In doing so, the Department may consider such "factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without [sales at less than normal value]." *Wire Rope from Korea*, 63 FR at 17988 (citing *Brass from Germany*, 61 FR at 49730); *see also Proposed Regulation Concerning the Revocation of Antidumping Duty Orders*, 64 FR 29818, 29820 (June 3, 1999) (explaining that when additional evidence as to whether the continued application of an antidumping duty order is necessary to offset dumping is placed on the record, "the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case."); and *Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part*, 63 FR 6519, 6523 (Feb. 9, 1998). Thus, based upon three consecutive reviews of zero or *de minimis* margins, the Department presumes that dumping is not likely to resume unless the Department has been presented with evidence to demonstrate that dumping is likely to resume if the order were revoked.

In this proceeding, the petitioners have not presented evidence that would demonstrate that dumping is likely to resume if the order were revoked.

However, since the respondent placed information on the record that addresses the types of factors considered by the Department, we have considered this information in our determination of whether dumping is likely to occur if the order on brass sheet and strip from the Netherlands is revoked.

Based upon the evidence presented in this proceeding, we have considered various factors in considering whether OBV is likely to sell merchandise in the future at less than NV. We have reviewed the LECG economic report and briefs presented by OBV and find no evidence that indicates the likelihood of future dumping. Although OBV has indicated that it intends to shift production of subject radiator strip from American Brass back to the Netherlands, we find that there is no evidence that this will lead to the reoccurrence of dumping in the future. Further, the record shows that with the recent investment in the new vertical strip caster, OBV has a considerable cost advantage over American Brass in the production of radiator strip. Also, we confirmed at verification that OBV is already producing to near capacity and has limited capabilities to shift production from radiator strip to other subject products, such as electrical connector strip, where American Brass has a considerable cost advantage. Based on this and other evidence presented by OBV as to the current structure of the American market for brass radiator strip, and the relative weakness of the Dutch guilder to the U.S. dollar, we find that it is not likely that OBV will sell at less than normal value in the future.

Because both requirements under the regulation have been satisfied, and the record establishes that OBV is the only known producer and exporter of the subject merchandise from the Netherlands, we intend to revoke the antidumping duty order on brass sheet and strip from the Netherlands. If these preliminary findings are affirmed in our final results, we will revoke the order with respect to brass sheet and strip from the Netherlands. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct Customs to refund any cash deposit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average

margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
OBV	Zero.

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date 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, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the date of filing of case briefs. The Department will publish 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 comments, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for the importer of the subject merchandise. Upon completion of this review, the Department will issue appraisement instructions to the U.S. Customs Service. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis* (i.e., at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

If the final results remain unchanged from these preliminary results, no future

cash deposits will be required for the subject merchandise.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 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: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23327 Filed 9-7-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-815 & A-580-816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from three respondents and from the petitioners in the original investigation, the Department of Commerce ("the Department") is conducting (the fifth) administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers and exporters of the subject merchandise. The period of review ("POR") is August 1, 1997, through July 31, 1998.

We preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between export price ("EP") or constructed export price ("CEP") and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Juanita Chen (Dongbu), Becky Hagen (the POSCO Group), Marlene Hewitt (Union), or James Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482-0409 (Chen), -0961 (Hagen), -1385 (Hewitt), or -0159 (Doyle).

SUPPLEMENTARY INFORMATION:

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 references to the provisions codified at 19 CFR Part 351 (April 1998).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty orders for the 1997/98 review period on August 19, 1998 (63 FR 42821). On August 31, 1998, respondent Union Steel Manufacturing Co., Ltd. ("Union") requested that the Department conduct an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, and Dongbu Steel Co., Ltd. ("Dongbu") and Pohang Iron and Steel Co., Ltd. ("POSCO") requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea. On August 31, 1998, petitioners in the original less-than-fair-value ("LTFV") investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group A Unit of USX Corporation) requested that the Department conduct administrative

reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea with respect to all three of the aforementioned respondents. We initiated these reviews on September 23, 1998 (63 FR 51893—September 29, 1998).

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department extended the time limits for the preliminary results in these cases. See *Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Antidumping Duty Administrative Reviews: Extension of Time Limit*, 64 FR 10982 (March 8, 1999).

The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of "certain cold-rolled carbon steel flat products" covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000,

7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of "certain corrosion-resistant carbon steel flat products" covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are: flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both

chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating; clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness; and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1997 through July 31, 1998. These reviews cover entries associated with sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, Union, and the POSCO Group (see "Affiliated Parties" section below).

Verification

We verified information provided by the POSCO Group with respect to costs, sales, and service center sales, including on-site inspection of facilities of the manufacturer, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost, sales, and service center verification reports. See the August 5, 1999 Cost Verification Report from Steve Bezirgianian, Becky Hagen, and Marlene Hewitt through James C. Doyle to Edward Yang, the August 10, 1999 Sales Verification Report from Steve Bezirgianian, Becky Hagen, and Marlene Hewitt through James C. Doyle to the File, and the August 2, 1999 Service Center Verification Report from Steve Bezirgianian, Becky Hagen, and Marlene Hewitt through James C. Doyle to Edward Yang, respectively.

Transactions Reviewed

Consistent with prior reviews, we excluded reported overrun sales in the home market from our sales comparisons because such sales were outside the ordinary course of trade.

The POSCO Group

According to section 351.403(d) of the Department's regulations, downstream sales to home market affiliates accounting for less than 5 percent of total sales are normally excluded from the normal value calculation. Since the

POSCO Group's sales to affiliated resellers did not meet the Department's 5 percent threshold, the Department has required the POSCO Group to report the home market downstream sales of the five affiliated service centers with the largest volume of sales of subject merchandise in each case. If the sales to the affiliated service centers did not pass the arm's length test, we used the resales made by these affiliated service centers. To test whether these sales were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated parties were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the related party were at arm's length. Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model.

Dongbu

In determining NV, based on our review of the submissions by Dongbu, the Department determined that Dongbu need not report "downstream" sales by affiliated resellers in the home market because of their small quantity.

We excluded from our margin calculation certain Dongbu home market sales of painted corrosion-resistant carbon steel flat products which we have determined to be outside of the ordinary course of trade. Specifically, we found that, based on Dongbu's description, the sales in question met such criteria for exclusion that were laid out in prior administrative reviews for products outside the ordinary course of trade. See, *e.g.*, Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12941–42 (March 16, 1999); Certain Corrosion-Resistant Carbon Steel Flat Products From Australia: Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14050–51 (March 29, 1996); and Certain Welded Carbon Steel Standard Pipes and Tubes From India, Final

Results of Antidumping Duty Administrative Reviews, 56 FR 64753, 64755 (December 12, 1991). The sales in question were: limited in quantity; at extremely low prices relative to costs; and involved coils of unusual sizes which would not be considered desirable by customers (see pages 18–19 of Dongbu's July 6, 1999 supplemental questionnaire response; note that the cover page to that response incorrectly indicates that the submission is dated July 6, 1998). For additional analysis, see the August 31, 1999 Preliminary Results Analysis Memorandum from Juanita Chen through James Doyle to the File.

Union

Union did not have any "downstream" sales by affiliated resellers in the home market to report.

Affiliated Parties

For purposes of these reviews, we are treating POSCO, Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI") as affiliated parties and have "collapsed" them, *i.e.*, treated them as a single producer of certain cold-rolled carbon steel flat products (POSCO and PSI) and certain corrosion-resistant carbon steel flat products (POSCO, POCOS, and PSI). We refer to the collapsed respondent as the POSCO Group. POSCO, POCOS, and PSI were treated as collapsed in all previous segments of these proceedings. The POSCO Group has submitted no new information which would cause us to reconsider that determination. See the August 31, 1999 Analysis Memorandum from Becky Hagen through James Doyle to Edward Yang.

As we have determined in past administrative reviews, we are treating Union and Dongkuk Industries Co., Ltd. ("DKI") as a single producer of certain cold-rolled carbon steel flat products. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews, 60 FR 65284 (December 19, 1995).

Additionally, we are treating DKI as a single producer of certain corrosion-resistant carbon steel flat products. See the August 31, 1999 Collapsing Memorandum from Marlene Hewitt through James Doyle to Edward Yang.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all cold-rolled carbon steel flat products produced by the respondents, covered by the descriptions in the "Scope of the Reviews" section of this notice, *supra*,

and sold in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of cold-rolled carbon steel flat products. Likewise, we considered all corrosion-resistant carbon steel flat products produced by the respondents and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to corrosion-resistant carbon steel flat products sold in the United States.

For certain product characteristics (*i.e.*, quality and surface finish) Dongbu reported additional sub-codes. The Department has included the additional codes that Dongbu reported in the aforementioned categories in the Department's product matching methodology. See the August 31, 1999 Preliminary Results Analysis Memorandum from Juanita Chen through James Doyle to the File.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent. Where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons.

Fair-Value Comparisons

To determine whether sales of certain cold-rolled and corrosion-resistant carbon steel flat products by the respondents to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price/Constructed 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 individual U.S. transactions.

Particular Market Situation in the Home Market

On November 9, and December 1, 1998, the petitioners alleged that the Korean home market should not be used to determine NV because there were economic distortions constituting a

"particular market situation" in Korea during the period of review. Petitioners allege that two economic distortions make it impossible to obtain reliable measures of normal value in Korea, or to make proper comparisons of normal value with U.S. sales. These economic distortions, according to petitioners, are: (1) the precipitous depreciation of the Korean won during the POR, which was not accompanied by a corresponding increase in domestic prices, and resulted from a profound financial and banking crisis linked to global market activity rather than from underlying domestic economic fundamentals; and (2) the Government of Korea ("GOK") controls home market prices of cold-rolled and corrosion-resistant steel. Petitioners propose that the Department instead rely upon third country sales as the basis for normal value. We note that the precipitous drop in the value of the won at the end of 1997 warrants the use of daily exchange rates and modified benchmarks, as discussed in the "Currency Conversion" section below.

We preliminarily determine that the information submitted by petitioners and the questionnaire responses by the respondents do not show that there is a particular market situation in Korea that warrants disregarding the home market in this case. This is consistent with previous reviews in which petitioners also alleged a particular market situation in Korea's home market based on alleged government control of pricing. In those cases, we determined that the Korean home market was viable and appropriate as a basis for NV. See *e.g.* Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (April 15, 1997), and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews, 62 FR 47422, 47425 (September 9, 1997).

Duty Absorption

On October 20, 1998, the petitioners requested that the Department determine whether antidumping duties have been absorbed by an exporter or producer subject to these administrative reviews, in the event that the subject merchandise was sold during this period of review in the United States through an importer affiliated with the POSCO Group, Dongbu, or Union. Section 751(a)(4) of the Act provides that, if requested, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order

if the subject merchandise is sold in the United States through an affiliated importer. Section 751(a)(4) of the Act authorizes this inquiry during an administrative review initiated two years or four years after publication of an order. For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, antidumping orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's regulations provides that the Department will make such a determination for any administrative review initiated in 1996 or 1998. The orders in these cases are transition orders, which went into effect in 1993. See Notice of Antidumping Duty Orders: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993). Because this review was initiated in 1998, and the petitioners made a timely request for a duty absorption determination (*i.e.*, within 30 days of the date of publication of the notice of initiation of this review), we find that the regulatory requirements for a duty absorption determination have been met. See 19 CFR 351.213(j).

We have determined that duty absorption has occurred with respect to the percentages of sales shown below which were made through the respondents' U.S. affiliates and which had positive dumping margins:

Producer/Manufacturer/ Exporter	Percentage of U.S. affiliate's sales with dumping margins
Certain Cold-Rolled Carbon Steel Flat Products	
The POSCO Group	1.07
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	20.81
The POSCO Group	2.92
Union	5.26

With respect to the above companies, we rebuttably presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we preliminarily find that antidumping duties have been absorbed by the above-listed firms on the percentages of U.S. sales indicated. If interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay

the ultimately assessed duty, they must do so no later than 15 days after publication of these preliminary results.

Request for Revocation

The POSCO Group

On August 31, 1998, the POSCO Group submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the orders covering certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from Korea with respect to its sales of this merchandise.

In accordance with 19 CFR 351.222(e), these requests were accompanied by a certification from POSCO that it had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. POSCO also agreed to its immediate reinstatement of the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, POSCO sold the subject merchandise at less than NV.

In the third administrative reviews, we determined that the POSCO Group sold both cold-rolled and corrosion-resistant carbon steel flat products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998), as amended at 63 FR 20572 (April 27, 1998). Although the final results of the third reviews are subject to litigation, that litigation is not yet complete. In the fourth administrative reviews, the POSCO Group had *de minimis* margins for both products. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 10982 (March 8, 1999). Consequently, we preliminarily determine that because the POSCO Group does not have three consecutive years of zero or *de minimis* margins on cold-rolled carbon steel flat products and corrosion-resistant carbon steel flat products, it is not eligible for revocation of these orders under 19 CFR 351.222(e).

Dongbu

On August 31, 1998, Dongbu submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the orders covering certain corrosion-resistant carbon steel flat products from Korea with respect to its sales of this merchandise.

In accordance with 19 CFR § 351.222(e), the request was accompanied by a certification from Dongbu that it had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. Dongbu also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV.

In the third administrative review, we determined that Dongbu sold corrosion-resistant carbon steel flat products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998), as amended at 63 FR 20572 (April 27, 1998). In the fourth administrative review, we determined that Dongbu was selling corrosion-resistant carbon steel products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 10982 (March 8, 1999). Consequently, we preliminarily determine that because Dongbu does not have three consecutive years of zero or *de minimis* margins on corrosion-resistant steel, it is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR § 351.222(e).

Union

Union did not request revocation.

Date of Sale

It is the Department's current practice normally to use the invoice date as the date of sale, although we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(j). We have preliminarily determined that there is no reason to depart from the Department's treatment of date of sale for these respondents. Consistent with prior reviews, for home market sales, we used the reported date of the invoice from the Korean manufacturer; for U.S. sales we have followed the Department's methodology from the prior reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment from Korea, in which case that shipment date is the date of sale. See Certain Cold-Rolled and Corrosion-Resistant Carbon

Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927 at 12935 (March 16, 1999).

Export Price/Constructed Export Price

We calculated the price of United States sales based on CEP, in accordance with section 772(b) of the Act, except for U.S. sales made by PSI, which we have classified as "export price" sales. The Act defines the term "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In contrast, "export price" is defined as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States." Sections 772(a)-(b) of the Act (emphasis added). In the instant case, the record establishes that Dongbu, the POSCO Group, and Union's affiliates in the United States were in most instances the parties first contacted by unaffiliated U.S. customers desiring to purchase the subject merchandise and also that the sales affiliates in question signed the sales contracts and performed other selling functions. Respondents have submitted no new evidence warranting a change in our finding in the third and fourth reviews—based in part on exhaustive sales verifications—that sales by Dongbu, Union and the POSCO Group sales by POSCO and POCOS are CEP transactions. See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12937 (March 16, 1999).

We preliminarily determine that the POSCO Group's U.S. sales made by PSI are EP sales. The U.S. affiliate, Pohang Steel America Corp. ("POSAM"), was not involved in the negotiations, and in fact, had no communication with the U.S. customer until the purchase order was finalized. Given the information from the record indicating PSI's substantial involvement in those sales and POSAM's absence of any involvement until the very end of the sales process (see, e.g., Section IVA of the Sales Verification report), we have classified PSI's sales as EP sales. For Dongbu, Union, and POSCO Group sales by POSCO and POCOS, we calculated CEP based on packed prices to

unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, U.S. Customs duties, commissions, credit expenses, warranty expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses. Our calculation of indirect selling expenses does not include interest expenses of the U.S. sales affiliates because we have preliminarily determined that virtually all of those interest expenses relate to the financing of receivables or to borrowings involving non-subject merchandise. Pursuant to section 772(d)(3) we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price. Consistent with the Department's normal practice, we added duty drawback to the gross unit price. We did so in accordance with the Department's long-standing test, which requires: (1) that the import duty and rebate be directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product.

Additionally, for Dongbu, we revised the calculation of U.S. indirect selling expenses to reflect our determination that a certain category of expenses should not be allocated across both subject and non-subject merchandise but, rather, should be considered to only apply to the former. Our original questionnaire requested that Dongbu provide a list of the overhead expenses incurred, and Dongbu's initial response included a category called "Others" (see pages C-47, C-48, and Exhibit C-19 of Dongbu's November 24, 1998 Section C response). Our first supplemental questionnaire asked Dongbu to indicate for all categories the basis for assigning costs to subject and non-subject merchandise, and Dongbu's response does not appear to clarify the types of expenses, and their applicability to subject vs. non-subject merchandise, included under the category "Others" (see page 31 and Exhibit C-31 of Dongbu's April 22, 1999 supplemental questionnaire response). Finally, in our most recent supplemental questionnaire we asked Dongbu to provide an explanation for each type of common expense including the category "other" common expenses, and to provide a list indicating each type of expense

included in the "other" expense category, but Dongbu did not provide such information (see pages 28-29 of Dongbu's July 6, 1999 supplemental questionnaire response). For additional analysis, see the August 31, 1999 Preliminary Results Analysis Memorandum from Juanita Chen through James Doyle to the File.

For PSI's U.S. sales, we calculated EP based on the packed prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, brokerage and handling, ocean freight, marine insurance, U.S. inland freight (where applicable), U.S. brokerage and wharfage charges (where applicable) and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. This is not a change from the fourth reviews, as PSI did not sell subject merchandise to the United States during that period of review.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, 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 home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted rebates, discounts, inland freight (offset, where applicable, by freight revenue), inland insurance, and packing. We made adjustments to NV, where appropriate, for differences in credit expenses (offset, where applicable, by interest income), warranty expenses, post-sale warehousing, and differences in weight basis. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding

20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on constructed value ("CV").

Differences in Levels of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action ("SAA") at 829-831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales (either EP or CEP). When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade, and adjust NV if appropriate. The NV level of trade is that of the starting-price sales in the home market. As the Department explained in *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17156 (April 9, 1997), for both EP and CEP, the relevant transaction for the level-of-trade analysis is the sale from the exporter to the importer.

To determine whether comparison market NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different level of trade 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 level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(8)(A) of the Act. Finally, 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). 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 17, 1997), and *Granular Polytetrafluoroethylene Resin From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25826 (May 11, 1998).

A. Dongbu

In its questionnaire responses, Dongbu states that there were no significant differences in its selling activities by customer categories within or between each market. Therefore, Dongbu states that it is not

distinguishing between levels of trade for these reviews and that it is not claiming a level of trade adjustment nor claiming a CEP offset. Our analysis of the questionnaire responses detailing the selling functions provided by Dongbu in the U.S. and home market leads us to conclude that sales within or between each market are not made at different levels of trade. We also note that the selling functions described by Dongbu in these reviews are consistent with the selling functions described for the previous reviews of these orders, in which we determined no distinct levels of trade. See *Notice of Preliminary Results: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 63 FR 48173, 48178 (September 9, 1998). Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and any adjustment pursuant to section 773(a)(7) of the Act is unwarranted.

B. Union

Union argues that, with the Department's classification of Union's U.S. sales as CEP sales, and its view of Dongkuk International Inc.'s ("DKA's") role in the sales process as more than ancillary for the U.S. sales, it is incumbent on the Department to recognize that U.S. sales and home market sales are at different levels of trade. Furthermore, Union notes that because the difference in the level of trade cannot be quantified, Union is eligible for a CEP offset. Union states that home market sales are at a different level of trade from CEP sales, a level representing a more advanced stage of distribution. Union asserts that the Department's practice in a CEP situation is to compare the level of trade of the U.S. sale after the deduction of the selling expenses with the level of trade of the home market product with no deduction; therefore, the indirect selling expenses incurred for the selling functions associated with the U.S. sale, i.e., the contact, and other ancillary functions (in particular the arranging of credit terms) have been deducted from the U.S. sales price, but remain in the home market price.

In identifying the level of trade for home market sales, we consider the selling functions reflected in the starting price of home market sales before any adjustments, pursuant to section 773(a)(1)(B)(i) of the Act. Union's description of selling functions in the home market makes no distinction with

regard to customer categories or channels of trade, and there is no evidence on the record indicating that such functions vary within the home market. In identifying the level of trade for CEP sales, we considered only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act.

We find that Union performed similar functions for its U.S. sales to DKA as it did for its sales to home market customers. Although the expenses related to DKA's activities have been deducted from CEP, the expenses incurred by Union are still reflected in CEP. Because we find there are no substantive differences in selling functions provided by Union for its home market customers as compared to DKA, there is no difference in level of trade and, therefore, no basis for granting a level of trade adjustment or a CEP offset. This is consistent with our treatment of level of trade for Union in prior administrative reviews. See *Notice of Preliminary Results: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 63 FR 48173, 48178 (September 9, 1998).

C. The POSCO Group

In its questionnaire responses, the POSCO Group stated that its home-market sales by affiliated service centers were at a different level of trade than its other home-market sales and its U.S. sales (regardless of the customer category). The respondent indicated that the service centers provide certain selling functions to all of their customers, while POSCO, POCOS and PSI provide a different set of selling functions to all of their customers (including the service centers).

In order to confirm the presence of separate levels of trade within or between the U.S. and home markets, we examined the respondent's questionnaire responses for indications of substantive differences in selling and marketing functions, and reviewed this issue during the sales verification in Korea. See the preamble to section 351.412 of the Department's new regulations (62 FR at 27371).

In its October 30, 1998 Section A response, the POSCO Group claimed that there are two channels of distribution in the home market: one channel of distribution consists of sales made by POSCO, POCOS, and PSI, while they claim that a second channel of distribution consists of the sales made by the affiliated service centers. Our analysis of the questionnaire responses and review of the sales functions at the service center and sales

verifications of the POSCO Group leads us to conclude that the cumulative functions of the POSCO Group and the service centers for sales made by the service centers are essentially the same as the cumulative functions of the POSCO Group for sales made by the POSCO Group. The only substantive additional function that the affiliated service centers perform is the slitting and shearing of coils, which is not a sales function, but rather a manufacturing operation. See, *e.g.*, the September 9, 1997 Preliminary Results Analysis Memorandum from Steve Bezirgianian to Richard Weible, the August 10, 1999 Sales Verification Report from Steve Bezirgianian, Becky Hagen, and Marlene Hewitt through James C. Doyle to the File, and the August 2, 1999 Service Center Verification Report from Steve Bezirgianian, Becky Hagen, and Marlene Hewitt through James C. Doyle to Edward Yang. Furthermore, the Department finds that POSCO, POCOS, and PSI all provide comparable services to their customers in each market. Thus, our analysis of the questionnaire responses and the review of sales functions at the service center and sales verifications leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7) is unwarranted.

Cost-of-Production/Constructed Value

At the time the questionnaires were issued in these reviews, the third annual administrative reviews were the most recently completed segments of these proceedings in which each of the three respondents had participated. In accordance with section 773(b)(2)(A)(ii) of the Act, because we disregarded certain below-cost sales by each of the three respondents in those reviews, we found reasonable grounds in these reviews to believe or suspect that those respondents made sales in the home market at prices below the cost of producing the merchandise. We therefore initiated cost investigations with regard to Dongbu, Union, and the POSCO Group, in order to determine whether the respondents made home-market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

Before making concordance matches, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP for Dongbu, Union, and the POSCO Group based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling expenses, general, and administrative expenses ("SG&A"), and packing costs in accordance with section 773(b)(3) of the Act.

Dongbu

We adjusted Dongbu's cost of materials and fabrication so that net currency and translation losses are allocated based on their relationship to Dongbu Steel costs rather than consolidated costs of goods sold (see Exhibits D-27 and C-31 of Dongbu's April 22, 1999 supplemental questionnaire response). For additional analysis, see the August 31, 1999 Preliminary Results analysis memo from Juanita Chen through James Doyle to the File.

Union

We made adjustments to Union's fixed overhead ("FOH") due to our recalculation of depreciation, consistent with the Department's treatment of depreciation for the previous review period. See 64 FR 12927, 12944 (March 16, 1999). See also the August 31, 1999 Analysis Memorandum from Marlene Hewitt through James Doyle to the File.

The POSCO Group

We adjusted the reported costs to reflect differences in production costs associated with quality and coating weight. Also, in order to correct a clerical coding error in reported minimum thickness, we calculated the correct minimum thickness by taking the reported nominal thickness, then reassigning this minimum thickness value to the proper minimum thickness band as required by the Department's questionnaire. We reassigned the observations with corrected minimum thicknesses to the appropriate CONNUM. We increased all reported costs to account for missing cost centers in the POSCO Group's cost buildups. See the August 31, 1999 Preliminary Results Analysis Memorandum from Becky Hagen through James Doyle to the File. Finally, the Department notes that it appears that a small portion of the POSCO Group's home market database was miscoded for yield strength. We will examine the accuracy and extent of this problem for the final determination.

We have conducted an analysis of the POSCO Group's startup adjustment claim for the preliminary results. The POSCO Group has claimed that the installation of a new production line at

one of its two works constitutes a new facility, and claimed startup adjustment should be applied to products manufactured on this new line. See the December 4, 1998 Section D Questionnaire Response at page 32. We preliminarily find that this new line does not constitute a "new production facility," as required by the startup adjustment provision. See section 773(f)(1)(C)(ii)(I) of the Act. The SAA sets a high standard for startup adjustment claims when it states that, "New production facilities' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery." SAA at 836 (emphasis added). Therefore, the startup adjustment should only be applied when substantial modifications have been made to an entire production plant.

When determining whether substantial modifications have been made the Department must consider, along with other factors, the extent to which the improvements relate to the total production process. In the instant case, the new line is but one of many processing steps necessary to produce corrosion-resistant products performed by the POSCO Group. We also note that, although the equipment in question is large and expensive, its relative size to the other production equipment involved in the production of cold-rolled products at the POSCO Group is small. Moreover, the line produces merchandise similar to that manufactured on numerous other lines by the POSCO Group. Therefore, we do not believe that the installation of this equipment constitutes the substantial retooling of one of the POSCO Group's facilities and, therefore, does not meet the standard established in the statute.

Because section 773(f)(1)(C) of the Act establishes that both prongs of the test must be met before a startup adjustment is warranted, this finding is sufficient to deny the POSCO Group's claim.

Therefore, we need not address the POSCO Group's arguments concerning technical factors that limit commercial production levels (see Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails from Korea, 62 FR 51420, 51426 (October 1, 1997)).

B. Test of Home-Market Prices

We used the respondents' weighted-average COP, as adjusted (see above), for the period July 1997 to June 1998. We compared the weighted-average COP figures to home-market sales of the

foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we found that sales of that model were made in "substantial quantities" within a reasonable period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act, and were not at prices which would permit recovery of all costs within an extended period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV for Dongbu, Union, and the POSCO Group based on the sum of respondents' cost of materials, fabrication, SG&A, including interest expenses, U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted-average home-market selling expenses. As noted in the "Calculation of COP" section of this notice, we made adjustments to the reported COMs of the POSCO Group and Union. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data

shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary, drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for comparison market sales matched to U.S. sales occurring between November 1 and December 31, 1997. For sales occurring after December 31, but before March 1, 1998, the Department continued to rely on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period. In this manner, we used an "up-to-date" (post-precipitous drop) benchmark, but at the same time avoided undue day-to-day fluctuations in the exchange rates used. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea, 64 FR 14865, 14868 (March 29, 1999) and Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Steel Wire Rope from Korea, 63 FR 67662, 67665 (December 8, 1998), unchanged at Steel Wire Rope from Korea; Final Results of Antidumping Duty Administrative Review and Partial Recission of Antidumping Administrative Review, 64 FR 17995 (April 13, 1999).

Preliminary Results of the Reviews

As a result of these reviews, we preliminarily determine that the following weighted-average dumping margins exist:

Producer/Manufacturer/Exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	0.00
The POSCO Group	0.10
Union	0.00
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	1.29
The POSCO Group	0.45
Union	0.17

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 five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing not later than 120 days after the date of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject

merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for each respondent will be the rate established in the final results of these administrative reviews (except that no deposit will be required for firms with zero or *de minimis* margins, i.e., margins lower than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, 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 these or any prior reviews, the cash deposit rate will be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), the "all others" rate established in the LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

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.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23325 Filed 9-7-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands: 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 requests from the petitioners and respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period August 1, 1997 through July 31, 1998.

We preliminarily determine that a *de minimis* dumping margin exists for this period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Hoogovens merchandise during the period of review, in accordance with the Department's regulations (19 CFR 353.6).

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Ilissa A. Kabak or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1395 or 482-5222, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act of 1994 (URAA). In addition, unless otherwise indicated, all references to the

Department's regulations are to 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce published an antidumping duty order on cold-rolled carbon steel flat products from the Netherlands on August 19, 1993 (58 FR 44172). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1997/1998 review period on August 11, 1998 (63 FR 42821). On August 31, 1998, both the respondent, Hoogovens Staal BV (Hoogovens), and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Ispat/Inland Steel, Inc., LTV Steel Company, and National Steel Corporation) filed requests for review. We published a notice of initiation of the review on September 29, 1998 (63 FR 51893).

Due to the complexity of the issues involved in this case, the Department extended the time limit for completion of the preliminary results until August 31, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after the date of publication of this notice. The Department is conducting this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000,

7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Verification

As provided in section 782(i)(3) of the Tariff Act, we verified information provided by Hoogovens at its headquarters in Beverwijk and IJmuiden, the Netherlands, using standard verification procedures, including inspection of the manufacturing facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. We also verified information provided by Hoogovens Steel USA, Inc. at its office in Scarsdale, New York.

Export Price (EP)

Sales made by Hoogoven's selling office in the Netherlands directly to unaffiliated customers in the United States were treated as EP sales. We calculated EP based on the delivered, duty-paid price to unaffiliated customers in the United States. We made adjustments for discounts and post-sale price adjustments. We also made deductions, where applicable, for foreign inland freight, ocean freight and marine insurance, brokerage and handling, U.S. inland freight, and U.S. customs duties in accordance with section 772(c) of the Tariff Act. *See Preliminary Analysis Memorandum (Analysis Memo)*, August 31, 1999, at 8.

Constructed Export Price (CEP)

Sales made by Hoogoven's selling office in the Netherlands through the affiliated Rafferty-Brown companies, located in the United States, to unaffiliated U.S. customers were treated as CEP sales. We based CEP on the delivered price to unaffiliated customers in the United States. We made deductions for foreign inland freight, ocean freight and marine insurance, brokerage and handling, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c) of the Tariff Act. Furthermore, in accordance with section 772(d)(1) of the Tariff Act, we deducted selling expenses associated with economic activities occurring in the United States, including credit expenses, indirect selling expenses, and inventory carrying costs. In accordance with section 772(d)(2) of the Tariff Act, for sales made through the affiliated Rafferty-Brown companies, we also deducted the cost of further manufacturing, including repacking expenses. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Tariff Act. *See Analysis Memo* at 10.

In the absence of cost of production (COP) data for home market sales,¹ we estimated COP for calculation of the CEP profit allocation as follows:

1. We estimated the home market fixed costs by calculating the weighted average ratio of fixed costs to variable costs for U.S. sales (using the reported VCOMU and TCOMU variables) and multiplying the reported home market variable costs (VCOMH) by this ratio;

2. We obtained the total cost of manufacturing (COM) by adding the reported total variable costs and the estimated fixed costs;

3. We obtained general and administrative expenses and interest expenses from the constructed value (CV) data base and added them to the total COM to obtain COP.

Normal Value (NV)

In order to determine whether sales of the foreign like product in the home market are a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Tariff Act. Hoogovens's aggregate volume of home market sales of the foreign like

product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on home market sales.

Hoogovens made sales to both affiliated and unaffiliated customers in the home market during the period of review. We included sales to affiliated customers when we determined those sales to be at arm's length (i.e., at weighted-average prices that were 99.5 percent or more of weighted average prices for identical products sold to unaffiliated customers in the home market). When the weighted-average price to an affiliated customer was less than 99.5 percent of the weighted-average price to unaffiliated customers, or there were no sales of identical merchandise to unaffiliated customers for purposes of the arm's-length test, we excluded sales to that affiliated customer from our calculation of NV. *See Antidumping Duties; Countervailing Duties, Final Rule* 62 FR 27296, 27355 (May 19, 1997).

Home market prices were based on the packed, ex-factory or delivered prices to customers, net of early payment discounts and rebates. We made deductions from NV for inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. In accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410(c), we made circumstance-of-sale (COS) adjustments for credit and, where appropriate, warranty expenses.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Tariff Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff 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 transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is normally the sale from exporter to importer. In this case the exporter sells directly to unaffiliated customers. For CEP, the U.S. LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we

¹ Hoogovens reported CV data, which provide the cost of manufacturing the products sold in the United States. As the product mix is very different in the home market, the CV data are not representative of total costs.

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 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 an LOT adjustment under section 773(a)(7)(A) of the Tariff 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 Tariff Act (the CEP-offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

To examine LOT in this review, we requested information concerning the selling functions associated with sales to service centers and to several categories of end-users in each of Hoogovens's markets and interviewed sales and technical service managers. In both the home and U.S. markets larger customers received more frequent visits from sales personnel. In the home market a higher level of technical service was provided to automotive customers than to other end-users. However, Hoogovens stated that "it cannot differentiate among the selling functions performed and services offered to different classes of home market or export price customers." Hoogovens's October 21, 1998 section A questionnaire response (Section A response) at 14. Hoogovens further noted that the higher level of service provided to large end-users, such as auto makers, was related to the higher volumes of merchandise purchased by these customers, and not any specific features of this market sector. Id. at 26. Therefore, based upon the information on the record we preliminarily determine that there are no significant differences between the selling functions performed and services offered to service centers and end-user customers in the home market. We also preliminarily determine that there are no differences between the selling functions performed and services offered to service centers and end-user customers in the U.S. market. Lastly, evidence on the record indicates that Hoogovens has not changed its selling functions since the fourth (1996-1997)

administrative review (see "Home Market Sales Verification Report," at 8 (July 8, 1999); see also *Certain Cold-rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 64 FR 11825, (March 10, 1999)).

As for CEP sales, Hoogovens claims it has no home market sales at a LOT equivalent to the CEP LOT, alleging, "while the CEP sales have been adjusted to create, in effect, an ex-factory level of trade, the starting price of the home market sales reflects many selling activities not reflected in the adjusted CEP price. These include indirect selling activities, indirect warranty and technical service expenses, and inventory carrying costs incurred on home market sales." See Section A response (October 21, 1998), at 45 and 46.

We disagree with Hoogovens's claim that the prices used to determine NV reflect many selling activities not reflected in CEP. In accordance with section 772(d)(1) the Department calculated CEP by deducting the imputed credit expenses incurred by the Rafferty-Brown companies as direct selling expenses. The Department also deducted indirect selling expenses (ISE), including imputed inventory carrying costs (ICC) incurred in the United States by the Rafferty-Brown companies for sales to the first unaffiliated buyers. The Department did not deduct from CEP those ISE incurred in the Netherlands pertaining to U.S. sales (reported in computer data fields DINDIRSU and DINVCARU), nor certain expenses of the U.S. sales office, on the grounds that these expenses were associated with the sale to Hoogovens's U.S. affiliates rather than with the sales by the affiliates to the first unaffiliated buyers. Thus, the CEP includes Hoogovens's warranty and technical service expenses for U.S. sales, as well as ISE, including the expenses of the sales offices in IJmuiden and New York, incurred in connection with the sales to the affiliated service centers.

For the purposes of the LOT analysis, we found no distinguishable difference between the selling functions included in the home market starting price and the selling functions included in the CEP; Hoogovens's starting price for home market sales includes the provision of services reflected in the direct warranty and technical service expenses, ICC, the expenses of the sales office in IJmuiden, and other indirect selling expenses incurred for home market sales. On the basis of this analysis, the Department has preliminarily determined that the record does not support Hoogovens's claim that

home market sales are at a different, more advanced LOT than the adjusted CEP sales.

Sales Comparisons

To determine whether sales of cold-rolled carbon steel flat products in the United States were made at prices below normal value, we compared EP or CEP to NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777(A) of the Tariff Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made deductions for direct selling expenses incurred on home market sales. There were no comparisons to CV for these preliminary results.

Reimbursement

Section 351.402(f) of the antidumping regulations requires the Department to deduct from EP or CEP the amount of any antidumping duty that is reimbursed to the importer. Based on verified evidence on the record in this review, including the revised agency agreement between Hoogovens and Hoogovens Steel USA, Inc. (HSUSA) and the refund to Hoogovens by HSUSA of a portion of the cash deposits advanced to HSUSA for merchandise entered during the second and fourth administrative reviews, the Department has preliminarily determined that HSUSA is solely responsible for the payment of antidumping duties. Further, evidence on the record in this review shows that HSUSA has sufficient assets to establish its ability to pay the antidumping duties to be assessed (see "United States Verification Report," at 3 (July 8, 1999)). Therefore, for this period of review we have determined that Hoogovens has not reimbursed HSUSA for antidumping duties to be assessed.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period August 1, 1997 through July 31, 1998:

Company	Margin (percent)
Hoogovens Staal BV	0.25

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any

hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage given above. The Department will issue appraisal 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 this review and for future deposits of estimated duties. For assessment purposes we intend to calculate importer-specific assessment rates for cut-to-length carbon steel plate. For both EP and CEP sales we will divide the total dumping duties for each importer (calculated as the difference between NV and EP or CEP) by the entered value of the merchandise. Upon completion of this review we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of subject merchandise by each importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of cold-rolled carbon steel flat products from the Netherlands 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 Tariff Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review, except if the rate is less than 0.5 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review; and (3) if neither the exporter nor the

manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 19.32 percent.

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 these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23321 Filed 9-7-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-802]

Gray Portland Cement and Clinker From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and extension of final results of administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1997, through July 31, 1998, and one firm, CEMEX, S.A. de C.V., and its affiliate, Cementos de Chihuahua, S.A. de C.V. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

In addition, we are extending the period for issuing the final results of this review. Our final results will be issued no later than 180 days after the date of publication of these preliminary results of review.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Davina Hashmi, Anne Copper, or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-5760, (202) 482-0090, (202) 482-0180, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

On August 11, 1998, the Department published in the **Federal Register** a Notice of Opportunity to Request Administrative Review concerning the antidumping duty order on gray portland cement and clinker from Mexico (63 FR 42821). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, CEMEX's affiliate, Cementos de Chihuahua, S.A. de C.V. (CDC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and CDC requested review of their own entries. Apasco subsequently reported, and the Department confirmed with U.S. Customs, that Apasco did not have any U.S. sales or shipments during the period of review. On September 29, 1998, the Department published a Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews (63 FR 51894) initiating this review. The period of review is August 1, 1997, through July 31, 1998. The Department is now conducting a review of CEMEX and CDC pursuant to section 751 of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary

component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by CEMEX and CDC using standard verification procedures, including an examination of relevant sales and financial records, selection of original documentation containing relevant information, and an on-site tour of one of CDC's manufacturing facilities. Our verification results are outlined in public versions of the verification reports.

Extension of Final Results

We have determined that it is not practical to complete our final results within 120 days of the date of publication of this notice of preliminary results. To allow time to obtain, analyze, and verify new cost information which we requested late in this review, we are extending the deadline for our final results of review, pursuant to 19 CFR 351.213(h)(2), from 120 to 180 days after publication of this notice. Memorandum from Richard W. Moreland to Robert S. LaRussa, 1997-1998 *Administrative Review of the Anti-Dumping Order on Gray Portland Cement and Clinker from Mexico-Extension of Final Results*, August 31, 1999. (Public versions of all referenced memoranda are on file in Room B-099 of the Department's main building.)

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, section 351.401(f) of the regulations describes when we will treat two or more affiliated producers as a single entity (i.e., "collapse" the firms) for purposes of calculating a dumping margin. In the three previous administrative reviews of this order, we analyzed whether we should collapse CEMEX and CDC in accordance with our regulations. *Gray Portland Cement*

and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 64 FR 13148 (March 17, 1999).

The regulations state that the Department will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Department concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Department may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

A North American Free Trade Agreement Binational Panel upheld our decision in the 1994/95 administrative review to collapse CEMEX and CDC. *Article 1904 Binational Panel Review Pursuant To The North American Free Trade Agreement* opinion of the Panel, Secretariat File No. USA-97-1904-01 (June 18, 1999). We found that, in each of the subsequent administrative reviews, the factual information underlying our original decision to collapse these two entities did not change and, accordingly, we continued to treat these two entities as a single entity.

Having reviewed the current record, we find, once again, that the factual information underlying our original decision to collapse these two entities has not changed during the instant administrative review period. CEMEX's indirect ownership of CDC exceeds five percent, such that these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition to their affiliation, we find that CEMEX and CDC have similar production processes. Finally, interlocking boards of directors and significant transactions between the companies give rise to a significant potential for the manipulation of price or production. Accordingly, we preliminarily conclude that these affiliated producers should be treated as a singly entity and that we should calculate a single, weighted-average margin for these companies. Therefore, throughout this notice, references to "respondent" should be

read to mean the collapsed entity. Memorandum from Analyst to Joseph A. Spetrini, 1996/1997 *Administrative Review of Gray Portland Cement and Clinker from Mexico* (August 31, 1998), and Memorandum from Analyst to File, *Collapsing CEMEX, S.A. and Cementos de Chihuahua for the Current Administrative Review* (April 6, 1999).

Export Price and Constructed Export Price

We used export price (EP), in accordance with section 772(a) of the Act, where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) was not otherwise warranted based on the facts in the record. We used CEP in accordance with section 772(b) of the Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. CEMEX made CEP sales during the period of review, while CDC made both CEP and EP sales during the period of review.

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early payment discounts, foreign inland freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments to the starting price for discounts and billing adjustments to the invoice price. In accordance with section 772(d) of the Act, we deducted those selling expenses, including inventory carrying costs, that were related to economic activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. brokerage and handling, U.S. duties, and direct selling expenses. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (e.g., cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

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 if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. Section 351.402(c)(2) of the regulations provides that the Department normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Department estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. We normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Department normally will base this determination on averages of the prices and the value added to the subject merchandise. 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.

During the course of this administrative review, the respondent submitted, and we verified, information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added 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 subject merchandise by the affiliated person. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to prove a reasonable and appropriate

basis for comparison. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average margin of 45.39 percent calculated on sales of identical or other subject merchandise sold to unaffiliated purchasers.

No other adjustments to EP or CEP were claimed or allowed.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent'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)(C) of the Act. Since the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home-market sales.

During the period of review, CEMEX and CDC sold two types of cement in the United States—Type V LA and Type II, respectively. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. However, in situations where identical product types cannot be matched, the statute expresses a preference for basing NV on sales of similar merchandise (sections 773(a)(1)(B) and 771(16) of the Act). Because we have preliminarily determined that Type V and Type V LA sold in the home market by CEMEX are outside the ordinary course of trade (see the "Ordinary Course of Trade" section of this notice) and CDC had no sales to unaffiliated customers of either Type II LA or Type V LA in the home market, we did not find identical matches in the home market to which we could match sales of the subject merchandise. Accordingly, we based NV on sales of similar merchandise.

During the period of review, CEMEX sold four basic types of gray portland cement in Mexico—Type I, Type V, Type V LA, and pozzolanic. During the same period, CDC sold two types of gray portland cement in Mexico—Type I and Type II. The history of this order demonstrates that, of the various types of cement which may reasonably be compared to imports of cement from Mexico, Type I cement is most similar to the Type V LA cement sold in the United States. On June 2, 1999, we determined that, while pozzolanic

cement is covered by the scope of this order, it is not comparable to Types II and V under sections 771(16)(B) or (C) of the Act and, thus, we did not require CEMEX to report its home-market sales of pozzolanic cement for this review. See Memorandum from Laurie Parkhill to Richard W. Moreland, *Gray Portland Cement and Clinker from Mexico-Sales of Pozzolanic Cement* (June 2, 1999).

On June 18, 1999, the North American Free Trade Agreement Binational Panel reviewing the final results of the 1994/1995 administrative review found that CEMEX's and CDC's Type I bagged cement should not have been combined with sales of Type I cement sold in bulk to the United States in the calculation of normal value. In other words, the Panel found that sales of Type I cement in bags should not be included in the universe of home-market sales available for comparison to bulk sales to the United States. Rather, the Panel concluded, only sales of Type I cement in bulk should serve as the basis for determining NV for Type II and Type V cement sold in the United States, and it remanded the results of the 1994/1995 review to the Department for a recalculation of the margin. Those proceedings have not yet been completed. In this review, the record supports the continued practice of finding CEMEX's and CDC's sales of Type I cement in bags in the home market as sales comparable, within the meaning of section 771(16)(B) of the Act, to U.S. sales. Specifically, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged Type I cement are produced in the same country and by the same producer as Type V LA or Type II, both bulk and bagged Type I cement are like Type V LA in component materials and in the purposes for which used, and both bulk and bagged Type I cement are approximately equal in commercial value to Type II or Type V LA cement. Questionnaire responses from both CEMEX and CDC indicate that, with the exception of packaging, Type I cement sold in bulk and Type I cement sold in bags are physically identical and both are used in the production of concrete. Also, since there is no difference in cost between cement sold in bulk or in bag (again with the exception of packaging), both are approximately equal in commercial value. See CEMEX response to Section A of the Department's Questionnaire, Volume 1, November 12, 1998, pgs. A-28-30, Section B, December 4, 1998, pg. B-51, and CDC response to Section A, A-44-47, November 12, 1998, and Section B, December 2, 1998, pg. B-31.

B. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base NV on "the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade."

Ordinary course of trade is defined as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

Apart from identifying certain sales that are below cost (section 773(b)(1) of the Act) or between affiliated persons (section 773(f)(2) of the Act), Congress has not specified any criteria that the Department should use in determining the appropriate "conditions and practices" which are "normal in the trade under consideration." Therefore, "Commerce, in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade." *Thai Pineapple Public Co. v. United States*, 946 F. Supp. 11, 14-17 (CIT 1996).

The Department's ordinary-course-of-trade inquiry is far-reaching. It evaluates not just "one factor taken in isolation but rather all the circumstances particular to the sales in question." *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (CIT 1993). In short, we examine the totality of the facts in each case to determine if sales are being made for "unusual reasons" or under "unusual circumstances." *Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 28551, 28552 (May 14, 1993).

In the 1991/1992 administrative review of this order, the Department determined that CEMEX's home-market sales of Type II and Type V cement were outside the ordinary course of trade and, therefore, could not be used in the calculation of NV (then referred to as "foreign market value"). *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 27254 (Sept. 8, 1993). In making this determination, the Department considered, *inter alia*, shipping distances and costs, sales volume, profit levels, sales history, home-market demand and the promotional aspect of sales. See Decision Memorandum to Joseph A. Spetrini, August 31, 1994, and Memorandum from Holly A. Kuga to Joseph A. Spetrini, August 31, 1993.

Based upon similar facts and using a similar analysis, the Department reached the same conclusion in the final results of the 1994/1995, 1995/1996, and 1996/1997 administrative reviews for certain sales of Type II and Type V cement by CEMEX in Mexico. *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17151 (April 9, 1997), *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12768 (March 16, 1998); *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13148 (March 17, 1999).

In the instant review, CEMEX claims that its sales of Type V LA cement in the home market are within the ordinary course of trade. Pursuant to section 773(a)(1)(B) of the Act, the Department has examined the totality of the circumstances surrounding CEMEX's sales of cement in Mexico that are produced as Type V and Type V LA cement and marketed as Type I, Type II LA, Type V, and Type V LA (Type V LA is identical in physical characteristics to the cement that CEMEX sells in the United States). Based on the current record, which reflects similar findings in prior reviews (see, for example, Decision Memorandum to Joseph A. Spetrini, August 31, 1998), the Department has preliminarily determined that CEMEX's home-market sales of Type V and Type V LA cement during the review period were outside the ordinary course of trade.

CEMEX sells, in Mexico, Type V and Type V LA cement produced at its Campana and Yaqui plants. The facts established in the record of this review with respect to sales from these plants are very similar to the facts which led the Department to determine in the 1991/1992, 1994/1995, 1995/1996, and 1996/1997 reviews that home-market sales of Type V, including Type V LA, cement were outside the ordinary course of trade. The determination involving the 1991/1992 review, as noted above, was affirmed by the Court of International Trade (CIT) in *CEMEX v. United States*, Slip Op. 95-72 at 14. Specifically, as in previous reviews, we examined shipping distances and costs, sales volume, profit levels, sales history, home-market demand and the promotional aspect of sales. We found that, while there has been some change from findings in previous reviews, changes have been relatively minor and do not affect the overall conclusion that sales of Type V and Type V LA cement

from the Campana and Yaqui plants are outside of the ordinary course of trade.

With respect to sales of Type V LA cement from CEMEX's Hidalgo plant, we have determined that these sales are also outside the ordinary course of trade. CEMEX notes that only the Campana and Yaqui plants produce Type V LA on a consistent basis, but it has produced Type V LA on "occasion" at its Hidalgo plant. In addition, CEMEX has stated that production of cement meeting the ASTM specifications of Type V LA at the Hidalgo plant was unintentional. In fact, CEMEX itself, in prior submissions, has indicated that production and sales of cement meeting ASTM standards for Type V LA at the Hidalgo plant were unusual in that they attempted to produce another type of cement. Moreover, none of the Type V LA production from the Hidalgo plant was sold as Type V LA and the profit-level pattern was similar to the pattern at Campana and Yaqui for sales of cement produced as Type V LA and sold as Type I. A complete discussion of our preliminary conclusions on sales of cement from the Campana, Yaqui, and Hidalgo plants, requiring reference to proprietary information, is contained in a memorandum in the official file for this case. Memorandum from Analyst to Laurie Parkhill, *Gray Portland Cement and Clinker from Mexico—Ordinary Course of Trade* (August 31, 1999).

In conclusion, the decision to exclude sales of Type V and Type V LA cement from the calculation of NV centers around the unusual nature and characteristics of these sales compared to the vast majority of CEMEX's other home-market sales. Based upon these differences, the Department has preliminarily determined that they are not representative of CEMEX's home-market sales, *i.e.*, these sales were not within the ordinary course of trade.

C. Arm's-Length Sales

Consistent with 19 CFR 351.403, we excluded sales to affiliated customers in the home market which were not made at arm's-length prices from our analysis. Because we could not test whether sales of Type II cement by CDC were made at arm's-length prices, we excluded such sales from our analysis. To test whether other sales to affiliated customers were made at arm's length for which we could test the prices, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we

determined that the sales made to the affiliated party were at arm's length.

D. Cost of Production

The petitioner alleged, on May 11, 1999, that CEMEX and its affiliate, CDC, sold gray portland cement and clinker in the home market at prices below their cost of production (COP). Based on these allegations, the Department determined, on July 15, 1999, that it had reasonable grounds to believe or suspect that CEMEX and CDC had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether CEMEX and CDC made home-market sales during the period of review at below-cost prices. See Memorandum from Laurie Parkhill to Richard W. Moreland, *Gray Portland Cement and Clinker from Mexico: Amended Request to Initiate Cost Investigation* (July 15, 1999). Because of time constraints, we could not incorporate the collapsed respondent's cost and constructed value data into the margin calculation for the preliminary results of review. However, we will incorporate such data into the margin calculation for the final results of review. Accordingly, to calculate NV for these preliminary results, we used all comparison-market sales to unaffiliated and affiliated customers that passed the arm's-length test and that were made within the ordinary course of trade.

E. Adjustments to Normal Value

Where appropriate, we adjusted home-market sales of Type I cement for discounts, rebates, packing, handling and interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and pre-sale warehousing expenses. For comparisons to EP transactions, we made adjustments to the home-market starting price for differences in direct selling expenses in the two markets. For comparisons to CEP sales, we deducted home-market direct selling expenses from the home-market price. We also deducted home-market indirect selling expenses as a CEP-offset adjustment (see *F. Level of Trade/CEP Offset* section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to NV to account for differences in the physical characteristics of merchandise where similar products are compared. Section 351.411(b) of the regulations

directs us to consider differences in variable costs associated with the physical differences in the merchandise. For CDC's sales, we calculated a difference-in-merchandise adjustment using appropriate plant-specific variable cost data CDC reported.

For CEMEX, although the company provided information pertaining to the cost of production for Type I and Type V LA cement, it was unable to segregate specific costs attributable to differences in physical characteristics other than costs attributable to the addition of kaolin. However, the Department has determined that the existing data and product information from previous reviews, on the record of the instant review, indicate that there are differences in the physical characteristics of Type I cement and Type V LA cement. Thus, we conclude that a difference-in-merchandise adjustment is appropriate. Section 776(a) of the Act authorizes the Department to use facts otherwise available when necessary information is not on the record. Therefore, for sales made by CEMEX, we preliminarily determine, in accordance with section 776 of the Act, that the use of partial facts available for calculating the difference-in-merchandise adjustment is appropriate. We have preliminarily determined that the most appropriate basis for calculating the difference-in-merchandise adjustment is the actual variable cost differences in producing Type I cement and Type V LA cement at CEMEX's Hidalgo plant, which is CEMEX's only plant that produced both types of cement during the period of review. Although we have not yet verified CEMEX's variable cost information, we intend to verify the cost information for the Hidalgo plant and will make any necessary changes based on verification prior to the issuance of the final results of review. A discussion of our preliminary conclusions on differences in merchandise is contained in a memorandum in the official file for this case. Memorandum from Analyst to Laurie Parkhill, *Gray Portland Cement and Clinker from Mexico—Difference in Merchandise* (August 31, 1999).

F. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the home market or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S.

level of trade 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.

To determine whether NV sales are at a different level of trade than EP or CEP, 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 level of trade, 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 level of trade of the export transaction, we make a level-of-trade 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). *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61971 (November 19, 1997).

Based on our analysis, we conclude that the respondent's home-market sales to various classes of customers which purchase both bulk and bagged cement constituted one level of trade. We based our conclusion on our analysis of its selling functions and their sales channels. We found that, with some minor exceptions, CEMEX and CDC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in selling functions were not substantial when all selling expenses were considered as a whole. Memorandum to Laurie Parkhill, *Level of Trade* (Level of Trade Memorandum), August 30, 1999.

With respect to U.S. sales, we found that CEMEX's and CDC's home-market sales occur at a different and more advanced stage of distribution than their sales to their respective U.S. affiliates. We also determined that the data available does not permit us to calculate a level-of-trade adjustment. See the *Level of Trade Memorandum*. Therefore, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset for the CEP sales made by CEMEX and CDC. CDC also reported that it sold cement to EP customers (end-users) and listed the selling functions performed for EP customers. We determined that CDC's EP sales are at a different level of trade as compared to CEMEX's and

CDC's home-market sales. However, because there is only one level of trade in the home market, available data did not permit a level-of-trade adjustment.

Inflation

In the previous administrative review of this proceeding, we found that Mexico experienced significant inflation and we adjusted our dumping margin analysis to account for the effects of high inflation on prices in order to avoid the distortions caused by such inflation. In this review period, we found that Mexico experienced less than 5 percent inflation during each month of the period of review with an annual inflation rate of less than 16 percent. Because we did not find these inflation rates to be so significant that they cause distortions in our analysis, we have not adjusted our antidumping margin analysis to account for inflation during the instant period.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of U.S. sales.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for CEMEX and CDC for the period August 1, 1997, through July 31, 1998, to be 45.39 percent.

The Department will disclose calculations performed in connection with these preliminary results to parties within five days of the date of publication of this notice. Interested parties may request a hearing by November 1, 1999. The Department will notify interested parties of the date of any requested hearing and the briefing schedule.

Upon completion of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal 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 the determination and for future deposits of estimated duties. We will base the assessment of antidumping duties on the per-unit assessment amount for subject merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the

publication date of the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 61.85 percent, the all-others rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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 dumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23326 Filed 9-7-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-825]

Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results of the Antidumping Duty Administrative Review of Oil Country Tubular Goods From Korea.

SUMMARY: In response to a request from SeAH Steel Corporation ("SeAH"), the

Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on oil country tubular goods from Korea. This review covers one manufacturer/exporter of the subject merchandise to the United States, SeAH, and the period August 1, 1997 through July 31, 1998, which is the third period of review ("POR").

We have preliminarily determined that SeAH made sales below normal value ("NV"). If these preliminary results are adopted in our final results of these administrative reviews, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the constructed export price ("CEP") and the NV. The preliminary results are listed below in the section entitled "Preliminary Results of Review."

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Jonathan Lyons or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0374, or (202) 482-0162, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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 (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (62 FR 27379, May 19, 1997).

Background

On August 11, 1995, the Department published in the **Federal Register** (60 FR 41058) the antidumping duty order on oil country tubular goods from Korea. On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice indicating an opportunity to request an administrative review of this order for the period August 1, 1997 through July 31, 1998. On August 31, 1998, both SeAH and petitioners (Maverick Tube Corporation, Lone Star Steel Company, and IPSCO Tubulars Inc.) requested an administrative review for SeAH entries during that period. On September 29, 1998, in accordance with Section 751 of the Act, we published in the **Federal Register** a notice of initiation of an administrative review of this order for the period August 1, 1997 through July 31, 1998 (63 FR 51893).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On February 17, 1999, the Department published a notice of extension of the time limit for the preliminary results in the review to August 13, 1999. *See Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Oil Country Tubular Goods from Korea*, 64 FR 7855. On July 20, 1999, the Department published a notice of extension of the time limit for the preliminary results in the review to August 31, 1999. *See Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Oil Country Tubular Goods from Korea*, 64 FR 38890.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this order are oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers:

7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90,

7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Transactions Reviewed

SeAH produced OCTG in Korea and shipped it to the United States. Pusan Pipe America, Inc. ("PPA"), an affiliate of SeAH, was the importer of record for all U.S. sales. All of SeAH's U.S. sales are classified as CEP sales (*see* "United States Price" section below). The Department's questionnaire instructed the respondent to report CEP sales made after importation if the dates of sale fell in the period of review (*see* page C-1 of the Department's September 29, 1998 Questionnaire). Therefore, as it did in the 1996-1997 POR, the Department again reviewed U.S. sales in the POR if those sales involved subject merchandise that had entered the United States and been placed in the physical inventory of SeAH's U.S. affiliates. The questionnaire also instructed the respondent to report CEP sales made prior to importation if the entry dates fell in the period of review. Consequently, we have limited our U.S. database to these transactions. For the few CEP sales made through PPA but shipped directly from Korea to the unaffiliated U.S. customers, we reviewed U.S. entries in the POR.

Comparison Market

The Department determines the viability of a comparison market by comparing the aggregate quantity of comparison market sales to U.S. sales. An exporting country is not considered a viable comparison market if the aggregate quantity of sales of subject merchandise within it amounts to less than five percent of the quantity of sales of subject merchandise into the United States during the POR. Section 773(a)(1)(B) of the Act; 19 CFR 351.404. We found Korea was not a viable comparison market because the aggregate quantity of SeAH's sales of subject merchandise within Korea during the POR amounted to less than five percent of the quantity of sales of subject merchandise to the United States during the POR.

According to section 773(a)(1)(B)(ii) of the Act, the price of sales to a third country can be used as the basis for normal value only if such price is representative, if the aggregate quantity (or, where appropriate, value) of sales to that country is at least 5 percent of the quantity (or value) of total sales to the

United States, and if the Department does not determine that the particular market situation in that country prevents proper comparison with the export price or constructed export price. The two potential third country markets are Myanmar and Japan. Sales to Myanmar, on both a value and a volume basis, were several times greater than sales to Japan. *See, e.g.,* Exhibit A-30 of SeAH's March 19, 1999, supplemental questionnaire response. In the previous administrative review the Department found the Myanmar sales to be representative, and found no reason to determine that the market situation in Myanmar would somehow prevent proper comparison between normal value and export price or constructed export price. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47470 (September 8, 1998), unchanged at *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review*, 64 FR 13169 (March 17, 1999). Likewise, in this administrative review we found Myanmar to be an appropriate comparison market. We utilized Myanmar sales in our analysis of petitioners' allegation regarding sales below cost (*see* "Normal Value" section below), and have used SeAH's sales to that market as the basis for normal value.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section, above, and sold in the comparison market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no contemporaneous sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's September 29, 1998 antidumping questionnaire.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than normal value, we compared the Constructed Export Price (CEP) to the NV, as described in the "United States 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 individual U.S. transaction prices.

United States Price

Typical sales proceeded as follows: after importation of the subject merchandise, PPA maintained the merchandise in inventory. PPA sold OCTG to the Panther division of State, a firm that is jointly owned by SeAH and PPA. State, in turn, sold OCTG to unaffiliated U.S. customers, typically after further manufacturing was performed by unaffiliated processors. Finally, State invoiced the unaffiliated customers and received payment. For a few sales, involving back-to-back sales by SeAH through PPA, SeAH produced subject merchandise to order and shipped the merchandise to the U.S. customer, with PPA fulfilling a number of intermediary functions as discussed below.

In accordance with section 772(b) of the Act, we used CEP for calculation of price to the United States because either the first sales to unaffiliated customers in the United States were made after importation of the subject merchandise or, in the remaining instances, the U.S. affiliate, PPA, performed functions beyond what would be considered ancillary. For back-to-back sales, respondent confirmed that PPA performed a number of functions, including occasional negotiations with unaffiliated customers, forwarding orders and order changes (at times) from unaffiliated U.S. customers to SeAH for acceptance, acting as the importer of record, provision of marine insurance, clearing subject merchandise through U.S. customs, occasional handling of freight from the U.S. point of entry, preparing and issuing invoices to unaffiliated customers, receipt of payments from unaffiliated customers, and providing customer service when necessary. Finally, respondent reported that SeAH has no direct contact with unaffiliated U.S. customers. As noted on page 2 of SeAH's supplemental questionnaire response dated March 19, 1999, the respondent agreed to characterize these "back-to-back" sales as CEP sales, in part because such characterization was consistent with the Department's recent decision involving respondents with similar sales processes (see *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12937-38 (March 16, 1999)).

The starting point for the calculation of CEP was the delivered price to unaffiliated customers in the United States. We made adjustments for early

payment discounts and other discounts. In accordance with section 772(c)(2) of the Act, we made deductions for movement expenses, including foreign inland freight, ocean freight, marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted credit expenses, warranty expenses, warehousing expenses, other direct selling expenses (inspection expenses), and indirect selling expenses, including inventory carrying costs. In accordance with section 772(c)(1)(B) of the Act, we added duty drawback to the starting price. In accordance with section 772(d)(2) of the Act, we deducted the cost of further manufacturing where such deduction was appropriate. This deduction for further manufacturing was based on the fees charged by the unaffiliated U.S. processors; SeAH indicated that the reported further processors' charges included processing and repacking, and that it did not include separate G&A or interest expense information related to this further processing because all of the expenses incurred by State and PPA, including the minimal G&A and interest expense associated with their dealings with further processors, were reported as selling expenses. Finally, we deducted an amount of profit allocated to these expenses, when incurred in connection with economic activity in the United States, in accordance with section 772(d)(3) of the Act.

Normal Value

A. Model Match

In accordance with recent practice, we matched a given U.S. sale to comparison market sales of the next most similar model if all contemporaneous sales of the most comparable model were below cost and discarded from our analysis. See *Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47471 (September 8, 1998), unchanged at *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review*, 64 FR 13169 (March 17, 1999). The Department uses CV as the basis for NV only when there are no sales that are suitable for comparison. Therefore, in this proceeding, in making comparisons in accordance with section 771(16) of the Act, we considered all products described in the "Scope of Review" section of this notice, above, sold in the comparison market in the ordinary course of trade for purposes of determining appropriate product

comparisons to U.S. sales. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. This methodology is pursuant to the ruling of the Court of Appeals for the Federal Circuit in *CEMEX vs. United States*, 133 F.3d 897 (Fed Cir. 1998).

B. Cost of Production and Constructed Value

1. Cost of Production

On December 21, 1998, petitioners alleged that SeAH made comparison market sales of OCTG at prices below the cost of production ("COP") during the POR. After analyzing petitioners' allegation, on February 4, 1999, the Department initiated a COP investigation of SeAH (see *Analysis of Petitioners' Allegation of Sales Below the Cost of Production Memorandum* (February 4, 1999); a public version of this report is on file in the Central Record Unit, Room B-099, Department of Commerce). Using sales and COP information provided by the respondent, we compared sales of the foreign like product in the comparison market with the model-specific COP figure for the POR. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, including all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment.

The API Specification 5CT, to which SeAH states it makes its OCTG, requires that a carload lot (considered to be a minimum of 40,000 pounds, or 18.14 metric tons) meet a negative weight tolerance of 1.75% (i.e., the actual weight of the carload lot can be no less than 100% minus 1.75%, or 98.25%, of the theoretical weight of the carload, the latter being the weight basis for SeAH's sales). The weight tolerance for single lengths of pipe are plus 6.5% and minus 3.5% (i.e., the actual weight of any given pipe must be between 96.5% and 106.5% of the theoretical weight). SeAH has reported weight conversion factors that indicate actual weight was less than 96.5% of theoretical weight, outside of its own interpretation of the specification's weight tolerance. Weight conversion factors are needed to convert

SeAH's production costs, which for most OCTG products are maintained on an actual weight basis, to a theoretical weight basis, so that the cost and sales data are on a comparable weight basis. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32836-37 (June 16, 1998).

In the prior review, we found that the minus 1.75% weight tolerance for carload lots applies for all OCTG produced to that specification, not simply to OCTG with an outside diameter of less than 1.660 inches. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47470 (September 8, 1998), unchanged in final. *See Notice of Final Results of Antidumping Duty Administrative Review of Oil Country Tubular Goods From Korea*, 64 FR 13169 (March 17, 1999). The specification states that "[a]ll dimensions shown herein without tolerances are related to the basis for design and are not subject to measurement to determine acceptance or rejection of the product," and that "[e]xceptions are Grades C90, T95, and Q125, which may be furnished in other sizes, weights, and wall thicknesses as agreed between the purchaser and the manufacturer" (*see* API Specification 5CT at section 7.1, in Exhibit A-14 of SeAH's November 2, 1998, submission). The carload lot weight is a dimension (weight) with a tolerance (minus 1.75%), and none of SeAH's Myanmar or U.S. sales were of Grades C90, T95, or Q125.

Nevertheless, it does not appear that the API carload lot weight tolerance of 1.75% would apply to merchandise being transported by ship, which is the case for SeAH's Myanmar sales and for its sales to PPA. Rather, the 3.5% weight tolerance indicated by the specification would apply. Therefore, as we have determined in the prior review, there is no clear reason why the actual weight should be less than 96.5% of the theoretical weight if all of SeAH's OCTG is produced to the specification. Consequently, for our preliminary results we have used a conversion factor based on this assumption to calculate costs (except for products for which costs were maintained on a theoretical weight basis, which require no weight conversion), consistent with the last administrative review. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47472 (September 8, 1998), unchanged at *Oil Country Tubular Goods from*

Korea: Final Results of Antidumping Duty Administrative Review, 64 FR 13169 (March 17, 1999).

After calculating COP, we tested whether comparison market sales of the foreign like product were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared to the POR average COP, any sales that were below cost were also determined not to be at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported comparison market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

2. Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value ("CV") as the basis for NV when there were no usable contemporaneous sales of such or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included SeAH's cost of materials and fabrication (including packing), SG&A expenses, and profit. *See* section 773(e)(2)(A) of the Act. We applied the same conversion factor methodology as noted in the COP section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market.

C. Price-to-Price Comparison

Where appropriate, for comparison to CEP, we made adjustments to NV by deducting Korean inland freight, brokerage and handling, and packing, in accordance with section 773(a)(6)(B) of the Act and direct selling expenses (credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

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") of the U.S. sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For both EP and CEP, the relevant transaction for the level of trade analysis is the sale (or constructed sale) from the exporter to the importer.

To determine whether comparison market NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different level of trade 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 level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, 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). *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 17, 1997).

The record does not indicate more than a minimal involvement by SeAH in either the marketing process or the selling functions associated with its Myanmar and U.S. sales. There does not appear to be any substantive difference between the functions performed by SeAH with respect to the sales to the Korean trading company which are destined for Myanmar and the functions performed by SeAH with respect to its

sales made to PPA, the affiliated U.S. importer of record. In both instances, SeAH made sales to resellers that in turn sold to end-users, and the record does not indicate any more than the most minimal interaction of SeAH with those resellers (the unaffiliated Korean trading company for Myanmar sales and PPA for U.S. sales) with respect to the sales process. Additionally, SeAH did not claim a LOT adjustment or a CEP offset in this POR. Consequently, we have preliminarily determined that the sales in both markets are at the same LOT. Therefore, neither a CEP offset nor a LOT adjustment is warranted.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won

exchange rate during the previous eight years.

Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary, drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, i.e., as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for comparisons to U.S. sales occurring between November 1 and December 31, 1997. For sales occurring after December 31, but before March 1, 1998, the Department continued to rely on the standard exchange rate model, but used

as the benchmark rate a (stationary) average of the daily rates over this period. In this manner, we used an "up-to-date" (post-precipitous drop) benchmark, but at the same time avoided undue day-to-day fluctuations in the exchange rates used. *See: Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 64 FR 14865, 14868 (March 29, 1999) and *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Steel Wire Rope from Korea*, 63 FR 67662, 67665 (December 8, 1998), unchanged at *Steel Wire Rope from Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Administrative Review* 64 FR 17995 (April 13, 1999).

Preliminary Results of Reviews

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 1997 through July 31, 1998 to be as follows:

Manufacturer/Exporter	Time period	Margin (percent)
SeAH	09/01/97–08/31/98	15.03

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 five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

The Department will issue the final results of this administrative review, including its analysis of issues raised in any case or rebuttal brief or at a hearing, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, i.e., margins less than 0.5

percent); (2) for exporters not covered in this review, but covered in the LTFV investigation or previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a 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; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate established in the LTFV investigation, which was 12.17 percent. 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 issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23322 Filed 9-7-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-815]

Sulfanilic 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.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1997, through July 31, 1998, and thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Factory; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Beijing; Hainan Garden Trading Company; Yude Chemical Company; and Shunping Lile. The preliminary results of this review indicate that there were dumping margins for the two responding parties: Yude Chemical Company/Xinyu Chemical Factory ("Yude/Xinyu") and Zhenxing Chemical Factory/Mancheng Zhenxing Chemical Factory ("Zhenxing/Mancheng") as well as for the "PRC enterprise." The rates assigned to each company are listed below in the "Preliminary Results of the Review" section of this notice.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Linda Smioldo

Checchia or Sean Carey, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230 at (202) 482-4243, (202) 482-6412, or (202) 482-3964, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice of "Opportunity to Request Administrative Review" for the August 1, 1997, through July 31, 1998, period of review (POR) of the antidumping duty order on Sulfanilic Acid from the People's Republic of China, 57 FR 37524 (August 19, 1992). In accordance with 19 CFR 351.213, Zhenxing, Yude, PHT International, Inc. ("PHT"), and the petitioners, Nation Ford Chemical Company, requested a review for the aforementioned period. On September 29, 1998, we published a notice of "Initiation of Antidumping Review." See 63 FR 51893. The Department is now conducting this administrative review pursuant to section 751(a) of the Act. On October 29, 1998, Zhenxing and Yude, two companies which are described as joint ventures between Chinese companies—namely, Mancheng and Xinyu, respectively—and a U.S.-based company named PHT, reported that they each had made sales of subject merchandise to the United States during the POR in their responses to Section A (Organization, Accounting Practices, Markets and Merchandise) of the Department's questionnaire. Zhenxing and Yude submitted responses to Sections C and D (Sales to the United States and Factors of Production, respectively) on November 25, 1998. Responses to two supplemental questionnaires by Zhenxing and Yude were received on January 25, 1999, and July 23, 1999.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid,

refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review period is August 1, 1997 through July 31, 1998.

Verification

Due to administrative constraints, verification prior to the issuance of this notice of preliminary results was not conducted. Section 351.307 of the Department's regulations stipulate that the Department must verify prior to issuing final results in an administrative review if (1) a domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and (2) no verification during either of the two immediately preceding administrative reviews was conducted. In this review, no such written request from a domestic interested party was received and verification was conducted during the immediately preceding 1996-1997 administrative review. However, for reasons stated below, the Department intends to conduct verification prior to

the issuance of the final results in this administrative review.

Determination of Producers

Based on the respondents' supplemental questionnaire responses of July 23, 1999, the Department preliminarily determines that the Yude and Xinyu firms constitute a single entity, and that the Zhenxing and Mancheng firms constitute a single entity. Record evidence shows that each producer pair did not maintain separate facilities for manufacturing subject merchandise, that each producer pair shares common majority ownership and that each producer pair shares common officers. See Collapsing Decision Memorandum for Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III from Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 1999. A public version of this memorandum is on file in the Central Records Unit (room B-099 of the Main Commerce Building) (CRU).

Collapsing

We have determined, after examining the relevant criteria, that Yude/Xinyu and Zhenxing/Mancheng are affiliated parties within the meaning of section 771(33)(F). We have further determined that PHT (the U.S. reseller of sulfanilic acid) is also affiliated with these producers/exporters and that these companies should be treated as a single entity (i.e., "collapsed") for purposes of calculating and assigning an antidumping margin in this review. Section 351.401(f) of the Department's antidumping regulations provides that the Department "will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." See 19 CFR 351.401(f). In identifying the potential for manipulation of price or production, section 351.401(f)(2) provides, *inter alia*, that the Department may consider the following factors: level of common ownership; the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and whether operations are intertwined, such as through the sharing of facilities or employees, or significant transactions between the affiliated parties. A full discussion of our conclusions, requiring reference to proprietary information, is

contained in the Department's memorandum in the official file for this case (a public version of this memorandum is on file in the CRU). Generally, however, we have found that: Yude/Xinyu and Zhenxing/Mancheng are affiliated parties; Yude/Xinyu and PHT are affiliated parties; Zhenxing/Mancheng and PHT are affiliated parties; substantial retooling would not be necessary to restructure manufacturing priorities; and, there is significant potential for manipulating price and production between the producers and the exporter. As a result we are collapsing Yude/Xinyu; Zhenxing/Mancheng; and PHT for purposes of conducting the 1997/1998 administrative review.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. See *Mitsubishi Heavy Industries, Ltd., v. U.S., — CIT —*, Slip Op. 99-46 (May 26, 1999). To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a non-market economy ("NME") country under the test 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 by 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 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; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4)

whether each exporter has the authority to sign contracts and other agreements.

The Department did not require the respondents to answer certain questions concerning separate rates. This is due to the fact that specific issues pertaining to Xinyu and Mancheng did not surface until the review of the Yude and Zhenxing supplemental questionnaire responses of July 23, 1999. Accordingly, the record evidence on which to conduct a separate rates analysis for purposes of these preliminary results may be incomplete. We have found that the evidence on the record affirmatively demonstrates an absence of direct government control, both in law and in fact, with respect to Yude's and Zhenxing's exports according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review, and have assigned to these companies a rate separate from the China-wide rate ("PRC rate"). Even though Yude failed to affirmatively demonstrate, in fact, that it exercised independent decision-making authority regarding disposition of profits and financing of losses during the POR, the overall balance of evidence affirmatively demonstrates an absence of government control. Together with Zhenxing, it will be granted a rate separate from all the others, "PRC rate."

As discussed above, because issues pertaining to Xinyu and Mancheng did not arise until late in the review process, we intend to examine further the issue of separate rates. We will request additional information prior to verification. Accordingly, even though for these preliminary results we are assigning a separate rate to Mancheng/Zhenxing and Xinyu/Yude, this preliminary separate rates determination is subject to the receipt and verification of further information. Before the issuance of the final results in this administrative review, we will be re-assessing whether separate rates are justified.

For further discussion of the Department's preliminary determination regarding the issuance of separate rates, see Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 1999. A public version memorandum is on file in the Central Records Unit (room B-099 of the Main Commerce Building) (CRU); see also "Collapsing" section of this notice.

Use of Facts Otherwise Available

All firms that have not affirmatively demonstrated that they qualify for a separate rate are presumed to be part of a single enterprise under the common control of the government (the "PRC

enterprise"). See *Sigma Corp. v. U.S.*, 117 F.3d 1401 (Fed. Cir. 1997). Therefore, all such entities receive a single margin, the "PRC rate." We preliminarily determine, in accordance with section 776(a) of the Act, that resorting to the facts otherwise available is appropriate in arriving at the PRC rate because companies, presumed to be part of the PRC enterprise, did not respond to the Department's antidumping questionnaire.

Where the Department must resort to the facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Statement of Administrative Action ("SAA") accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." See H.Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* The SAA also states that independent sources used for corroboration may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See *id.* However, where corroboration is not practicable, that fact will not prevent the Department from applying an adverse inference and using the secondary information in question. See 19 CFR 351.308(d).

The Department issued its standard non-market economy (NME) questionnaires to thirteen firms on September 29, 1998. These thirteen firms are: Sinochem Hebei; China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical

Industry Company; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Beijing; Hainan Garden Trading Company; Yude Chemical Industry Company; and Shunping Lile. The Department received responses from only two companies: Yude and Zhenxing. Yude and Zhenxing responded to Section A (Organization, Accounting Practices, Markets and Merchandise) of the Department's questionnaire on October 29, 1998. Yude and Zhenxing submitted responses to Sections C and D (Sales to the United States and Factors of Production, respectively) of the Department's questionnaire on November 25, 1998. Responses to two supplemental questionnaires by Yude and Zhenxing were received on January 25, 1999, and July 23, 1999. The Department did not receive any responses from any other firms. Such non-response supports the Department's preliminary determination to apply adverse facts available.

As noted above, some of the companies which were issued questionnaires in this review did not respond. Therefore, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Consequently, we have preliminarily decided to use adverse facts available with respect to the PRC-wide entity in accordance with section 776(b) of the Act.

When making adverse inferences, the Statement of Administrative Action (SAA) authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation (SAA at 870). Because the "all others" PRC rate that was applicable during the POR and that is applicable to current imports is 85.2 percent, the Department believes that assigning a 85.2 percent rate will prevent non-responding firms from benefitting from their failure to respond to the Department's requests for information. Anything less than the current cash deposit rate would effectively reward non-responding firms for not cooperating to the best of their ability.

The 85.2 percent rate is based on the less than fair value (LTFV) final determination, which in turn was based on information in the petition. Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from, among other places, the petition or the final determination from the LTFV investigation. This type of information

is considered secondary information. See SAA at 870; 19 CFR 351.308(c)(1).

In accordance with the law, the Department, to the extent practicable, will examine the reliability and relevance of the information used. However, in an administrative review the Department will not engage in updating the petition to reflect the prices and costs that are found during the current review. Rather, corroboration consists of determining that the significant elements used to derive a margin in a petition are reliable for the conditions upon which the petition is based. With respect to the relevance aspect of corroboration, the Department will consider the information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.

To corroborate the LTFV rate of 85.2 percent, we examined the basis of the rates contained in the petition of October 8, 1991. The U.S. price in the petition was based on actual prices from customer purchase orders, invoices and price quotations for refined sulfanilic acid from the PRC. This U.S. price covers delivery to the customer's point of usage. We were able to corroborate the average unit values listed in the petition by comparing those values to publicly available information compiled by the U.S. Census Bureau and made available by the International Trade Commission (ITC). The ITC reports quantity and value by HTS numbers. Using the same HTS numbers as listed in the petition (HTS 2921.42.24, 2921.42.79, and 2921.42.79), we divided the total quantity by the total value for the period referenced in the petition and noted the average unit values were very similar to those reported in the original petition.

The petition also states that due to the non-market economy status of the PRC, the foreign market value was calculated using a factors of production methodology. Based on the production experience of the petitioners, the petition identified actual factors of production for subject merchandise. Such factors include: labor, raw material, energy, overhead, and general selling and administrative expenses. To value these factors of production, the petition used published costs in India for the above-mentioned factors as surrogate values for those in the PRC. See Antidumping Petition on Sulfanilic Acid from the People's Republic of China dated October 2, 1991, and found in CRU. Because petitioners used published, publicly available data for valuing the major inputs, we consider this data to be probative and relevant.

The SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition, and mindful of the legislative history discussing facts available and corroboration, we consider the petition margin we are assigning to non-responding firms in this review as adverse facts available to be corroborated to the extent practicable.

Finally, we note that where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that would indicate that the margin from the petition is not appropriate. Nothing on the record of this administrative review supports a determination that the highest margin rate from the petition in the underlying investigation does not represent reliable and relevant information for purposes of adverse facts available. This rate has been used as the PRC-wide, all others rate since the Department's *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 29705 (July 6, 1992).

United States Price

Respondents reported U.S. sales as constructed export price ("CEP") sales made by PHT on behalf of Yude/Xinyu and Zhenxing/Mancheng. We calculated CEP based on FOB prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs duties, U.S. transportation, credit, warehousing, repacking in the United States, indirect selling expenses, including inventory carrying costs, and constructed export price profit, as appropriate, in accordance with sections 772(c) and (d) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors of production methodology if (1) the merchandise is exported from a non-

market economy (NME) country, and (2) the 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 every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i), 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. Accordingly, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production as set forth in section 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act, we determined that India is comparable to the PRC in terms of per capita gross national product ("GNP"), the growth rate in per capita GNP, and the national distribution of labor; and that India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the primary surrogate country, see Memorandum from Jeffrey May, Director, Office of Policy, to Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated June 30, 1999, entitled "Sulfanilic Acid from the People's Republic of China ("PRC"): Nonmarket Economy Status and Surrogate Country Selection"; "Selection of Significant Producer Memo" dated August 31, 1999; "Surrogate Values Memorandum" dated August 31, 1999; and Preliminary Analysis Memorandum dated August 31, 1999, which are on file in the CRU.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. 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 those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices published in the IMF's International Financial Statistics. When necessary, we adjusted the values for certain inputs reported in *Chemical Weekly* to exclude sales and excise taxes. In accordance with our practice, we added to CIF import values from

India a surrogate inland freight cost using a simple average 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 (Nov. 20, 1997). In accordance with this methodology, we valued the factors of production as follows:

To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value of imports into India during April 1997–March 1998, obtained from the March 1998, *Monthly Statistics of the Foreign Trade of India*, Volume II—Imports (*Indian Import Statistics*.) Using the Indian rupee wholesale price indices ("WPI") obtained from the International Financial Statistics, published by the International Monetary Fund (IMF), we adjusted this value for inflation in India during the POR. We made adjustments to include costs incurred for freight between the Chinese aniline suppliers and Zhenxing/Mancheng's and Yude/Xinyu's factories using the average of (1) the distance from the factory to the supplier or (2) the distance from the factory to the port. The surrogate freight rates were based on truck freight rates from *The Times of India*, April 20, 1994, consistent with the Department's practice. *See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 13401 (Mar. 18, 1999) (*Lock Washers*). Rail freight rates were from the December 22, 1989, embassy cable for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China*, 56 FR 4040 (Feb. 1, 1991). These rates were adjusted for inflation to be concurrent with the period of review and have been placed on the record of this review.

To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during December 1996–July 1997 as reported in *Chemical Weekly*. We have adjusted this value for inflation in India during the POR, and have excluded the Central Excise Tariff of India and the Bombay Sales Tax. We made additional adjustments to include costs incurred for freight between the Chinese sulfuric acid supplier and Zhenxing/Mancheng's and Yude/Xinyu's factories in the PRC.

To value sodium bicarbonate used in the production of sodium sulfanilate, we used the rupee per kilogram value for sales in India during December

1996–July 1997 as reported in *Chemical Weekly*. We have adjusted this value for inflation in India during the POR, and have excluded the Central Excise Tariff of India and the Bombay Sales Tax. We made additional adjustments to include costs incurred for freight between the Chinese sodium bicarbonate supplier and Zhenxing/Mancheng factory in the PRC.

Consistent with our final determination in the 1996–1997 administrative review, we have used the public price quotes, in this case those submitted by the respondents on July 14, 1999, which are specific to the type and grade of activated carbon used in the production of sulfanilic acid, as reported in the Chinese sulfanilic acid producers' factors of production. We made adjustments to account for inflation in India during the POR, and to include costs incurred for inland freight between the Chinese activated carbon supplier and Zhenxing/Mancheng's and Yude/Xinyu's factories in the PRC.

The Department's regulations, at 19 CFR 351.408(c)(3), state that "[f]or labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public." To value the factor inputs for labor, we used the wage rates calculated for the PRC in the Department's "Expected Wages of Selected Non-Market Economy Countries—1997 Income Data" as updated in May 1999, and published by the Department in the world-wide web site for Import Administration.

Following our practice from prior administrative reviews of sulfanilic acid from the PRC, for factory overhead, we used information reported in the January 1997 *Reserve Bank of India Bulletin* ("Bulletin"). From this information, we were able to determine factory overhead as a percentage of total cost of manufacturing.

Similarly, for selling, general and administrative (SG&A) expenses, we used information obtained from the January 1997 *Bulletin*. We calculated an SG&A rate by dividing SG&A expenses as reported in the *Bulletin* by the cost of manufacturing.

Finally, to calculate a profit rate, we used information obtained from the January 1997 *Bulletin*. We calculated a profit rate by dividing the before-tax profit by the sum of those components

pertaining to the cost of manufacturing plus SG&A as reported in the *Bulletin*.

To value the inner and outer bags used as packing materials, we used import information from *Indian Import Statistics* for the period April 1997–March 1998. Using the Indian rupee WPI data obtained from *International Financial Statistics*, we adjusted these values to account for inflation in India during the POR. We adjusted these values to include freight costs incurred between the Chinese plastic bag suppliers and Zhenxing/Mancheng's and Yude/Xinyu's factories in the PRC.

To value coal, we used the price of steam coal in 1996 for industries in India as reported in *Energy, Prices and Taxes, First Quarter 1999* published by the International Energy Agency. This price was adjusted for inflation to be concurrent with the POR and has been placed on the record of this review.

To value electricity, we used the price of industrial electricity in India in 1997 reported in *Energy, Prices, and Taxes, First Quarter 1999* published by the International Energy Agency. This price was adjusted for inflation to be concurrent with the POR and has been placed on the record of this review.

To value truck freight for input materials, we used the rate reported in *The Times of India*, April 20, 1994. We adjusted the truck freight rates for inflation during the POR using Indian rupee WPI data published by the IMF. See *Lock Washers*.

To value rail freight for input materials, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China*, 56 FR 4040 (Feb. 1, 1991) and added to the record of this review. We adjusted the rail freight rates for inflation during the POR using Indian rupee WPI data published by the IMF.

To value brokerage and handling, we used the brokerage and handling rate used in the *Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (1994). See April 1997 Memorandum to All Reviewers from Richard W. Moreland, Acting Deputy Assistant Secretary "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China," found on Import Administration's web site. We adjusted the value for brokerage and handling for inflation during the POR using Indian rupee WPI data published by the IMF.

To value marine insurance, we used information from a publicly summarized version of a questionnaire

response in *Investigation of Sales at Less Than Fair Value: Sulphur Vat Dyes from India* (62 FR 42758). See "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China," found on Import Administration's web site. We adjusted the value for marine insurance for inflation during the POR using Indian rupee WPI data published by the IMF.

To value ocean freight, we used a value for ocean freight provided by the Federal Maritime Commission used in the *Final Determination of the Antidumping Administrative Review of Sebacic Acid from the PRC*, 62 FR 65674 (1997). We adjusted the value for ocean freight for inflation during the POR using Indian rupee WPI data published by the IMF.

Preliminary Results of the Review

We preliminarily determine the weighted average dumping margin for Yude/Xinyu and Zhenxing/Mancheng for the period August 1, 1997 through July 31, 1998 to be 1.62 percent. The rate for all other firms which have not demonstrated that they are entitled to separate rates is 85.20 percent. This rate will be applied to all firms other than Yude/Xinyu and Zhenxing/Mancheng.

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 five (5) days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs are currently scheduled for submission within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five (5) days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs. The Department will issue the final results of this administrative review, including its analysis of issues raised in any case or rebuttal brief or at

a hearing, 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. Upon completion of this review, the Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective with respect to all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies listed above will be the rates for those firms established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate 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 rate will be the China-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402 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 notice are in accordance with sections 751(a)(1) and 771 (i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23324 Filed 9-7-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-834-803]

Titanium Sponge From the Republic of Kazakhstan; Notice of 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 request from Titanium Metals Corporation, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on titanium sponge from the Republic of Kazakhstan (Kazakhstan). This notice of preliminary results covers the period August 1, 1997 through July 31, 1998. This review covers one manufacturer/exporter and one trading company.

We preliminarily determine that no sales were made below normal value during this review period. If this preliminary result is adopted in our final results of administrative review, we will instruct the U.S. Customs Service to liquidate entries during the period of review (POR) without regard to dumping duties. Interested parties are invited to comment on this preliminary result. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-3936.

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, as amended (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).

Background

The Department published an antidumping finding on titanium

sponge from the Union of Soviet Socialist Republics (U.S.S.R.) on August 28, 1968 (33 FR 12138). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to each of the former republics of the U.S.S.R. (57 FR 36070, August 12, 1992).

On August 28, 1998, Titanium Metals Company (Timet) requested that the Department conduct an administrative review of the antidumping finding on titanium sponge from Kazakhstan for one manufacturer/exporter, Ust-Kamenorgorsk Titanium and Magnesium Plant (UKTMP), and one trading company, Specialty Metals Corporation (SMC), covering the period August 1, 1997 through July 31, 1998. The Department published a notice of initiation of the review on September 29, 1998 (63 FR 51893). Due to the complexity of the legal and methodological issues presented by this review, the Department postponed the date of the preliminary results of review on May 10, 1999 (64 FR 25024). The Department is conducting this administrative review in accordance with section 751 of the Act.

On August 13, 1998, the International Trade Commission (ITC) published in the **Federal Register** its determination that revocation of the findings covering titanium sponge imports from Kazakhstan, the Russian Federation (Russia), and Ukraine and the antidumping duty order covering imports of titanium sponge from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States. Due to this determination the Department has revoked the finding covering titanium sponge imports from Kazakhstan. This revocation is effective as of August 13, 1998, the date of publication in the **Federal Register** of the ITC's determinations. See *Notice of Revocation of Antidumping Findings and Antidumping Duty Order and Termination of Five-Year ("Sunset") Reviews: Titanium Sponge from Kazakhstan, Russia, Ukraine, and Japan*, 63 FR 46215 (August 31, 1998).

Scope of Review

The product covered by this administrative review is titanium sponge from Kazakhstan. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS)

subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

Separate Rates Determination

To establish whether a company operating in a nonmarket economy (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test 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 by 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*). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. 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 the 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. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589.

In the final results of the 1996–1997 review of titanium sponge from Kazakhstan, the Department granted a separate rate to UKTMP and SMC. See *Titanium Sponge From the Republic of Kazakhstan: Final Results of Antidumping Duty Administrative Review* (64 FR 1598, January 11, 1999). While UKTMP and SMC received a separate rate in the previous segment of this proceeding, it is the Department's policy that separate rates questionnaire responses must be evaluated each time a respondent makes a separate rate

claim, regardless of any separate rate the respondent received in the past. See *Manganese Metal from the People's Republic of China, Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 Fed. Reg. 12441 (March 13, 1998). In the instant review, UKTMP and SMC submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in this review by UKTMP and SMC, which is consistent with the Department's findings in the previous review, is sufficient to demonstrate independence from the government entity. We therefore preliminarily determine that UKTMP and SMC continue to be entitled to a separate rate.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an export price (EP) on sales to the United States, because use of constructed export price was not warranted. For date of sale, we used the sales invoice date because this is the date when the price and quantity are set. We excluded those sales made to the United States which the respondents identified as having entered the United States under temporary importation bond (TIB). At this time, because merchandise entered under a TIB is not entered for consumption, such merchandise is not subject to the antidumping finding. See *Titanium Metals Corp. v. United States*, 901 F. Supp 362 (CIT 1995).

We calculated export price based on the price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, insurance, ocean freight, and brokerage and handling. SMC did not claim any other adjustments to EP, nor were any other adjustments allowed.

Surrogate Country Selection

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, in accordance with Section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries.

The Department has treated Kazakhstan as an NME country in every past case involving this country. Since none of the parties to these proceedings

contested such treatment in this review, we calculated NV for the instant review in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the factors of production (FOP) utilized in producing titanium sponge include, but are not limited to—(A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the cost of the FOP in a market economy that is—(A) at a level of economic development comparable to Kazakhstan, and (B) a significant producer of comparable merchandise. We determined that Egypt is comparable to Kazakhstan in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, Egypt is a significant producer of aluminum, a product comparable to titanium sponge. For a further discussion of the Department's selection of Egypt as the surrogate country, see *Memorandum to the File, "1997–1998 Administrative Review of the Antidumping Finding on Titanium Sponge from Kazakhstan; Selection of a Surrogate Country,"* dated June 24, 1999, which is on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File).

Normal Value

In accordance with section 773(c)(1) of the Act, for purposes of calculating normal value (NV), we valued Kazakhstan's FOP based on data for the POR. Surrogate values that were in effect during periods other than the POR were inflated or deflated, as appropriate, to account for price changes between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for Egypt and Indonesia, where appropriate, that were reported in the IMF's publication, *International Financial Statistics*. We valued Kazakhstan's FOP as follows (for further discussion of our preliminary analysis, see *Analysis Memorandum for the Preliminary Results of Administrative Review*, dated August 31, 1999, which is on file in the CRU—Public File.):

- Except as noted below, we valued raw materials using Egyptian import data from the Commodity Trade Statistics Section, United Nations Statistics Division, (UN import statistics) for the calendar year 1997. We

adjusted certain factor values to reflect the actual purity used in the production of the subject merchandise. Since UKTMP purchased titanium slag from both market and non-market economy suppliers, consistent with the Department's practice, we valued this input using the market economy price, regardless of the supplier. The most recent Egyptian import statistics that we were able to find for pitch coke and chlorine were Egypt's 1994 and 1996 UN import statistics, respectively. Since the UN statistics are reported in U.S. dollars, we did not adjust these values for the effects of inflation. We were unable to find information from Egypt in order to value carnallite and spent electrolyte. For carnallite, we used the 1995 Egyptian UN import statistics for dolomite, a commodity similar to carnallite, as the surrogate value. In order to value spent electrolyte, we used the surrogate value for potassium chloride because spent electrolyte is 75 percent potassium chloride. The surrogate value for potassium chloride was obtained from Egypt's 1997 UN import statistics.

- Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor by using the regression-based wage rate for Kazakhstan as posted on the Import Administration Internet web site.

- Although the respondents placed on the record an Egyptian electricity rate for large industrial consumers, they did not provide any source documentation to substantiate this rate. Therefore, we valued electricity in the instant review with the Indonesian surrogate value for electricity used in the 1996–1997 administrative review of this finding. In that review, we used the "extra large industry user" rate from Indonesia's electricity tariff schedule that UKTMP would have received had it been an electricity consumer in Indonesia during the POR. Since this rate is from 1994, and is expressed in Indonesian rupiahs, we adjusted this rate in order to account for the effects of inflation.

- We were unable to obtain a surrogate value from Egypt for steam. Since steam was not valued as a factor of production in the 1996–1997 administrative review of this finding, we have used the surrogate for electricity, as discussed above, to value this energy input.

- UKTMP states that it incurred handling and reloading charges for merchandise transited through the port in St. Petersburg, Russia. We were unable to find a surrogate value from Egypt for handling and reloading charges. Since these expenses were

incurred in Russia, we valued them, consistent with the 1996–1997 review of titanium sponge from Kazakhstan, with the surrogate value used in the 1996–1997 administrative review of the antidumping finding on titanium sponge from the Russian Federation (titanium sponge from Russia). In that review, we determined that Venezuela was an appropriate surrogate country for Russia. However, since we were unable to locate a Venezuelan surrogate value for handling charges, we valued these charges with the surrogate value from the 1995–1996 administrative review of titanium sponge from Russia. In the 1995–1996 review, we valued these charges using the brokerage and handling charges reported in the public record of the antidumping administrative review of silicon metal from Brazil. Therefore, in the instant review, we valued the handling and reloading charges incurred by UKTMP in Russia with the weighted-average brokerage and handling expenses reported in the public record of the 1997–1998 administrative review of the antidumping duty order on silicon metal from Brazil.

- We valued truck and rail transportation in Kazakhstan using Egyptian truck and rail surrogate values obtained by the respondents. With respect to truck transportation, the respondents provided a schedule of trucking fees covering transport of cargo between various cities throughout Egypt. We used the price per kilometer per metric ton rate from the Ramadan City-to-Cairo fee because the distance between these two cities most closely matches the distance cargo traveled by truck in Kazakhstan. In regard to rail transportation, the respondents provided a schedule of rail fees covering transport of cargo between various cities throughout Egypt. We used the price per kilometer per metric ton rate from the city-to-city fees that most closely matched the distances cargo traveled by rail in Kazakhstan.

- UKTMP shipped its sales of titanium sponge to the United States via rail through Russia. We valued this transportation with the surrogate value for rail transportation used in the 1996–1997 administrative review of titanium sponge from Russia, which is the most recently completed review of that finding. In that review, we valued transportation via the Russian rail lines using the Venezuelan Bolivares price per metric ton per kilometer quoted by the national Venezuelan railroad system administrator. Since the correspondence containing the price quote was issued during the instant review's POR, we did

not adjust this rate to account for the effects of price changes.

- In regard to packing materials, we used the 1997 UN import statistics from Egypt that were provided by the respondent for polyethylene film, argon, and sheet steel. Since the UN data is reported in U.S. dollars, we did not adjust for the effects of inflation. We valued labor used in packing with the above-referenced regression-based labor rate for Kazakhstan.

- The respondents placed on the record the financial statements from three Egyptian aluminum companies. One of the three companies is a primary aluminum producer while the other two are aluminum products producers. Since primary aluminum producers use a production process that is closer to the process used to produce titanium sponge than producers of aluminum products, we normally prefer to use the financial statements from primary aluminum producers in our calculation of factory overhead, selling, general and administrative (SG&A) expense, and profit. However, the financial statements from the Egyptian primary aluminum producer did not contain enough detail to be used in our calculations. Similarly, the financial statements from one of the two aluminum products producers lacked sufficient detail to be used in our calculations. Therefore, we calculated the ratios used in our valuation of overhead, SG&A, and profit with the 1998 financial statements from Arab Aluminum Co., an Egyptian producer of aluminum products.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act, based on exchange rates certified by the Federal Reserve Bank and Dow Jones Business Information Services.

Preliminary Results of the Review

SMC owns 65 percent of UKTMP and manages the operations of UKTMP under a long-term management contract. Due to SMC's equity ownership in UKTMP, we considered SMC and UKTMP to be affiliated for the purpose of the antidumping statute and regulations. During the POR, UKTMP sold titanium sponge to SMC who then resold the merchandise to unaffiliated purchasers in the United States. Because this was the only channel of distribution for sales to the United States, we calculated one rate that will apply to both SMC and UKTMP. As a result of our review, we preliminarily determine that the following margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/Exporter	Period	Margin (percent)
Specialty Metals Company/Ust-Kamenogorsk Titanium and Magnesium Plant	8/1/97-7/31/98	00.00

Within 5 days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of this preliminary result.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review.

Duty Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. This rate will be assessed uniformly on all entries of that specific importer made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*, i.e., less than 0.5 percent. The Department will issue appraisal instructions directly to the Customs Service.

Cash Deposit Requirements

Pursuant to the ITC's determination that revocation of the finding covering titanium sponge imports from Kazakhstan is not likely to lead to continuation or recurrence of material injury to an industry in the United

States, the Department revoked this finding on August 31, 1998, with an effective date of August 13, 1998. Since the revocation is currently in effect, current and future imports of titanium sponge from Kazakhstan shall be entered into the United States without regard to antidumping duties. Therefore, we will instruct Customs not to suspend future entries and to liquidate all future entries of this product, from Kazakhstan, without regard to antidumping duties.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 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 notice is 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: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23328 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-810]

Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from

Mexico for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for the reviewed company as well as for non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (See the *Public Comment* section of this notice.)

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Norbert Gannon or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** (58 FR 43755) the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. On August 11, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" (63 FR 42821) of this countervailing duty order. We received a timely request for review from Altos Hornos de Mexico, S.A. (AHMSA), the respondent company to this proceeding. On September 29, 1998, we initiated the review, covering the period January 1, 1997 through December 31, 1997 (63 FR 51893). On November 13, 1998, petitioners submitted new subsidy allegations. Based on the information submitted by petitioners, we initiated an investigation of nine of the ten new subsidy allegations made by petitioners. On May 6, 1999, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. See *Certain Cut-to-Length Carbon Steel Plate from Mexico: Postponement of Preliminary Results of Countervailing Duty Administrative Review* (64 FR 24370). On June 8 through June 17, 1999, we conducted a verification of the questionnaire responses that the Government of Mexico (GOM) and

AHMSA submitted during this administrative review. The results of our verification are contained in the July 8, 1999, memorandum "Verification of Government of Mexico's (GOM) Questionnaire Responses in the Administrative Review of the Countervailing Duty Order on Cut-to-length Carbon Steel Plate from Mexico" to David Mueller, Director of Office of AD/CVD Enforcement VI (GOM Verification Report), and the July 15, 1999, memorandum "Verification of AHMSA's Questionnaire Responses in the Administrative Review of the Countervailing Duty Order on Certain Carbon Steel Plate from Mexico" to David Mueller, Director of Office of AD/CVD Enforcement VI, the public versions of which are on file in the Central Records Unit, Room B-099 of the Main Commerce Building (AHMSA Verification Report).

In accordance with 19 C.F.R. 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. Accordingly, this review covers AHMSA. This review also covers twenty-one programs. The deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 C.F.R. Part 351 (April 1998), unless otherwise indicated. Because the request for this administrative review was filed before January 1, 1999, the Department's substantive countervailing duty regulations, which were published in the **Federal Register** on November 25, 1998 (63 FR 65348), do not govern this review.

Scope of the Review

The products covered by this administrative review are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of

rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this administrative review is grade X-70 plate. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Subsidies Valuation Information

Allocation Period

In *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, a methodology that was articulated in the *General Issues Appendix* appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc. v. United States*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews where the Department examines non-recurring subsidies received prior to the period of review (POR) which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. Where a countervailing duty rate in earlier segments of a proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Redefining an allocation period could lead to an increase or decrease in the total amount countervailed and, thus, could result in over-or under-countervailing the actual benefit.

In this administrative review, the Department is considering both non-recurring subsidies previously allocated in the initial investigation and non-recurring subsidies received since the original period of investigation (POI). Therefore, for purposes of these preliminary results, the Department is using the original allocation period of 15 years assigned to each non-recurring subsidy received prior to or during the POI. For non-recurring subsidies received since the POI, AHMSA submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. In accordance with the Department's practice, we derived AHMSA's company-specific AUL by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to depreciation for a 10-year period. We found this calculation produced a result that is aberrational possibly due to the effect of intermittent periods of high inflation. Further, AHMSA's financial statements indicate that the company revised the useful life of property, plant and equipment using differing annual depreciation rates rather than a straight line depreciation methodology. Therefore, for purposes of allocating benefits received after 1991 over time, we used a 15-year AUL, which is the same AUL that was used in the underlying investigation. See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico*, 58 FR 37352, 37356 (July 9, 1993) (*Certain Steel 1993*). Use of the 15-year AUL in this instance accords with our practice, which is to rely on IRS depreciation tables where company-

specific AUL data are distortive or otherwise unusable. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38742, 38746 (July 19, 1999); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530, 15546 (March 31, 1999).

Discount Rates

In *Certain Steel 1993*, for those years in which there were non-recurring grants and equity infusions, we used as our long-term benchmark discount rate the Costo Porcentual Promedio (CPP), which is the average percentage cost of funds for banks. We note we have converted the CPP rate into a discount rate using the formula that has been used in past Mexican cases. *See e.g. Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico*, 57 FR 562, January 7, 1992, (*POS Cookware 1992*). We further note that for those years in which there were grants and equity infusions and for which the Department had previously calculated a benchmark interest rate in a prior case, we used the rates calculated in those cases (*see, e.g., Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico*, 56 FR 26064 June 6, 1991, *Final Results of Countervailing Duty Administrative Review: Ceramic Tile from Mexico*, 57 FR 24247, June 8, 1992 (*Ceramic Tile 1992*), *Final Results of Countervailing Duty Administrative Review: Certain Textile Mill Products from Mexico*, 56 FR 12175, March 22, 1991 (*Ceramic Tile 1991*). In addition, we determined AHMSA to be uncreditworthy during the years 1983 through 1986. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

In this administrative review, we have preliminarily determined that AHMSA received additional non-recurring grants, countervailable loans, and debt forgiveness since the POI. These programs are discussed below in the "Analysis of Programs" section of this notice. With respect to the non-recurring, peso-denominated grants, we have preliminarily determined to continue using the CPP as our benchmark discount rate. Regarding loans with interest payments outstanding during the POR and U.S. dollar-denominated non-recurring grants received since the POI, AHMSA submitted company-specific interest rate information. During verification, we

reviewed AHMSA's short-term and long-term commercial loans and have preliminarily determined to use the weighted-average of each of these types of loans as our benchmark interest and discount rates.

Change in Ownership

(I) Background

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA. Thus, in this administrative review, we are analyzing the privatization of AHMSA in 1991 and, for purposes of this preliminary determination, have applied the Department's change in ownership methodology described below.

(II) Change in Ownership Calculation Methodology

Under the *Change in Ownership* methodology described in the *GIA* concerning the treatment of subsidies received prior to the sale of a company or the spinning-off of a productive unit, we estimate the portion of the purchase price attributable to prior subsidies. In the investigation, we computed this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the change in ownership.

We then took the simple average of the ratios of subsidies to net worth. This simple average of the ratios serves as a reasonable surrogate for the portion that subsidies constitute of the overall value of the company. Next, we multiplied the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

Inflation Methodology

In the original investigation of this case, we determined, based on information from the GOM, that Mexico experienced significant inflation during 1983 through 1988. *See Certain Steel 1993*, 58 FR at 37355. In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to account for inflation in the benefit calculations.

Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, indexing for the entire period or converting the non-recurring benefits into U.S. dollars at the time of receipt (i.e. dollarization) for use in our calculations would have inflated the benefit from these infusions by adjusting for inflationary as well as non-inflationary periods. Thus, in *Certain Steel 1993*, 58 FR at 37355, we used a loan-based methodology to reflect the effects of intermittent high inflation. The methodology we used in *Certain Steel 1993* assumed that, in lieu of a government equity infusion/grant, a company would have had to take out a 15-year loan that was rolled over each year at the prevailing nominal interest rates, which for purposes of our calculations were the CPP-based interest rates discussed in the "Discount Rate" section of this notice. The benefit in each year of the 15-year period equaled the principal plus interest payments associated with the loan at the nominal interest rate prevailing in that year.

Since we assumed that an infusion/grant given was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, just as with the Department's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit.

The methodology recognized that, absent dollarization of the subsidy, there was no way given the significant inflation in 1983 through 1988 to (1) preserve a declining balance in the benefit stream, and (2) reflect accurately the effects of significant inflation. The methodology used in *Certain Steel 1993* recognized that in an environment with significant inflation, asset appreciation due to inflation can often outweigh normal asset depreciation and cause benefits in some years to be higher than in previous years. This methodology was upheld in *British Steel plc v. United States*, 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel III*).

For purposes of the preliminary results of this administrative review, we have analyzed information provided by the GOM and have found that Mexico, again, experienced significant, intermittent inflation during the period 1991 through 1997. *See* the August 31, 1999, memorandum to the file, "Presence of Significant Intermittent Inflation During the POR," a public document on file in the Central Records Unit, Room B-099 of the Main Commerce Building. In addition, we

learned at verification that AHMSA continued its practice of accounting for inflation in its financial statements. See page 4 of the AHMSA Verification Report. Thus, we preliminarily determine to use the benefit calculation methodology from *Certain Steel 1993*, described above, for all non-recurring, peso-denominated grants received since the POI.

Analysis of Programs

I. Programs Conferring Subsidies

A. GOM Equity Infusions

In *Certain Steel 1993*, 58 FR at 37356, we determined that the GOM made equity infusions in AHMSA in 1977, each year from 1979 through 1987, 1990 and 1991. Shares of common stock were issued for all of these infusions and were made annually as part of the GOM's budgetary process as per the Federal Law on State Companies. At the time of these infusions, AHMSA was almost entirely a government-owned company.

In *Certain Steel 1993*, 58 FR at 37356, we found AHMSA to be unequityworthy in each year from 1979 through 1987, and in 1990 and 1991. Accordingly, we determined that the equity infusions by the GOM into AHMSA in these years were inconsistent with commercial considerations. In addition, because the infusions were made to a single enterprise, we determined that they were specific within the meaning of the section 771(5A)(D) of the Act. Thus, because these equity infusions were specific and inconsistent with commercial considerations, we found them to be countervailable. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 1.54 percent *ad valorem* for AHMSA.

B. 1986 Assumption of AHMSA's Debt

In 1986, the GOM negotiated an agreement with AHMSA through which the GOM assumed a portion of AHMSA's debt. One part of this debt assumption was recorded as a reduction in the company's accumulated past losses. For a second part, shares of stock were issued; a third part was held for

future capital increases for which new stock was issued to the GOM in 1987. In *Certain Steel 1993*, 58 FR at 37356, we treated the full amount of debt assumed by the GOM in 1986 as a countervailable, non-recurring grant. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 1.84 percent *ad valorem* for AHMSA.

C. 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM

In 1987, the GOM negotiated an agreement with foreign creditors to restructure the debt of AHMSA and several other Mexican parastatal companies. Under the agreement, the parastatal companies remained indebted to the foreign banks. The GOM again negotiated on behalf of AHMSA debt restructuring agreements in 1988 and 1990. Under these agreements, the GOM purchased AHMSA's debts, which were denominated in several foreign currencies, from AHMSA's foreign creditors in exchange for GOM debt. The GOM thereby became the creditor for loans included in these agreements.

During the proceeding of *Certain Steel 1993*, the GOM claimed that AHMSA's principal repayment obligations remained the same after the debt restructuring. However, in *Certain Steel 1993*, we could not verify that none of AHMSA's principal obligations on its debt was forgiven in the 1988 and 1990 debt restructuring agreements. Thus, based upon the facts available to the Department at the time of the investigation, we assumed that the principal had been forgiven in the amount of the discount the GOM had received when purchasing the debt from AHMSA's foreign creditors. Thus, we treated the forgiven principal as a non-recurring grant. During this administrative review, AHMSA claimed that, in June 1996, it repaid its restructured debt in the form of a discounted prepayment to the GOM, thereby extinguishing its financial obligations to the GOM.

In their November 13, 1998, submission, petitioners allege that AHMSA's discounted prepayment of the outstanding principal in 1996 constituted a partial debt forgiveness on behalf of the GOM. As a result of the prepayment, petitioners allege that AHMSA realized an extraordinary income gain approximately equal to the difference between the principal and the amount of the prepayment. Petitioners allege that this extraordinary income provided a countervailable benefit to AHMSA because the company repaid the debt at a 26.4 percent discount, which is not consistent with commercial terms.

During the verification of the questionnaire responses submitted during this review, we learned that, in order to determine the amount of the discounted prepayment that AHMSA was to make in June of 1996, the company and the GOM created amortization tables for each of the foreign currency loans. Next, they converted these payment streams into U.S. dollars and calculated the net present value for each of them. Then, they summed the U.S. dollar denominated net present values to derive the amount of the discounted prepayment to be made in U.S. dollars.

In this review, we have preliminarily determined that AHMSA's discounted prepayment of its 1988 and 1990 restructured debts constitutes a countervailable benefit. At verification, we confirmed that the amount of AHMSA's discounted prepayment resulted in a reduction of the principal owed by AHMSA on this debt. On this basis, we preliminarily determine that the difference between the principal outstanding on AHMSA's restructured debt and the amount of its discounted prepayment constitutes debt forgiveness on the part of the GOM. In addition, we preliminarily determine that the benefit was conferred in 1996, the year in which the debt forgiveness took place. Because the debt forgiveness was made to a single enterprise, we also preliminarily determine that it is specific within the meaning of the section 771(5A)(D) of the Act.

Because the principal forgiveness was denominated in U.S. dollars, we used the Department's standard non-recurring grant methodology to allocate the benefit to the POR. We used as our discount rate, the weighted-average of AHMSA's fixed-rate, U.S. dollar loans that were received during the year of receipt. We then divided the benefit attributable to the POR by AHMSA's total sales in U.S. dollars during the same period. On this basis, we preliminarily determine the net subsidy

for this program to be 0.53 percent *ad valorem* for AHMSA.

D. IMIS Research and Development Grants

The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), or the Mexican Institute of Steel Research, was a government-owned research and development organization that performed independent and joint venture research with the iron and steel industry.

In *Certain Steel 1993*, 58 FR at 37359, the Department found that IMIS's activities with AHMSA fell into two categories: joint venture activities and non-joint venture activities. We determined that IMIS's non-joint venture activities with AHMSA were not countervailable. However, the Department determined that joint venture activities were countervailable, and we treated IMIS's contributions to joint venture activities as non-recurring grants and allocated the benefits over AHMSA's AUL.

During verification in *Certain Steel 1993*, AHMSA submitted new information indicating that the company utilized services and generated purchase orders related to its activities with IMIS. In *Certain Steel 1993*, we found that AHMSA's use of IMIS services was related to its joint venture activities and, therefore, was countervailable. In addition, because the Department was unable to determine whether the purchase orders were related to AHMSA's joint venture activities, we determined, as best information available, that funds linked to these purchase orders provided countervailable benefits. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

We note that during this administrative review, the GOM reported that IMIS was terminated by Government decree on November 4, 1991. However, because the allocated benefits of the non-recurring benefits that AHMSA received under this program extend into the POR, this program continues to confer a countervailable benefit.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy

for this program to be 0.05 percent *ad valorem* for AHMSA.

E. Pre-privatization Lay-off Financing from the GOM and the 1991 Equity Infusion in Connection with the Debt to Equity Swap of PROCARSA

During the verification of *Certain Steel 1993*, the Department discovered that the GOM loaned AHMSA money to cover the cost of personnel lay-offs which the GOM felt were necessary to make AHMSA more attractive to potential purchasers. The Department learned that this loan did not accrue interest after September 30, 1991. Further, the Department learned that the GOM was allowing the privatized AHMSA to repay this loan with the transfer of AHMSA assets back to the GOM. The assets which AHMSA was using to repay the loan were assets which Grupo Acerero del Norte, S.A. de C.V. (GAN), the purchaser of AHMSA, had not wished to purchase but which the GOM included in the sale package. See *Certain Steel 1993*, 58 FR at 37360. These assets were characterized as "unnecessary assets" or assets not necessary to the production of steel.

Since the information about this financing and its repayment came to light only at verification of the questionnaire responses submitted during the investigation, we were unable to determine whether this loan relieved AHMSA of an obligation it would otherwise have borne with respect to the laid-off workers. Thus, in *Certain Steel 1993*, 58 FR at 37361, we calculated the benefit by treating the financing as an interest-free loan.

In the current review, AHMSA has claimed that it extinguished its pre-privatization lay-off financing debt with the transfer of these "unnecessary assets." The record of the investigation indicates that these assets were included by the GOM in the sale of AHMSA despite the fact that GAN, the purchaser of AHMSA, indicated that it did not wish to purchase those assets, and GAN's bid for AHMSA did not include any funds for those assets. The record from the investigation further indicates that the value of those assets was frozen in November 1991, and that, as of that date, the assets were neither depreciated nor revalued for inflation, both of which are standard accounting practices in Mexico.

Although a loan that provides countervailable benefits normally ceases to do so once it has been fully repaid, we preliminarily determine that the manner in which AHMSA has repaid this loan conferred a countervailable benefit. AHMSA is repaying the loan with the transfer of assets which

AHMSA's purchasers did not wish to purchase and which they did not pay for. As *Certain Steel 1993* indicates, GAN's purchase bid specifically detailed the assets which GAN wished to purchase. We note that the "unnecessary assets" were not included in GAN's purchase price offer. The GOM included these assets when GAN's purchase of AHMSA took place. Thus, we preliminarily determine that AHMSA's use of these "unnecessary assets," assets which were effectively given to AHMSA free of charge, to repay this loan, constitutes debt forgiveness of this loan. Accordingly, we preliminarily determine that the entire amount of the pre-privatization lay-off financing was a non-recurring grant received in 1994, the time the loan was forgiven.

In their November 13, 1998 submission, petitioners allege that, with the transfer of the "unnecessary assets," AHMSA received an equity infusion in connection with a debt-to-equity swap involving the majority government-owned company, Procesadora de Aceros Rasini, S.A. de C.V. (PROCARSA). Specifically, petitioners allege that AHMSA received the PROCARSA shares and subsequently liquidated them, thereby constituting an equity infusion in AHMSA by the GOM.

During the verification of the questionnaire responses submitted in this review, we learned that, in 1991, AHMSA received shares in PROCARSA in lieu of an accounts receivable payment that PROCARSA owed in approximately the same amount. Furthermore, we learned that AHMSA did not liquidate its shareholdings in PROCARSA as petitioners allege. Rather, the PROCARSA shareholdings were included as part of the "unnecessary assets" that the company transferred to the GOM as payment for the pre-privatization lay-off financing.

Thus, AHMSA's shares in PROCARSA are among the "unnecessary assets" that GAN received when it purchased AHMSA in 1991. As with the rest of the "unnecessary assets," we preliminarily determine that the countervailable benefit arises from AHMSA's use of the shares to repay the pre-privatization lay-off financing and not, as petitioners allege, from AHMSA's acquisition of the shares.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit from the pre-privatization lay-off financing, including the 1991 equity infusion in connection with the debt to equity swap of PROCARSA, attributable to the POR, by the total sales of AHMSA during the

same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.74 percent *ad valorem* for AHMSA.

F. Bancomext Export Loans

Banco Nacional de Comercio Exterior, S.N.C. (Bancomext) offers a government program through which short-term financing is provided to producers or trading companies engaged in export activities. These U.S. dollar-denominated loans provide financing for working capital (pre-export loans), and export sales (export loans). AHMSA used this program during the POR.

In *Certain Steel* 1993, 58 FR at 37357, we determined that, since these loans are available only to exporters, Bancomext loans are countervailable to the extent that they are provided at preferential rates. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To determine the benefit conferred under the Bancomext export loan program, we compared the interest rate charged on these loans to a benchmark interest rate. As discussed in the "Subsidies Valuation" section of this notice, AHMSA submitted company-specific interest rate information on short and long-term loans that it received from commercial banks. Thus, we used the short-term loans to calculate a company-specific, weighted-average, U.S. dollar-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on AHMSA's Bancomext loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program conferred a countervailable benefit during the POR because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

Because eligibility under this program is contingent upon exports, we divided the benefit by AHMSA's total export sales in U.S. dollars during the POR. On this basis, we preliminarily determine the net subsidy for this program to be 0.10 percent *ad valorem* for AHMSA.

G. PITEX Duty-Free Imports for Companies That Export

The Programa de Importacion Temporal Para Producir Productos Para Exportar, or Program for Temporary Import for Producing Products for Export (PITEX), was established by a decree published in the *Diario Oficial* on September 19, 1985, and amended in

the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development and the Customs Administration. Manufacturers who meet certain export requirements are eligible for the PITEX program. Those who qualify are exempt from paying import duties and the value added tax (VAT) on temporarily imported goods that will be used in the production of exports. Categories of merchandise eligible for PITEX import duty and VAT exemptions are raw materials, packing materials, fuels and lubricants, perishable materials, machinery, and spare parts.

Machinery imported under the PITEX program may only be imported on a temporary basis. When the items' temporary status has run out, companies must either send the machines back or pay the import duties and VAT taxes that were originally exempted. In *Certain Steel* 1993, 58 FR at 37359, we found that machinery imported under the PITEX program could stay in Mexico for five years initially and, after five years, a manufacturer could renew the temporary stay each year. At the verification of this review, we learned that the PITEX program was amended such that companies that imported machinery under the program after 1998 cannot apply for an extension of their import duty exempt status. Rather, the period of temporary status is determined as the time that the machinery and spare parts take to depreciate. After the items are fully depreciated, companies must send them back or pay the import duties and VAT that were originally exempted. However, regarding machinery imported prior to 1998, we learned at the verification of this review that it can remain in Mexico without liability for import duties and VAT, provided that the company maintains its PITEX status.

In accordance with past practice, we determined in *Certain Steel* 1993, 58 FR at 37359, that PITEX benefits are countervailable to the extent that they provide duty exemptions on imports of merchandise not consumed in the production of the exported product. See *POS Cookware* 1992, 57 FR at 564, *Ceramic Tile* 1991, 56 FR at 12178, and *Ceramic Tile* 1992, 57 FR at 24248. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

At the verification of this review, we learned that AHMSA used the PITEX program to import raw materials, containers and packing materials, fuels, perishable items and lubricants, and various machinery and equipment.

Thus, pursuant to the Department's practice, we preliminarily determine that AHMSA's import duty exemptions on spare parts, machinery and other items not consumed in the production of the exported products are countervailable.

To calculate the countervailable benefit in the POR, we determined the amount of import duty that AHMSA would have paid absent the program for each duty exemption that the company received on products not consumed in the production of the exported product. Because eligibility for this program is contingent upon exports, we divided the benefit over AHMSA's total export sales. On this basis, we preliminarily determine the net subsidy to be 5.03 percent *ad valorem* for AHMSA.

As mentioned above, AHMSA also received VAT exemptions on the products imported under the PITEX program. At the verification of this review, we learned that PITEX companies receive an exemption on VAT because it is understood that they are going to re-export the items at a later date. Non-PITEX companies, on the other hand, must pay the VAT upon importing the items and receive a reimbursement at a later date. The Department has previously determined that when the time-lag for the VAT credits that all other companies eventually receive is short, VAT exemptions do not confer a measurable time-value-of-money benefit upon participating companies that received the VAT exemption. See, e.g., *Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review*, 60 FR 52379, 52373 (October 6, 1995) (*Ball Bearings Final*) and *Ball Bearings and Parts Thereof From Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 34794, 34796 (July 3, 1996) (*Ball Bearings Preliminary*). At the verification of this review, we learned that the amount of time that non-PITEX companies had to wait for their VAT credits was not so much longer than the amount of time PITEX companies had to wait for their credits such that a measurable time-value-of-money benefit was conferred on the PITEX companies. Thus, we preliminarily determine that the VAT exemptions that AHMSA received under the PITEX program are not countervailable.

H. Immediate Deduction

The immediate deduction program was established in 1987 and was subject to ongoing reforms until it was repealed in 1998. It originated from Article 163 of Mexico's Income Tax Law enacted in

1981 and repealed in 1987. The immediate deduction mechanism was available only for certain fixed assets that had not been previously used in Mexico. The immediate deduction was not available for pre-operation expenses or for deferred expenses and costs. The GOM's stated purpose of the immediate deduction program was to promote investment by allowing the future deduction of the investments, at their present value, at the time of the investment. The immediate deduction option only applied to property used permanently within Mexico but outside the metropolitan areas of Mexico City, Guadalajara, and Monterrey. With respect to small firms (*i.e.*, firms with a gross income of 7 million pesos or less), the location restriction does not apply. We note that the small firm classification does not apply to AHMSA. Immediate deduction could be taken, at the election of the tax-payer, in the tax year in which the investments in qualifying fixed assets were made, in the year in which these assets were first used, or in the following year. No prior approval by the GOM was required to use the immediate deduction option.

We preliminarily determine that the immediate deduction program is specific to a region pursuant to section 771(5A)(D)(iv) of the Act. In this case, the "designated geographical region" comprises all of Mexico except Mexico City, Guadalajara, and Monterrey. The Department has previously found other GOM programs to be regionally specific based on a comparable designated region. For example, in *Portland Hydraulic Cement and Cement Clinker From Mexico; Final Results of Administrative Review of Countervailing Duty Order*, 50 FR 51732 (December 19, 1985), the Department explained that so-called Certificates of Fiscal Promotion, or CEPROFIs, were regionally specific because they were not available in Mexico City and certain other cities in two states near Mexico City. See also *Final Affirmative Countervailing Duty Determination: Ceramic Tile from Mexico*, 47 FR 20012 (May 10, 1982). Pursuant to section 771(5)(D)(ii) of the Act, we preliminarily determine that to extent that the GOM is not collecting tax revenue that is otherwise due from AHMSA, it is providing a financial contribution. Pursuant to section 771(5)(E) of the Act, because the immediate deduction program relieves certain companies of a tax burden that they would have otherwise incurred this program confers a benefit equal to the tax savings.

At verification, we learned that the immediate deduction program does not change the taxable income declared by

the company. Rather, the program changes the amount of deductions that a company can take on taxable income. The immediate deduction program is not an accelerated depreciation program, which Mexico does not have. Mexican companies eligible to use immediate deduction basically have two choices. Companies can either depreciate according to the normal depreciation schedule in Mexico, or they can take a one-time immediate deduction on the future depreciation of the item discounted back to its present value. If companies take the immediate deduction, they will not be able to claim all of the deductions that they would otherwise be able to take if they had utilized the standard straight line depreciation method. In other words, only a certain percentage of the value of the assets (as prescribed by law) are used in the immediate deduction calculation. Regarding the net present value calculation used to derive the immediate deduction, it is made at market rates as specified in the program legislation.

At verification, we learned that losses (for tax purposes) can be carried forward for 10 years and that the immediate deduction figure is part of that loss carried forward. Therefore, the amount of the immediate deduction can be carried forward for up to 10 years.

In order to calculate the benefit from the immediate deduction program, we examined AHMSA's tax returns from 1991, the year AHMSA began using the program, to 1996, the year of the tax return filed during the POR. Since the amount a company elects to take as an immediate deduction, as well as all losses, can be carried forward for 10 years, we summed the immediate deduction amounts from all the years prior to the first year in which AHMSA had a taxable profit, which was 1995. We subtracted the 1995 taxable profit from the total amount of available immediate deductions and then compared the result to the taxable profit for 1996 to determine the amount of the tax reduction based on the use of the immediate deduction program. To arrive at the actual benefit we multiplied the amount of the reduction in taxable income by Mexico's corporate income tax rate. We then divided the benefit over AHMSA's total sales. On this basis, we preliminarily determine the net subsidy to be 6.48 percent *ad valorem* for AHMSA. We invite comments on this methodology particularly with respect to whether and how we should account for normal depreciation in the quantification of the benefit under this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Committed Investment

In the 1991 privatization, GAN purchased AHMSA from the GOM. In addition to paying a certain amount in cash, and assuming a portion of AHMSA's debt, GAN committed to investing another large sum of money in AHMSA. In their November 13, 1998, submission, petitioners allege that the committed investment provides a countervailable subsidy because it is revenue "otherwise due to the GOM from GAN's purchase of AHMSA, revenue which the GOM forewent" in exchange for requiring GAN to make additional investments in AHMSA. Petitioners allege that these investments would not have otherwise occurred, as AHMSA was unequityworthy at the time (see *Certain Steel* 1993, 58 FR at 37354). Therefore, petitioners contend that the investment commitment constitutes a "funding mechanism" within the meaning of the statute, to which the GOM made payment by foregoing revenue otherwise due and which the GOM required GAN to use for the purposes of additional investments in AHMSA. As equity investments into an unequityworthy company, petitioners allege that the committed investment constitutes a financial contribution which confers a benefit. In addition, petitioners allege that this benefit is specific to AHMSA because this component of the privatization bid formula was limited to AHMSA.

After carefully analyzing the committed investment, we disagree with petitioners' contention that it conferred a benefit upon AHMSA. The record evidence does not support petitioner's claim that GAN would not have made these investments into AHMSA absent its express commitment to the GOM to do so. In fact, the record establishes that GAN invested more than was agreed to under the terms of its arrangement with the GOM. Therefore, we preliminarily determine that the committed investment did not confer a countervailable benefit upon AHMSA. Because there is no benefit, we need not reach the decision whether the committed investment agreement constituted a financial contribution.

B. Corporacion Mexicana de Investigacion en Materiales, S.A. de C.V. (COMIMSA)

Although IMIS was terminated in 1991, its equity was used to establish the Corporacion Mexicana de Investigacion en Materiales, S.A. de C.V. (COMIMSA), an organization charged with continuing certain activities of

IMIS. The GOM has reported that COMIMSA's activities are comprised of manufacturing parts and providing services such as: environmental engineering; structural integrity; lubricants; computers and software; project engineering; and, laboratory analysis and testing.

During verification we learned that COMIMSA acts as a supplier to AHMSA for laboratory analysis services and specifically engineered products for which COMIMSA holds the exclusive production rights. The products sold to AHMSA are mostly items for which COMIMSA's predecessor, IMIS, developed and obtained the design patents. These are usually key parts for important equipment. We learned at verification that since AHMSA has to purchase these items only from COMIMSA the prices are very high compared to similar items purchased from other suppliers. AHMSA has attempted to purchase the design patents, but COMIMSA has refused to sell them. We found no evidence that COMIMSA provided AHMSA with any research and development assistance. At verification we found that in situations where COMIMSA was a sole supplier of a particular item AHMSA, consistent with its policy of attempting to minimize sole supplier situations, sought out and found alternative suppliers that could perform some of the maintenance and installation services associated with these items.

Because COMIMSA's dealings with AHMSA consist primarily of selling goods and services, the only relevant analysis in determining whether or not a countervailable benefit has been provided by COMIMSA would be under the "Adequate Remuneration" standard codified at section 771(5)(E)(iv) of the Act. Given the fact that AHMSA has (1) paid very high prices on items for which COMIMSA has exclusive design rights, (2) attempted to purchase the design rights for items COMIMSA produces for AHMSA, (3) consistently attempted to find alternative suppliers to COMIMSA, and (4) has gone to outside suppliers for installation and maintenance of items purchased from COMIMSA, we preliminarily determine that COMIMSA is not providing its goods and services to AHMSA at less than "adequate remuneration." COMIMSA's behavior is more consistent with that of a monopoly supplier for certain items, *i.e.*, it is selling above adequate remuneration. Therefore, we find that COMIMSA's provision of goods and services to AHMSA does not provide a countervailable benefit.

C. Waiver of Taxes on AHMSA Purchase of Fundadora de Monterrey, S.A. de C.V. (FMSA)

In *Certain Steel* 1993, 58 FR at 37365, the Department found that in 1991, a portion of the assets of Fundadora de Monterrey, S.A. de C.V. (FMSA) was sold together with AHMSA. Petitioners argued then that the Department should have countervailed the GOM's waiver of sales and title taxes on the FMSA assets. In *Certain Steel* 1993, 58 FR at 37365, we determined that, although the FMSA assets purchased along with AHMSA should have been subject to sales and title taxes, we would not consider the issue in reaching our final determination because the FMSA assets did not produce subject merchandise at the time of the investigations. However, in their November 13, 1998, submission, petitioners allege that the FMSA assets began producing subject merchandise in 1994, thus making the waiver of taxes a countervailable event that conferred a benefit to AHMSA's production.

In accordance with the Department's practice, benefits in the form of tax waivers are expensed in the year of receipt. Thus, given that the event in question occurred outside of the POR, the issue of whether FMSA produced subject merchandise at the time of the alleged tax waiver is moot. Therefore, we preliminarily determine this program to be not countervailable.

D. Discounted Freight Rates

In their November 13, 1998, submission petitioners provided AHMSA's 1993 annual report, which shows that negotiations between AHMSA and Ferrocarriles Nacionales de Mexico (FNM), the national railroad, led to a 9.2% reduction in freight tariffs for the company in 1993. Petitioners allege that these rail rates are preferential and therefore the GOM, through its state-owned railroad, provided rail services to AHMSA for less than adequate remuneration. Based on the information that was reasonably available to them at the time, petitioners alleged that AHMSA may have received similar benefits during the years 1994 through 1997.

Section 771(5)(E)(iv) of the Act states that a benefit shall normally be treated as conferred when "goods and services are provided for less than adequate remuneration." To the extent that AHMSA's negotiated freight tariffs are less than what other companies could receive for the same services, a countervailable benefit may be conferred. However, we must first determine if this program, *i.e.*, discounts on freight rates by the government-

owned railroad, is specific according to section 771 (5A)(D) of the Act and is therefore countervailable.

We found at verification that during the POR FNM was still government-owned. FNM, the government entity running the railroads, had an established policy of providing discounts according to the volume of material transported on its rails. We also found that a very large number of companies across a wide range of industries, including AHMSA, constituted "big accounts" that were eligible for the largest volume-based discounts. Industries represented in the "big accounts" categories include the cement, auto parts, agriculture, beer, steel, and mining industries. The deepest discount was only available to customers, including AHMSA, that provided their own rolling stock. We verified that the discounts were made public and that they applied equally to every customer eligible for volume discounts. We verified that benefits under this program are widely and evenly distributed throughout the sectors with no sector receiving a disproportionate amount. Because the discounts provided by FNM are not limited to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine that they are not countervailable.

E. ALTEX

In their November 13, 1998, submission petitioners claim that the ALTEX program is designed to provide registered exporters with administrative and financial assistance for product promotion. Under the ALTEX program, assistance is limited to companies with export sales of at least U.S.\$2 million annually or companies with export sales of at least 40 percent of gross sales. Companies must maintain a positive trade balance. In addition to administrative and financial assistance for promotion, petitioners allege that ALTEX entities are provided with PITECH program benefits (companies that export a certain percentage of their goods do not pay duties on imports used in the production of exported goods). Petitioners further allege that immediate VAT refunds and increased financial support from the GOM in the form of debt supplied at preferred interest rates through Bancomext, are additional benefits available to exporters that qualify under the ALTEX program.

At verification we learned that the ALTEX program provides administrative facilities to exporters in the form of immediate VAT reimbursements. We asked government officials to describe the benefits of being

designated as an ALTEX company. GOM officials explained that it usually takes about 60 days for the GOM to reimburse non-ALTEX companies while only taking 15 days to reimburse ALTEX companies. Regarding eligibility requirements, GOM officials said that exports must constitute 40 percent of participating companies' sales or a minimum of 2 million U.S. dollars of their total sales.

In addition to receiving VAT redemptions on an expedited basis, GOM officials explained that ALTEX companies are eligible to receive detailed import and export information on a product-specific basis for free while non-ALTEX companies must pay a nominal amount for access to the information. We learned, however, that the fee paid by non-ALTEX companies is very nominal such that the differential between ALTEX and non-ALTEX companies is not significant.

We also learned at verification that loans, such as the type of loans offered under the Bancomext program, are not offered under the ALTEX program. We verified that enrollment under the ALTEX program does not have any bearing on the bestowal of loans under the Bancomext program. In addition, benefits under the ALTEX program that are described in the program legislation are listed under a section that is separate from the section in which the Bancomext program is discussed, thereby indicating that the two programs are not related.

Regarding VAT refunds, we verified that the ALTEX program was intended to reduce the amount of time exporters had to wait for VAT refunds. We found that, according to the law, ALTEX companies are supposed to receive their refunds in 7 days as opposed to non-ALTEX companies that usually must wait approximately 50 days. Companies have the option of reimbursement in the following month or they can apply the credit to any VAT payments due the following month.

The Department has previously determined that when the time-lag for VAT credits that all other companies eventually receive is short, VAT exemptions do not confer a measurable time-value-of-money benefit upon participating companies that received the VAT exemption. *See, e.g., Ball Bearings Final*, 60 FR at 52373 and *Ball Bearings Preliminary*, 61 FR at 37796. As in these cited cases, the time difference between ALTEX company refunds and non-ALTEX company refunds was not long enough to confer a time-value-of-money benefit. Thus, we preliminarily determine that the

accelerated VAT refunds under the ALTEX program are not countervailable.

III. Other Program Examined

A. NAFINSA

Nafinsa provides long-term financing to Mexican enterprises in various geographical areas of Mexico. Until December 31, 1988, Nafinsa acted as a first-tier bank, i.e., a commercial bank, providing funds directly to Mexican firms. In 1989, Nafinsa began acting as a second-tier bank—a bank which acts as an intermediary between various international lending organizations and Mexican commercial banks. During the POR, Nafinsa acted only as a second-tier bank for new loans. We found during verification that Nafinsa still administers loans granted prior to 1989 for which it acted as the first-tier bank and long-term loans previously taken out under the FONEI program. AHMSA had a Nafinsa long-term loan outstanding during the POR, for which Nafinsa acted as a second tier bank.

We learned at verification that in its capacity as a second-tier bank Nafinsa establishes a rate to be charged to the commercial banks after which the banks and the companies independently negotiate the final interest rate. The GOM has no involvement in the negotiating process between the commercial banks and companies. The core rate that Nafinsa charges to commercial banks is the same regardless of the size of the ultimate recipient. We verified that the commercial banks were free to determine the interest rate charged to the companies. We found that, while the government does not know which company will ultimately receive the loan at the time the money is lent to the commercial bank, the banks must eventually inform Nafinsa of the ultimate recipient via an annual report that participating banks must submit to the GOM. AHMSA had one outstanding NAFINSA loan with principal and interest during the POR. The company received this loan from a commercial bank which acted as the first tier bank for the financing. This was a long-term variable rate loan.

To determine the benefit we compared the interest rate charged on this loan to a benchmark interest rate. As discussed in the "Subsidies Valuation" section of this notice, AHMSA submitted company-specific interest rate information on short and long-term loans that it received from commercial banks. Thus, we used the long-term variable rate loans to calculate a company-specific, weighted-average, U.S. dollar-denominated benchmark interest rate. We compared this

company-specific benchmark rate to the interest rates charged on AHMSA's Nafinsa loan and found that the interest rates charged were higher than the benchmark rate. Therefore, we preliminarily determine that this program did not confer a countervailable benefit during the POR because the interest rates charged on this loan was higher than what a company otherwise would have had to pay on a comparable long-term commercial loan.

IV. Programs Not Used

- A. Bancomext Short-Term Import Financing
- B. FONEI Long-Term Financing
- C. Export Financial Restructuring
- D. Bancomext Trade Promotion Services and Technical Support
- E. ECEX
- F. Article 15 & 94 Loans

Preliminary Results of Review

In accordance with 19 C.F.R. 351.221(b)(4)(i), we have calculated an individual subsidy rate for AHMSA, the producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for AHMSA to be 16.31 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties for AHMSA at 16.31 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from AHMSA, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 C.F.R. 355.22(b). Pursuant to 19 C.F.R. 355.22(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul*

Corporation and The Torrington Company v. United States, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 C.F.R. 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. See *Certain Steel* 1993. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 C.F.R. 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 C.F.R. 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. 351.303(f). Also, pursuant to 19 C.F.R. 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the

hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23323 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-815]

Pure Magnesium and Alloy Magnesium From Canada: Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 7, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 1997, through December 31, 1997. The Department has now completed these reviews in accordance with section 751(a) of the Act. For information on the net subsidy rate for the reviewed company, as well as for all non-reviewed companies, see the Final Results of Reviews section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties accordingly.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Blanche Ziv, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3798 or (202) 482-4207, respectively.

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 ("URAA"), effective January 1, 1995 ("the Act"). The Department of Commerce ("the Department") is conducting these administrative reviews in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citation to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 31, 1992, the Department published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392).

In accordance with 19 CFR 351.213(b), the reviews of these orders cover those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, these reviews cover only Norsk Hydro Canada, Inc. ("NHCP"), the sole producer or exporter of the subject merchandise for which a review was requested. The petitioner in these reviews is the Magnesium Corporation of America. These reviews cover 17 programs.

In the preliminary results of these reviews, the Department invited interested parties to comment on the results (See *Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of the Sixth Countervailing Duty Administrative Reviews*, 64 FR 24585 (May 7, 1999) ("Preliminary Results")). However, no case briefs or rebuttal briefs were filed by interested parties. The Department did not conduct a hearing for these reviews because none was requested.

Scope of the Reviews

The products covered by these reviews are shipments of pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The merchandise under review is currently classifiable under items 8104.11.0000 and 8104.19.0000 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 these reviews is dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 1997 through December 31, 1997.

Analysis of Programs

I. Programs Conferring Subsidies

I. Programs Conferring Subsidies

A. Exemption from Payment of Water Bills

In the *Preliminary Results*, we found that this program conferred a countervailable benefit on the subject merchandise. We also preliminarily determined that the program was terminated during the POR, that no residual benefits were being provided or received, and that no substitute program had been implemented. We have not received any new information or comments which would lead us to change our preliminary findings. On this basis, we determine that the net subsidy rate for this program during the POR is 0.18 percent for NHCI. Moreover, because this program was terminated during the POR, we do not intend to examine it in the future and the cash deposit rate will be zero for this program.

B. Article 7 Grants from the Québec Industrial Development Corporation

In the *Preliminary Results*, we found that this program conferred a countervailable benefit on the subject merchandise. We have not received any new information or comments which would lead us to change our preliminary findings. On this basis, we determine that the net subsidy rate for this program during the POR is 1.84 percent for NHCI.

II. Programs Found Not to be Used

In the *Preliminary Results*, we found that NHCI did not apply for or receive benefits under the following programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- Export Development Corporation

- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program.

We have not received any new information or comments on these programs which would lead us to change our findings from the *Preliminary Results*.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer or exporter subject to these administrative reviews. For the period January 1, 1997, through December 31, 1997, we determine the net subsidy rate for NHCI, the only producer or exporter subject to these reviews, to be 2.02 percent *ad valorem*. We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties in this amount for all entries of the subject merchandise produced and/or exported by NHCI during this period. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties (exclusive of the net subsidy rate calculated for the water program; see section I.A. above) at the rate of 1.84 percent of the f.o.b. invoice prices on all shipments of the subject merchandise from NHCI, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Consequently, the requested review will normally cover only those companies specifically named (see 19

CFR 351.213(b)). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which parallels 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except NHCI are unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies (except for Timminco Limited, which was excluded from the order in the original investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding. See *Final Results of the Second Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*, 62 FR 48607 (September 16, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is completed. In addition, for the period January 1, 1997, through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited (which was excluded from the order in the original investigations).

This notice serves as a reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or 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.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23329 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Texas Habitat Protection Advisory Panel (AP).

DATES: The meeting will begin at 9:00 a.m. on Tuesday, September 21, 1999 and conclude by 3:00 p.m.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport 8181 Airport Boulevard, Houston, TX 77061; telephone: 713-645-3000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Gulf States Marine Fisheries Commission; telephone: 228-875-5912.

SUPPLEMENTARY INFORMATION: The Texas group is part of a three unit Habitat Protection Advisory Panel of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico.

Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will discuss revision of the Council's Habitat Policy to include Essential Fish Habitat (EFH) provisions, an update on EFH assessments in Council fishery management plan amendments, an update on the status of the EFH lawsuit, expansion of the Houston Ship Channel in Galveston Bay, an informational

presentation on artificial reefs, and a new wetland restoration technique.

Although other issues not listed in this agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The AP's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 14, 1999.

Dated: September 1, 1999.

Bruce C. Morehead,

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

[FR Doc. 99-23318 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083199D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of committee meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee has scheduled a meeting.

DATES: The meeting will be held on Wednesday, September 29, 1999, 9:00 a.m.

ADDRESSES: The meeting will be held at the Leif Erickson Lodge, 2245 NW 57th Street, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition; telephone: 206-547-7560.

SUPPLEMENTARY INFORMATION: The Pacific Northwest Crab Industry Advisory Committee will meet with representatives of the Alaska Department of Fish and Game to receive reports and information on the following subjects:

1. Status of crab stocks and resulting guideline harvest levels.
2. Report on recent Alaska Board of Fisheries activities, including update on

recent appeals on stand-down and season change action.

3. Report on Tanner crab rebuilding analysis.

4. Status of the Crab Observer Program.

After presentations by the Alaska Department of Fish and Game staff, the committee will discuss and may make recommendations on any of the listed subjects.

Although other issues not contained in this agenda may come before this committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: September 1, 1999.

Bruce C. Morehead,

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

[FR Doc. 99-23320 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082599C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held on September 21, 1999, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the RFDTF which will discuss the following topics: the need and importance of recreational

fisheries data, recreational fisheries studies in Hawaii over the past 20 years, management of recreational fisheries in the Atlantic and Gulf of Mexico, the impact of international management of pelagic fisheries in the Central-West Pacific on recreational fisheries, logistics of recreational data collection, and other business as required.

Although other issues not contained in this agenda may come before this task force for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99-23319 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Pakistan

September 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 8, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
Specific Limits	
219	7,758,895 square meters.
226/313	130,660,750 square meters.
239pt. ²	887,016 kilograms.
314	6,944,831 square meters.
315	87,320,778 square meters.
317/617	37,389,899 square meters.
334/634	305,922 dozen.
335/635	444,410 dozen.
336/636	549,992 dozen.
340/640	783,910 dozen of which not more than 292,326 dozen shall be in Categories 340-D/640-D ³ .
359-C/659-C ⁴	1,091,626 kilograms.
369-R ⁵	12,353,542 kilograms.
638/639	575,093 dozen.
647/648	1,090,032 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1998.

² Category 239pt.: only HTS number 6209.20.5040 (diapers).

³ Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

⁴ Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

⁵ Category 369-R: only HTS number 6307.10.1020

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-23307 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
Levels in Group I	
338/339	2,961,226 dozen.
347/348	2,960,856 dozen.
350	112,475 dozen.
351/651	866,330 dozen.
638/639	2,352,448 dozen.
647/648	1,433,192 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99-23306 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notice to the Public Announcing Process for Reconsideration of Determinations Regarding Denial of Entry to Textiles and Textile Products Allegedly Produced or Manufactured by Certain Companies.

September 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive announcing process for reconsideration of CITA determinations regarding denial of entry.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

A notice and letter to the Commissioner of Customs, dated July 27, 1999, and published in the **Federal Register** on July 30, 1999 (64 FR 41395) directed the Commissioner of Customs to issue regulations permitting U.S. Customs to deny entry to textiles and textile products where the declared manufacturer was named in a CITA directive as a company found to be illegally transshipping, closed or unable to produce records to verify production. Immediately following that notice, another notice and letter to the Commissioner of Customs, also dated July 27, 1999, and published in the **Federal Register** on July 30, 1999 (64 FR 41395) directed the U.S. Customs Service, effective for goods exported on and after September 1, 1999, to deny entry to textiles and textile products allegedly manufactured by certain listed companies in Macau; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

The purpose of this notice is to advise the public that CITA has established a process for interested parties to request reconsideration of CITA determinations regarding the companies listed. Effective immediately, CITA will accept petitions from any interested party who believes that CITA should reconsider its determination regarding a specific listed company. Petitions should include the

full name, in English, of the company, the full address, and the reasons why CITA should reconsider its determination. In reconsidering its determination, CITA will consider all relevant facts, including the following: information provided by Customs regarding the company; information from the petitioner indicating that the company was not illegally transshipping, was not closed, and maintained records to verify production; and information from authorities in the country of exportation regarding that company.

CITA will review all such petitions and will seek to make a reconsideration determination as soon as possible. It may be necessary for CITA to request the U.S. Customs Service to revisit the company. Moreover, it may be necessary for CITA to request additional information from the petitioner.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-23305 Filed 9-2-99; 3:25 pm]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Human Effectiveness will meet at Wright-Patterson AFB, Ohio and Rome, New York on November 15-19, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99-23250 Filed 9-7-99; 8:45 am]

BILLING CODE 5001-05-U

DEPARTMENT OF DEFENSE**Department of the Air Force****HQ USAF Scientific Advisory Board Meeting**

The Science and Technology Panel on Materials and Manufacturing will meet at Wright-Patterson Air Force Base, Ohio on December 13-17, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99-23251 Filed 9-7-99; 8:45 am]

BILLING CODE 5001-05-U

DEPARTMENT OF DEFENSE**Department of the Air Force****HQ USAF Scientific Advisory Board Meeting**

The Science and Technology Panel on Air Vehicles will meet at Wright-Patterson AFB, Ohio on November 29 to December 3, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99-23252 Filed 9-7-99; 8:45 am]

BILLING CODE 5001-05-U

DEPARTMENT OF DEFENSE**Department of the Air Force****HQ USAF Scientific Advisory Board Meeting**

The Science and Technology Panel on Information will meet in Rome, New York on December 6-10, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99-23253 Filed 9-7-99; 8:45 am]

BILLING CODE 5001-05-U

DEPARTMENT OF DEFENSE**Department of the Army****Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for Disposal and Reuse of the BRAC Property at Fort Greely, AK**

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101-510, the Defense Base Realignment and Closure (BRAC) Commission recommended the realignment of the Northern Warfare Training Center (NWTTC) and the Cold Regions Test Center (CRTC) from Fort Greely, Alaska, to Fort Wainwright, Alaska. The realignment of Fort Greely could begin no earlier than July 1997 and can end no earlier than July 2001.

The EA analyzes the environmental and socioeconomic effects relating to the disposal and reuse of surplus property at Fort Greely. The day Fort Greely was selected for realignment (February 28, 1995), approximately 747 active duty and civilian personnel were employed on the installation. By July 2001, this number will be reduced to 55 civilians and 11 military. Much of the base infrastructure, including most of the housing units, is surplus to the needs of the Federal Government and is available for transfer to the Local Redevelopment Authority (LRA). The total surplus area is 1,785 acres.

DATES: Public comments should be submitted on or before October 8, 1999.

ADDRESSES: A copy of EA and FNSI may be obtained by writing to the U.S. Army Corps of Engineers, Alaska District, ATTN: CEPOA-EN-CW-ER (My. Guy McConnell), P.O. Box 898, Anchorage, Alaska 99506-0898.

FOR FURTHER INFORMATION CONTACT: Mr. Guy McConnell at (907) 753-2625, or by facsimile at (907) 753-2526.

SUPPLEMENTARY INFORMATION: The EA analyzes the alternatives of no action,

unencumbered disposal, and encumbered disposal. The Army's preferred alternative is encumbered disposal, which places constraints on future use of some parcels. Reuse of the surplus property is also discussed, based on reasonably foreseeable scenarios envisioned in the LRA Final Reuse Plan, Fort Greely, Alaska. Additionally, the EA evaluates the environmental consequences of privatizing certain utilities, a non-BRAC action the Army may or may not exercise in the future. Privatization would facilitate the reuse of the property.

The Army concludes that the disposal and reuse of the BRAC property at Fort Greely does not constitute a major federal action significantly affecting the quality of the natural or human environment. Because no significant impacts would result from implementing the proposed action, an environmental impact statement is not required and will not be prepared.

The EA is also available for review at the Library, Building 652, Fort Greely, Alaska; Delta Public Library, 2288 Deborah Street, Delta Junction, Alaska; and, Noel Wien Public Library, 1215 Cowles Street, Fairbanks, Alaska.

Dated: September 1, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc 99-23291 Filed 9-7-99; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY**Finding of No Significant Impact in the Environmental Assessment for the Paralex Project Fuel Manufacture and Shipment**

AGENCY: U.S. Department of Energy.

ACTION: Notice of Availability.

SUMMARY: An environmental assessment (EA) has been prepared to assess potential environmental impacts associated with a U.S. Department of Energy (DOE) proposed action to conduct limited mixed oxide (MOX) fuel manufacture and shipment for the purpose of confirming the viability of using MOX fuel in Canadian Deuterium Uranium (CANDU) reactors. The Proposed Action would involve preparation and analysis activities in TA-55 (building PF-4) at Los Alamos National Laboratory (LANL), and shipping of the MOX fuel to the U.S.-Canada border. This EA covers only those activities necessary to manufacture and ship up to 59.2 lb (26.8

kg) of MOX fuel. Based on the analysis in this EA, and after considering comments received, DOE has determined that the proposed action is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). Therefore the preparation of an environmental impact statement is not required.

ADDRESSES: Single copies of the EA and further information concerning the proposed action are available from: Bert Stevenson, NEPA Compliance Officer, Office of Fissile Materials Disposition (MD-4), U.S. Department of Energy, P.O. Box 23786, Washington, DC 20026-3786, telephone (202) 586-5368.

FOR FURTHER INFORMATION CONTACT: For further information regarding the DOE NEPA Process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, telephone (202) 586-4600, or (800) 472-2756.

SUPPLEMENTARY INFORMATION:

Purpose and Need

DOE needs to test and demonstrate the feasibility of using MOX fuel in CANDU reactors, as a potential disposition option¹ for surplus weapons-usable plutonium. The proposed action discussed in this EA is a limited scale test that would provide DOE with information needed to assess that option.

Background

The end of the Cold War has created a legacy of surplus weapons-usable fissile materials both in the United States and the former Soviet Union. The global stockpiles of weapons-usable fissile materials pose a danger to national and international security in the form of potential proliferation of nuclear weapons and the potential for environmental, safety, and health

consequences if the materials are not properly safeguarded and managed. In September 1993, President Clinton issued a "Nonproliferation and Export Control Policy" in response to the growing threat of nuclear proliferation. Further, in January 1994, President Clinton and Russia's President Yeltsin issued a "Joint Statement Between the United States and Russia on Nonproliferation of Weapons of Mass Destruction and the Means for Their Delivery." To demonstrate the United States' commitment to these policies, President Clinton announced on March 1, 1995 that about 224 tons (203 metric tons) of U.S.-origin weapons-usable fissile materials, of which 182 tons (165 metric tons) are highly enriched uranium and 42 tons (38 metric tons) are weapons-usable plutonium, had been declared surplus to the United States' defense needs.

To safeguard and manage this material, DOE has decided to implement a program to provide for safe and secure storage of weapons-usable fissile materials and a strategy for the disposition of surplus weapons-usable plutonium, as specified in the ROD for the S&D PEIS. The fundamental purpose of the program is to maintain a high standard of security and accounting for these fissile materials while in storage, and to ensure the plutonium produced for nuclear weapons and declared surplus to national security needs is never again used for nuclear weapons.

The Final S&D PEIS ROD, issued January 14, 1997, established a hybrid strategy to irreversibly dispose of the Nation's surplus plutonium and to reduce from seven to three the number of sites that store nuclear weapons materials. The strategy would immobilize some (and potentially all) of the surplus plutonium in glass or ceramic formulations and allow the use of some of the surplus plutonium as MOX fuel. The option of dispositioning some of the weapons-usable surplus plutonium as MOX fuel in heavy-water-moderated reactors, such as CANDU reactors, was retained as an option in the event of future multilateral agreement among Russia, Canada, and the United States. As explained in the ROD for the S&D PEIS, DOE proposes to engage in a test and demonstration program for CANDU MOX fuel consistent with ongoing and potential future cooperative efforts with Russia and Canada, and based on appropriate NEPA review. The test and demonstration activities would occur at LANL, New Mexico, and at Chalk River Laboratories (CRL), Ontario, Canada.

Proposed Action

To meet the purpose and need for Agency action, DOE proposes to fabricate and transport up to 59.2 lb (26.8 kg) of MOX fuel as part of the Parallex Project. DOE has already fabricated a portion of this MOX fuel at LANL, and DOE proposes to fabricate additional MOX fuel at LANL if needed. MOX fuel would be fabricated in building PF-4 in TA-55 at LANL. This test and demonstration project has been named Parallex (parallel experiment) because of the roles of the United States and Russia in supplying test material. The Parallex Project would be a joint agreement between Russia, Canada, and the U.S. to demonstrate the irradiation of U.S. and Russian MOX fuel in parallel in the Atomic Energy of Canada, Limited (AECL)-owned National Research Universal (NRU) reactor. This international project would use MOX fuel made in the U.S. (specifically LANL) and Russia (specifically from Bochvar) from surplus weapons-usable plutonium out of both countries' nuclear stockpiles.

Research and development of MOX fuels has already been conducted at LANL as part of its ongoing mission relating to the development of energy sources for experiments and research reactors. However, these various MOX fuel forms were not made with weapons-grade plutonium. In contrast, the MOX fuel fabrication process involved in the Parallex Project would use weapons-grade plutonium (in an unclassified form) obtained from decommissioned nuclear weapons.

The MOX fuel fabricated at LANL would be transported to the Canadian border. At the border the AECL, per prior agreement, would take possession of the fuel. The fuel would remain on the same truck and the AECL would complete the shipment to the reactor site. At Chalk River, Ontario, the MOX fuel would be delivered to CRL for testing in the NRU reactor. The AECL would be responsible for conducting all subsequent tests of the fuel's performance and the function of the reactor.

Fueling the NRU reactor with MOX fuel would be part of a feasibility test to determine MOX fuel performance in converted CANDU reactors. The NRU test reactor is the only available reactor specifically designed to test MOX fuel performance for CANDU reactors. Positive test results could support subsequent decisions on the dispositioning of surplus weapons-usable plutonium in CANDU reactors. All spent fuel resulting from the tests

¹ As described in the Record of Decision (ROD) for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (S&D PEIS), DOE's strategy for disposition of surplus plutonium is to pursue an approach that allows immobilization of surplus plutonium in glass or ceramic materials for disposal in a geologic repository pursuant to the Nuclear Waste Policy Act, and burning of some of the surplus plutonium as MOX fuel in existing, domestic, commercial reactors, with subsequent disposal of spent fuel in a geologic repository pursuant to the Nuclear Waste Policy Act. The ROD stated that DOE would retain the option of dispositioning some of the weapons-usable plutonium as MOX fuel in heavy-water-moderated reactors, such as CANDU reactors, in the event of a future multilateral agreement among Russia, Canada, and the United States.

would be managed under the Canadian spent fuel program.

Alternatives Considered

The EA describes several alternatives to the proposed action as well as the No Action Alternative.

No Action: The No Action alternative provides an environmental baseline to compare to the potential effects of the Proposed Action. Under this alternative, LANL would continue to store the existing MOX fuel at TA-55. No additional fuel pellets or additional fuel rods would be made for the Parallex Project. The AECL would have no source of U.S. MOX fuel rods and, therefore, would have to cancel its testing program at the NRU reactor in parallel with Russian MOX fuel, or if Russian fuel were made available, operate the testing program in the absence of U.S. supplied MOX fuel.

Other Transportation Routes: Seven routes were analyzed for the shipment of MOX fuel from LANL to the Canadian border. Each route involves a separate point of entry into Canada. In accordance with standard transportation planning practices, all routes use available interstate highways and city bypasses, where available, to go around high-population areas, and meet Department of Transportation routing requirements. For very specific reasons, DOE has decided not to use two of these routes. The Port Huron, MI route would not be used because of construction on the Blue Water Bridge, and the Detroit, MI route would not be used because the Ambassador Bridge currently does not allow placarded (i.e., carrying hazardous material) vehicles. Other possible interstate highway routes, such as via Sweetgrass, Montana and Champlain, New York were not evaluated because of excessive travel distances.

MOX Fabrication at Other DOE Facilities: Under this alternative, MOX fuel would be fabricated at other DOE facilities and then shipped to CRL. No DOE site other than LANL presently has the ability to fabricate MOX fuel. Furthermore much of the raw materials that would be used in the demonstration are already located at LANL. The time required to upgrade other sites to produce MOX fuel would delay the further fabrication and shipment of MOX fuel such that the Parallex Project schedule would not be met. Therefore, this alternative was dismissed from further analysis.

Other Technologies for MOX Evaluation: This alternative would use other methods such as computer simulation or surrogate fuels to evaluate the MOX fuel fabrication process. The

use of computer simulation is not developed to the point where it can be applied to MOX fuel fabrication. The use of surrogate fuels in the Parallex Project would not produce the irradiation data required for verifying reactor performance. Therefore, this alternative was dismissed from further analysis.

Transport of MOX Fuel by Air: Federal regulations under 10 CFR 71.88 (Air Transport of Plutonium) explicitly prohibit the transport of plutonium by air or the delivery to a carrier for air transport unless the plutonium is in a form with a specific activity no greater than 0.002 $\mu\text{Ci/g}$, and shipped in a single package with no more than a specified quantity. The restrictions imposed for transportation of plutonium by air prohibit this alternative for shipment of the MOX fuel quantities needed for the Parallex Project. Therefore, this alternative was dismissed from further analysis.

Transport of MOX Fuel by Rail: Rail shipment is an allowable mode for the transport of radioactive materials and is regulated by the U.S. Department of Transportation (DOT) under 49 CFR 174.700. However, there is no direct rail service from Los Alamos, New Mexico. Moreover, this mode of transport would not be feasible because of the lack of dedicated rail routes, and long layovers for railcar transfers. Cumulatively, all these factors negate use of this transport mode.

Shipment of MOX Fuel by Safe Secure Transport (SST): The SST fleet is a DOE owned and operated transportation system that consists of armored tractor-trailers and special escort vehicles. The added security and expense of the SST system is not needed because the MOX fuel would be in small quantities, would have a negligible radiation dose to the public, and could not easily be converted into weapons-usable form.

Environmental Impacts

The results of evaluations in key impact areas are summarized in the following section; other types of consequences were determined to be negligible and are not discussed in detail.

Human Health: The potential threat to workers from MOX fuel fabrication would come from penetrating radiation. No excess fatal cancers would be expected in the involved workers from penetrating radiation exposures. Noninvolved workers, those performing other jobs as well as the usual PF-4 building personnel, would not be expected to receive a dose from the proposed operation. MOX fuel

fabrication is not expected to measurably increase the airborne radioactive material emissions from PF-4 associated with routine operations; therefore, no effects to the public are expected.

Facility Accidents: Abnormal events or accidents are hypothetical incidents that are not a planned part of routine operations. A fire in the MOX fuel fabrication line was chosen for the accident analysis. The likelihood of this accident occurring was categorized as "unlikely." The small amount of material that would be released within PF-4 and the reduction of that release by the two-stage high-efficiency particulate air (HEPA) filtration system would result in a negligible dose to the offsite maximum exposed individual (MEI) and no latent cancer fatalities (LCFs) within the offsite population. The radiological dose to involved workers from such an accident was estimated at 1.8 rem, with calculated LCFs of less than one.

Transportation: No changes to the existing highway infrastructure would be required to allow passage of the MOX fuel shipment(s), nor would roads need to be closed. The normal traffic flow along the MOX fuel transportation routes would not be expected to change with the added presence of one to three commercial truck(s). The shipment(s) of MOX fuel by commercial truck from LANL to the Canadian border would not be expected to adversely affect the health of the truck crew or the public along any of the analyzed routes.

Transportation Accidents: Two transportation accident scenarios were analyzed for the shipment of MOX fuel to the Canadian border. One accident would involve the release of radioactive materials and the other would not involve the release of radioactive materials.

The first accident relates to an event that leads to the MOX fuel package container breaking open, igniting, and releasing plutonium dioxide particles into the air. The probability of such a severe accident occurring and adversely affecting the public is extremely unlikely. The accident scenario could occur anywhere along the transportation corridors, and could have transboundary effects on Canadian populations. The population and individual doses would be very small. Therefore, no LCFs would be expected from an accident during the shipment(s) of MOX fuel to Canada.

Under the second accident scenario for MOX fuel transportation to the Canadian border, no radioactive material would be released by the vehicular collision. This scenario

analyzed potential fatalities from the force of a collision. Results of the accident analysis indicated that no driver or public fatalities would be expected.

Air Quality: Air emission from the fabrication of MOX fuel pellets and rods for the Paralex Project would be a very small percentage of the overall LANL annual air emissions. The MOX fuel pellets and rods would be made inside sealed gloveboxes that have negative air pressure and a primary air system fitted with HEPA filtration. PF-4 laboratories also have negative air pressure and a separate HEPA filtered air system. The filters would prevent any measurable release of particles into the atmosphere. Therefore, no MOX fuel powder particles would be expected to be released from PF-4 into the environment.

No change to the air quality along the route(s) to Canada would be expected since the MOX fuel would be sealed in rods and package container(s) during transportation. A commercial truck carrying MOX fuel would be one out of thousands of trucks on the road at any one time. The overall contribution of nonradiological air pollutants from a single vehicle to the air quality within a given airshed would be immeasurable.

Waste Management: The small quantities of low-level radioactive waste (LLW) and transuranic (TRU) waste produced from MOX fuel fabrication would not appreciably increase waste generation rates at LANL. No mixed waste, hazardous waste, or additional nonhazardous solid waste would be generated from MOX fuel fabrication. MOX fuel fabrication would not measurably increase the volume of sanitary wastewater generated. No radioactive or hazardous waste would be generated during the shipment of MOX fuel to the Canadian border.

Environmental Justice: Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that Federal agencies identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs and activities on minority and low-income populations. Because no adverse effects are anticipated as a result of the proposed actions during both normal operations and accident conditions, there would be no opportunity for disproportionately high and adverse consequences on minority, or low-income populations.

Other Environmental Impacts: The consequences of the proposed action are expected to be negligible for other types

of impacts, including those on land use, socioeconomic, cultural resources, aesthetic or scenic resources, geologic resources, water resources, ecological resources, noise, or site services.

Cumulative Impacts: Because the contributions from the Proposed Action would be extremely small, the proposed action is not expected to contribute substantially to the overall cumulative impacts from past or anticipated operations at LANL and along the transportation corridors.

Determination

Based on the analysis in this EA, and after considering the preapproval review comments, I have concluded that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, an EIS for the proposed action is not required.

Issued at Washington, DC, this 13th day of August 1999.

Laura Holgate,

Director, Office of Fissile Materials Disposition.

[FR Doc. 99-23331 Filed 9-7-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[FE Docket No. 99-48-NG]

Office of Fossil Energy; Milford Power Company, LLC; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Milford Power Company, LLC (Milford) long-term authorization to import up to 75,000 Mcf per day of natural gas from Canada, in accordance with the "Fuel Purchase Agreement" between Milford and El Paso Gas Marketing Company. The authorization is for a 20-year term beginning on the date of first delivery pursuant to this Order. This gas may be imported from Canada at Niagara Falls or Waddington, New York.

This Order may be found on the FE web site at <http://www.fe.doe.gov>, or on our electronic bulletin board at (202) 586-7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E-033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is

open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., September 1, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99-23332 Filed 9-7-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-607-000]

Central New York Oil and Gas Company, LLC; Notice of Petition

September 1, 1999.

Take notice that on August 26, 1999, Central New York Oil and Gas Company, LLC (CNYOG), One Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102, filed in Docket No. CP99-607-000, a petition, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 387.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act, seeking approval of a temporary exemption from certificate requirements, all as more fully set forth in the petition which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.us/online/rims.htm> (call 202-208-2222 for assistance).

Specifically, CNYOG seeks authorization to drill up to eight stratigraphic test wells in a producing natural gas field (Stagecoach Field) located in Tioga County, New York. CNYOG states that the test wells and related experimental well tail placement and data collection efforts are necessary to enable CNYOG to conduct additional research and development to verify the suitability of the Stagecoach Field reservoirs to storage development using Salternatives™ Technology being developed by eCORP, LLC, an affiliate of CNYOG.

Any questions regarding this petition should be directed to Jay C. Jimerson, eCORP, LLC, c/o Central New York Oil and Gas Company, LLC, One Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102 at (405) 235-0993 (Voice) or (405) 235-0992 (FAX).

Any person desiring to be heard or making any protest with reference to said petition should on or before September 13, 1999, file with the Federal Energy Regulatory Commission,

888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the requested exemption is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNYOG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-23262 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-485-000]

Kansas Pipeline Company; Notice of Tariff Filing

(September 1, 1999).

Take notice that on August 27, 1999, Kansas Pipeline Company (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below, with an effective date of October 1, 1999:

Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 21

Third Revised Sheet No. 26
Third Revised Sheet No. 28
Third Revised Sheet No. 30

KPC requests an effective date of October 1, 1999, and accordingly, requests that the Commission suspend this filing for the minimal statutory period to allow the tariff sheets to go into effect on October 1, 1999.

KPC states that the purpose of this filing is to revise KPC's rates for jurisdictional services to reflect current and projected costs and changes in demand on KPC's system.

KPC states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-23265 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-606-000]

The Union Light, Heat and Power Company; Notice of Application

September 1, 1999.

Take notice that on August 26, 1999, The Union Light, Heat and Power Company (Union Light), 139 East Fourth Street, Cincinnati, Ohio 45202, filed in Docket No. CP99-606-000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon the services rendered under Rate Schedules X-4 and X-5, all as more fully set forth in the

application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance).

Union Light requests permission to abandon a natural gas transportation and exchange service with Columbia Gas Transmission Corporation (Columbia). Union Light states that the service was performed under Union Light's Rate Schedule X-4 and, together with Columbia's Rate Schedule X-33, facilitated the transportation of natural gas on behalf of The Cincinnati Gas & Electric Company (Cincinnati). Union Light states that on December 1, 1998, Union Light was issued a blanket certificate of public convenience and necessity under Order No. 63 and Section 284.224 of the Commission's Regulations. Union Light further states that service rendered under the Order No. 63 blanket certificate supplants the service previously rendered under Rate Schedule X-4. In addition, Union Light requests permission to abandon Rate Schedule X-5, a fuel reimbursement agreement with Cincinnati which was specifically related to the service rendered under Rate Schedule X-4.

Any questions regarding the application should be directed to James L. Turner, at (513) 287-3232, The Union Light, Heat and Power Company, 139 East Fourth Street, Cincinnati, Ohio 45202.

Any person desiring to be heard or make any protest with reference to said application should on or before September 22, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Union Light to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-23261 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-1554-022, et al.]

CNG Power Services Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 26, 1999.

Take notice that the following filings have been made with the Commission:

1. CNG Power Services Corporation

[Docket No. ER94-1554-022]

Take notice that on August 20, 1999, CNG Power Services Corporation (CNG Power), tendered for filing a statement of policy and code of conduct with respect to the relationship between CNG Power Services Corporations and Virginia Electric and Power Company (Virginia Power). On June 7, 1999, Consolidated Natural Gas Company, the parent of CNG Power Services and Dominion Resource, Inc., the parent of Virginia Power, filed for approval of merger in Docket No. EC99-81-000. This filing is a result of the Commission's policy that merging companies treat each other as affiliates.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New York Independent System Operator, Inc.

[Docket Nos. ER97-1523-010, OA97-470-009 and ER97-4234-007 (not consolidated)]

Take notice that on August 23, 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 Addenda A and B to its Market Monitoring Plan.

The NYISO requests an effective date of October 12, 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 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER99-2175-000]

Take notice that on August 12, 1999, the New England Power Pool (NEPOOL), tendered for filing with the Commission information regarding Market Rule 15 actions for May 1999 in the above-referenced proceeding for informational purposes 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).

4. South Eastern Electric Development Corporation

[Docket No. ER99-3654-000]

Take notice that on August 23, 1999, South Eastern Electric Development Corporation tendered for filing a long-term service agreement with Morgan Stanley Capital Group Inc., in compliance with the Commission's August 19, 1999, letter order in the above-captioned proceeding.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Kincaid Generation L.L.C.

[Docket No. ER99-4146-000]

Take notice that on August 20, 1999, Kincaid Generation L.L.C. (KGL), tendered for filing short term agreements for the sale of electric energy and capacity by KGL to Commonwealth Edison Company, dated, July 22, July 23, July 28, July 29 and July 30, 1999, respectively.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER99-4147-000]

Take notice that on August 20, 1999, Consumers Energy Company

(Consumers), tendered for filing executed service agreements for unbundled wholesale power service with The Energy Authority, Inc., and Wabash Valley Power Association, Inc., pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98-4421-000.

The service agreements have an effective date of July 23, 1999.

Copies of the filing have been served on the Michigan Public Service Commission, The Energy Authority, Inc. and Wabash Valley Power Association, Inc.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Company

[Docket No. ER99-4149-000]

Take notice that on August 20, 1999, Atlantic City Electric Company (Atlantic), tendered for filing an executed umbrella service agreement with Avista Energy, Inc. (Avista) under Atlantic's market rate sales tariff.

Atlantic requests an effective date of August 20, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER99-4151-000]

Take notice that on August 20, 1999, UtiliCorp United Inc., tendered for filing a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by UtiliCorp United Inc., to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER99-4153-000]

Take notice that on August 20, 1999, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the

Service Agreement to become effective in accordance with its terms.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99-4168-000]

Take notice that on August 23, 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. 35 to add one (1) new 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 July 23, 1999 to Public Service Electric and Gas Company.

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: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99-4169-000]

Take notice that on August 23, 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. 34 to add one (1) new 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 July 22, 1999 to Enron Power Marketing, 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: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 99-23258 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-3282-001, et al.]

CU Power Limited, et al.; Electric Rate and Corporate Regulation Filings

August 25, 1999.

Take notice that the following filings have been made with the Commission:

1. CU Power Limited

[Docket No. ER99-3282-001]

Take notice that on August 20, 1999, CU Power Limited filed their quarterly report for the quarter ending June 30, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Millennium Energy Corporation, Horizon Energy Company, Merchant Energy Group of Americas, Inc.

[Docket No. ER98-174-006, ER98-380-009, ER98-1055-007]

Take notice that on August 19, 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. CNG Retail Services Corporation

[Docket No. ER97-1845-009]

Take notice that on August 20, 1999, CNG Retail Services Corporation (CNG Retail), tendered for filing a statement of policy and code of conduct with respect to the relationship between CNG Retail Services Corporations and Virginia Electric and Power Company (Virginia Power). On June 7, 1999, Consolidated Natural Gas Company, the parent of CNG Retail Services, and Dominion Resource, Inc., the parent of Virginia Power, filed for approval of merger in Docket No. EC99-81-000. This filing is a result of the Commission's policy that merging companies treat each other as affiliates.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. PEI Power Corporation

[Docket No. ER98-2270-001]

Take notice that on August 18, 1999, PEI Power Corporation (PEI Power), advises the Commission of a proposed change in operating control of Pennsylvania Enterprises, Inc., the corporate parent.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER99-3416-000]

Take notice that on August 20, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to the subject docket to include the Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreements with Commonwealth Edison Company, Michigan Companies by Detroit Edison, Virginia Power Company, and AEPSC Power Marketing & Trading Division. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after June 1, 1999.

A copy of the filing was served upon the Parties and the state utility

regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER99-4129-000]

Take notice that on August 18, 1999, Cinergy Services, Inc. (Cinergy) and Phibro Power LLC (Power) tendered for filing a notice of assignment that Power will replace Phibro Inc., of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7-MB, Service Agreement No. 123, dated October 29, 1997.

Cinergy and Power are requesting an effective date of one day after the date of filing.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER99-4148-000]

Take notice that on August 20, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCo), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement dated July 1, 1999, between APCo and the City of Radford, Virginia (Radford).

AEPSC requests an effective date of August 20, 1999, for the tendered agreement.

A copy of the filing was served upon the City of Radford and the Virginia State Corporation Commission.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER99-4150-000]

Take notice that on August 20, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Ohio Power Company (OPCo), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement dated March 18, 1999, between OPCo and the City of St. Marys, Ohio (CSM).

AEPSC requests an effective date of August 20, 1999, for the tendered agreement.

A copy of the filing was served upon the City of St. Marys, Ohio and the Public Utilities Commission of Ohio.

9. UtiliCorp United Inc.

[Docket No. ER99-4152-000]

Take notice that on August 20, 1999, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER99-4154-000]

Take notice that on August 20, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service with Coral Power L.L.C., under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of July 23, 1999, the date service was first provided.

Copies of the filing were served upon Coral Power L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER99-4156-000]

Take notice that on August 20, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Northwestern Wisconsin Electric Company.

Wisconsin Electric respectfully requests an effective date of July 29, 1999 to allow for economic transactions.

Copies of the filing have been served on Northwestern Wisconsin Electric Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER99-4157-000]

Take notice that on August 20, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2). Wisconsin Electric respectfully requests an effective date August 19, 1999.

Copies of the filing have been served on El Paso Power Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Central Maine Power Company

[Docket No. ER99-4158-000]

Take notice that on August 20, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Reliant Energy Services. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER99-4159-000]

Take notice that on August 20, 1999, Commonwealth Edison Company (ComEd) tendered for filing service agreements establishing TransAlta Energy Marketing (U.S.) Inc. (TAEM), Alliant Energy Industrial Services, Inc. (AEIS), and an unexecuted Service Agreement establishing American Municipal Power-Ohio, Inc. (AMP), as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of July 22, 1999 for the Service Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on TAEM, AEIS, and AMP.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Dynegy Power Marketing, Inc.

[Docket No. ER99-4160-000]

Take notice that on August 20, 1999, Dynegy Power Marketing, Inc. 1000

Louisiana, Suite 5800, Houston, Texas 77002-5050, tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession to reflect a name change from Electric Clearinghouse, Inc., to Dynegy Power Marketing, Inc.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Mantua Creek Generating Company, L.P.

[Docket No. ER99-4162-000]

Take notice that on August 20, 1999, Mantua Creek Generating Company, L.P. (Mantua Creek), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a petition for authorization to make sales of capacity, energy, and certain ancillary services, at market-based rates, and to reassign transmission capacity. Mantua Creek plans to construct and own a nominally rate 800 MW natural gas-fired, combined cycle power plant located in the Township of West Deptford, New Jersey.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER99-4163-000]

Take notice that on August 20, 1999, Florida Power Corporation (FPC), tendered for filing an amendment to Florida Power Corporation FERC Rate Schedule No. 92. The filing amends the interchange contract between FPC and City of Lakeland. Specifically, the filing modifies the interchange contract to provide for sales by City of Lakeland under Service Schedule OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on October 1, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER99-4155-000]

Take notice that on August 20, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an unexecuted service agreement with Aquila Energy Marketing Corp., under its Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 10.

WPSC requests an effective date of July 21, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PG Energy Power Plus

[Docket No. ER98-1953-004]

Take notice that on August 18, 1999, PG Energy Power Plus advises the Commission of a proposed change in operating control of Pennsylvania Enterprises, Inc. the corporate parent of PG Plus.

Comment date: September 7, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 99-23259 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-4170-000, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota Company) Northern States Power Company (Wisconsin Company)

[Docket No. ER99-4170-000]

Take notice that on August 23, 1999, Northern States Power Company—Minnesota (NSP-M) and Northern States Power Company—Wisconsin (NSP-W) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement

between NSP and Northern Indiana Public Service Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on July 26, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4171-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to PG&E Energy Trading—Power, L.P. (PG&E).

Con Edison states that a copy of this filing has been served by mail upon PG&E.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4172-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc. (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4173-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4174-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for

filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4175-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4176-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4177-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (APC).

Con Edison states that a copy of this filing has been served by mail upon APC.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4178-000]

Take notice that on August 23, 1999 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for

filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Select Energy, Inc. (SE).

Con Edison states that a copy of this filing has been served by mail upon SE.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4179-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Select Energy, Inc. (SE).

Con Edison states that a copy of this filing has been served by mail upon SE.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4180-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4181-000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. UtiliCorp United Inc.

[Docket No. ER99-4182-000]

Take notice that on August 23, 1999, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service

Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp United Inc. requests that the service agreement become effective on August 23, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Mid-Continent Area Power Pool

[Docket Nos. OA97-163-004, ER97-1162-003 and OA97-658-004]

Take notice that on August 20, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing a compliance filing pursuant to the Commission's order issued on April 15, 1999 (87 FERC ¶61,075 (1999) in the above-referenced dockets, addressing voting and administrative procedures under MAPP's Restated Agreement.

Comment date: September 9, 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. 99-23288 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER99-4183-000, et al.]

Puget Sound Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 30, 1999.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Energy, Inc.

[Docket No. ER99-4183-000]

Take notice that on August 23, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing an unexecuted Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Northern California Power Agency (NCPA). A copy of the filing was served upon NCPA.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket No. ER99-4184-000]

Take notice that on August 23, 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 NorAm Energy Services, Inc. (NorAm). A copy of the filing was served upon NorAm.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Energy, Inc.

[Docket No. ER99-4185-000]

Take notice that on August 23, 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 New Energy Ventures, L.L.C. (NEV).

A copy of the filing was served upon NEV.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER99-4186-000]

Take notice that on August 23, 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 Pacific Gas & Electric Company (PG&E).

A copy of the filing was served upon PG&E.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER99-4187-000]

Take notice that on August 23, 1999, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (the Service Agreement) for Network Integration Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Wolverine Power Supply Cooperative and MPPA, dated as of July 2, 1999. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 17, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER99-4188-000]

Take notice that on August 23, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with New Energy Ventures, L.L.C. under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 23, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER99-4189-000]

Take notice that on August 24, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with Entergy Power Marketing Corp. under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 24, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER99-4190-000]

Take notice that on August 24, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with Northeast Utilities Service Company under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 24, 1999.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER99-4191-000]

Take notice that on August 23, 1999, in the above-referenced docket, Public Service Company of New Mexico (PNM) proposes to cancel the following tariff revisions submitted in Docket No. ER98-2862-000:

Second Revised Sheet No. 1
Second Revised Sheet No. 2
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 17
Second Revised Sheet No. 30
Second Revised Sheet No. 41
Second Revised Sheet No. 88
Second Revised Sheet No. 89
Second Revised Sheet No. 96
Second Revised Sheet No. 97
Second Revised Sheet No. 101
Original Sheet No. 103A
Original Sheet No. 103B
Second Revised Sheet No. 104
Second Revised Sheet No. 105
Original Sheet Nos. 105A through 105U
Original Sheet Nos. 115 through 120

PNM proposes to cancel these tariff revisions effective on the day the Federal Energy Regulatory Commission approves a Settlement Agreement submitted in Docket Nos. ER98-2862-000 and ER98-3376-000 without condition or modification.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99-4192-000]

Take notice that on August 23, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies) tendered for filing service agreements establishing Cargill-Alliant,

LLC (Cargill), Koch Energy (Koch), and Avista Energy, Inc. (Avista) as customers under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of August 23, 1999 for the agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Cargill, Koch and Avista.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER99-4193-000]

Take notice that on August 23, 1999, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to Appendix 5-B of Market Rule and Procedure number 5.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER99-4194-000]

Take notice that on August 23, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing unexecuted umbrella service agreements with Tractebel Energy Marketing, Inc., United Illuminating Company, Great Bay Power Corporation, Constellation Power Source, Inc., Enron Power Marketing, Inc. and Green Mountain Power Corporation under Central Vermont's market-based rates tariff, FERC Electric Tariff, Second Revised Volume No. 8.

Central Vermont requests that the service agreement with United Illuminating become effective on August 1, 1999 and that the other service agreements become effective on August 23, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Energy, Inc.

[Docket No. ER99-4195-000]

Take notice that on August 24, 1999, Midwest Energy, Inc. filed Quarterly Market Sales Reports for the second and third quarter of 1999.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER99-4196-000]

Take notice that on August 24, 1999, Public Service Company of Colorado submitted for filing a power purchase agreement and an agreement adding a new delivery point with Yampa Valley Electric Association, Inc.

Comment date: September 13, 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. ER99-4197-000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 38 to add one (1) new 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 July 31, 1999, to The Dayton Power and Light Company.

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: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4198-000]

Take notice that on August 24, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing Center (PP&L). Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4199-000]

Take notice that on August 24, 1999, Consolidated Edison Company of New

York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Statoil Energy Trading, Inc. (SET).

Con Edison states that a copy of this filing has been served by mail upon SET.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99-4202-000]

Take notice that on August 24, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU) tendered for filing an executed Service Agreement between LG&E/KU and The Energy Authority, Inc. under LG&E/KU's MBSS Rate Schedule.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Electric Company

[Docket No. ER99-4203-000]

Take notice that on August 24, 1999, Pennsylvania Electric Company (doing business as and referred to as GPU Energy) submitted for filing a Generation Facility Transmission Interconnection Agreement between GPU Energy and Willamette Industries, Inc.

GPU Energy requests an effective date of August 25, 1999 for the agreement.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Wisvest-Connecticut, LLC

[Docket No. ER99-4204-000]

Take notice that on August 24, 1999, Wisvest-Connecticut, LLC (Wisvest) submitted for filing an Option Agreement dated September 17, 1997 between the United Illuminating Company (UI) and Duke Energy Trading and Marketing, L.L.C. ("DETM"), together with two supplements to that agreement, namely, a December 21, 1998 Agreement for Marketing Services between UI and DETM and a July 18, 1999 Addendum to Agreement for Marketing Services between Wisvest and DETM.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99-4205-000]

Take notice that on August 24, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU) tendered

for filing the cancellation of the Unilateral Market-Based Sales Service Agreement with South Carolina Public Service Authority (Santee Cooper).

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER99-4206-000]

Take notice that on August 24, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an unexecuted umbrella service agreement with Engage Energy US, L.P. under Central Vermont's market-based rates tariff, FERC Electric Tariff, Second Revised Volume No. 8.

Central Vermont requests that the service agreement become effective on August 24, 1999.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Sierra Pacific Power Company

[Docket No. ER99-4207-000]

Take notice that on August 24, 1999, Sierra Pacific Power Company (Sierra) tendered for filing Service Agreements (Service Agreements) with Entergy Power Marketing Corp. for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit an effective date of August 25, 1999 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ameren Services Company

[Docket No. ER99-4208-000]

Take notice that on August 24, 1999, Ameren Services Company (ASC) tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and NRG Power

Marketing Inc. (NRG). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to NRG pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98-3285-000.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99-4209-000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 37 to add one (1) new 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 July 26, 1999, to Niagara Mohawk Energy Marketing, 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: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99-4210-000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 39 to add one (1) new 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 July 22, 1999, or on a date as determined by the Commission to Southern Company Energy Marketing L.P.

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: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Tampa Electric Company

[Docket No. ER99-4211-000]

Take notice that on August 24, 1999, Tampa Electric Company (Tampa Electric) tendered for filing an unexecuted service agreement with the Orlando Utilities Commission (OUC) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 25, 1999.

Copies of the filing have been served on OUC and the Florida Public Service Commission.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Hardee Power Partners Limited

[Docket No. ER99-4212-000]

Take notice that on August 24, 1999, Hardee Power Partners Limited (HPP) tendered for filing an unexecuted service agreement with the Orlando Utilities Commission (OUC) under HPP's market-based sales tariff.

HPP proposes that the service agreement be made effective on July 25, 1999.

Copies of the filing have been served on OUC and the Florida Public Service Commission.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99-4213-000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 36 to add one (1) new 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 July 29, 1999, to PECO Energy Company (d/b/a PECO Energy Company—Power Team).

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: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4200-000]

Take notice that on August 24, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission to Southern Company Energy Marketing L.P. (Southern).

Comment date: September 13, 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. 99-23287 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4737-005]

Morgan J. Langan; Notice of Availability of Draft Environmental Assessment

September 1, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to surrender the exemption from licensing for the existing Trinity Alps Hydroelectric Project, located on Trinity Alps Creek in Trinity County, California, and has prepared a Draft Environmental Assessment (DEA) for the proposed action.

In the DEA, Commission staff concludes that approval of the subject surrender of exemption from licensing would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, DC 20426, or by calling (202) 208-1371. The DEA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208-2222 for assistance.

Any comments on the DEA should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix "Trinity Alps Project Surrender of Exemption from Licensing, Project No. 4737-005" to all comments. For further information, please contact Jim Haines at (202) 219-2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-23264 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169 NC/TN]

Tapoco, Inc.; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

September 1, 1999.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, Tapoco, Inc. (Tapoco) intends to prepare an Applicant Prepared Environmental Assessment (APEA) to file along with the license application, with the Federal Energy Regulatory Commission (Commission) for the Tapoco Project, FERC No. 2169. The license for the project expires on February 28, 2005.

In June, 1998, Tapoco initiated the cooperative consultation process with federal and state resource agencies, local interests, Indian tribes and nongovernmental organizations (NGOs) for the relicensing of the Tapoco Project. Tapoco obtained support from the parties involved in the cooperative process to pursue the Alternative Licensing Process (ALP) for the relicensing of the Tapoco Project. On September 30, 1998, Tapoco, Inc. requested, and on February 9, 1999, the Commission approved the use of the ALP. The process has involved identification of environmental issues associated with the relicensing of the Tapoco Project, including a project site visit for agencies/stakeholders and a public meeting to solicit comments on the Initial Consultation Document (ICD) and initiate issue identification on April 13 and 14, 1999 and additional public meetings on June 15 and 16, 1999 to continue issue identification.

As part of the ALP, Tapoco, with the Commission has prepared a Scoping Document I (SDI), which provides information on the scoping process, an APEA preparation schedule, background information, environmental issues, and proposed project alternatives.

The purpose of this notice is to: (1) Advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine

what issues should be addressed in the document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The SDI will be circulated to enable appropriate federal, state, and local resource agencies, Indian tribes, NGOs, and other interested parties to participate in the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of issues.

Scoping Meetings

Tapoco and FERC staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed in the APEA.

The first scoping meeting will be held on October 5, 1999, from 8:30 am to 3:30 pm at the Tapoco Lodge in Tapoco, NC, and the second scoping meeting will be held on October 5, 1999, from 6:30 pm to 9:30 pm at the Blount County Chamber of Commerce Board Room, 201 South Washington Street, Maryville, TN. Each meeting will commence with a presentation by Tapoco representatives followed by the opportunity for participants to provide information on resources at issue or which should be analyzed in the APEA. For more details, interested parties should contact Sue Fugate at Tapoco at (423) 977-3321, prior to the meeting date.

Objectives

At the scoping meetings, Tapoco and FERC staff will: (1) Summarize the environmental issues identified for analysis in the APEA; (2) identify reasonable alternatives to be addressed in the APEA, (3) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (4) encourage statements from experts and the public on issues that should be analyzed in the APEA. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because these meetings will be NEPA scoping meetings, the Commission will not conduct another scoping meeting after the application and APEA are filed with the Commission.

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the relicensing of the Tapoco Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than December 4, 1999.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Tapoco Project, FERC No. 2169. A copy of each filing should also be sent to Norm Pierson, Tapoco, Inc., 300 North Hall Road, Alcoa, TN 37701 and to Paul Shiers, Stone & Webster Engineering Corporation, 245 Summer Street, Boston, MA 02210.

Based on all comments, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions and written statements received.

For further information regarding the scoping process, please contact Ronald McKittrick, Federal Energy Regulatory Commission, Atlanta Regional Office, Parkridge 85 North, Suite 300, 3125 Presidential Parkway, Atlanta, GA 30340 at (770) 452-3778, E-mail ronald.mckittrick@ferc.fed.us, or Norm Pierson at Tapoco at (423) 977-3326.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-23263 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to Eliminate the Remote Public Access System (RPA) and the Records Information Management System-Remote Public Access System (RIMS-RPA)

September 1, 1999.

The Federal Energy Regulatory Commission (the Commission), hereby gives notice that it intends to eliminate the Commission's dial up systems effective on or about September 30, 1999. These systems include the Remote Public Access System (RPA) and the Records Information Management System-Remote Public Access System (RIMS-RPA). The majority of the data and information currently available on these dial up systems is available through the Commission's Internet website.¹

Government agencies are required to be "Y2K" compliant. However, the dial up systems are not year 2000 compliant. In addition, OMB Circular A-130, Section 8(a)(5)(d)(i) directs agencies, when disseminating information, to achieve "the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public." Eliminating the two dial up systems, RIMS-RPA and RPA, is consistent with these goals and will eliminate costly duplication.

These systems rely on technology that is being used less and less popular with the advent of the Internet. Moreover, accessing the systems available through the Internet is much simpler than accessing the same systems by dialing in.² Since the Commission has limited resources, we must eliminate the cost of supporting duplicative systems that rely on older technology. Moreover, given the Commission's fiscal year ends on September 30, the greatest cost savings to the taxpayer will accrue if these systems are eliminated but the end of the fiscal year. Therefore, the

¹ The one system not yet available on the Commission's website is the Rates and Tariff Indexing System (RATIS). The Commission is currently revising RATIS to make it compatible with the web. The successor to RATIS will be known as the Automated Numbering System (ANS). Every effort is being made to make it available by the Commission's deadline for discontinuing the dial up systems. See Appendix A for the location on the Internet of the information currently on the dial up systems.

² The dial-up technology requires users to obtain a password and user ID to access the systems. Anyone with access to the Internet may use RIMS and the Docket Sheet and Service List System without obtaining a user ID and password.

Commission intends to discontinue RPA and RIMS-RPA in the next fiscal year.

The Commission invites interested persons to submit written comments on the matters and issues in this notice. The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. on September 15, 1999. Comments should be submitted to the Office of the

Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington, DC 20426, during regular business hours. Additionally, comments may be viewed

and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. RIMS user assistance is available at 202-208-2222, or by E-Mail to rimsmaster@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

APPENDIX A

System or Document Available on dial-up system	Location on the internet ¹
RIMS	http://rimsweb1.ferc.fed.us/rims/
Docket Sheets and Service Lists	http://fercdocket.ferc.fed.us/pa/pa.htm
Sunshine Notice	http://www.ferc.fed.us/sec/sec1.htm
RATIS (to be renamed ANS)	Available approximately October 1, 1999. ²

¹ Helplines (202-208-2222 or 202-208-1371) for technical assistance or questions about using the systems available on the Commission's website are staffed during the Commission's official business hours (8:30 a.m. to 5:00 p.m. Eastern Time). Users may also send an e-mail message at any time to rimsmaster@ferc.fed.us for inquiries about RIMS and webmaster@ferc.fed.us for other types of inquiries.

² Monitor What's New on the Commission's website for the future location of RATIS (to be renamed ANS) on the web.

[FR Doc. 99-23260 Filed 9-7-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Western Area Power Administration

Power Allocation Procedures and Call for Applications, Post-2004 Resource Pool—Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of allocation procedures and call for applications.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is seeking applicants for long-term firm capacity and energy resources (power resources) available from the Salt Lake City Area Integrated Projects (SLCA/IP) on October 1, 2004.

DATES: Western will hold public information meetings on its procedures at the following locations and times:

1. September 8, 1999, 9 a.m., Albuquerque, New Mexico
2. September 9, 1999, 9 a.m., Farmington, New Mexico
3. September 14, 1999, 9 a.m. Kingman, Arizona
4. September 15, 1999, 9 a.m., Phoenix, Arizona
5. September 16, 1999, 9 a.m., Salt Lake City, Utah

ADDRESSES:

1. Albuquerque, Pueblo Cultural Center; 2401 12th Street NW
2. Farmington, Holiday Inn, 600 E. Broadway

3. Kingman, Holiday Inn, 3100 Andy Devine

4. Phoenix, YWCA, 9440 N. 25th Avenue

5. Salt Lake City, Western Area Power Administration, 150 Social Hall Avenue, Suite 300

All correspondence regarding these procedures should be directed to the following address; Mr. Burt Hawkes, Power Marketing and Contracts Team Lead, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606.

FOR FURTHER INFORMATION CONTACT: Burt Hawkes, Power Marketing and Contracts Team Lead, (801) 524-3344; Clayton Palmer, Resources and Environment Team Lead, (801) 524-3522; or Lyle Johnson, Public Utilities Specialist, (801) 524-5585. Written requests for information should be sent to CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606.

SUPPLEMENTARY INFORMATION:

Authorities: Power resources are marketed pursuant to the DOE Organization Act (42 U.S.C. 7101-7352); and the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485 h(c)); and other acts specifically applicable to the projects involved.

Background

Existing power resource contracts were due to expire on September 30, 2004. In a Notice of Decision published on June 25, 1999 (64 FR 34413), Western determined that it will extend 93 percent of most of the existing

customers' proportional shares of the power resources available on October 1, 2004, through September 30, 2024. In addition, a further 7-megawatt reduction to Tri-State Generation and Transmission Association, Inc.'s (Tri-State) allocation will be made. The amount not extended to existing customers will be allocated in accordance with these procedures. Western expects the amount will be sufficient to supply up to 12.5 percent of the current load of eligible new preference applicants and 65 percent of the current load of eligible Native American applicants.

In an exception to the general rule, the four existing SLCA/IP power resource customers that are Native American entities—the Navajo Tribal Utility Authority (NTUA), the Ak Chin Indian Community, the Bureau of Indian Affairs' Colorado River Agency, and the San Carlos Irrigation Project—will be extended 100 percent of their pro rata shares of the SLCA/IP resource available on October 1, 2004. Moreover, Western intends, if necessary, to allocate additional power resources to these existing Native American customers so that 65 percent of the 1998-1999 nonindustrial load of NTUA and 65 percent of the 1998-1999 total load of each of the other Native American organizations is served.

For Native American tribes currently receiving power from utilities that have allocations of Federal power resources, Western will take into account the benefit received through the existing supplier when determining their allocations.

During the process of allocating the resource pool, further information about

actual loads will be collected and used to determine the final allocations from the resource pool. Western, to the extent it is able, will provide technical assistance to Native American applicants requesting assistance in preparation of their applications and load data. If a Native American applicant received an allocation and executes a purchase contract within the request time period but is unable to receive power on October 1, 2004, the power resources allocated will be provided to other customers until such time as the Native American applicant is able to accept the power.

The Post-2004 Resource Pool Allocation Procedures

These procedures for the SLCA/IP address (1) eligibility criteria, (2) Western's plans to allocate the pool resources to eligible applicants, and (3) the terms and conditions under which Western will sell the power resources allocated.

I. Amount of Power Resources

Western will allocate the SLCA/IP power resource available as of October 1, 2004.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking an allocation of power resources under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Applicants, including Native American applicants, must be entities that Western determines to be entitled to preference in the allocation of power resources in accordance with section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), as amended.

B. Non-Native American applicants' loads must be located within the portion of the SLCA/IP marketing area which includes New Mexico and Utah; the portion of Colorado west of the Continental Divide; the southwest area of Wyoming within the Colorado River Basin; White Pine County and those portions of Elko and Eureka Counties currently served by Mt. Wheeler Power in Nevada; and the areas in Arizona currently served by the Dixie Escalante Electric Cooperative, the Garkane Power Association, the Navajo Tribal Utility Authority, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative. Qualified Native American applicants' loads must be located within the previously established SLCA/IP marketing area which consists of Arizona; Colorado; New Mexico; Utah; Wyoming; and Clark, Lincoln, Nye Counties, and those portions of Elko and Eureka Counties

currently served by Mt. Wheeler Power in Nevada.

C. Applicants must not be currently receiving benefits, directly or indirectly, from a current power resource allocation. Native American applicants and Navopache Electric Cooperative are not subject to this requirement.

D. Applicants must be able to use the power resource directly or be able to sell it directly to their retail customers.

E. Applicants must have "utility status" by September 30, 2003. "Utility status" means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis. Native American tribes are not subject to this requirement.

F. Any Native American applicant must be an Indian tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b), as amended, or an organization of an Indian Tribe.

G. Applicants must submit letters of intent and applicant profile data to Western on or before the dates specified in this notice.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of power resources under the Post-2004 Resource Pool Allocation Procedures.

A. Allocations of power resources will be made in amounts as determined solely by Western.

B. An allottee will have the right to purchase such power resources only upon the execution of an electric service contract between Western and the allottee and the continued satisfaction of all conditions in that contract.

C. Allocations made to Native American applicants will be based upon actual loads experienced by the Native American applicants on their respective reservations in the 1998 summer season and the 1998–99 winter season. If actual load data are not available, quality estimates will be accepted. Inconsistent and suspect estimates may be adjusted by Western during the allocation process. Western is willing to consult with the Native American applicants to develop load data collection and estimating methods assuring consistency among eligible Native American applicants' loads across the marketing area.

D. Allocations made to non-Native American applicants will be based upon their energy use experienced in the 1998 summer season and the 1998–99 winter season.

E. Allocations of power resources will be determined by Western and be based upon Western's system load factor.

F. Any electric service contract offered to an applicant shall be executed by the applicant within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western, or the offer will be withdrawn.

G. Power resources available from the resource pool will first be allocated to eligible Native American applicants with the goal of serving 65 percent of their 1998–1999 loads. Remaining power resources will be allocated to other eligible applicants.

H. If unanticipated obstacles to the delivery of power resource benefits to Native American applicant(s) arise, Western retains the right to provide the economic benefits of its resources directly to the Native American applicant(s) in some other manner.

IV. General Contract Principles

Western will apply the following general contract principles to all applicants receiving an allocation of power resources under the proposed Post-2004 Resource Pool Allocation Procedures.

A. The electric service contracts offered to new and existing customers as a result of these allocations will have the same general terms and conditions as the contracts extended to existing customers and effective on October 1, 2004.

B. Western shall assist the allottee in obtaining third-party transmission arrangements for delivery of power resources allocated under these proposed procedures to new customers; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

V. Applications for Power Resources

Western requests all applications for an allocation of power resources under these procedures be submitted in writing to the CRSP Power Marketing and Contracts Team Lead, CRSP Customer Service Center. The applications, which consist of a letter of interest and Applicant Profile Data (APD), must be received in Western's CRSP Customer Service Center at P.O. Box 11606, Salt Lake City, UT 84147–0606, in accordance with the deadlines set forth below.

A. Letter of Interest

Each applicant must submit to the Power Marketing and Contracts Team Lead, CRSP Customer Service Center, a Letter of Interest in receiving power resources and the appropriate APD as outlined below. A Letter of Interest must

be received by Western by [insert date 45 days after publication].

B. Applicant Profile Data

APD must be received by Western by [insert date 6 months from date of publication]. The information should be submitted in the sequence listed below. The applicant must provide all requested information or a reasonable estimate. The applicant should note any requested information that is not applicable. The APD must be typed and two copies submitted to Western's CRSP Customer Service Center by the date specified above. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the organization seeking the allocation.

1. The APD shall consist of the following:

- a. Applicant's name and address.
- b. Person(s) representing applicant. Please provide the name, address, title, and telephone number of such person(s).
- c. Type of organization; i.e., municipality, rural electric cooperative, Native American tribe, State agency, Federal agency. Please provide a brief description of the organization that will interact with Western on contract and billing matters and whether the organization owns and operates its own electric utility system.
- d. Applicable law under which organization was established.
- e. Loads.

2. Non-Native American Applicants.

- a. Number and type of customers served; i.e., residential, commercial, industry, military base, agricultural.
- b. The actual monthly maximum demand in kilowatts and energy use in kilowatt-hours experienced in the 1998 summer season (April 1998 through September 1998) and the 1998–99 winter season (October 1998 through March 1999).

3. Native American Applicants.

- a. Number and type of customers served; i.e., residential, commercial, industrial, military base, agricultural.
- b. The actual demand in kilowatts and energy use in kilowatthours for the 1998 summer season and the 1998–99 winter season. If actual loads are not available, an estimate of these loads with a description of the method and basis for this estimate will be accepted.

4. Resources.

- a. A list of current power supplies, including the applicant's own generation and purchases from others. For each, provide capacity and location.
- b. Status of power supply contracts, including a contract termination date.

Indicate whether power supply is on a firm basis or some other type of arrangement.

5. Transmission.

a. Points of delivery. Provide the preferred point(s) of delivery on Western's system or a third-party's system and the required service voltage.

b. Transmission arrangements. Describe the transmission arrangements necessary to deliver power resources to the requested points of delivery.

c. Other Information. The applicant may provide any other information pertinent to receiving an allocation.

d. Signature. The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation.

C. Western's Consideration of Applications

When the APD is received by Western, Western will determine whether the General Eligibility Criteria set forth in section II have been met and whether all items requested in the APD have been provided. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 30 days from the date on Western's letter of request to provide the information. If Western determines that the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify. If the applicant has met the eligibility criteria, Western will determine the amount of power resources to be allocated pursuant to the General Allocation Criteria set forth in section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of power resources allocated to the applicant. All power resources shall be allocated according to the procedures in the General Allocation Criteria set forth in section III. Western reserves the right to determine the amount of power resources to allocate to an applicant, as justified by the applicant in its APD.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a

regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule under control number 1910–1200.

VIII. Review Under the National Environmental Policy Act

Western will conduct an environmental evaluation to develop the appropriate level of environmental documentation pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

IX. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: September 1, 1999.

Timothy J. Meeks,

Assistant Administrator.

[FR Doc. 99–23330 Filed 9–7–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6434–9]

Industrial Non-Hazardous Waste Policy Dialogue Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Industrial Non-Hazardous Waste Policy Dialogue Committee (INWPDC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appl Section 9(c). The purpose of INWPDC is to provide advice and recommendations to the Administrator of EPA on issues associated with the development of

voluntary guidelines for safe management of industrial non-hazardous wastes.

It is determined that INWPDC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Deborah Dalton, Designated Federal Officer, INWPDC, U.S. EPA, (mail code 2136), 401 M Street, SW, Washington, DC 20460.

Dated: July 29, 1999.

Thomas E. Kelly,

Acting Associate Administrator, Office of Policy and Reinvention.

[FR Doc. 99-23272 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6435-2]

Microbial and Disinfectants/Disinfection Byproducts Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under Section 10(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on September 8-9, 1999, from 9:00 a.m. to 5:00 p.m. eastern time at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting will be to discuss a framework to evaluate data on microbial risk in a regulatory context, introduce data on microbial occurrence, review current studies on dose-response and epidemiology of microbial disease from drinking water, and describe risk of microbial disease from drinking water.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, DC 20460. The telephone number is

202-260-7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: September 3, 1999.

Elizabeth J. Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99-23403 Filed 9-3-99; 12:38 pm]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6433-8]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is convening a public meeting of only the Sanitary Sewer Overflow (SSO) Advisory Subcommittee to discuss the draft National Pollutant Discharge Elimination System (NPDES) regulation and policy for municipal sanitary sewer collection systems. This meeting is open to the public. Advance registration is required by September 17 since public seating is limited. Attendees should register by faxing their name, address, daytime telephone, fax number, and days of attendance to Sharie Centilla at 202-260-1460.

A limited number of government-rate hotel rooms (\$98.55 single) are available. Hotel reservations should be made by calling the Ramada Inn & Conference Center at 1-800-666-8888 by September 17, 1999. The block is listed as "USEPA SSO FAC."

DATES: September 27-30, 1999.

ADDRESSES: Ramada Inn & Conference Center, 500 Merrimac Trail, Williamsburg, VA 23185.

TIME: On September 27, the meeting will start at approximately 1:00 p.m. EDT and end at approximately 5:30 p.m. On September 28, 29, and 30, the meeting will start at 9:00 a.m. and end at approximately 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Sharie Centilla, Office of Wastewater Management, at (202) 260-6052 daytime; 202-260-1460 fax, or Internet: centilla.sharie@epa.gov.

Background information is available on the EPA website: <http://www.epa.gov/owm/wet.htm>.

Dated: September 1, 1999.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 99-23271 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30419A; FRL-6099-3]

Pesticide Products; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Sulfotone and Raid TVK containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Insecticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-6502; and e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to pesticide manufacturing, (NAICS code 32532).

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access a fact sheet which provides more detail on these registrations, go to the Office of Pesticide Programs home page at <http://www.epa.gov/pesticides/>, and select "factsheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30419A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A fact sheet which provides more detail on these registrations may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the applications after considering all required data on risks associated with the proposed use of lithium perfluorooctane sulfonate (LPOS), and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of LPOS when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

EPA issued a notice, published in the **Federal Register** of September 4, 1996 (61 FR 46643) (FRL-5392-1), which announced that S.C. Johnson & Sons, 1525 Howe St., Racine, WI 53403, had submitted applications to register the pesticide products, Sulfotone and Raid TVK, both insecticides (EPA files symbol 4822-ULT and 4822-ULI, respectively), containing the new active ingredient lithium perfluorooctane sulfonate at 26% and 0.03% respectively, an active ingredient not included in any previously registered product.

The applications were approved on August 3, 1999, as Sulfotone (EPA Registration Number 4822-457) for manufacturing purpose only, and Raid TVK (EPA Registration Number 4822-458) for use as a hornet, yellow jacket and wasp bait station.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 26, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99-23196 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-888; FRL-6097-6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF-888, must be received on or before October 8, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-888 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Deluise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-5428; and e-mail address: deluise.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Cat-egories	NAICS	Examples of poten-tially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PF-888. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-888 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division

(7502C), Office of Pesticide Programs (OPP), 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 (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 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 above. 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 PF-888. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. FMC Corporation

PP 9F6037, 4F4399, and 4F3012

EPA has received pesticide petitions (PP 9F6037, 4F4399, and 4F3012) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of zeta-cypermethrin ($\pm\alpha$ -cyano(3-phenoxyphenyl)methyl ($\pm$) *cis*, *trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity sugar beets, roots at 0.05 parts per million (ppm), sugar beets, tops at 0.20 ppm; sugarcane at 0.60 ppm; corn, grain (field, seed and pop) at 0.05 ppm; green onions at 6.0 ppm; alfalfa seed at 0.5 ppm; alfalfa forage at 10.0 ppm; and alfalfa hay at 30.0 ppm; and corn, sweet (K+CWHR) at 0.1 ppm; corn, forage and corn, fodder at 30.0 ppm; poultry, meat at 0.05 ppm; poultry, meat byproducts at 0.05 ppm; poultry, fat at 0.05 ppm; eggs at 0.05 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.3 ppm; fat of cattle, goats, hogs, horses, and sheep at 2.0 ppm; and milk, fat at 1.0 ppm (reflecting 0.2 ppm in whole milk). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD)).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for sugar beets, sugarcane, corn (field, seed, pop and sweet), green and bulb onions, and alfalfa, show that the proposed zeta-cypermethrin tolerances on sugar beets, roots at 0.05 ppm; sugar beets, tops at 0.20 ppm; sugarcane at 0.60 ppm; corn, grain (field, seed and

pop) at 0.05 ppm; green onions at 6.0 ppm; alfalfa seed at 0.5 ppm, alfalfa forage at 10.0 ppm, and alfalfa hay at 30.0 ppm; corn, sweet (K+CWHR) at 0.1 ppm, and corn, forage and corn, fodder at 30.0 ppm will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the no observed adverse effect level (NOAEL) of 3.8 milligrams/kilograms/day (mg/kg/day) based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The lowest observed adverse effect level (LOAEL) of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative: *in vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPTT mutagen assay; weakly mutagenic; gene mutation (Ames).

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL of 7.0 mg/kg/day and a LOAEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOAEL for reproductive toxicity was considered to be > 45.0 mg/kg/day, the highest dose tested.

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL of 12.5 mg/kg/day and a LOAEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL of 100 mg/kg/day and a LOAEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity.* Short- and intermediate-term toxicity. The NOAEL of 3.8 mg/kg/day based on the NOAEL 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study.

5. *Chronic toxicity*—i. The reference dose (RfD) of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day.

ii. Cypermethrin is classified as a Group C Chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep (along with the associated meat and milk tolerances). For the purposes of

assessing the potential dietary exposure for these existing and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated (PCT) as follows:

ii. *Acute exposure and risk.* Acute dietary exposure 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. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 3.8 mg/kg/day based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of this study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and PCT was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001934 mg/kg/day (MOE of 1964); 99th percentile 0.003844 mg/kg/day (MOE of 988); and 99.9th percentile 0.012574 mg/kg/day (MOE of 302). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.002195 mg/kg/day (MOE of 1730); 99th percentile 0.004976 mg/kg/day (MOE of 763); and 99.9th percentile 0.016942 mg/kg/day (MOE of 224). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.001090 mg/kg/day (MOE of 3484); 99th percentile 0.002516 mg/kg/day (MOE of 1510); and 99.9th percentile 0.004140 mg/kg/day (MOE of 917). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.002288 mg/kg/day (MOE of 1660); 99th percentile 0.006164 mg/kg/day (MOE of 616); and 99.9th percentile 0.018741 mg/kg/day (MOE of 202). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.002993 mg/kg/day (MOE of 1269) and 0.002286 mg/kg/day (MOE of 1662); 99th

percentile 0.005234 mg/kg/day (MOE of 725) and 0.004178 (MOE of 909); and 99.9th percentile 0.034965 mg/kg/day (MOE of 108) and 0.014545 (MOE of 261). The 95th percentile of exposure for females (13+/-nursing) was estimated to be 0.001448 mg/kg/day (MOE of 2623); 99th percentile 0.003594 mg/kg/day (MOE of 1057); and 99.9th percentile 0.011663 mg/kg/day (MOE of 325). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk.* The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and PCT was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000379 mg/kg body weight (bwt)/day and utilizes 3.0% of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (< 1 year) is estimated to be 0.000104 mg/kg bwt/day and 0.000509 mg/kg bwt/day and utilizes 0.8% and 4.1% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old is estimated to be 0.000904 mg/kg bwt/day and 0.000544 mg/kg bwt/day and utilizes 7.2% and 4.4% of the RfD, respectively. The ARC for females (13+/-nursing) is estimated to be 0.000365 mg/kg bwt/day and utilizes 2.9% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iv. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into ground water. Other data show that cypermethrin is virtually

insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (<0.001 parts per billion). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 parts per billion. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

2. *Non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL-5734-6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology data base, the RfD for zeta-cypermethrin is 0.0125 mg/kg/day, based on a NOAEL of

2.5 mg/kg/day and a LOAEL of 7.5 mg/kg/day from the cypermethrin rat reproduction study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and PCT was incorporated into an analysis to estimate the ARC for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000379 mg/kg body weight (bwt)/day and utilizes 3.0% of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) is estimated to be 0.000104 mg/kg bwt/day and 0.000509 mg/kg bwt/day and utilizes 0.8% and 4.1% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old are estimated to be 0.000904 mg/kg bwt/day and 0.000544 mg/kg bwt/day and utilizes 7.2% and 4.4% of the RfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000365 mg/kg bwt/day and utilizes 2.9% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001934 mg/kg/day (MOE of 1964); 99th percentile 0.003844 mg/kg/day (MOE of 988); and 99.9th percentile 0.012574 mg/kg/day (MOE of 302). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.002195 mg/kg/day (MOE of 1730); 99th percentile 0.004976 mg/kg/day (MOE of 763); and 99.9th percentile 0.016942 mg/kg/day (MOE of 224). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.001090 mg/kg/day (MOE of 3484); 99th percentile 0.002516 mg/kg/day (MOE of 1510); and 99.9th percentile 0.004140 mg/kg/day (MOE of 917). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.002288 mg/kg/day (MOE of 1660); 99th percentile 0.006164 mg/kg/day (MOE of 616); and 99.9th percentile 0.018741 mg/kg/day (MOE of 202). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.002993 mg/kg/day (MOE of 1269) and 0.002286

mg/kg/day (MOE of 1662); 99th percentile 0.005234 mg/kg/day (MOE of 725) and 0.004178 (MOE of 909); and 99.9th percentile 0.034965 mg/kg/day (MOE of 108) and 0.014545 (MOE of 261). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001448 mg/kg/day (MOE of 2623); 99th percentile 0.003594 mg/kg/day (MOE of 1057); and 99.9th percentile 0.011663 mg/kg/day (MOE of 325). Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. Infants and children—i. General. In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional 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.

ii. Developmental toxicity studies. In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. Reproductive toxicity study. In the 2-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

iv. Prenatal and postnatal sensitivity. There was no evidence of developmental toxicity in the studies at

the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

v. Postnatal. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

vi. Conclusion. Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on sugar beets, sugarcane, corn (field, seed, pop and sweet), green and bulb onions, and alfalfa.

2. FMC Corporation

PP 9F6040

EPA has received a pesticide petition (PP 9F6040) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of zeta-cypermethrin ($\pm$ - α -cyano(3-phenoxyphenyl)methyl ($\pm$) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity rice, grain at 1.2 ppm; rice, straw at 2.0 ppm; and rice, hulls at 16.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD)).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for rice grain show that the proposed zeta-cypermethrin tolerances on rice, grain at 1.2 ppm, rice, straw at 2.0 ppm and rice, hulls at 16.0 ppm will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the NOAEL of 3.8 mg/kg/day based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative: *in vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPTT mutagen assay; weakly mutagenic; gene mutation (Ames).

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL of 7.0 mg/kg/day and a LOAEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOAEL for reproductive toxicity was considered to be > 45.0 mg/kg/day, the highest dose tested.

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL of 12.5 mg/kg/day and a LOAEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL of 100 mg/kg/day and a LOAEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity.* Short- and intermediate-term toxicity. The NOAEL of 3.8 mg/kg/day based on the NOAEL 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study.

5. *Chronic toxicity*—i. The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day.

ii. Cypermethrin is classified as a Group C Chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have

been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. Dietary exposure—i. Food.

Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep (and their associated meat and milk tolerances). For the purposes of assessing the potential dietary exposure for these existing and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and PCT as follows:

ii. *Acute exposure and risk.* Acute dietary exposure 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. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 3.8 mg/kg/day based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of this study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and PCT was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001049 mg/kg/day (MOE of 3622); 99th percentile 0.003166 mg/kg/day (MOE of 1200); and 99.9th percentile 0.012313 mg/kg/day (MOE of 308). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000610 mg/kg/day (MOE of 6229); 99th percentile 0.001955 mg/kg/day (MOE of 1943); and 99.9th percentile 0.019362 mg/kg/day (MOE of 196). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000283 mg/kg/day (MOE of 13418); 99th percentile 0.001141 mg/kg/day

(MOE of 3330); and 99.9th percentile 0.002424 mg/kg/day (MOE of 1567). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000657 mg/kg/day (MOE of 5784); 99th percentile 0.007700 mg/kg/day (MOE of 493); and 99.9th percentile 0.019395 mg/kg/day (MOE of 195). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.001184 mg/kg/day (MOE of 3208) and 0.001177 mg/kg/day (MOE of 3227); 99th percentile 0.003894 mg/kg/day (MOE of 975) and 0.003337 (MOE of 1138); and 99.9th percentile 0.034204 mg/kg/day (MOE of 111) and 0.013940 (MOE of 272). The 95th percentile of exposure for females (13+/-nursing) was estimated to be 0.001070 mg/kg/day (MOE of 3549); 99th percentile 0.003318 mg/kg/day (MOE of 1145); and 99.9th percentile 0.011127 mg/kg/day (MOE of 341). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk.* The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and PCT was incorporated into the analysis to estimate the ARC. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000158 mg/kg body weight (bwt)/day and utilizes 1.3% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and nursing infants (<1 year) is estimated to be 0.000212 mg/kg/day and 0.000032 mg/kg/day and utilizes 1.7% and 0.3% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old is estimated to be 0.000268 mg/kg bwt/day and 0.000168 mg/kg bwt/day and utilizes 2.1% and 1.3% of the RfD, respectively. The ARC for females (13+/-nursing) is estimated to be 0.000170 mg/kg bwt/day and utilizes 1.4% of the RfD. Generally speaking, the EPA has no

cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

vi. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into ground water. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (<0.001 parts per billion). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

2. *Non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to

consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA in **Federal Register** August 4, 1997 (62 FR 42020) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology data base, the RfD for zeta-cypermethrin is 0.0125 mg/kg/day, based on a NOAEL of 2.5 mg/kg/day and a LOAEL of 7.5 mg/kg/day from the cypermethrin rat reproduction study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and PCT was incorporated into an analysis to estimate the ARC for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000158 mg/kg body weight (bwt)/day and utilizes 1.3% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and nursing infants (<1 year) is estimated to be 0.000212 mg/kg/day and 0.000032 mg/kg/day and utilizes 1.7% and 0.3% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old is estimated to be 0.000268 mg/kg bwt/day and 0.000168 mg/kg bwt/day and utilizes 2.1% and 1.3% of the RfD, respectively. The ARC for females (13+/-nursing) is estimated to be 0.000170 mg/kg bwt/day and utilizes 1.4% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001049 mg/kg/day (MOE of 3622); 99th percentile 0.003166 mg/kg/day (MOE of 1200); and 99.9th percentile 0.012313 mg/kg/day (MOE of 308). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000610 mg/kg/day (MOE of 6229); 99th percentile 0.001955 mg/kg/day (MOE of 1943); and 99.9th percentile 0.019362 mg/kg/day (MOE of 196). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000283 mg/kg/day (MOE of 13418); 99th percentile 0.001141 mg/kg/day (MOE of 3330); and 99.9th percentile 0.002424 mg/kg/day (MOE of 1567). The 95th percentile of

exposure for non-nursing infants < 1 year old was estimated to be 0.000657 mg/kg/day (MOE of 5784); 99th percentile 0.007700 mg/kg/day (MOE of 493); and 99.9th percentile 0.019395 mg/kg/day (MOE of 195). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.001184 mg/kg/day (MOE of 3208) and 0.001177 mg/kg/day (MOE of 3227); 99th percentile 0.003894 mg/kg/day (MOE of 975) and 0.003337 (MOE of 1138); and 99.9th percentile 0.034204 mg/kg/day (MOE of 111) and 0.013940 (MOE of 272). The 95th percentile of exposure for females (13+/- nursing) was estimated to be 0.001070 mg/kg/day (MOE of 3549); 99th percentile 0.003318 mg/kg/day (MOE of 1145); and 99.9th percentile 0.011127 mg/kg/day (MOE of 341). Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children*— i. *General*. In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional 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.

ii. *Developmental toxicity studies*. In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study*. In the 2-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ

weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

iv. *Prenatal and postnatal sensitivity*. There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

v. *Postnatal*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

vi. *Conclusion*. Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on rice grain, straw or hulls.

[FR Doc. 99-23198 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6434-5]

University of Florida Pentaborane Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a

proposed administrative settlement for recovery of past response costs concerning the University of Florida Pentaborane Site in Gainesville, Alachua County, Florida with the following Settling Party: the University of Florida. The settlement requires the Settling Party to pay \$10,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to 42 U.S.C. 9607(a). EPA may withdraw from or modify the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303, 404/562-8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: August 23, 1999.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99-23273 Filed 9-7-99; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 30, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0212.

Title: Section 73.2080 Equal Employment Opportunity Program.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, non-profit institutions.

Number of Respondents: 16,251 broadcast licensees.

Estimated Time per Response: 52 hours per year.

Frequency of Response: Recordkeeping.

Annual Burden: 845,052.

Annual Costs: \$0.

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. Section 73.2080 requires that each broadcast station shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. This section incorporates specific EEO program requirements and general guidelines for meeting those requirements. These guidelines are not intended to be either exclusive or inclusive but simply to provide guidance. This program will provide an appropriate and effective means of informing broadcasters, individuals employed or seeking employment by broadcast stations of its EEO

requirements. The Commission has suspended the enforcement of Section 73.2080 (b) and (c) due to the decision in *Lutheran Church—Missouri Synod v. FCC*, wherein the Court of Appeals held that the EEO program requirements of this section are unconstitutional. The enforcement of these requirements is suspended until the Commission revises the EEO rules to be consistent with the Court of Appeals Lutheran Church decision. The Commission will make such adjustments to the rule as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking (NPRM) concerning the Court of Appeals Lutheran Church decision, Section 73.2080 needs to retain a current OMB control number. We note that Section 73.2080(a) remains in effect. The data is used by a broadcast licensee in the preparation of the station's Broadcast Annual Employment Report (FCC Form 395-B) that is submitted annually and the station's EEO Program (FCC Form 396) submitted with the license renewal application. If this information were not maintained there could be no assurance that licensees are complying with the EEO rule. The Commission has suspended the filing of these forms until such time as the Commission reaches a decision in the outstanding NPRM.EEO requirements.

OMB Control Number: 3060-0390.

Title: Broadcast Station Annual Employment Report.

Form Number: FCC 395-B.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 14,000.

Estimated Time per Response: 0.88 hours.

Frequency of Response: Reporting, annually.

Annual Burden: 12,320 hours.

Annual Costs: \$0.

Needs and Uses: The Annual Employment Report (FCC 395-B) was required to be filed by all licensees and permittees of AM, FM, TV, international and low power TV broadcast stations. It is a data collection device used to assess industry employment trends. The report identifies each staff member by gender, race, color and/or national origin in each of the nine major job categories. The data are used to assess industry employment trends.

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees and permittees submit the FCC

395-B. This suspension is to remain in effect at least until the Commission revises the EEO rules to be consistent with the Court of Appeals Lutheran Church decision. If the Commission chooses to reinstate the FCC 395-B, the Commission will make such adjustments to the form as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking concerning the Court of Appeals Lutheran Church decision, the FCC 395-B needs to retain a current OMB control number.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99-23233 Filed 9-7-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

August 30, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 8, 1999. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0572.

Title: Filing Manual for Annual International Circuit Status Reports.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 120.

Estimate Time Per Response: 12.17 hrs. (avg.).

Frequency of Response: Annual reporting requirements.

Total Annual Burden: 1,460 hours.

Total Annual Costs: None.

Needs and Uses: The information will enable the Commission to discharge its obligations to authorize the construction and use of international common carrier transmission facilities. The information will be used by the Commission and the industry to determine whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities. The information is extremely valuable because it is not available from any other source.

OMB Control Number: 3060-0309.

Title: Section 74.1281, Station Records.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local, or tribal governments.

Number of Respondents: 3,150.

Estimate Time Per Response: 1 hour.

Frequency of Response:

Recordkeeping.

Total Annual Burden: 3,150 hours.

Total Annual Costs: None.

Needs and Uses: Section 74.1281 requires that licensees of FM translator/booster stations maintain adequate records. These records include the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other

pertinent documents. They also include entries concerning any extinguishing or improper operation of tower lights. The data are used by FCC staff in investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations.

OMB Control Number: 3060-0550.

Title: Local Franchising Authority Certification.

Form Number: FCC 328.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal governments.

Number of Respondents: 40.

Estimate Time Per Response: 30 mins.

Frequency of Response: Single reporting requirement.

Total Annual Burden: 20 hours.

Total Annual Costs: None.

Needs and Uses: On May 3, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177. In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. Among other things, the Report and Order implemented Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a local franchise authority (LFA) must file with the Commission, a written certification when it seeks to regulate basic service cable rates. Subsequently, the Commission developed FCC Form 328 to provide a standardized, simple form for LFAs to use when requesting certification. The data derived from Form 328 filings are used by Commission staff to ensure that an LFA has met the criteria specified in Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 for regulating basic service rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-23234 Filed 9-7-99; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

[FEMA-1288-DR]

**Minnesota; Major Disaster and Related
Determinations**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA-1288-DR), dated August 26, 1999, and related determinations.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT:

Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe ice storms, flooding, and heavy rains beginning on March 1, 1999 and continuing through May 30, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Powers of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Kittson, Marshall, Pennington, Polk, Red Lake, and Roseau Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99-23314 Filed 9-7-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 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. *Kevin P. Gates*, Salt Lake City, Utah; to acquire additional voting shares of Centennial Bancshares, Inc., Ogden, Utah, and thereby indirectly acquire additional voting shares of Centennial Bank, Ogden, Utah.

Board of Governors of the Federal Reserve System, September 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-23289 Filed 9-7-99; 8:45 am]

BILLING CODE 6210-01-F

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 October 4, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Marine Bancorp, Inc.*, Marathon, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Marine Bank of the Florida Keys, Marathon, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *WCB Holding Company of Illinois, Inc.*, Geneva, Illinois (in formation); to become a bank holding company by acquiring 100 percent of the voting shares of Winfield Community Bank, Winfield, Illinois (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Kennett Merger Corporation*, Kennett, Missouri; to become a bank holding company by acquiring 100

percent of the voting shares of Kennett Bancshares, Inc., Kennett, Missouri, and thereby indirectly acquire Kennett National Bank, Kennett, Missouri.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Pinnacle Bancorp, Inc.*, Central City, Nebraska; to acquire 100 percent of the voting shares of Park National Bank, Estes Park, Colorado.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Grant Bancshares, Inc.*, Montgomery, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Montgomery, Montgomery, Louisiana.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *First Security Corporation*, Salt Lake City, Utah; to acquire 100 percent of the voting shares of Zions Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Zions First National Bank, Salt Lake City, Utah; National Bank of Arizona, Phoenix, Arizona; California Bank & Trust, San Diego, California; Nevada State Bank, Las Vegas, Nevada; The Commerce Bank of Washington, N.A., Seattle, Washington; Val Cor Bancorporation, Inc., Denver, Colorado; and Vectra Bank Colorado, National Association, Denver, Colorado.

In connection with this application, Applicant also has applied to acquire Cash Access, Inc., Salt Lake City, Utah; Zions Insurance Agency, Inc., Salt Lake City, Utah; Zions Life Insurance Company, Salt Lake City, Utah; Regency Investment Advisors, Fresno, California, and thereby engage in data processing services by leasing automated teller machines to a third party, pursuant to § 225.28(b)(14) of Regulation Y; in providing insurance brokerage services by administering credit-related insurance programs in subsidiaries of Zions Bancorporation, pursuant to § 225.28(b)(11) of Regulation Y; in underwriting, as reinsurer, credit-related life and disability insurance, pursuant to § 225.28(b)(11) of Regulation Y; and in providing financial and investment advisory services and agency transactional services for customer investments, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-23290 Filed 9-7-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Monday, September 13, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-23469 Filed 9-3-99; 3:35 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

Office of Communications

Standard and Optional Forms Management Office Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Office of Personnel Management cancelled the need for

Standard Form 66B, Caution Personnel Record—Restricted Usage because of low usage.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams (202) 501-0581.

DATES: Effective September 8, 1999.

Dated: August 30, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99-23256 Filed 9-7-99; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

Office of Communications

Stocking change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage, the Department of the Treasury is not stocking the following Standard Form: SF 1198, Request by Employee for Allotment of Pay for Credit to Savings Account with a Financial Organization.

You can get this form from: Department of the Treasury—FMS, Ardmore Industrial Center, 3361-L 75th Avenue, Landover, MD 10785.

The form is also available on the internet. Address: <http://www.gsa.gov/forms/forms.htm>.

FOR FURTHER INFORMATION CONTACT: Mr. Irv. Wilson (202) 622-1575. This contact is for information about completing the form only.

DATES: Effective on September 8, 1999.

Dated: August 23, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99-23257 Filed 9-7-99; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO-99-35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and

Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Vibrio Illness Investigation Report Form—(0920-0322)—Reinstatement—The National Center for Infectious Disease (NCID)—The purpose of the Cholera and other Vibrio Illness Investigation Report Form is to collect information on illnesses occurring as a result of infection with Vibrio species. Vibrios are important pathogens in the United States, primary septicemia, gastroenteritis, and wound infections have been associated with various species. Gastroenteritis and primary septicemia have been associated with the consumption of undercooked shellfish, particularly with raw, Gulf Coast oysters. Associations have also been linked to wound infections with exposure of broken skin to seawater. Most importantly, Vibrio cholerae 01 is the organism responsible for cholera, a severe, dehydrating diarrheal illness. Although infections with Vibrio cholerae 01 are notifiable in all states, an official report form for this illness did not previously exist. The Vibrio Illness Investigation Report Form is used to record information on all Vibrio-related illnesses, as well as more detailed information on cholera illness, which is currently a reportable disease in all states. The form has a separate, optional Seafood Investigation section to be completed when applicable. The form provides a consolidated, systematic method by which health departments can report such information, and is then used to gain a better understanding of the incidence, etiology, and epidemiology of all Vibrio-

related illnesses occurring in the United States.

There is no change in the frequency of reporting or projected reporting. Most

respondents are epidemiologists or nurses in the local health department, but in some instances, infection control nurses or physicians might complete the

form. The total cost per respondent is estimated at \$11.00. This is primarily salary but also includes postage and telephone calls.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden of response (in hrs.)	Total burden (in hrs.)
Local health department staff	90	1	.33	30
Health care facility staff	45	1	.33	15
Physicians	15	1	.33	5
Total				50

Dated: September 1, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-23282 Filed 9-7-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC) Meeting: Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announced the following committee meeting in the **Federal Register** on August 23, 1999, Volume 64, Number 162, Page 45971.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.-5 p.m., September 22, 1999. 8:30 a.m.-3:30 p.m., September 23, 1999.

Correction: Please note, "potential rulemaking for genetic testing" should be added to the previously published agenda.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, M/S G-25, Atlanta, Georgia 30341-3724, telephone 770/488-8076, FAX 770/488-8282.

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 the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99-23382 Filed 9-3-99; 10:00 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 91N-0101, 91N-0098, 91N-0103, and 91N-100H]

Food Labeling; Health Claims and Label Statements; Request for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting scientific data, research study results, and other related information on four substance-disease relationships in order to reevaluate the scientific evidence for these relationships. The agency is taking this action to comply with a recent court decision in which FDA was instructed to reconsider whether to authorize health claims for these relationships in dietary supplement labeling. The four health claims to be reconsidered are: "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," "Consumption of fiber may reduce the risk of colorectal cancer," "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." The agency will use the data and information to determine, for each substance-disease relationship, if an appropriate scientific basis exists to support the issuance of a proposed rule to authorize a health claim for the relationship.

DATES: Written comments by November 22, 1999.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS-451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4168.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the act), directed the Secretary of Health and Human Services, among other things, to evaluate the scientific evidence on 10 substance-disease relationships to determine their scientific validity as the basis for health claims in food labeling. For conventional foods, the 1990 amendments state that a health claim is permitted only if FDA determines that there is significant scientific agreement among qualified experts that the claim is supported by the totality of publicly available scientific evidence, including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles (section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B))). While the 1990 amendments allowed FDA to consider a different scientific standard for health claims for dietary supplements (section 403(r)(5)(D) of the act (21 U.S.C. 343(r)(5)(D))), FDA issued regulations in 21 CFR 101.14(c) in 1994 that applied the same standard as that used for health claims for conventional foods (59 FR 395, January 4, 1994).

FDA conducted rulemakings in which it reviewed the scientific evidence for all 10 substance-disease relationships. Although the agency issued regulations authorizing health claims for most of these relationships, it concluded that there was insufficient scientific agreement regarding the scientific validity of the four health claims listed in the **Summary** section of this document. Therefore, the agency issued regulations providing that these claims were not authorized. (See § 101.71(a), (c), (e) (21 CFR 101.79(c)(2)(i)(G)).

Several dietary supplement marketers and nonprofit organizations that had submitted comments during the health claims rulemakings filed suit in Federal district court on constitutional and statutory grounds seeking, among other things, authorization to make the following health claims for use in the labeling of dietary supplements: (1) "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," (2) "Consumption of fiber may reduce the risk of colorectal cancer," (3) "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and (4) "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." Their constitutional and statutory challenges were rejected in the district court; however, on appeal the district court decision was reversed, and FDA was instructed to reconsider the four health claims (*Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999)).

As a first step in complying with the court's decision, FDA intends to reevaluate the scientific evidence for the four substance-disease claims listed above. The agency is now in the process of preparing scientific summaries on each of these four topics. To ensure that all relevant scientific evidence is considered in the rulemaking process and to allow timely development of these summaries, FDA is requesting that anyone who has or is aware of relevant scientific data, research study results, or information related to these four substance-disease relationships submit the materials to Dockets Management Branch (address above). Such information, if submitted to FDA, must be considered publicly available. If used in the agency's scientific review, information submitted to FDA will become part of the public record for the evaluation of these relationships.

The agency has established four dockets to compile information relating to each of the four topic areas; docket numbers are as specified in Table 1 below. FDA advises that the **Federal**

Register documents listed in the footnotes to the table have been incorporated into each of the referenced dockets (Docket Nos. 91N-0101, 91N-0098, 91N-0103, and 91N-100H). FDA is requesting data and information other than the information contained or referred to in these **Federal Register** documents. As a guideline, therefore, the agency is requesting data and information from 1992 to the present for the four topic areas.

FDA is allowing 75 days for the submission of data. Individuals and organizations submitting information or data relating to a specific topic should submit two copies of the information to the Dockets Management Branch (address above) by November 22, 1999. Separate submissions should be made for each topic area, and each submission should be identified with the appropriate docket number given below. Submissions received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

TABLE 1

Topic	Docket No.
Antioxidant vitamins and cancer ¹ and ²	91N-0101
Fiber and colorectal cancer ³ and ⁴	91N-0098
Omega-3 fatty acids and coronary heart disease ⁵ and ⁶	91N-0103
Folic acid (dietary supplement vs. food form) and neural tube defects ⁷ and ⁸	91N-100H

¹"Food Labeling: Health Claims and Label Statements; Antioxidant Vitamins and Cancer," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (56 FR 60624 to 60651, November 27, 1991).

²"Food Labeling: Health Claims and Label Statements; Antioxidant Vitamins and Cancer," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (58 FR 2622 to 2660, January 6, 1993).

³"Food Labeling: Health Claims; Dietary Fiber and Cancer," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (56 FR 60566 to 60582, November 27, 1991).

⁴"Food Labeling: Health Claims and Label Statements; Dietary Fiber and Cancer," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (58 FR 2537 to 2551, January 6, 1993).

⁵"Food Labeling: Health Claims and Label Statements; Omega-3 Fatty Acids and Coronary Heart Disease," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (56 FR 60663 to 60689, November 27, 1991).

⁶"Food Labeling: Health Claims and Label Statements; Omega-3 Fatty Acids and Coronary Heart Disease," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (58 FR 2682 to 2738, January 6, 1993).

⁷"Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (58 FR 53254 to 53295, October 14, 1993).

⁸"Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (61 FR 8752 to 8781, March 5, 1996).

Dated: September 1, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99-23337 Filed 9-7-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D-0433]

Draft Guidance for Industry on Average, Population, and Individual Approaches to Establishing Bioequivalence; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Average, Population, and Individual Approaches to Establishing Bioequivalence." This draft guidance provides recommendations to sponsors and/or applicants intending to perform in vivo and in vitro bioequivalence (BE) studies based on comparisons of in vivo and in vitro

bioavailability (BA) measures in investigational new drug applications, new drug applications, abbreviated new drug applications, and their amendments and supplements. This draft guidance is a modification of a preliminary draft guidance entitled "In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches" published in December 1997, and this draft guidance updates a July 1992 FDA guidance entitled "Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design". When finalized, this draft guidance will replace both the 1992 and 1997 guidances.

DATES: Written comments may be submitted on the draft guidance document by November 8, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at "<http://www.fda.gov/cder/guidance/index.htm>". Submit written requests for single copies of "Average, Population, and Individual Approaches to Establishing Bioequivalence" to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mei-Ling Chen, Center for Drug Evaluation and Research (HFD-870), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-5919.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Average, Population, and Individual Approaches to Establishing Bioequivalence." The draft guidance provides recommendations to sponsors and/or applicants intending to perform in vivo and in vitro BE studies based on comparisons of in vivo and in vitro BA measurements. In an earlier guidance entitled "Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design," FDA recommended that an average BE approach be used to establish BE between test and reference drug products. Because of the limitations in the average BE approach, and after extensive intramural and

extramural discussions, the Center for Drug Evaluation and Research (CDER) now recommends that the average BE approach be supplemented by two new approaches, population and individual BE. This draft guidance focuses on how to use each approach once a specific criterion has been chosen.

This draft guidance is one of a set of seven core guidances being developed to provide recommendations on how to meet provisions of part 320 (21 CFR part 320) for orally administered drug products and drug products for local action. Taken together, the seven guidances are designed to clarify the studies needed to document product quality BA/BE for all drug products regulated by CDER in accordance with the provisions in part 320. A further intent is to reduce regulatory burden where feasible.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 2, 1997). It represents the agency's current thinking on average, population, and individual approaches to establishing BE. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 26, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99-23228 Filed 9-7-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D-2726]

Medical Devices; Draft Guidance on Labeling for Laboratory Tests; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Draft Guidance on Labeling for Laboratory Tests." This draft guidance is not final nor is it in effect at this time. The draft guidance is intended to identify the information that should be provided to FDA for labeling the diagnostic performance of laboratory tests. FDA intends to recognize two major categories of endpoints for assessing diagnostic performance of new "in vitro diagnostic" assays.

DATES: Written comments concerning this draft guidance must be received by December 7, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Guidance on Labeling for Laboratory Tests" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-3084.

SUPPLEMENTARY INFORMATION:

I. Background

The labeling and evaluation of laboratory test performance should compare a new product's test results to some appropriate and relevant diagnostic benchmark that can be used to correlate results from a new test with the clinical status or condition of individuals or patients for whom the test is intended to be used. Determination of the clinical status of patients whose specimens are used in an evaluation may be based on laboratory and/or clinical endpoints. FDA recognizes two major categories of endpoints for assessing performance of new laboratory assays: (1) "True" diagnostic state (patient clinical status or condition) or operational "truth," and (2) laboratory equivalence where the test is characterized in terms of a

comparison to a legally marketed predicate.

This draft guidance represents the agency's current thinking on labeling of diagnostic performance for new laboratory tests. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a Level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive the "Draft Guidance on Labeling for Laboratory Tests" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1352) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Draft Guidance on Labeling for Laboratory Tests," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch

between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99-23229 Filed 9-7-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-R-285]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

ACTION: Comment request.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Request for Retirement Benefit Information;

Form No.: HCFA-R-285 (OMB# 0938-0769);

Use: This form will be used to obtain information regarding whether a beneficiary is receiving retirement payments based on State or local government employment, how long the claimant worked for the State or local government employer, and whether the former employer or pension plan subsidizes the beneficiary's Part A premium. The purpose in collecting this information is to determine and provide those eligible beneficiaries, with free Part A Medicare coverage;

Frequency: On Occasion;
Affected Public: State, Local or Tribal Government, and Individuals or Households;

Number of Respondents: 1,500;
Total Annual Responses: 1,500;
Total Annual Hours: 375.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willingham, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: August 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-23312 Filed 9-7-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of 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 Health Professions and Nurse Education Special Emphasis Panel (SEP) Meetings.

Name: Residency Training in Primary Care Peer Review Group I.

Date and Time: December 6-9, 1999, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: December 6, 1999, 8:00 a.m. to 10:00 a.m.

Closed on: December 6, 1999, 10:00 a.m. to 6:00 p.m.; December 7-9, 1999, 8:00 a.m. to 6:00 p.m.

Name: Residency Training in Primary Care Peer Review Group II.

Date and Time: December 13-16, 1999, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: December 13, 1999, 8:00 a.m. to 10:00 a.m.

Closed on: December 13, 1999, 10:00 a.m. to 6:00 p.m.; December 14–16, 1999, 8:00 a.m. to 6:00 p.m.

Name: Faculty Development in Primary Care Peer Review Group.

Date and Time: January 18–21, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: January 18, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: January 18, 2000, 10:00 a.m. to 6:00 p.m.; January 19–21, 8:00 a.m. to 6:00 p.m.

Name: Quentin N. Burdick Rural Health Interdisciplinary Program Peer Review Group.

Date and Time: January 24–27, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: January 24, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: January 24, 2000, 10:00 a.m. to 6:00 p.m.; January 25–27, 8:00 a.m. to 6:00 p.m.

Name: Public Health Nursing/Clinical Practice Peer Review Group.

Date and Time: January 24–27, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: January 24, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: January 24, 2000, 10:00 a.m. to 6:00 p.m.; January 25–27, 2000, 8:00 a.m. to 6:00 p.m.

Name: Podiatric Residency in Primary Care Peer Review Group.

Date and Time: January 31–February 3, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: January 31, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: January 31, 2000, 10:00 a.m. to 6:00 p.m.; February 1–3, 2000, 8:00 a.m. to 6:00 p.m.

Name: Dentistry Public Health Peer Review Group.

Date and Time: January 31–February 3, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: January 31, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: January 31, 2000, 10:00 a.m. to 6:00 p.m.; February 1–3, 2000, 8:00 a.m. to 6:00 p.m.

Name: Health Administration Traineeships and Special Projects Peer Review Group.

Date and Time: February 7–10, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: February 7, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: February 7, 2000, 10:00 a.m. to 6:00 p.m.; February 8–10, 2000, 8:00 a.m. to 6:00 p.m.

Name: Predoctoral Training in Primary Care Peer Review Group.

Date and Time: February 14–17, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: February 14, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: February 14, 2000, 10:00 a.m. to 6:00 p.m.; February 15–17, 2000, 8:00 a.m. to 6:00 p.m.

Name: Physicians Assistant Training Peer Review Group.

Date and Time: February 22–25, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: February 22, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: February 22, 2000, 10:00 a.m. to 6:00 p.m.; February 23–25, 2000, 8:00 a.m. to 6:00 p.m.

Name: Residencies and Advanced Education in the Practice of General Dentistry Peer Review Group.

Date and Time: February 28–March 2, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: February 28, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: February 28, 2000, 10:00 a.m. to 6:00 p.m.; February 29–March 2, 2000, 8:00 a.m. to 6:00 p.m.

Name: Pediatric Dentistry Peer Review Group.

Date and Time: February 28–March 2, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: February 28, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: February 28, 2000, 10:00 a.m. to 6:00 p.m.; February 29–March 2, 2000, 8:00 a.m. to 6:00 p.m.

Name: Public Health Training Centers Review Group.

Date and Time: March 6–9, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: March 6, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: March 6, 2000, 10:00 a.m. to 6:00 p.m.; March 7–9, 2000, 8:00 a.m. to 6:00 p.m.

Name: Public Health Special Projects Review Group.

Date and Time: March 6–9, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: March 6, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: March 6, 2000, 10:00 a.m. to 6:00 p.m.; March 7–9, 2000, 8:00 a.m. to 6:00 p.m.

Name: Nursing Workforce Diversity Peer Review Group.

Date and Time: March 13–16, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: March 13, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: March 13, 2000, 10:00 a.m. to 6:00 p.m.; March 14–16, 2000, 8:00 a.m. to 6:00 p.m.

Name: Centers of Excellence Review Group.

Date and Time: March 20–23, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: March 20, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: March 20, 2000, 10:00 a.m. to 6:00 p.m.; March 21–23, 2000, 8:00 a.m. to 6:00 p.m.

Name: Geriatric Training Regarding Physicians and Dentists Review Group.

Date and Time: March 27–30, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: March 27, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: March 27, 2000, 10:00 a.m. to 6:00 p.m.; March 28–30, 2000, 8:00 a.m. to 6:00 p.m.

Name: Geriatric Education Centers Review Group.

Date and Time: March 27–30, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: March 27, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: March 27, 2000, 10:00 a.m. to 6:00 p.m.; March 28–30, 2000, 8:00 a.m. to 6:00 p.m.

Name: Health Careers Opportunity Program Review Group.

Date and Time: April 3–7, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: April 3, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: April 3, 2000, 10:00 a.m. to 6:00 p.m.; April 4–7, 8:00 a.m. to 6:00 p.m.

Name: Academic Administrative Units (Departments of Family Medicine) Peer Review Group.

Date and Time: April 10–13, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: April 10, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: April 10, 2000, 10:00 a.m. to 6:00 p.m.; April 11–13, 2000, 8:00 a.m. to 6:00 p.m.

Name: Advanced Nursing Education Review Group (Optional Group).

Date and Time: April 25–28, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: April 25, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: April 25, 2000, 10:00 a.m. to 6:00 p.m.; April 26–28, 2000, 8:00 a.m. to 6:00 p.m.

Name: Model AHEC Review Group.

Date and Time: April 25–26, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: April 25, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: April 25, 2000, 10:00 a.m. to 6:00 p.m.; April 26, 2000, 8:00 a.m. to 6:00 p.m.

Name: Basic AHEC Review Group.

Date and Time: April 27–28, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: April 27, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: April 27, 2000, 10:00 a.m. to 6:00 p.m.; April 28, 2000, 8:00 a.m. to 6:00 p.m.

Name: Advanced Nursing Education Review Group I.

Date and Time: May 1–4, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: May 1, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: May 1, 2000, 10:00 a.m. to 6:00 p.m.; May 2–4, 2000, 8:00 a.m. to 6:00 p.m.

Name: Advanced Nursing Education Review Group II.

Date and Time: May 8–11, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: May 8, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: May 8, 2000, 10:00 a.m. to 6:00 p.m.; May 9–11, 2000, 8:00 a.m. to 6:00 p.m.

Name: Basic Nurse Education and Practice Review Group.

Date and Time: May 16–19, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: May 16, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: May 16, 2000, 10:00 a.m. to 6:00 p.m.; May 17–19, 2000, 8:00 a.m. to 6:00 p.m.

Name: Allied Health Project Grants Review Group.

Date and Time: May 22–25, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: May 22, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: May 22, 2000, 10:00 a.m. to 6:00 p.m.; May 23–25, 2000, 8:00 a.m. to 6:00 p.m.

Name: Chiropractic/Demonstration Review Group.

Date and Time: May 22–25, 2000, 8:00 a.m. to 6:00 p.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: May 22, 2000, 8:00 a.m. to 10:00 a.m.

Closed on: May 22, 2000, 10:00 a.m. to 6:00 p.m.; May 23–25, 2000, 8:00 a.m. to 6:00 p.m.

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Director of the Bureau of Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meetings will be closed at approximately 10:00 a.m. on the first day of each meeting until adjournment for the review of grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members or other relevant information should write or contact Mrs. Sherry Whipple, Program Analyst, Peer Review Branch, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–5926.

Dated: September 2, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–23335 Filed 9–7–99; 8:45 am]

BILLING CODE 4160–15 P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for Individual Physicians and Small Group Practices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties as the OIG considers developing a compliance program guidance for individual and small group physician practices, especially those serving Medicare and other Federal

health care program beneficiaries. Many physicians have expressed an interest in better protecting their practices from the potential for fraud and abuse. While the OIG believes that the great majority of physicians are honest and share our goal of protecting the integrity of Medicare and other Federal health care programs, all health care providers have a duty to reasonably ensure that the claims submitted to Medicare and other Federal health care programs are true and accurate. The development of a comprehensive, effective compliance program by individual physicians and small group practices will go a long way toward achieving this goal. Over the past two years, the OIG has developed guidances for hospitals, clinical laboratories, home health agencies, third-party medical billing companies and durable medical equipment companies. While the OIG has previously referred physicians and physician groups to the OIG's compliance guidance for third-party medical billing companies for guidance regarding the risk areas that are most directly relevant to physicians, we have received continued interest from physicians for a specific guidance directed at their individual practices. In order to provide such meaningful guidance to individual and small group physician practices, the OIG is soliciting comments, recommendations and other suggestions from concerned parties and organizations on how best to develop a compliance program guidance to reduce the potential for fraud and abuse in the individual or small group physician practice, as well as feedback as to whether such a guidance would be beneficial to physician practices.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on November 8, 1999.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–7–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–7–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday

through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Kimberly Brandt, Office of Counsel to the Inspector General, (202) 619-2078.

SUPPLEMENTARY INFORMATION: The development of compliance program guidances has become a major initiative of the OIG in its effort to engage the private health care community in addressing and combating fraud and abuse. Recently, the OIG has developed and issued compliance program guidance directed at various segments of the health care industry.¹ New OIG guidance under consideration will be designed to provide clear direction and assistance to physicians providing services to Medicare and other Federal health care program beneficiaries who are interested in reducing and eliminating the potential for fraud and abuse within their practice.

The guidances represent the culmination of the OIG's suggestions on how providers can most effectively establish internal controls and implement monitoring procedures to identify, correct and prevent fraudulent and wasteful activities. As stated in previous guidances, these guidelines are not mandatory for providers, nor do they represent an exclusive document of advisable elements of a compliance program.

In an effort to formalize the process by which the OIG receives public comments in connection with compliance program guidances, the OIG is seeking, through this **Federal Register** notice, formal input from interested parties as the OIG considers developing a compliance program guidance directed at individual and small group physician practices. The OIG will give consideration to all comments, recommendations and suggestions submitted and received by the time frame indicated above.

We anticipate that the physician guidance will contain seven elements that the OIG considers necessary for a comprehensive compliance program. These seven elements have been discussed in our previous guidances and include:

- The development of written policies and procedures.
- The designation of a compliance officer and other appropriate bodies.

- The development and implementation of effective training and education programs.

- The development and maintenance of effective lines of communication.

- The enforcement of standards through well-publicized disciplinary guidelines.

- The use of audits and other evaluation techniques to monitor compliance.

- The development of procedures to respond to detected offenses and to initiate corrective action.

The OIG would appreciate specific comments, recommendations and suggestions on (1) risk areas for the individual or small group physician practice, and (2) aspects of the seven elements contained in previous guidances that may need to be modified to reflect the unique characteristics of the individual or small group physician practice. Detailed justifications and empirical data supporting suggestions would be appreciated.

We also request that any comments, recommendations and input be submitted in a format that addresses the above topics in a concise manner, rather than in the form of a comprehensive draft guidance that mirrors previous guidances.

Dated: August 31, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99-23294 Filed 9-7-99; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing an Opportunity of Federal Funding of Proposals Submitted Under the State Partnership Program (SPP) for Fiscal Year 2000

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Pre-proposal Applications are invited for projects under the FY2000 State Partnership Program (SPP).

The purpose of the SPP is to provide support through grants and cooperative agreements to states and tribal agencies whose primary focus is on gathering, analyzing, and distributing biological science information needed for natural resource management decision-making. This program requires complementary study participation and interaction between State/Tribal institutions and Science Centers or Cooperative Research Units of the USGS, Eastern Region. For

contact information relating to potential study cooperation and participation by scientists from the USGS Biological Resources Division, Eastern Region, Science Centers (6 Centers) and Cooperative Research Units (16 Units) access the following web sites:

For Centers, http://biology.usgs.gov/nbs/nbshp2_2.htm [http](http://biology.usgs.gov/nbs/nbshp2_2.htm)

and

For Units, <http://biology.usgs.gov/coop/list.html>

Proposals involving the support and cooperation of multiple State parties as well as multiple Federal, private, or other entities are strongly favored. Respondents are encouraged to show linkages to other resource agencies, in addition to USGS, that have jurisdiction over public lands or public trust biotic resources and to the science information needs for other Department of the Interior bureaus and other Federal agencies. Proposals must demonstrate a commitment to information exchange and technology transfer.

Eligibility Requirements

Applicant Eligibility: State, Tribal, and/or U.S. Territories and Possessions that conduct natural resources studies and associated information management. No Federal or private agencies may apply.

Application and Award Process

Pre-proposal Submission: Eligible institutions may request a Pre-proposal Solicitation Package, including instructions on the SPP and how to submit an application, from the USGS, Eastern Regional Office (see address below). *Pre-proposals must be submitted to USGS by State/Tribe institutions only, but must include information on participating USGS Science Center or Cooperative Research Unit.*

Full-proposal Evaluation and Award: *Full proposals will be requested in writing by the USGS from institutions that have submitted pre-proposals of high merit and who have met all of the pre-proposal requirements as detailed in the Pre-proposal Solicitation Package.* Detailed specifications will be provided when the written request for full proposals is made. After meeting all submission requirements, full proposals will be reviewed and evaluated by a technical review team. Projects will be individually scored and prioritized, and award recommendations forwarded to the USGS contracting office for award.

Dates: Completed pre-proposals must be submitted to the USGS, Eastern Regional Office and be postmarked no later than October 6, 1999. Full

¹ See 62 FR 9435 (March 3, 1997) for clinical laboratories, as amended in 63 FR 45076 (August 24, 1998); 63 FR 8987 (February 23, 1998) for hospitals; 63 FR 42410 (August 7, 1998) for home health agencies, and 63 FR 70138 (December 18, 1998) for third party medical billing companies. The guidances can also be found on the OIG web site at <http://www.hhs.gov/oig>.

proposals will be required by 30 November, 1999. Notification of awards will be made by 30 December 1999.

Application Information: A Pre-Proposal Solicitation Package, including a SPP Factsheet that gives examples of projects that have received funding in the past, may be requested from the USGS, Eastern Regional Office at the following address: Dr. Gary D. Brewer, State Partnership Program Coordinator, USGS Biological Resources Division, Eastern Regional Office, 1700 Leetown Road, Kearneysville, WV 25430, Telephone: 304-724-4507, Fax: 304-724-4505, E-mail: gary__brewer@usgs.gov

Authorization

Fish and Wildlife Act of 1956, 70 Stat. 1119, as amended, 16 U.S.C. 742a-742j; Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-667e. The Office of Management and Budget Catalog of Federal Domestic Assistance Number is 15.808.

Dated: August 24, 1999.

David P. Bornholdt,

Deputy Regional Chief Biologist.

[FR Doc. 99-23245 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-Y7-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[**(WO-310-02-24 1A)**; OMB Approval Number 1004-0162]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35). On June 30, 1999, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (64 FR 35177) requesting comments on the collection. The comment period ended August 30, 1999. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004-

0160), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395-7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO-630) 1849 C St., NW, Room 401 LS Bldg., Washington, DC 20240.

Nature of Comments: We specifically request your comment on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the 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 to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas Geophysical Exploration Operations (43 CFR 3151).

OMB Approval Number: 1004-0162.

Abstract: Respondents supply information that will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans, and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.

Form Numbers: 3150-4, 3150-5.

Frequency: On occasion.

Description of Respondents: Oil and gas exploration and drilling companies.

Estimated Completion Time: Form 3150-4, 1 hour; Form 3150-5, 1/3 hour.

Annual Responses: 1200.

Annual Burden Hours: 800.

Bureau Clearance Officer: Carole J. Smith (202) 452-0367.

Dated: August 31, 1999.

Carole J. Smith,

Bureau Clearance Officer.

[FR Doc. 99-23247 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

[**NV-055-99-7122-00-8824**]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office.

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary closure of selected public lands in Clark County, Nevada, during the operation of the 1999 SNORE OHV in NELLIS DUNES Race.

SUMMARY: The District Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 SNORE OHV in NELLIS DUNES Race and to comply with provisions of the US Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1-5-F-237).

DATES: From 6:00 am Sept 24, 1999 through 6:00 am Sept 26, 1999 Pacific Standard Time.

CLOSURE AREA: Public lands within as described below, an area within T.17S, R64E & 65E east of I-15 and south of S.R. 40 (Valley of Fire Road); T18S, R63E, R64E, R65E east of I-15; T19S, R63E, R64E, R65E east of I-15.

1. The closure is bound by MOAPA RIVER INDIAN RESERVATION to the NORTH, NELLIS AFB on the SOUTH, I-15, to the WEST, LAKE MEAD NRA to the EAST.

Exceptions to the closure are: Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders of directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor. Maps are available at the Las Vegas Field Office.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager or Ron

Crayton or Ken Burger, BLM Rangers, BLM Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108, (702) 647-5000.

Dated: August 25, 1999.

Dave Wolf,

Acting Field Office Manager.

[FR Doc. 99-23145 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-72110]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease UTU-72110 for lands in Uintah County, Utah, was timely filed and required rentals accruing from December 1, 1998, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of \$10 per acre and 16 $\frac{2}{3}$ percent, respectively. The \$500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU-72110, effective December 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: August 31, 1999.

Robert Lopez,

Branch Chief, Minerals Adjudication.

[FR Doc. 99-23153 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-1430-01; AA-6497]

Public Land Order No. 7410; Partial Revocation of Executive Order dated April 1, 1915; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects

approximately 29,709 acres of lands withdrawn for Bureau of Land Management Power Site Reserve No. 485 at Iliamna Lake region. The lands are no longer needed for the purpose for which they were withdrawn. This action allows the conveyance of approximately 11,211 acres of the lands to the State of Alaska, if such lands are otherwise available. Any of the lands described herein that are selected by but not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5184, as amended, Public Land Order No. 5174, as amended, and any other withdrawal or segregation of record. Approximately 18,498 acres of the lands have been conveyed out of Federal ownership or lie within the Lake Clark National Preserve pursuant to the Alaska National Interest Lands Conservation Act.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Robbie J. Havens, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Executive Order dated April 1, 1915, as modified, which withdrew lands for Bureau of Land Management Power Site Reserve No. 485 in the Iliamna Lake area, is hereby revoked insofar as it affects the following described lands:

Seward Meridian, Alaska

All lands within $\frac{1}{4}$ mile of the Lower Tazimina Lake, the Tazimina River between Lower Tazimina Lake and Sixmile Lake, the Kakhonak Lake, and the Kakhonak River between Kakhonak Lake and Kakhonak Bay, an arm of Iliamna Lake, located within:

(a) Those portions of Tps. 7 and 8 S., Rs. 28 and 29 W., (unsurveyed), and T. 8 S., R. 30 W., (surveyed) which have not been conveyed out of Federal ownership. The area described contains approximately 11,211 acres.

(b) Those portions of Tps. 8 S., Rs. 30 and 31 W., T. 9 S., R. 31 W., T. 2 S., R. 30 W., and Tps. 2 and 3 S., Rs. 31 and 32 W., (all surveyed) which lie within the Lake Clark National Preserve or have been conveyed out of Federal ownership.

The area described contains approximately 18,498 acres.

The areas described in (a) and (b) above aggregate approximately 29,709 acres.

2. The State of Alaska applications for selection made under Section 6(b) of the

Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), for the lands described in paragraph 1(a), become effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Lands selected by, but not conveyed to the State, will be subject to the terms and conditions of Public Land Order No. 5184, as amended, Public Land Order No. 5174, as amended, and any other withdrawal or segregation of record.

3. The public lands described in paragraph 1(b) will remain withdrawn as part of the Lake Clark National Preserve pursuant to Sections 201(7)(a) and Section 206 of Alaska National Interest Lands Conservation Act, 16 U.S.C. 410hh-5 (1994). This action is for record clearing purposes only as to those lands that have been conveyed out of Federal ownership.

Dated: August 13, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99-23246 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-120-99-1640-00; COC-63206]

Realty Action: Sale of Public Land in Grand County, Colorado

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Grand County, Colorado has been examined and found suitable for direct sale under section 203 and 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than the appraised fair market value. The mineral interest will be included in the sale.

Affected Public Land

Sixth Principal Meridian

T. 4N., R. 76W.,
sec. 24, lot 8

The lands described above contain 3.20 acres, more or less.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning this sale is available for review in the Kremmling Field Office at 1116 Park Avenue,

Kremmling, Colorado 80459, (97024-3437).

SUPPLEMENTARY INFORMATION:

Publication of this notice in the **Federal Register** segregates the public land from operation of the public land laws, including the mining laws, for a period of 270 days from the date above unless the sale is cancelled or completed prior to this date. The following reservations will be made in a patent issued for the public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1990 (43 U.S.C. 945).

For a period of 45 days from the date of this notice, interested parties may submit comments to the Field Manager, Kremmling Field Office, Bureau of Land Management, P.O. Box 68, Kremmling, Colorado 80459. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any advance comments, this realty action will become the final determination of the Department of Interior.

Dated: August 25, 1999.

Linda M. Gross,

Field Manager.

[FR Doc. 99-23248 Filed 9-7-99; 8:45 am]

BILLING CODE 4310-JB-M

International Trade Commission

[Investigation No. 337-TA-416]

Certain Compact Multipurpose Tools; Notice of Issuance of General Exclusion Order and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, having found violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337), the U.S. International Trade Commission has issued a general exclusion order under section 337(d) (19 U.S.C. 1337(d)) and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. General information concerning the Commission also may be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission conducted the subject investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact multipurpose tools that allegedly infringe claims of four U.S. design patents. The complainant was the patent owner, Leatherman Tool Group, Inc. Six firms were named as respondents: Suncoast of America, Inc.; Quan Da Industries; Kumasama Products Co., Ltd.; Jiangsu Hongbao Group, Corp.; SCIKO Chinalight, Ltd.; and Charles Amash Imports, Inc., d/b/a Grip On Tools. Grip On and Suncoast were terminated from the investigation on the basis of consent orders. The Commission found Jiangsu, Kumasama, Quan Da, and SCIKO to be in default in light of their failure to answer the complaint and notice of investigation in the manner prescribed by the Commission's rules and their failure to respond to orders directing them to show cause why they should not be found in default. By granting the complainant's motions for summary determination on various issues, the Commission determined that the latter four respondents violated section 337.¹

The remaining issues for the Commission to decide were (1) the appropriate remedy for the aforesaid violations, (2) whether the statutory public interest factors precluded such relief, and (3) the amount of the bond during the Presidential review period under section 337(j).² In making those determinations, the Commission was required to take into account the presiding administrative law judge's recommended determination (RD) on permanent relief and bonding under 19 CFR 210.42(a)(2), as well as any written submissions from parties, the public, or other Federal agencies.³ The Commission solicited but did not receive submissions from other agencies or members of the public.⁴ Complainant Leatherman and the Commission investigative attorney each filed a written submission on remedy, the public interest, bonding, and the RD.

After considering the RD and the parties' submissions, the Commission determined that a general exclusion

¹ See 63 FR 52287 (Sept. 30, 1998); 63 FR 70215 (Dec. 18, 1998); and 64 FR 35679 (July 1, 1999).

² See 19 CFR 210.50(a) and 19 U.S.C. 1337(d), (f), (g), and (j)(3).

³ See 19 CFR 210.42(a)(2) and 210.50(a)(4). See also 19 U.S.C. 1337(b)(2) and S. Rept. No. 1298, 93d Cong. 2d Sess. at 195 (1974).

⁴ *Id.* and 64 FR 35679 (July 1, 1999).

order is the appropriate remedy for the violations found in the subject investigation, that the statutory public interest factors do not preclude such relief, and that the bond during the Presidential review period should be 100 percent of the imported articles' entered value.

The Commission accordingly has terminated the investigation and issued a general exclusion order prohibiting the entry of imported tools covered by one or more of the following design patents: U.S. Letters Patent Des. 385,168, entitled "Scissors," issued on October 21, 1997; U.S. Letters Patent Des. 385,169, entitled "Folding Scissors," issued on October 21, 1997; U.S. Letters Patent Des. 385,170, entitled "Folding Scissors," issued on October 21, 1997; and U.S. Letters Patent Des. 380,362, entitled "Scissors," issued on July 1, 1997.

Nonconfidential copies of the Commission's Order and its Opinion on Remedy, the Public Interest, and Bonding, all other documents cited in this notice, and all other nonconfidential documents filed in the investigation are or will be made available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-1802.

Issued: August 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-23316 Filed 9-7-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-282 (Review)]

Petroleum Wax Candles From China

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on petroleum wax candles 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.²

Background

The Commission instituted this review on January 4, 1999 (64 FR 365, January 4, 1999) and determined on April 8, 1999 that it would conduct an expedited review (64 FR 19197, April 19, 1999).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 1, 1999. The views of the Commission are contained in USITC Publication 3226 (August 1999), entitled *Petroleum Wax Candles from China: Investigation No. 731-TA-282 (Review)*.

Issued: September 1, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-23315 Filed 9-7-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Investigation No. 332-345

Shifts in U.S. Merchandise Trade in 1999

AGENCY: United States International Trade Commission.

ACTION: Opportunity to submit written statements in connection with the 1999 report.

EFFECTIVE DATE: July 29, 1999.

SUMMARY: The Commission has prepared and published annual reports on U.S. trade shifts in selected industries/commodity areas under investigation No. 332-345 since 1993. The Commission plans to publish the next report in July 2000, which will cover shifts in U.S. trade in 1999 compared with trade in 1998. The report structure and content is anticipated to be similar to the report issued in August 1999. Comments and suggestions regarding the July 2000 report are welcome in written submissions as specified below. The latest version of the report covering 1998 data (USITC Publication 3220, August 1999) may be obtained from the USITC's Internet server (<http://www.usitc.gov>). A printed report may be requested by contacting the Office of the Secretary at 202-205-2000 or by fax at 202-205-2104.

FOR FURTHER INFORMATION CONTACT:

Questions about the trade shifts report may be directed to the project leader, Karl Tsuji, Office of Industries (202-

205-3434) or the assistant project leader, Tracy Quilter, Office of Industries (202-205-3437). For information on the legal aspects, please contact Mr. William Gearhart, Office of General Counsel (202-205-3091). The media should contact Ms. Margaret O'Laughlin, Public Affairs Officer (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

Background

The initial notice of institution of this investigation was published in the **Federal Register** of September 8, 1993 (58 FR 47287). The Commission expanded the scope of this investigation to cover service trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The merchandise trade report has been published in the current series under investigation No. 332-345 annually since September 1993.

As in past years, each report will summarize and provide analyses of the major trade developments that occurred in the preceding year, and is expected to be published in July of each year. The reports will also provide summary trade information and basic statistical profiles of about 300 industry/commodity groups.

Written Submissions

No public hearing is planned. However, interested persons are invited to submit written comments or suggestions concerning the July 2000 report. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with section 201.8 at the earliest practical date and should be received no later than the close of business on December 30, 1999. All submissions should be addressed to the Secretary, United States International

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.

Trade Commission, 500 E Street, SW, Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Issued August 31, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-23317 Filed 9-7-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Information Collection Under Review; (Reinstatement, with change, of a previously approved collection for which approval has expired); Local Law Enforcement Block Grants Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by September 10, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395-7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Lluana McCann, 202-305-1772, Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None.

The Local Law Enforcement Block Grants Act of 1996 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will apply for funding and complete a one-hour on-line application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hours burden to complete the application is 3,500.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, or via facsimile at (202) 514-1534.

Dated: September 1, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99-23285 Filed 9-7-99; 8:45 am]

BILLING CODE 4410-18-M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 16, 1999 and Friday, September 17, 1999 at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The meeting is tentatively scheduled to begin at 11:00 a.m. on September 16, and 9:00 a.m. on September 17.

The Commission will discuss Medicare + Choice, payments to teaching hospitals, payments for evaluation and management services, the physician fee schedule, payment update issues for inpatient, outpatient, and post-acute care settings, ESRD payment reform, access to care, the expanded hospital transfer policy, and hospital capital payments.

Agendas, will be mailed on September 7, 1999. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653-7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653-7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653-7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99-23378 Filed 9-7-99; 8:45 am]

BILLING CODE 6820-BW-M

NATIONAL CAPITAL PLANNING COMMISSION

Public Meeting on Proposed New Policies for Memorial in the Nation's Capital.

AGENCY: National Capital Planning Commission.

ACTION: Notice of public meetings on proposed new policies for memorials in the Nation's Capital.

Background

The National Capital Planning Commission, the Commission of Fine Arts, and the National Capital Memorial Commission (Joint Task Force on Memorials) will hold public hearings on Wednesday, September 29, 1999 in Washington, DC at the Martin Luther King Memorial Library, 901 G Street, NW in Room A-5 (lower level). The meeting will be held in afternoon and evening sessions. The afternoon session will run from 2:00 PM to 4:30 PM and the evening session will run from 6:00 PM to 8:30 PM. The purpose of the hearings is to receive public testimony on proposed new policies for monuments, memorials, and museums in the Nation's Capital. The 60-day public comment period on the proposed policies ends on November 8, 1999.

The Joint Task Force, whose parent agencies are responsible for reviewing and approving the placement and design of commemorative works in the National Capital, have been meeting since fall 1997 to forge a consensus on new policies for commemorative works in the Mall area. The three commissions have agreed to seek public comments on a draft policy statement and map, which establish a protected area in the central cross-axis of the Mall (the Reserve) in which no new commemorative sites would be approved. The proposed policy also calls for the creation of a zone adjacent to the Reserve where new monuments, memorials, and museums, meeting certain predetermined criteria, would be permitted to locate (Area A). Finally, the proposal creates an area outside Area A where new commemorative works would be encouraged to locate (Area B) (See Illustration 1).

SUMMARY: The Proposed Policy Statement reads as follows:

The Reserve

The great cross-axis of the Mall forms one of the world's premier examples of civic art, which itself is a monument to democracy. Here the nation commemorates its history, and citizens can join in celebration, congregation, contemplation, and the exercise of their rights of free speech and assembly.

The Reserve is a unique national space, an embodiment of our democratic ideals and achievements, and must be preserved as an indispensable, nationally significant cultural resource. This setting has matured as the nation has matured. The cross-axis, framed by monuments and museums, constitutes the historic urban design framework of the capital established by the L'Enfant and

McMillan Plans—open spaces, long axes, and dramatic vistas. It must be rigorously protected. No new memorial sites will be approved in this area.*

The Mall is a historic, monumental open space and a substantially completed work of public urban design. The east-west axis extends from the U.S. Capitol to the Lincoln Memorial. The north-south axis stretches from the White House to the Jefferson Memorial. The L'Enfant Plan established the central greensward that was extended to the west a century later by the McMillan Plan. This latter plan created the great cross-axis that dominates the Mall Complex well known to American and world visitors alike. The area is defined primarily by monuments, memorials, and museums contained by a carefully designed landscape that is extended by water and the monumental skyline. This vast open space enhances public and individual gatherings and recreation. The Mall's sweeping vistas and reciprocal views contribute greatly to the power and beauty of the Nation's Capital.

Area A

Area A, immediately adjacent to the Reserve, comprises the rest of the Monumental Core of the Nation's Capital. The importance of Area A accrues from its proximity to the Reserve and from its own significance as an area of commemoration and historic and scenic vistas. This area also serves as an important recreation area under the jurisdiction of the National Park Service. Memorials may be approved for this area subject to restrictive criteria and design guidelines that ensure that memorials will not intrude on the significance of the setting.*

The Commemorative Works Act of 1986 recognizes the importance of protecting much of this area by limiting future memorials to those of preeminent historical significance. The Task Force's current proposal would slightly enlarge the boundary of this zone to extend this protection, primarily to federal lands on the Virginia shore of the Potomac River.

Area B

Area B is the rest of the city of Washington with emphasis on the important North, South, and East Capitol Street axes, as well as circles and squares on major avenues, waterfronts, urban gateways and scenic overlooks. The idea of encouraging the placement of memorials in strategic locations beyond the traditional Monumental Core is a key premise of the National Capital Planning

* Within both the Reserve and Area A, the proposed restrictions are not applicable to commemorative works that received site approval prior to September 8, 1999 from the Commission of Fine Arts, the National Capital Planning Commission, and the Secretary of the Interior or the Administrator of the General Services Administration, as appropriate. These memorials are the World War II Memorial in the Reserve, and the following in Area A: the Black Revolutionary War Patriots Memorial, the George Mason Memorial, and the U.S. Air Force Memorial. In addition, the Martin Luther King, Jr. Memorial has been approved for a location within the proposed Area A, but a specific site has not yet been approved.

Commission's framework plan, *Extending the Legacy: Planning America's Capital for the 21st Century*.

The Joint Task Force on Memorials strongly encourages the siting of commemorative works in the National Capital in Area B. Monuments and memorials have the power to encourage civic beauty and pride. Memorial sponsors should consider appropriate sites throughout the Nation's Capital and its environs, especially in association with federal facilities on Special Streets and Gateways, on circles, squares, and other parkland, and along the waterfront where the presence of memorials will reinforce the L'Enfant and McMillan Plans.

In some cases, commemorative works can impart extra meaning to or be enhanced by museums. The Task Force encourages the siting of such works in Area B, which provides many appropriate areas for locating memorials and their associated museums in proximity to each other. This commemorative and planning activity would encourage tourism, educational opportunities, and good urban design, as well as civic, cultural, and economic development throughout the Washington area.

The development of memorials in urban areas may entail unusual cost and complexity for land acquisition and infrastructure. Federal assistance should be used to encourage the establishment of memorials in Area B, in recognition of the valuable federal land otherwise contributed to memorial sites in Area A.

Public Comment Period

Public testimony will be taken at the public meetings on September 29, 1999. Individuals interested in testifying at the meetings should call the National Capital Planning Commission at (202) 482-7200 no later than 12:00 noon, Eastern Time, the day before the public meeting to register in advance. Members of the public who wish to testify and have not signed up in advance may sign up at the meeting before the start of the session. Public testimony will be limited to five minutes each, and will generally be scheduled on a first-come basis.

Written comments may be submitted before, during, or after the meetings. Comments should be mailed to the attention of the Joint Task Force on Memorials, c/o Ronald Wilson, National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576. Comments may also be sent by e-mail to info@ncpc.gov. All written and oral comments will become part of the public record. Comments should be received no later than COB, November 8, 1999, the end of the 60-day public comment period.

FOR FURTHER INFORMATION CONTACT: Joint Task Force on Memorials, c/o Ronald Wilson, National Capital Planning Commission, at (202) 482-7242.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access. Single copies of the draft memorials policy statement and map may be obtained at no cost from the Joint Task Force on Memorials by

writing the National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576 or by calling NCPC at (202) 482-7200. The documents are also available on

NCPC's Internet site <http://www.ncpc.gov>.

Dated: September 1, 1999.

Lise L. Wineland,
Attorney Advisor

BILLING CODE 7520-01-p

Proposed Commemorative Zones

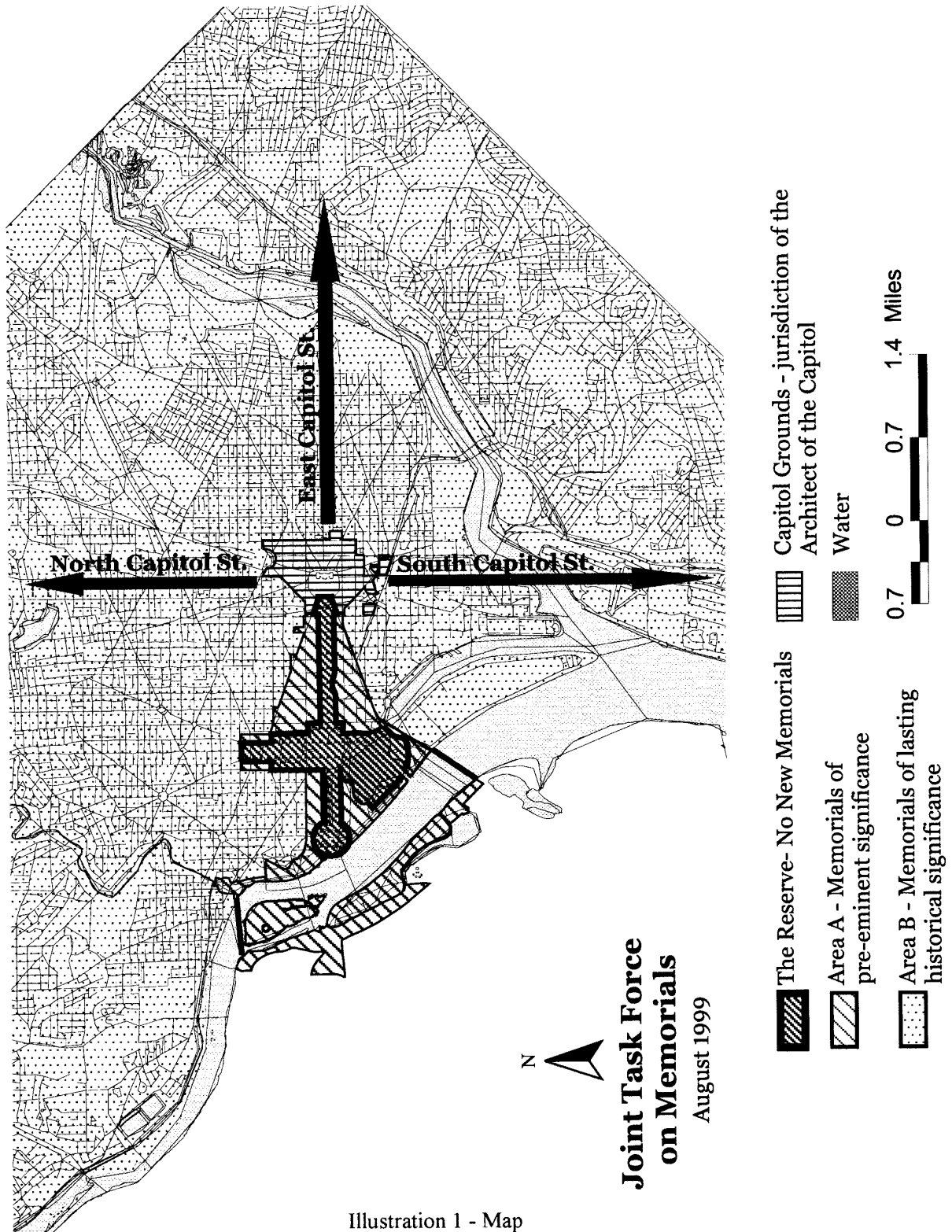


Illustration 1 - Map

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9 a.m., local time on Monday, September 13, 1999, at the Ambassador West, Wyndham Grand Heritage Hotel, 1300 North State Parkway, Chicago, Illinois concerning the *Investigation of the Collision and Derailment of Amtrak Train No. 59, the City of New Orleans, with an East Bound Tractor Semi-trailer Truck at Railroad/Highway Grade Crossing, near Bourbonnais, Illinois, on March 15, 1999*. For more information, contact James S. Dunn, NTSB Office of Highway Safety at (202) 314-6436 or Terry N. Williams, NTSB Office of Public Affairs at (202) 314-6100.

Dated: September 1, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99-23232 Filed 9-7-99; 8:45 am]

BILLING CODE 7533-01-M

NATIONAL WOMEN'S BUSINESS COUNCIL

Sunshine Act Notice

AGENCY: National Women's Business Council.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 105-135 as amended, the National Women's Business Council (NWBC) announces a forthcoming Council meeting and joint meeting of the NWBC and Interagency Committee on Women's Business Enterprise. The meetings will cover action items worked on by the National Women's Business Council and the Interagency Committee on Women's Business Enterprise included by not limited to procurement, access to capital and training.

DATES: September 23, 1999.

ADDRESSES: Council Meeting & Joint Meeting. The White House/Old Executive Office Building/(17th & Penn. Entrance), Washington, DC. Council Meeting, S-476, 9 a.m. to 10 a.m., Joint Meeting, Indian Treaty Room, 10 a.m. to 12 p.m.

Note: No admittance without prior official clearance. Please have a photo ID.

STATUS: Open to the public.

CONTACT: National Women's Business Council, 409 Third Street, SW., 8th Floor, Washington, DC 20024, (202) 205-3850.

Note: Please call by September 13, 1999.

Gilda Presley,

Administrative Officer,

National Women's Business Council.

[FR Doc. 99-23481 Filed 9-3-99; 3:57 pm]

BILLING CODE 6820-AR-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Company; (Zion Nuclear Power Station, Units 1 and 2); Exemption

I.

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR-39 and DPR-48, which authorize the licensee to possess the Zion Nuclear Power Station (ZNPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the US Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located at the ComEd site on the west shore of Lake Michigan about 40 miles north of Chicago, Illinois, in the extreme eastern portion of the city of Zion, Illinois (Lake County). The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II.

Section 50.12(a) of 10 CFR, "Specific exemption," states that.* * *

The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.* * *" The underlying purpose of sections 50.47(b) and 50.47(c)(2) is to ensure that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish

plume exposure and ingestion pathway emergency planning zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite emergency plans.

By letter dated April 13, 1999, ComEd requested an exemption from certain provisions of 10 CFR 50.47(b) and 10 CFR 50.47(c)(2) on the basis that the permanently shutdown and defueled condition of the ZNPS had substantially reduced the risk to public health and safety. In addition, the licensee submitted a proposed Defueled Station Emergency Plan (DSEP) for NRC's approval. The DSEP proposed to discontinue offsite emergency planning activities and to reduce the scope of onsite emergency planning. Thus, exemptions from certain provisions of 10 CFR 50.47(b) and 50.47(c)(2) are required to implement the proposed DSEP to maintain compliance with the regulation.

By letter dated April 13, 1999, and supplemental letters dated July 8, July 19, and August 30, 1999, the licensee also submitted an analysis of the radiological consequences of a postulated event, an analysis to determine the maximum Zircaloy cladding temperature in the spent fuel pool (SFP) with the fuel exposed to an air environment, and an analysis to determine the potential upper limit radiation fields at the exclusion area boundary.

III.

The licensee stated that special circumstances exist at ZNPS because of the station's permanently shutdown and defueled condition. The standards in 10 CFR 50.47(b) and the requirements in 10 CFR 50.47(c)(2) were developed taking into consideration the risks associated with operation of a nuclear power reactor at its licensed full-power level. The risks include the potential for an accident with offsite radiological dose consequences. There are no design basis accidents or other credible events for ZNPS that would result in a radiological dose beyond the exclusion area boundary that would exceed the Environmental Protection Agency's (EPA) Protective Action Guidelines (PAGs). Therefore, the application of all of the standards in 10 CFR 50.47(b) and the requirements of 10 CFR 50.47(c)(2) are not necessary to achieve the underlying purpose of those rules.

The licensee analyzed the heatup characteristics of the spent fuel from a beyond design basis event that results in the complete loss of spent fuel pool (SFP) water, when cooling depends on the natural circulation of air through the spent fuel racks. The licensee presented

the results of an analysis showing that as of June 30, 1999, decay heat could not heat the spent fuel cladding above 482 °C in the event all water was drained from the SFP. The staff reviewed the licensee's analysis and found the licensee's value for peak fuel cladding temperature acceptable. On the basis of a staff determination that fuel cladding will remain intact at this temperature, the staff concluded that a complete loss of water from the ZNPS SFP would not result in a release off site that exceeds the early-phase EPA PAGs.

Although a significant release of radioactive material from the spent fuel is no longer possible in the absence of water cooling, a potential exists for radiation exposure to an offsite individual in the event that shielding of the fuel is lost (a beyond-design-basis event). Water and the concrete pool structure serve as radiation shielding on the sides of the pool. However, water alone provides most of the shielding above the spent fuel. A loss of shielding above the fuel could increase the radiation levels off site because of the gamma rays streaming up out of the pool being scattered back to a receptor at the site boundary. The licensee calculated the offsite radiological impact of a postulated complete loss of SFP water and determined that the gamma radiation dose rate at the exclusion area boundary would be 0.00294 rad per hour at an outside air temperature of 21 °C. At this rate, it would take 14 days for the event to exceed the EPA early-phase PAG of 1 rem. The EPA early-phase PAG is defined as the period beginning at the projected or actual initiation of a release and extending a few days later. The PAGs were developed to respond to a mobile airborne plume that could transport and deposit radioactive material over a large area. In contrast, the radiation field would be scatter from a drained SFP would be stationary rather than moving and would not cause transport or deposition of radioactive materials. The 14 days available for action allow sufficient time to develop and implement mitigative actions and provide confidence that additional offsite measures could be taken without planning if efforts to reestablish shielding over the fuel are delayed.

The standards and requirements that remain in effect are listed in Attachment 1 to the licensee's letter of April 13, 1999, and Attachment 2 to the licensee's letter of July 8, 1999. On the basis of this review, the staff finds that the radiological consequences of accidents possible at ZNPS are substantially lower than those at an operating plant. The upper bound of offsite dose

consequences limits the highest attainable emergency class to the alert level. In addition, because of the reduced consequences of radiological events still possible at the site, the scope of the onsite emergency preparedness organization may be reduced. Thus, the underlying purpose of the regulations will not be adversely affected by eliminating offsite emergency planning activities or reducing the scope of onsite emergency planning. Accordingly, the Commission has determined that special circumstances as defined in 10 CFR 50.12(a)(2)(ii) exist.

IV.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Commonwealth Edison Company an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR 50.47(c)(2).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (64 FR 45981).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of August 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-23297 Filed 9-7-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50-390]

Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has granted a request by the Tennessee Valley Authority (the Licensee) to withdraw the remainder of its October 23, 1996, application for proposed amendment to Facility Operating License No. NPF-90 for the Watts Bar Nuclear Plant, located in Rhea County, Tennessee.

The remaining portion of the application that was not approved by license amendment number 6, issued on

July 28, 1997, proposed the installation of spent fuel racks in the cask pit area of the spent fuel pool for an additional 225 storage spaces and the use of an impact shield over the fuel in the cask pit when heavy loads are moved near or across the cask pit area.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 2, 1997 (62 FR 15733). However, by letter dated July 22, 1999, the licensee withdrew that portion of the proposed amendment related to storage in the cask pit.

For further details with respect to this action, see the application for amendment dated October 23, 1996, Amendment to Facility Operating License Number 6 issued on July 28, 1997, and the licensee's letter dated July 22, 1999. The above 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 local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated at Rockville, Maryland, this 1st day of September 1999.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-23299 Filed 9-7-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Postponement of Public Workshop To Develop a Standard Review Plan for Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Postponement of public workshop.

SUMMARY: This notice announces the postponement of one of the public workshops the Nuclear Regulatory Commission (NRC) is sponsoring to solicit input from stakeholders during the development of a Standard Review Plan (SRP) and other guidance for decommissioning nuclear facilities.

SUPPLEMENTARY INFORMATION: On October 21, 1998, NRC announced that it was sponsoring a series of public workshops to support the staff's development of an SRP and other guidance for the decommissioning of nuclear facilities. On November 18,

1998, NRC published the schedule for these workshops and indicated that a workshop would be held on October 20–21, 1999, at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD. At the conclusion of the August workshop, the participants agreed to postpone the October workshop until February 2000. The rescheduling will allow more time for public review of the SRP prior to the final workshop. The workshop will be held at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD. NRC staff will announce the date for this workshop in a future **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749.

Dated at Rockville, Maryland, this 30th day of August 1999.

For the US Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–23298 Filed 9–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of September 6, 13, 20, 27 and October 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 6

Tuesday, September 7

9:15 a.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790).

Friday, September 10

11:30 a.m.—Affirmation Session (Public Meeting)

a. Final Rule: “Respiratory Protection and Controls to Restrict Internal Exposures, 10 CFR Part 20”

b. Yankee Atomic Electric Company (Yankee Nuclear Power Station), Docket No. 50–029–LA, Yankee Atomic's Motion for Leave to Withdraw Appeal of LBP–99–14

Week of September

There are no meetings scheduled for the Week of September 13.

Week of September 20—Tentative

Tuesday, September 21

9:25 a.m.—Affirmation Session (Public Meeting), (if needed).

9:30 a.m.—Briefing by DOE on Draft Environmental Impact Statement (DEIS) for a Proposed HLW Geologic Repository (Public Meeting).

Wednesday, September 22

9:00 a.m.—Meeting on Center for Strategic and International Studies Report, “The Regulatory Process for Nuclear Power Reactors—a Review” (Public Meeting).

Week of September 27—Tentative

There are no meetings scheduled for the Week of September 27.

And

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.—Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material*, is available in the NRC Public Document Room or on NRC web site at “www.nrc.gov/NRC/COMMISSION/SECYS/index.html”. Download the *zipped version* to obtain all attachments.)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 3, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 14, 1999, through August 27, 1999. The last biweekly notice was published on August 25, 1999 (64 FR 46424).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: August 3, 1999.

Description of amendment request:

The proposed amendments would revise Technical Specification (TS) 2.1.B to increase the minimum critical power ratio for higher cycle exposures for Unit 2. The proposed amendments would also revise TS 6.9.A.6.b for Units 2 and 3 to add an NRC-approved topical report to the list of analytical methodologies that are used to determine operating limits.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC-approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. These changes do not affect the operability of plant systems, nor do they compromise any fuel performance limits.

Changing the Minimum Critical Power Ratio (MCPR) Safety Limit (SL) at Dresden Nuclear Power Station Unit 2 will not increase the probability or the consequences of an accident previously evaluated. This change implements the MCPR SL resulting from the Siemens Power Corporation (SPC) ANFB critical power correlation methodology using the approved ATRIUM-9B additive constant uncertainty. For each cycle, specific MCPR SL calculations will be performed, consistent with SPC's approved methodology, to confirm the appropriateness of the MCPR SL. Additionally, operational MCPR limits will be applied that will ensure the MCPR SL is not violated during all modes of operation and anticipated operational occurrences. The MCPR SL ensures that less than 0.1% of the rods in the core are expected to experience boiling transition. Therefore, the probability or consequences of an accident will not increase.

Adding EMF-85-74, Revision 0, Supplements 1 and 2 (P)(A) to Section 6 for Dresden Nuclear Power Station Units 2 and 3, does not increase the probability or consequences of an accident previously evaluated. The NRC-approved burnup extension for RODEX2A applications has been demonstrated to meet all applicable design criteria. Therefore, adding this methodology to Technical Specification Section 6 does not increase to the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

Creation of the possibility of a new or different kind of accident would require the

creation of one or more new precursors of that accident. New accident precursors may be created by modifications to the plant configuration, including changes in allowable modes of operation. This Technical Specification submittal does not involve any modifications to the plant configuration or allowable modes of operation. No new precursors of an accident are created and no new or different kinds of accidents are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the MCPR SL does not create the possibility of a new accident from any accident previously evaluated. This change does not alter or add any new equipment or change modes of operation. The MCPR SL is established to ensure that 99.9% of the rods avoid boiling transition.

The MCPR SL is changing for Dresden Nuclear Power Station Unit 2 to support Cycle 17 operation. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

The addition of RODEX2A (EMF-85-74, Revision 0, Supplements 1 and 2 (P)(A)) to Section 6 does not create the possibility of a new accident from an accident previously evaluated. This change does not alter or add any new equipment or change modes of operation. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety for the following reasons:

Changing the MCPR SL for Dresden Nuclear Power Station Unit 2 will not involve any reduction in margin of safety. The MCPR SL provides a margin of safety by ensuring that less than 0.1% of the rods are calculated to be in boiling transition. The proposed Technical Specification amendment request reflects the MCPR SL results from evaluations by SPC using NRC-approved methodology.

Because the methodology used to determine the MCPR SL is conservative and has received NRC approval, a decrease in the margin to safety will not occur due to changing the MCPR SL. The revised MCPR SL will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed MCPR SL to ensure that the MCPR SL is not violated during all applicable modes of operation including anticipated operation occurrences. This will ensure that the fuel design safety criterion of more than 99.9% of the fuel rods avoiding transition boiling during normal operation as well as during an anticipated operational occurrence is met.

The addition of EMF-85-74, Revision 0, Supplements 1 and 2 (P)(A) to Section 6 does not decrease the margin of safety. The burnup limit extension for RODEX2A applications has been reviewed and approved by the NRC. The data supporting the burnup extension demonstrates that all

applicable design criteria are met. Therefore, since the burnup extension is acceptable and within the design criteria, using the approved burnup extension will not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room

location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690-0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: August 13, 1999, as supplemented on August 27, 1999.

Description of amendment request:

The proposed amendments would revise Technical Specification Section 1.0, "Definitions," Item 1.7, "Core Alteration," to specify that movement of instrumentation and control rod movements are not considered core alterations if there are no fuel assemblies in the associated cell. The licensee also proposed corresponding changes to TS Sections 3/4.1, 3/4.3, and 3/4.9 to reflect the change in definition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes incorporate a definition contained in NUREG-1433, Revision 1, "Standard Technical Specifications, General Electric Plants, BWR/4." There are no modifications to plant equipment or systems and there is no direct effect on plant operation. The proposed changes do not affect any accident initiators or precursors and do not change or alter the design assumptions for systems or components used to mitigate the consequences of an accident. The proposed changes do not affect the design or operation of any system, structure, or component in the plant. The proposed changes do not impact

the requirements for refueling evolutions associated with shutdown margin, core monitoring, and reactor protection system operability. There are no changes to parameters governing plant operation, and no new or different types of equipment will be installed. These changes do not impact any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). Therefore, no increases in the probability of an accident or consequences will result due to this change.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of any plant system, structure, or component. There are no changes to parameters governing plant operation, and no new or different type of equipment will be installed. There is no change in any method by which a safety related system performs its function. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints affected by this proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. As such, no new failure modes are being introduced. There are no changes to assumptions in accident analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes are consistent with NUREG-1433, Revision 1, "Standard Technical Specifications, General Electric Plants, BWR/4." The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The initial conditions and methodologies used in the accident analyses remain unchanged. Therefore, accident analyses results are not impacted. There are no resulting effects on plant safety parameters or setpoints. The proposal does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings, or a significant relaxation of the bases for the limiting conditions for operations. Therefore, these proposed changes do not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348-9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690-0767.

NRC Section Chief: Anthony J. Mendiola.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendment would permit a one-time extension of the allowed outage time (AOT) for the reactor protection and engineered safety feature actuation instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor protection and engineered safety features functions are not initiators of any design basis accident or event and therefore do not increase the probability of any accident previously evaluated. The proposed changes to the AOTs, bypass times, and allowing on-line testing and maintenance have an insignificant impact on plant safety based on the calculated CDF [core damage frequency] increase being less than LOE-06. Therefore, the proposed changes do not result in a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RPS [reactor protection system] and ESFAS [engineered safety features actuation system] provide plant protection. No change is being made which alters the functioning of the RPS and ESFAS. Rather, the likelihood or probability of the RPS or ESF functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in the margin of safety as defined in the Safety Analysis Report.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operations are determined. The impact of increased AOTs, testing times, and allowing on-line testing and maintenance are expected to result in an overall improvement in safety because:

The longer AOTs for the master relays, logic cabinets, and analog channels will promote improved maintenance practices that will provide improved component performance, improved availability of the protection system, and a reduced number of spurious reactor trips and spurious actuation of safety equipment.

The longer AOTs and bypass times for the analog channels will provide additional time before being required to place the channel in trip. With the channel in trip, the logic required to cause a reactor trip or a safety system actuation is reduced to 1 of 2 (for 2 of 3 logic) and to 1 of 3 (for 2 of 4 logic). With the reduced logic requirement, the potential for a spurious actuation is increased. Leaving the channel in the bypass state for additional time does reduce the availability of signals to initiate component actuation for event mitigation when required, but as shown in this analysis, the impact on plant safety is small due to the availability of other signals or operator action to trip the reactor or cause component actuation.

The longer allowed outage times will provide plant operators additional flexibility in operating the plant. There will be additional time available before an action needs to be taken to shut down the plant or place a channel in the tripped state. This additional flexibility will facilitate prioritizing component repairs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. Biweekly Notice Coordinator Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: S. Singh Bajwa.

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 4, 1999.

Description of amendment request: The amendments would revise the joint Technical Specifications as follows:

(1) A current action in Section 3.2.2 requires that when one Nuclear Service Water System (NSWS) suction transfer low pit level channel is inoperable, the channel be placed in its trip position. The licensee proposed an additional alternative such that the NSWS suction can simply be aligned from Lake Wylie to the Standby Nuclear Service Water Pond (SNSWP). Suction from Lake Wylie is the normal configuration, while suction from the SNSWP is the safety configuration. This proposed alternative

action provides operational flexibility; there is no associated design change to the units.

(2) The licensee proposed to delete from Table 3.3.2-1, "Engineered Safety Feature Actuation System Instrumentation," the entry regarding Auxiliary Feedwater Loss of Offsite Power (Function 6d) on the basis that a comparable and adequate requirement will exist in Section 3.3.5. To such end, a new Surveillance Requirement (SR) 3.3.5.3 will be added, incorporating the Function 6d requirement from Table 3.3.2-1. These proposed changes remove inconsistencies that currently exist in the Technical Specifications for Function 6d. There is no associated design change to the units.

(3) In the process of converting the Technical Specification to the improved format (Amendment Nos. 173 and 165), errors were inadvertently introduced regarding the conditions under which the Reactor Coolant System Subcooling Margin Monitor must be operable. The licensee proposed to correct these errors by revising the entry regarding the Subcooling Margin Monitor in Table 3.3.3-1, "Post Accident Monitoring Instrumentation". There is no associated design change to the units.

(4) Section 3.4.17 is concerned with reactor coolant system loops test exceptions. Currently Surveillance Requirement 3.4.17.2 incorrectly specifies that a COT [channel operational test] be performed "for each power range neutron flux-flow and intermediate range neutron flux channel and P-7 [Low Power Reactor Trips Block Function]". The licensee proposed to correct this statement by deleting "P-7" and adding "P-10 [Power Range Neutron Flux] and P-13 [Turbine Impulse Pressure]". This correction does not involve any design change to the units.

(5) The licensee proposed to delete from Section 5.3.1 the specific qualification requirements for Reactor Operators (ROs) and Senior Reactor Operators (SROs). Such requirements are specified by 10 CFR 50.55, "Operators" Licenses", and the licensee is required to follow this regulation. There will be no change in the qualification of ROs and SROs, and no design change to the units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences. For proposed changes #1-4, the systems and equipment referenced in the revised TS are not accident initiating systems; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The design of the systems is not being modified by these proposed changes. Therefore, there will be no impact on any accident consequences. For proposed change #5, the change is purely administrative; it will therefore have no effect on any accident probabilities or consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The systems and equipment referenced in the revised TS for proposed changes #1-4 are already capable of performing as designed. No safety margins will be impacted. Since proposed change #5 is purely administrative, it will have no effect on any safety margins.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 26, 1999.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.3.2.1, "Safety Features Actuation System Instrumentation," to remove the "Trip Setpoint" values and revise the "Allowable Values" entries for Sequence Logic Channels a, "Essential Bus Feeder Breaker Trip (90%)," and b, "Diesel Generator Start, Load Shed on Essential Bus (59%)."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not change any accident initiator, initiating condition, or assumption.

The proposed changes would revise Technical Specification (TS) Table 3.3-4, Safety Features Actuation System Instrumentation Trip Setpoints, to remove the "Trip Setpoint" values for Functional Unit Sequence Logic Channel "a", "Essential Bus Feeder Breaker Trip (90%)", and Functional Unit Sequence Logic Channel "b", "Diesel Generator Start, Load Shed on Essential Bus (59%)", and also modify the "Allowable Values" entry for Functional Unit Sequence Logic Channel "a", consistent with updated calculations and current setpoint methodology. The proposed changes would also clarify an inconsistency between Table 3.3-4 and Table 4.3-2, Safety Features Actuation System Instrumentation Surveillance Requirements. The proposed changes to Limiting Condition for Operation (LCO) 3.3.2.1 and Bases 3/4.3.1 and 3/4.3.2 are associated with these changes.

The accident previously evaluated in Section 15.2.9, "Loss of All AC Power to the Station Auxiliaries (Station Blackout)," of the DBNPS Updated Safety Analysis Report (USAR) is not affected by the proposed changes because its bounding conditions are not affected. The existing TS action statements will continue to maintain the USAR requirement to start and load one Emergency Diesel Generator (EDG) to meet minimum ESF requirements, should all AC power be lost. Furthermore, the proposed changes are based on the existing performance characteristics of plant equipment; therefore, the proposed changes

will not involve a significant change to the plant design or operation.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path or alter radiological consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety because the proposed changes do not significantly reduce the ability of the plant to respond to a loss of AC power to the essential 4160 Volt buses in a timely manner. The revised Allowable Value for the Sequence Logic Channel "Essential Bus Feeder Breaker Trip (90%)" takes into account the need not only to be able to actuate Engineered Safety Features equipment coincident with a degraded grid condition, but to provide voltage at the required value to properly operate the equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 27, 1999.

Description of amendment request: The proposed amendment would remove Technical Specification (TS) Section 6.4, "Training," relocate TS Sections 6.5.2.8, "Audits," and 6.10 "Record Retention," to the Updated Safety Analysis Report, and make related changes to TS Sections 6.14, "Process Control Program," and 6.15, "Offsite Dose Calculation Manual." In addition, an editorial correction is proposed to TS 6.8, "Procedures and Programs."

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Section 6.0, Administrative Controls, of the Technical Specifications (TS).

The proposed changes to remove Section 6.4, Training, from the TS and relocate the detailed listings of TS Section 6.5.2.8, Audits, and TS Section 6.10, Record Retention, to the DBNPS [Davis-Besse Nuclear Power Station] Quality Assurance Program in Chapter 17 of the Updated Safety Analysis Report are consistent with NUREG-1430, "Standard Technical Specifications—Babcock and Wilcox Plants," Revision 1 or NRC Administrative Letter 95-06 "Relocation of Technical Specification Administrative Controls Related to Quality Assurance," dated December 12, 1995. The proposed changes to TS Section 6.14, Process Control Program (PCP); TS Section 6.15, Offsite Dose Calculation Manual (ODCM); and TS Section 6.8, Procedures and Programs, are either associated administratively with the above proposed changes or are editorial corrections. These TS being removed or relocated will remain subject to the controls of regulations (e.g., 10 CFR 50.59, 10 CFR 55.59, or 10 CFR 50.54(a)).

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are consistent with the improved "Standard Technical Specifications—Babcock and Wilcox Plants" (NUREG-1430) or Administrative Letter 95-06 and are administrative changes. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes, which involve only administrative controls. The proposed changes do not alter any accident scenarios.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative and do not reduce or adversely affect the capabilities of any plant structures, systems or components to perform their nuclear safety function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 5, 1999.

Description of amendment request: The requested changes correct editorial errors in Technical Specification (TS) Sections 3.8.3.2, 4.6.2.1, 4.6.2.2, 4.8.1.1, and 4.9.12. Also, the requested changes correct minor editorial and reference errors in Technical Specification Bases Sections B 3/4.3.2, B 3/4.4.11, B 3/4.6.1.2, and B 3/4.8.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve any Significant Hazards Considerations (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed Technical Specification revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are editorial in nature and do not alter or effect the design, operation, maintenance[,] or surveillance associated with MP-3 [Millstone Nuclear Power Station, Unit No. 3] [s]tructures, [s]ystems, and [c]omponents (SSC) during normal or accident operations. Since the SS[Cs] are not altered[,] the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are editorial in nature and do not alter or effect the design,

operation, maintenance[, or surveillance associated with MP-3 [s]tructures, [s]ystems, and [c]omponents (SSC) during normal or accident operations. Since the Units SS[Cs] have not been modified physically, or operationally[, due to procedure changes prompted by this TSCR [Technical Specification Change Request], the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

These proposed TS changes are editorial and do not impact any MP-3 design or operational requirements. MP-3 system performance and operating limits are not affected; therefore[, the proposed change does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined [by NNECO] that the proposed revision does not involve a[n] SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 22, 1999.

Description of amendment request: The Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TS) contained in Appendix A to the Operating Licenses would be amended to eliminate a surveillance requirement for the Reactor Recirculation System. This proposed TS change request involves revising the TS to delete Surveillance Requirement 4.4.1.1.2, and associated TS Administrative Controls Section 6.9.1.9.h, which requires that each Reactor Recirculation System pump motor generator (MG) set scoop tube mechanical and electrical stop be demonstrated OPERABLE with the overspeed setpoints less than or equal to the setpoints as noted in the Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed TS changes do not make any physical changes to the fuel, or the way the fuel responds to a transient or accident. The radiological barriers are not compromised. The fuel will continue to be operated to analyzed operating limits. No new failure mode is introduced.

Prior to the removal of the Recirculation System Master Flow Controller at LGS, the bounding postulated event involving an increase in reactor coolant system flow rate was the dual pump slow flow runout event not terminated by SCRAM. The requirements surrounding the MG set stops were established to mitigate consequences during a dual pump slow flow runout by providing a limit on the maximum core flow. The MG set stop requirements were not established to prevent an accident. The potential common mode failure required for a dual pump slow flow runout event was eliminated with the removal of the Master Flow Controller. The elimination of the Master Flow Controller does not increase the probability of other core flow increase events, or of any other events previously analyzed.

Revised generic flow biased ARTS [APRM (average power range monitor)/RBM (rod block monitor) Technical Specifications Improvement] thermal limits that do not take credit for MG set stops have been developed for LGS, Units 1 and 2. Adherence to approved flow biased ARTS thermal limits identified in the LGS, Units 1 and 2, Core Operating Limits Reports (COLRs) ensure that fuel design limits are not exceeded. Maintaining fuel design limits results in no change in the consequences of accidents previously evaluated.

The single pump slow flow runout does not terminate by Main Steam Isolation Valve (MSIV) closure or generator load reject. As a result, the single pump runout event does not result in any significant pressurization and does not represent a challenge to the reactor coolant pressure boundary. MSIV closure with associated SCRAM on high neutron flux, as confirmed in

the cycle specific Supplemental Reload Licensing Report (SRLR), remains the bounding reactor pressure vessel overpressurization event for LGS, Units 1 and 2. In addition, there are no other associated impacts to the plant resulting from a single pump runout. Therefore, the integrity of radiological barriers will not be compromised.

Although there is no longer a safety need to demonstrate operability of the MG set stops, there still is an operational need to have the MG set stops for the Reactor Recirculation System (RS). Damage to the jet pump sensing lines could occur if the resonance frequency of the sensing lines is reached. Jet pump sensing line tests established a conservative pump speed limit (1650 rpm for Unit 1, no limit for Unit 2) to preclude sensing line resonance. The MG set stop setpoint bounded the operationally required setpoint. The operationally required MG set stop setpoint to preclude jet pump sensing line resonance will continue to be controlled administratively via approved plant procedures. The proposed TS changes do not adversely impact the RS, or introduce new or unanalyzed operating conditions for the RS. The MG sets will not exceed their previously analyzed maximum 57.5 Hz with the stops removed.

Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS changes do not make any physical changes to the fuel, or the way the fuel responds to a transient or accident. The radiological barriers are not compromised. The fuel will continue to be operated to analyzed operating limits. No new failure mode is introduced.

The proposed TS changes do not create new operating conditions that have not been evaluated. Removal of the Recirculation Master Flow Controller eliminates the possibility of a single failure initiated common mode event. Since the possibility of a common failure has been eliminated, the most limiting recirculation runout event is a one pump slow flow runout. This is the same kind of postulated accident as that previously evaluated, only it involves one pump instead of both pumps. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not make any physical changes to the fuel, or the way the fuel responds to a transient or accident. The radiological barriers are not compromised. The fuel will continue to be operated to analyzed operating limits. No new failure mode is introduced.

Single pump runout based, generic flow biased ARTS thermal limits that do not take credit for MG set stops have been developed for LGS, Units 1 and 2. Adherence to approved ARTS-based flow biased thermal limits identified in the LGS, Units 1 and 2, COLRs and implemented in the plant process computer are sufficient to maintain the margin of safety as delineated in TS Sections 3/4.2.1, 3/4.2.3, and 3/4.2.4.

Therefore, these proposed TS changes do not involve a significant reduction in a margin of safety.

Based on the above review, the NRC staff concludes that it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 29, 1998.

Description of amendment request: The amendment would delete the requirements for a security plan from the 10 CFR Part 50 license and technical specifications after the spent nuclear fuel is transferred to a Part 72 licensed independent spent fuel storage installation (ISFSI). Security requirements for the ISFSI would be in accordance with 10 CFR Part 72, Subpart H.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The physical structures, systems and components of the Trojan Nuclear Plant and the operating procedures for their use are unaffected by the proposed change. The proposed elimination of the security requirements for the 10 CFR Part 50 license, is predicated on approval of the Trojan ISFSI Security Plan (PGE 1073) which will be coincident with issuance of a 10 CFR Part 72 license and upon completion of the transfer of all nuclear fuel from the spent fuel pool to the ISFSI. The planned 10 CFR 72 licensing controls for the ISFSI will provide adequate confidence that personnel and equipment can perform satisfactorily for normal operations of the ISFSI and respond adequately to abnormal events/accidents. The proposed Trojan ISFSI Security Plan (PGE 1073) will also provide confidence that security personnel and safeguards systems will perform satisfactorily to ensure adequate protection for the storage of spent nuclear fuel. Therefore, the proposed 10 CFR Part 50 amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is security related, and as such, has no direct impact on plant equipment or the procedures for operating plant equipment and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because the proposed ISFSI area will be segregated from the 10 CFR Part 50 licensed area, licensed security activities under the 10 CFR Part 50 license will no longer be necessary after all the nuclear fuel has been moved. The planned 10 CFR 72 licensing controls for the ISFSI area will provide adequate confidence that personnel and equipment can perform satisfactorily for normal operations of the ISFSI and respond adequately to normal events/accidents. Moreover, the ISFSI will be physically separate from the Trojan Nuclear Plant structures and equipment. Therefore, the proposed 10 CFR Part 50 license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The assumptions for a fuel handling and other accidents are not affected by the proposed license amendment. Because the proposed ISFSI area (that will contain the nuclear fuel) will be segregated from the 10 CFR Part 50 licensed area, licensed security activities under the 10 CFR Part 50 license will no longer be necessary. The planned 10 CFR 72 licensing controls for the ISFSI area will provide adequate confidence that personnel and equipment can perform satisfactorily for normal operations of the ISFSI and respond adequately to abnormal events/accidents. Also, the ISFSI will be physically separate from the Trojan Nuclear Plant structures and equipment. Therefore, the proposed 10 CFR Part 50 license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 19, 1999. The August 19, 1999, submittal supersedes the February 18, 1999, submittal in its entirety (64 FR 14284).

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) to incorporate the new Pressure/Temperature (P-T) Limits Curves consistent with the analysis results of reactor vessel specimen W. These figures are contained in Section 3/4.4.9 and are presented as Figures 3.4-2 and 3.4-3. These figures were developed using the methodology included in WCAP 14040-NP-A, "Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves," as well as Code Case N-640, "Alternative Reference Fracture Toughness for Development of P-T Limit Curves for Section XI, Division I." A reduced flange temperature requirement was included in the development of the curves, with justification provided in WCAP 15102, Revision 1, "V. C. Summer Unit I Heatup and Cooldown Limit Curves for Normal Operation." Additionally, the Bases section for the Pressure/Temperature Limits would be revised to accurately reflect current industry standards and regulations. A significant portion of this Bases section would be deleted due to the information also being located in WCAP 15102, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise the Pressure/Temperature Limits Curves to provide curves that reflect the results of the analysis performed on reactor vessel surveillance specimen W. This analysis was performed using NRC approved methodology as documented in WCAP 14040-NP-A, utilizing the 1996 ASME Boiler and Pressure Vessel Code, Section XI, Appendix G requirements, along with ASME Code Case N-640. These curves provide the limits for operation of the Reactor Coolant System during heat up, cool down, criticality, and hydrotesting. These curves are provided without instrument uncertainties included, however, the uncertainties are included in the curves provided in the operating procedures. The limits protect the reactor vessel from brittle fracture by separating the region of acceptable operation from the region where brittle fracture is postulated to occur. Failure of the reactor vessel is not a VCSNS design basis accident, and, in general, reactor vessel failure has a low probability of occurrence and is not considered in the safety analysis. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes revise the Pressure/Temperature Limits Curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen W. There are no plant design changes or significant changes in any operating procedures. This change adjusts the heatup and cooldown curves to reflect the shift in nil-ductility reference temperature of the reactor vessel as a result of neutron embrittlement, and alternate methodology utilized to generate the curves. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed changes revise the Pressure/Temperature Limits Curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen W. The new PT curves ensure that the 10 CFR 50 Appendix G, requirements are not exceeded during normal operation including Reactor Coolant System transients during heat up, cool down, criticality, and hydrotesting. The new PT curves were prepared, using accepted industry methodology, for a projected reactor vessel neutron exposure of 32 EFPY [Effective Full Power Years].

The new curves will serve as the basis for operating limitations, to provide margin against non-ductile fractures. The uncertainties introduced by instrumentation, forced flow and elevation differences are not reflected in the TS curves. These uncertainties will be factored into the curves presented in the operating procedures. Since administrative limits remain in place to

ensure that 10 CFR 50 Appendix G limits are not challenged, the margin of safety described in the TS Bases is not reduced by the proposed change. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: August 11, 1999 (PCN-488).

Description of amendment requests: The proposed amendments would modify the Technical Specifications for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to revise Surveillance Requirement (SR) 3.3.7.3 by providing allowable values in place of analytical limits for certain degraded voltage parameters, and by deleting unnecessary parameter limits in cases where plant safety is not affected. The proposed change would also delete redundant SR 3.3.7.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

Proposed Change Number (PCN)-488 revises the Technical Specification (TS) Surveillance Requirement (SR) acceptance criteria of the Loss of Voltage Signal (LOVS), Degraded Grid Voltage with Safety Injection Actuation Signal (DGVSS), and Sustained Degraded Voltage Signal (SDVS) relay circuits. These circuits are not accident initiators.

PCN-488 revises the TS SR acceptance requirements to make them more limiting than the present requirements. Because the revised acceptance criteria are more limiting than the present requirements, the

consequences of accidents analyzed in the Updated Final Safety Analysis Report (UFSAR) are not increased. PCN-488 also revises the TS SR acceptance requirements to delete upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting bounds having no safety significance does not involve a significant increase in the probability or consequences of an accident previously evaluated.

PCN-488 deletes redundant SR 3.3.7.4, which is not in NUREG-1432, Standard Technical Specifications, Combustion Engineering Plants. Deleting a redundant requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Consequently, the proposed amendment does not result in an increase in the probability of accidents evaluated in the UFSAR.

2. Does this amendment request create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

PCN-488 revises the TS SR acceptance criteria of the LOVS, DGVSS, and SDVS relay circuits, which are not accident initiators, and deletes a redundant SR. PCN-488 does not introduce any revision in the hardware configuration of the protective circuitry for LOVS, DGVSS or SDVS. The measurement required by the deleted, redundant surveillance is required elsewhere in the TS. For these reasons, PCN-488 does not create the possibility of any new or different kind of accident from any previously evaluated.

3. Does this amendment request involve a significant reduction in a margin of safety?

No.

PCN-488 provides allowable values for the acceptance criteria for the TS SR for LOVS, DGVSS and SDVS. As such, the revised values are more limiting than the current values, which represent design limits. Therefore, PCN-488 does not involve a significant reduction in a margin of safety.

PCN-488 also revises the TS SR acceptance requirements to delete upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting bounds having no safety significance does not involve a significant reduction in a margin of safety.

PCN-488 additionally deletes a redundant SR. Because the deleted surveillance is required elsewhere in the TS, this action does not involve a significant reduction in a margin of safety.

For these reasons, PCN-488 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.
NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 31, 1998, as supplemented by letters dated April 19 and August 18, 1999. The August 31, 1998, application was originally noticed in the **Federal Register** on October 21, 1998 (63 FR 56260).

Description of amendment request: The proposed amendments would revise Technical Specification 3/4.4.9.3 by revising the cold overpressure mitigation curve to accommodate the replacement steam generators and by adding two surveillances (for the centrifugal charging pumps and the emergency core cooling system accumulators) to ensure the operability of the cold overpressure mitigation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Reanalysis of STP [South Texas Project, Units 1 and 2] COMS [cold overpressure mitigation system] transients to consider design characteristics of Delta-94 RSGs [replacement steam generators] has shown that maximum allowable PORV [power-operated relief valve] setpoints decrease slightly, and continue to provide design basis low temperature overpressure protection with Delta-94 steam generators. This change request incorporates the new COMS curves into Technical Specification 3.4.9.3 (Figure 3.4-4). Maximum allowable PORV setpoints decrease with Delta-94 steam generators, and are conservative compared to Model E steam generator curves. Use of the new curves with either Model E or Delta-94 steam generators conforms to the STP design basis.

These changes are based on a reanalysis that accounts for Model Delta-94 design, a decision to make calculation[s] of COMS maximum allowable PORV setpoint consistent with current industry standards as represented by WCAP-14040, and addition of two surveillances to the Technical Specification to ensure operability of COMS. Moving maximum allowable PORV setpoints in the conservative direction and adding surveillances to reinforce standard operating practice have no adverse effect on the probability or consequences of an accident previously evaluated. Therefore, the

proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed PORV maximum allowable setpoint changes do not create any new operating conditions or modes, and the added surveillances have no effect except to ensure operation of COMS as designed. The slight change to the maximum allowable PORV setpoint curves for the Cold Overpressure Mitigation System accommodates Delta-94 steam generator design characteristics, and COMS continues to perform in accordance with existing requirements, which are sufficient to ensure plant safety is preserved.

The proposed change is the result of a reanalysis of a previously evaluated accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change reflects design characteristics of the new Delta-94 steam generators. The change to the COMS curves is in the conservative direction and does not affect any design failure point or system limitation. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036-5869.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 18, 1999.

Description of amendment request: The licensee proposed changing the Vermont Yankee Nuclear Power Station (VY) Technical Specifications by revising the reactor core spiral reloading pattern such that it begins around a source range monitor rather than from the center of the core. The offloading pattern would be the reverse sequence.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

VY has determined that the proposed change to reload the reactor core in a spiral pattern beginning around a Source Range Monitor (SRM) does not involve a significant increase in the probability or consequences of an accident previously evaluated. The design basis accident associated with refueling is the Refueling Accident; i.e., the accidental dropping of a fuel bundle onto the top of the core. There is no assumption as to the core loading pattern in the analysis of this accident. The analyzed abnormal operational transients associated with refueling are: (1) the Control Rod Removal Error During Refueling, and (2) the Fuel Assembly Insertion Error During Refueling. There is no assumption as to the core loading pattern in the analyses of these transients. The Fuel Assembly Insertion Error During Refueling transient involves mislocated and rotated fuel assembly loading errors. However, a change in the approved core loading pattern has no impact on the probability of mislocating or rotating a bundle while following that pattern. Furthermore, the proposed change implements a core loading pattern that provides improved flux monitoring as compared to the pattern prescribed by the current Technical Specifications. When loading the core in accordance with the proposed change, the SRM indication will be indicative of the true flux of the loaded fuel, as the creation of flux traps (moderator filled cavities surrounded on all sides by fuel) is precluded.

The SRMs and the core loading pattern are not initiators of any accident previously evaluated. As such, the subject changes cannot affect the probability of an accident previously evaluated. The core loading pattern is not assumed in the mitigation of any accident. Since the proposed change provides improved flux monitoring by the SRMs, operators will have more accurate indication and SRM automatic trip functions will actuate based on a more accurate indication of flux. As such, any event mitigation function provided by the SRMs is enhanced by this change. Therefore, the associated changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. VY proposes to change the core reloading and offloading patterns to start and stop, respectively, at an

SRM versus the geometric center of the core as prescribed by current Technical Specifications. This ensures that flux monitoring instrumentation is always OPERABLE in the fueled region of the vessel. There is no separation of the monitoring device from the fuel by cavities of water as is the case with the pattern prescribed by the current Technical Specifications. As such, flux monitoring is enhanced during core reloading and offloading. This change is conservative relative to the current requirements. Therefore, no new or different kinds of accidents are created.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

VY has determined that the proposed change does not involve a significant reduction in a margin of safety. Loading around the geometric center of the core as prescribed by the current Technical Specifications results in cells of moderator separating the fuel from the instrumentation monitoring its flux. This change requires the flux monitoring instrumentation to be in the fueled region, and, in so doing, provides for more accurate monitoring of core flux during core reloading and offloading. As such, the operators will have more accurate indication and SRM automatic trip functions will actuate when the actual flux reaches the trip setpoints. Therefore, this change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 18, 1999.

Description of amendment request: The licensee proposed changing the Vermont Yankee Nuclear Power Station (VY) technical specifications (TSs) by revising the definition of the "Surveillance Frequency" to incorporate provisions that apply upon the discovery of a missed TS surveillance. The provisions would allow 24 hours to perform the surveillance before the applicable limiting condition for operation is entered.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change does not result in any physical alteration of plant systems, structures or components; nor does the change modify the manner in which plant equipment will be operated or maintained. As a result, the proposed change does not affect any of the parameters or conditions that contribute to the initiation or mitigation of any accidents previously evaluated.

Surveillance frequencies are not assumed in the initiation of any analyzed event. Thus, conditions assumed in the plant accident analyses are unchanged. Furthermore, there is no relaxation of required setpoints or operating parameters.

Therefore, the probability or consequences of an accident previously evaluated are not significantly increased since the most likely outcome of performing a surveillance is that it does, in fact, demonstrate the system or component is operable. VY has, therefore, determined that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not modify the physical plant or the modes of plant operation. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. These changes to Technical Specifications do not create any new or different kind of accident since they do not involve any change to the plant or the manner in which it is operated.

Therefore, VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously [evaluated].

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not affect design margins or assumptions used in accident analyses. The capability of safety systems to function and limiting safety system settings are similarly unaffected as a result of this change.

The increased time allowed (up to 24 hours) for the performance of a surveillance discovered to have not been performed, is acceptable based on the small probability of an event requiring the associated component. The requested allowance will provide sufficient time to perform the missed surveillance in an orderly manner. Without

the 24 hour delay, it is possible that the missed surveillance would force a plant shutdown; thus, the plant could be shutting down while the missed surveillance is being performed. As a result of this delay, the potential for human error will be reduced. Consequently, there is no significant reduction in a margin of safety as overall plant safety is enhanced due to the avoidance of unnecessary plant shutdowns.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: August 4, 1999.

Description of amendment request: The proposed changes to North Anna Power Station (NAPS) Units 1 and 2 Technical Specification (TS) 4.4.1.6.1 and associated Bases will extend the drained reactor coolant loop verification time (verified as drained) from two hours to four hours prior to backfilling when returning the drained loop to service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

Administrative procedures ensure that the initiation of seal injection in order to establish a partial vacuum in an isolated and drained loop will not create the potential for an inadvertent and undetected introduction of under-borated water into an isolated loop prior to returning the isolated loop to service. Additionally, extension of the drained loop verification time from two hours to four hours prior to backfill operations will not significantly diminish confidence that the isolated and drained loop will, in fact, be drained at the time the back-fill evolution is initiated. Therefore, there is no measurable increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no modifications to the plant as a result of the changes. No new accident or event initiators are created by the initiation of seal injection in order to establish a partial vacuum in an isolated and drained loop, and by the extension of the drained loop verification time requirement from two hours to four hours prior to backfill operations. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Does the change involve a significant reduction in the margin of safety.

The proposed changes have no effect on the safety analyses assumptions. Changes acknowledge the establishment of seal injection for the Reactor Coolant Pump in the isolated and drained loop as a prerequisite for the vacuum-assisted back-fill technique and extends the drained-loop verification time from two hours to four hours prior to backfill operations. The two hour interval was established to ensure that the drained loop is verified to be drained at a point in time sufficiently close to the initiation of the back-fill evolution such that no intervening event could occur that would render the loop no longer drained. Relaxation of the drained loop verification time from two hours to four hours will not significantly diminish confidence that the isolated and drained loop will be drained at the time the back-fill evolution is initiated. Therefore, the proposed changes do not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: April 28, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Section 3.4.A.4 and Table 4.1-2B for Units 1 and 2. The proposed changes would reduce the minimum volume requirement for the refueling water chemical addition tank (CAT) to provide additional operating margin, and also

correct administrative format errors in Table 4.1-2B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability or the consequences of an accident previously evaluated are not increased. When the revised Safety Analysis Limit minimum CAT volume of 3800 gallons was implemented, consideration was given to the effects of the proposed reduced CAT volume on containment integrity analyses, containment spray and post-LOCA sump pH analyses, and the post-LOCA recirculation switchover time interval specified in Emergency Operating Procedures. The change was determined to be acceptable as accident analyses assumptions would continue to be met. The proposed TS minimum CAT volume (3930 gallons) includes an allowance for the CAT level Channel Statistical Allowance (CSA), so that the safety analysis limit CAT volume (3800 gallons) will not be violated when the measured CAT volume (i.e., tank level) is at or above the TS minimum CAT volume limit. The proposed reduction in the TS minimum CAT volume has no bearing on the probability of occurrence of any accident previously evaluated, since neither the volume nor the sodium hydroxide inventory of the CAT have any bearing on postulated accident initiators. Furthermore, because the affected accident analyses have been evaluated and found to meet their acceptance criteria with the reduced safety analysis limit CAT volume, the consequences of an accident previously evaluated is not increased.

Criterion 2—Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a new or different kind of accident than any accident previously evaluated is not created. The proposed reduction in the TS minimum CAT volume does not involve any alterations to the physical plant that would introduce any new or unique operational modes or accident precursors. Only the TS minimum CAT volume is being changed to establish an operationally feasible alarm setpoint to provide the operators additional flexibility in maintaining the required CAT volume.

Criterion 3—Does not involve a significant reduction in a margin of safety.

The margin of safety is not reduced. It was determined that the affected safety analyses continue to meet their respective acceptance criteria with the revised minimum CAT volume. By implementing the proposed change in the TS minimum CAT volume, a CAT level alarm setpoint may be established which includes a conservative allowance for level measurement uncertainty such that neither the proposed TS minimum CAT volume nor the Safety Analysis Limit CAT volume will be violated at the time a CAT

level alarm is received. Therefore, it is concluded that the proposed change will not reduce the margin of safety.

This analysis demonstrates that the proposed amendment to the Surry Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 29, 1998, as supplemented by letter dated July 29, 1999. The December 29, 1998, amendment application was previously noticed in the **Federal Register** on February 24, 1999 (64 FR 9023).

Description of amendment request: The amendment would revise Section 5.6.6, "Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR)," of the improved Technical Specifications (TSs), that were issued in Amendment 123 on March 31, 1999. The amendment would (1) add the phrase "and Cold Overpressure Mitigation System" to the first sentence of item 5.6.6.b that identifies the limits that can be determined by the licensee in the PTLR, and (2) replace the current list of documents listed in item 5.6.6.b by the NRC letter that will approve this amendment and the Westinghouse report, WCAP-14040-NP-A, "Methodology Used to Develop Cold Overpressure Mitigation System Setpoints and RCS Heatup and Cooldown Limit Curves," dated January 1996. WCAP-14040-NP-A is the NRC-approved topical report that provides a methodology for developing the cold overpressure mitigation system (COMS) setpoints and RCS heatup and cooldown limit curves for Westinghouse plants,

such as Wolf Creek Generating Station (WCGS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Incorporating the revised heatup and cooldown pressure/temperature limit curves and the COMS PORV setpoint limit curve into the WCGS Technical Specifications does not affect the probability or consequences of an accident previously evaluated.

The revised limit curves are calculated using the most limiting RT_{NDT} for the reactor vessel components and include a radiation-induced shift corresponding to the end of the period for which the curves are generated. The COMS PORV Setpoint Limit Curve is calculated using the most limiting mass injection transient, taking into account operation of the NCP [normal charging pump] during shutdown modes. The changes do not affect the basis, initiating events, chronology, or availability/operability of safety related equipment required to mitigate transients and accidents analyzed for WCGS.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Adopting the revised limit curves redefines the range of acceptable operation for the Reactor Coolant System. This redefinition is a result of the analysis of reactor vessel surveillance specimens removed from the reactor in a continuing surveillance program which monitors the effects of neutron irradiation on the WCGS reactor vessel materials under actual operating conditions. Included in the revised limit curves is consideration for NCP operation during shutdown modes. Incorporating these revised curves does not create the possibility of an accident of a different type from any previously evaluated for WCGS.

3. The proposed change does not involve a significant reduction in a margin of safety.

The revision of these limit curves continues to maintain the margin of safety required for prevention of non-ductile failure of the WCGS reactor vessel during low temperature operation as required by 10 CFR 50, Appendices G and H. The revised curves primarily affect RCS operation below 350°F by limiting the available pressure/temperature window for heatup and cooldown. The revised limit curves compensate for the in-service radiation induced embrittlement of the reactor vessel and accounts for the requirement that the closure flange region temperature must exceed the nil-ductility temperature by at least 120°F when pressure exceeds 20% of the preservice hydrostatic test pressure.

The revised COMS PORV Setpoint Limit Curve, which includes consideration of NCP operation during shutdown modes, ensures

overpressure protection of the RCS and reactor vessel.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: August 6, 1999.

Brief description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) contained in Appendix A to the Operating Licenses to incorporate a note into the TSs which will permit a one-time exemption, until September 30, 1999, from the 90°F limit stated in Surveillance Requirement (SR) 3.7.2.2. This SR currently requires that the average water temperature of the normal heat sink be less than or equal to 90°F as demonstrated on a 24-hour frequency. As stated in the proposed TS note, during the time period between

approval and September 30, 1999, the average water temperature of the normal heat sink will be limited to less than or equal to 92°F.

Date of publication of individual notice in Federal Register: August 13, 1999 (64 FR 44243).

Expiration date of individual notice: 14 days for comments, August 27, 1999; 30 days for hearing, September 13, 1999.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: July 30, 1999.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.8, "Ultimate Heat Sink (UHS)," to permit a 72-hour delay in the UHS temperature restoration period prior to entering the plant shutdown required actions. This TS amendment is given as a temporary amendment change effective until September 30, 1999, after which the TS will revert back to the original TS provisions.

Date of issuance: August 24, 1999.

Effective date: August 24, 1999.

Amendment No.: 184.

Facility Operating License No. DPR-23: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 43406 dated August 10, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 8, 1999, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated August 24, 1999.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 25, 1999.

Brief description of amendments: The amendments revise various parts of the Technical Specifications (Appendix A of the Catawba operating licenses) to identify that the Trip Setpoints for the reactor trip system and engineered safety feature actuation system instrumentation are in reality Nominal Trip Setpoints.

Date of issuance: August 13, 1999.

Effective date: As of the date of issuance and shall be implemented

within 45 days from the date of issuance.

Amendment Nos.: 179—Unit 1; 171—Unit 2.

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 5, 1999 (64 FR 24195).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

Location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: June 18, 1996, as supplemented December 12, 1997, February 23, June 15, and July 15, 1999; and by separate application dated October 22, 1997, as supplemented February 23, June 28, and July 15, 1999.

Brief description of amendment: This amendment implements: (1) voltage-based repair criteria for BVPS-2 steam generator tubes similar to the changes approved for BVPS-1 in License Amendment No. 198. The changes revise BVPS-2 technical specifications (TSs) 4.4.5 and 3.4.6.2 and associated Bases to reflect the guidance provided in the Nuclear Regulatory Commission's (NRC) Generic Letter 95-05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking," (GL 95-05). Additionally, BVPS-2 TS Table 4.4-2 is revised to reference TS 6.6 for reporting requirements. (2) reduced reactor coolant system (RCS) specific activity limits in accordance with the NRC's guidance provided in GL 95-05. The definition of Dose Equivalent I-131 is replaced with the Improved Standard TS definition in the first sentence, and an equation is added based on dose conversion derived from the International Commission on Radiation Protection (ICRP) ICRP-30. TS 3.4.8, Specific Activity, is revised by reducing the Dose Equivalent I-131 limit from 1.0 [micro] Ci [curies]/gram to 0.35 [micro] Ci [curies]/gram for the 48-hour limit and from 60 [micro] Ci [curies]/gram to 21 [micro] Ci [curies]/gram for the maximum instantaneous limit. Item 4.a in TS Table 4.4-12, Primary Coolant Specific Activity Sample and Analysis Program; TS Figure 3.4-1, and the Bases for TS 3/4.4.8 are also modified to

reflect the reduced Dose Equivalent I-131 limit.

The February 23, 1999, letter provided a revised control room dose calculation in support of both the June 18, 1996, and October 22, 1997, amendment requests. Importantly, this calculation assumed the lower allowable primary-to-secondary leak rate limit associated with the June 18, 1996, submittal, and the reduced RCS specific activity limits associated with the October 22, 1997, submittal. Because of this interdependence, the changes of the first amendment request must be implemented concurrently with those of the second in order for the supporting analysis to remain valid. Hence, both of these license amendment requests have been combined into this single amendment.

Date of issuance: August 18, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 101.

Facility Operating License No. NPF-73: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 18, 1998 (63 FR 64109) and March 25, 1998 (63 FR 14485). The December 12, 1997, February 23, June 15, June 28, and July 15, 1999, letters provided additional information but did not change the initial proposed no significant hazards consideration determinations or expand the amendment requests beyond the scope of the **Federal Register** notices.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: November 24, 1998, as supplemented by letters dated February 25 and July 14, 1999.

Brief description of amendments: The amendments revise the administrative sections of the Technical Specifications to reflect the approved consolidated quality assurance program, clarify the responsibilities of the shift technical advisor position on shift, simplify the contents of the monthly operating report description, complete the relocation of the fire protection requirements from

the Technical Specifications, and replace selected position titles with descriptions of functional responsibility.

Date of issuance: August 26, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 198 and 209.

Facility Operating License Nos. DPR-51 and NPF-6: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 27, 1999 (64 FR 4156).

The February 25 and July 14, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: November 22, 1998.

Brief description of amendment: This amendment revises the reactor thermal margin safety limit lines and flow rates stated in the St. Lucie, Unit 1, technical specifications (TS). The amendment also updates the reference for dose conversion factors used in Dose Equivalent Iodine-131 calculations, makes administrative changes to the criticality analysis uncertainty described in TS 5.6.1.a.1, updates the analytical methods used in determining core operating limits listed in TS 6.9.1.11, and revises the TS Bases for the steam generator pressure-low trip setpoint.

Date of Issuance: August 18, 1999.

Effective Date: August 18, 1999.

Amendment No.: 163.

Facility Operating License No. NPF-16: Amendment revised the TS.

Date of initial notice in Federal Register: February 10, 1999 (64 FR 6696).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 30, 1998, as supplemented December 31, 1998, and May 12, 1999.

Brief description of amendment: The amendment approves changes to the Improved Technical Specifications to reflect the use of Topical Report BAW-2421 for fluence determination and changes to the low temperature over-pressure protection limits. Changes to the CR-3 Pressure/Temperature Limits Report to reflect plant operation to 32 Effective Full Power Years were included in the submittal.

Date of issuance: August 12, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing Cycle 12 operation.

Amendment No.: 183.

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 30, 1998 (63 FR 71965). The supplemental letters dated December 31, 1998, and May 12, 1999, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 30, 1998.

Brief description of amendment: The Amendment revises Technical Specifications (TS) to allow both doors of the containment personnel air lock to be open during fuel movement and adds a provision for an outage equipment hatch.

Date of issuance: August 16, 1999.

Effective date: August 16, 1999.

Amendment No.: 184.

Facility Operating License No. DPR-31: Amendment revised the TS.

Date of initial notice in Federal Register: January 27, 1999 (64 FR 4157).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated August 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: July 30, 1998, as supplemented April 8 and July 8, 1999.

Brief description of amendment: Revises Technical Specifications for the Control Room Emergency Ventilation System and the Ventilation Filter Test Program.

Date of issuance: August 23, 1999.

Effective date: August 23, 1999.

Amendment No.: 185.

Facility Operating License No. DPR-31: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 18, 1998 (63 FR 64115). The April 8 and July 8, 1999, supplements did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

GPU Nuclear, Inc., et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: December 3, 1998, as supplemented by letters dated March 26, April 16, May 7, May 21, June 4, June 15, and June 29, 1999.

Brief description of amendment: The amendment revises the Technical Specification Figure 2.1-1 "Core Protection Safety Limit," and Figure 2.1-3 "Core Protection Safety Bases" to reflect a decrease in reactor coolant system flow resulting from a revised analysis to allow operation of the TMI-1 facility with an average of 20 percent of the steam generator tubes plugged, and no more than 25 percent plugged in either generator.

Date of issuance: August 19, 1999.

Effective date: As of the date of demonstration of a satisfactory emergency feedwater pump flow test, as described in the license amendment and documented by the licensee, to be

performed during the 13R refueling outage scheduled to begin September 10, 1999, and shall be implemented within 30 days of that date.

Amendment No.: 214.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 30, 1998 (63 FR 71967). The supplements dated March 26, April 16, May 7, May 21, June 4, June 15, and June 29, 1999, are within the scope of the original notice and do not change the proposed no significant hazards consideration finding.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

GPU Nuclear, Inc., et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: February 2, 1999 as supplemented July 29, 1999.

Brief description of amendment: The amendment expands the scope of systems and test requirements for post-accident reactor building sump recirculation engineered safeguards features systems and increases the maximum allowable leakage of TS 4.5.4 from 0.6 gallons per hour (gph) to 15.0 gph.

Date of issuance: August 24, 1999.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 215.

Facility Operating License No. DPR-50. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 24, 1999 (64 FR 14283).

The supplemental letter did not change the initial no significant hazards consideration determination or the **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Northeast Nuclear Energy Company, et al., Docket Nos. 50-336 and 50-423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: March 5, 1999.

Brief description of amendment: The amendments relocate certain Technical Specifications (TSs) Section 6.0 administrative controls to the NRC-approved Northeast Utilities Quality Assurance Program (NUQAP) Topical Report. Specifically, Sections 6.2.3 (Unit 3 only), 6.5, 6.6 (partial), 6.7 (partial), and 6.10. The amendments also delete parts of Section 6.6 and 6.7 because their requirements are duplicated in existing regulations or elsewhere in the TSs. In addition, the amendments modify the table of contents and other TS sections to incorporate the aforementioned changes (e.g., correct references).

Date of issuance: August 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 239 and 173.

Facility Operating License Nos. DPR-65 and NPF-49: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 7, 1999 (64 FR 17027).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 12, 1999, as supplemented July 8, 1999. The July 8, 1999, letter provided clarifying information and did not change the original no significant hazards consideration determination.

Brief description of amendments: Administrative changes to correct typographical and editorial errors in Technical Specifications introduced in previous amendments.

Date of issuance: August 23, 1999.

Effective date: This license amendment is effective as of its date of issuance. The amendment will be implemented within 30 days.

Amendments Nos.: 228 and 231.

Date of initial notice in Federal Register: May 5, 1999 (64 FR 24200).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

PP&L, Inc., Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 20, 1998, as supplemented by letter dated June 25, 1998.

Brief description of amendments: These amendments modified technical specification surveillance requirement, 3.8.1.4, to allow increases in the minimum fuel oil required to be stored in the day tanks for emergency diesel generators.

Date of issuance: August 23, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 185 and 159.

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 27, 1999 (64 FR 4159).

The supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 19, 1997, as supplemented June 1, 1998, and May 13, 1999.

Brief description of amendments: The amendments revise TS 3.4.9, Pressurizer, to reduce the allowable pressurizer water volume for pressurizer operability. The allowable water volume is also revised to a percent pressurizer level of 57 percent.

Date of issuance: August 19, 1999.

Effective date: August 19, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—155; Unit 3—146.

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 25, 1998 (63 FR 14488).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: September 4, 1998, as supplemented December 8, 1998, and February 16, 1999 (PCN 493).

Brief description of amendments: The amendments revise Technical Specification 3.4.10, Pressurizer Safety Valves, to increase the as-found pressurizer safety valve setpoint tolerances.

Date of issuance: August 19, 1999.

Effective date: August 19, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—156; Unit 3—147.

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 10, 1999 (64 FR 6711). The licensee's letters dated December 8, 1998, and February 16, 1999, provided clarifications and additional information that were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern Nuclear Operating Company, Inc., Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama.

Date of amendment request: April 23, 1999, as supplemented by letters dated July 22, July 30 and August 12, 1999.

Brief Description of amendment: The amendment adds an additional condition to the license which allows Southern Nuclear Operating Company to operate Unit 1 for Cycle 16 based on a risk-informed approach to evaluate steam generator tube structural integrity.

Date of issuance: August 17, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 143.

Facility Operating License No. NPF-2: Amendment revises the Facility Operating License to add a license condition.

Date of initial notice in Federal Register: June 16, 1999 (64 FR 32291).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: March 22, 1999, as supplemented July 15, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.7.1.6, "Atmospheric Steam Relief Valves," and added a new Technical Specification for atmospheric steam relief valve instrumentation, to ensure that the automatic feature of the steam generator power-operated relief valves (i.e., the atmospheric steam relief valves) remains operable during Modes 1 and 2.

Date of issuance: August 19, 1999.

Effective date: August 19, 1999, to be implemented within 30 days.

Amendment Nos.: Unit 1—114; Unit 2—102.

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 21, 1999 (64 FR 19565).

The July 15, 1999, supplement provided revised Technical Specification pages and clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Tennessee Valley Authority, Docket Nos. 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendment: June 3, 1999 (TS 397).

Brief description of amendment: The Amendments change the Technical Specifications (TS) by reducing the Allowable Value used for Reactor Vessel Water Level—Low, Level 3 for several instrument functions.

Date of issuance: August 16, 1999.

Effective date: August 16, 1999.

Amendment Nos.: 260 and 219.

Facility Operating License Nos. DPR-52 and DPR-68: Amendments revise the TS.

Date of initial notice in Federal Register: July 14, 1999 (64 FR 38037).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 16, 1999, as supplemented June 9, 1999.

Brief description of amendment: The amendment clarifies the inservice inspection requirements regarding the granting of relief from the American Society of Mechanical Engineers (ASME) Code requirements by the NRC. The amendment also made changes to reflect previous NRC approval of the use of ASME Code Case N-560.

Date of Issuance: August 13, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 172.

Facility Operating License No. DPR–28. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 14, 1999 (64 FR 38037).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 24, 1999.

Brief description of amendment: The amendment clarifies the basis for the reactor protection system bypass of the turbine stop valve closure and turbine control valve fast closure scram signals at low power. The amendment clarifies that the analytical basis for this bypass corresponds to a fraction of reactor rated thermal power and not other measures of power, for instance, turbine power.

Date of Issuance: August 13, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 173.

Facility Operating License No. DPR–28.: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 14, 1999 (64 FR 38038).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 1st day of September 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23300 Filed 9–7–99; 8:45 am]

BILLING CODE 7590–01–P

ACTION: Notice of alterations to Privacy Act system of records.

SUMMARY: The Commission proposes to amend its system of records.

The proposed changes will update the system and ensure consistency with the Privacy Act of 1974, as amended.

DATES: See **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Send comments to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The Postal Rate Commission gives notice, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), of its systems of records and their routine uses, which have changed since the Commission's last publication of a notice. The Commission is also proposing revisions in its rules implementing the Privacy Act, contained in 39 CFR part 3003, to clarify their application and to shorten and simplify their language. These changes will also be published in the **Federal Register**.

PRC–1. To date, the Commission's sole system of records for Privacy Act purposes has been PRC–1, named *Official Personnel Files*. This system consists of information pertaining to Commission personnel generally. However, it does not explicitly include all related records maintained by the Commission, such as information regarding travel by Commission personnel on official business. In order to indicate clearly that all such information is included in the system, the Commission is replacing the previously-described PRC–1 with a more comprehensive system extending to all personnel, pay, leave and travel records. This new system, to be named *Personnel, Pay, Leave, and Travel*, will continue to be designated PRC–1. This system is described in the first section of Appendix A to Order No. 1256.

The Commission is also revising its statement of the routine uses of records contained in PRC–1. Two previously published routine uses are being abolished because they have not occurred in actual practice, and thus are apparently unnecessary. Other routine uses have been reworded, either to accommodate expansions in the use of records made by the Commission or the Postal Service, or to conform with language recommended by the Office of Management and Budget (OMB). The

two pre-existing routine uses that encompass litigation-related disclosures have been combined into a single category.

The system notice also contains new routine uses either required by law or which the Commission anticipates may be necessary in the performance of agency business. These include disclosure of information to the National Archives and Records Administration, to agency contractors, and to the OMB for potential private relief legislation. One of these new routine uses reflects the requirement that federal agencies report wage information quarterly to the Parent Locator Service, as prescribed by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act.

The system notice does not contain a routine use for any computer matching activities that might be performed on records contained in PRC–1, as the Commission has not performed such matching activities in the past, and does not intend to do so in the future. However, the Commission provides payroll records to the Postal Service for routine processing, and it is possible that the Postal Service might use information about Commission personnel in a computer matching activity. In order to fulfill its statutory obligations regarding potential matching activities, particularly under the Computer Matching and Privacy Protection Amendments of 1998 (Pub.L. 100–508), the Commission is transmitting a notice informing the Postal Service of its policy that use of employee records for computer matching may be conducted only with express Commission approval, and requesting the Postal Service to exclude Commission employees from any matching activities it otherwise conducts.

PRC–2. As noted above, the revised PRC–1 will incorporate all Commission records pertaining to its employees. Virtually all other information in the Commission's possession concerning individuals occurs in the pleadings and other filings submitted by participants in the Commission's postal rate, mail classification, and other official public proceedings. Note: The Commission maintains a short press list containing the names, affiliations, addresses, and telephone numbers of reporters in their professional capacity. In the Commission's view, this list does not qualify as a system of records for Privacy Act purposes. Various Commission offices also maintain correspondence files that may contain some information about individuals in

POSTAL RATE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Postal Rate Commission.

some instances. However, correspondence in these files is not routinely filed or retrieved by personal identifier, and consequently none of them constitutes a system of records in the Commission's view. In order to provide public notice of the existence of information about individuals in this principal substantive record-keeping system, the Commission proposes to establish another system of records, to be designated PRC-2.

As the notice (which also appears as Appendix A to Order No. 1256) states, this system contains names, addresses, and contact information for anyone who intervenes in a Commission proceeding, together with all filings, answers, exhibits and other submissions provided to the Commission. Because all these materials are public records under the terms of 39 CFR 3001.42(b), the system notice states under the "Routine Uses" heading that all records in this system are public and will be disclosed to any person upon request.

Order 1256. The information contained in this notice was distributed to the Docket No. R97-1 service list as part of Order No. 1256 (issued July 7, 1999). Paragraph No. 1 of Order No. 1256 invited interested persons to submit comments on the proposed revisions the system of records no later than August 23, 1999. Ordering paragraph No. 2 directed the Secretary of the Commission to arrange for publication of a Notice and Order in the **Federal Register** in a manner consistent with applicable requirements. Given the delay in publication, persons who did not comment by the date set out in Order No. 1256, but who nevertheless wish to comment, should contact the Secretary at 202-789-6840 for further information. The Commission anticipates providing further information regarding an effective date in a subsequent notice.

Dated: September 1, 1999.

Margaret P. Crenshaw,
Secretary.

PRC-1

SYSTEM NAME:

Personnel, Pay, Leave, and Travel.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1333 H Street NW., Suite 300,
Washington, DC 20268-0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to personnel, pay, leave, and travel. This includes: Name; date of birth; social security number; home address; grade; salary; time and attendance; alternate work schedules; biographical information; leave accrual rate, usage, and balances; training; Civil Service Retirement and Federal Employees' Retirement System contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employees' Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bonds allotments; travel expenses; parking permits; carpools; building security records; employee locator; and information on the fare subsidy program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 3603, 44 U.S.C. 3101, 5 U.S.C. ch. 57 (relating to travel, transportation, and subsistence), together with any amendments.

PURPOSE(S):

These records are used to administer pay, leave, travel, parking, fare subsidies, and other administrative functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A. Disclosure to the U.S. Postal Service

The U.S. Postal Service handles payroll and other disbursements on behalf of the Postal Rate Commission. As a result, records related to payroll functions, travel, and other disbursements are disclosed as a routine use to the U.S. Postal Service. The records from the Commission are incorporated into Privacy Act systems of records maintained by the U.S. Postal Service and are routinely disclosed for purposes defined in those systems of records. The main systems of records at the U.S. Postal Service are Finance Records—Payroll System (USPS 050.020), and Finance Records—Employee Travel Records (USPS 050.010).

B. Disclosure for Law Enforcement Purposes

Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil

or criminal law or regulation within the jurisdiction of the receiving entity.

C. Disclosure Incident to Requesting Information

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

D. Disclosure to Requesting Agency

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other authority may then make a request supported by the written consent of the individual for the record if it chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to the authority or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

E. Disclosure to Office of Management and Budget

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

F. Disclosure to Congressional Offices

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

G. Disclosure During Litigation

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Postal Rate Commission is authorized to appear, when:

1. The Commission, or any component thereof; or
2. Any employee of the Commission in his or her official capacity; or

3. Any employee of the Commission in his or her individual capacity where the Department of Justice or the Commission has agreed to represent the employee; or

4. The United States, when the Commission determines that litigation is likely to affect the Commission or any of its components is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Commission is deemed by the Commission to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

H. Disclosure to the National Archives

Information may be disclosed to the National Archives and Records Administration in records management inspections.

I. Disclosure to Contractors, Grantees, and Others

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Postal Rate Commission and who need the information in the performance of their duties or activities for the Commission. If appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

J. Disclosures for Administrative Claims, Complaints and Appeals

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

K. Disclosure to the Office of Personnel Management

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to

that agency's responsibility for evaluation and oversight of Federal personnel management.

L. Disclosure in Connection with Litigation

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Postal Rate Commission, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

M. Disclosure for Child Support Enforcement

The name, Social Security Number, home address, date of birth, date of hire, quarterly earnings, employer identifying information, and State of hire for each employee may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104-193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information from this system of records may be disclosed to a consumer reporting agency as provided in 31 U.S.C. 3711.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper, in folders, in file cabinets, and on the Postal Rate Commission's computer network.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or other identification number.

SAFEGUARDS:

Records are maintained in locked file cabinets or combination safes and on computers and computer networks that use password protections and other system controls to prevent unauthorized access by Postal Rate Commission staff. Firewalls prevent access to internal Commission documents by outsiders. All records and computer facilities are

maintained in Commission offices, and public access to Commission offices is controlled.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time, in accordance with NARA General Records Schedules 2 (pay and leave) and 9 (travel).

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Officer, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001.

NOTIFICATION PROCEDURE:

RECORD ACCESS PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

CONTESTING RECORD PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from: the subject of the record; employment applications, references, and other employment-related sources; the official personnel file from the Office of Personnel Management; and internal Postal Rate Commission documents, including time and attendance records, leave slips, travel requests, performance evaluations, training records, and similar internal documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PRC-2

SYSTEM NAME:

Docket Room Records (PRC-2).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1333 H Street NW, Suite 300, Washington, DC 20268-0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who intervene in Postal Rate Commission proceedings and individuals whose name and other identifying information appears in records filed in connection with Postal Rate Commission proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains names, addresses, and contact information for anyone who intervenes in a proceeding before the Postal Rate Commission; submissions, filings, answers, exhibits, and any other record provided to the Commission and made public under Commission rule 3001.42(b).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 3603.

PURPOSE:

These records are used under the Postal Rate Commission's rules and procedures in Commission proceedings, decisions, opinions, and other activities authorized by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All records in this system are public and will be disclosed to any person upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in paper, in folders, in file cabinets, and on the Postal Rate Commission's computer network.

RETRIEVABILITY:

Records may be retrieved by name or docket number.

SAFEGUARDS:

Records are maintained in the Postal Rate Commission's Docket Room, on computer networks, and on the Commission website. All records and computer facilities are maintained in Commission offices, and public access to Commission offices is controlled.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with approved record schedules. Most records pertaining to Commission decisions are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Officer, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001.

NOTIFICATION PROCEDURE:**RECORD ACCESS PROCEDURES:**

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

CONTESTING RECORD PROCEDURE:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from intervenors in Postal Rate Commission proceedings and from Commission staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-23303 Filed 9-7-99; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION**Proposed Collection; Comment Request**

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 40-F, SEC File No. 270-335;

OMB Control No. 3235-0381

Schedule 13E-4, SEC File No. 270-

190; OMB Control No. 3235-0203

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form 40-F is used by certain Canadian issuers to register securities pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act. The information required under cover of Form 40-F can be used by security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others in evaluating securities and making investment decisions with respect to securities of certain Canadian companies. Form 40-F takes approximately 2 hours to prepare and is filed by an estimated 100 respondents for a total annual response of 200 burden hours. It is estimated that 25% (50 hours) of the 200 hours would be prepared by the company.

Schedule 13E-4 is filed pursuant to Section 13(e)(1) of the Exchange Act by issuers conducting a tender offer. This information is needed to provide full and fair disclosure to the investing public. Schedule 13E-4 takes approximately 232 hours to prepare and is filed by an estimated 121 respondents annual for a total of 28,072 burden hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: August 26, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99-23236 Filed 9-7-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27071]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

August 31, 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 application(s) and/or declaration(s)

should submit their views in writing by September 27, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 or facts of 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 September 27, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation (70-9521)

SCANA Corporation ("SCANA"), 1426 Main Street, Columbia, South Carolina 29201, a South Carolina public utility holding company exempt from registration under section 3(a)(1) of the Act, has filed an application under sections 5, 9(a)(2), 10, and 11 of the Act.

SCANA proposes to acquire, by means of the transactions described below, Public Service Company of North Carolina, Incorporated ("PSNC"), a North Carolina corporation and gas public-utility company. PSNC would become a wholly owned subsidiary company of SCANA and the third public utility company, within the meaning of the Act, owned by SCANA. Following its acquisition of PSNC, SCANA would register under section 5 of the Act.

SCANA, PSNC, and their respective subsidiaries have also filed in File No. 70-9533 an application-declaration related to financing SCANA's proposed registered holding company system and the establishment of a service company for that system. A notice of that filing is being issued simultaneously with this notice.

SCANA is engaged primarily in providing electric and gas service to customers in South Carolina. SCANA's two current public utility company subsidiaries are South Carolina Electric and Gas Company ("SCE&G") and South Carolina Generating Company, Inc. ("GENCO"). SCE&G generates and sells electricity to wholesale and retail customers, and purchases, sells, and transports natural gas at retail. SCE&G also provides public transit service in Columbia, South Carolina. GENCO owns and operates the Williams Station generating facility and sells electricity solely to SCE&G. As of December 31, 1998, SCANA provided electric utility service to 517,447 customers and gas utility service to 256,842 customers. As

of February 26, 1999, 103,572,623 shares of SCANA common stock, no par value, were issued and outstanding. SCANA's principal executive office is located in Columbia, South Carolina.

SCANA has thirteen direct, wholly owned, nonutility subsidiary companies that engage in a wide range of energy and telecommunications-related services. For the year ended December 31, 1998, SCANA had total assets of \$5.281 billion, net utility assets of \$3.787 billion, total operating revenues of \$1.632 billion, and net income of \$115 million. SCANA neither owns nor operates any physical properties. As of December 31, 1998 SCANA employed, in conjunction with its subsidiaries, a total of 4,697 full-time employees.

PSNC is a public utility company franchised to serve a 31-county area in North Carolina. It transports, distributes, and sells natural gas to approximately 340,000 residential, commercial, and industrial customers in 95 cities in North Carolina. In connection with its natural gas distribution business, PSNC promotes, sells, and installs both new and replacement natural gas appliances and equipment. PSNC has seven partially or wholly owned nonutility subsidiaries that engage primarily in energy-related activities.

For the fiscal year ended September 30, 1998, 20,274,332 shares of PSNC common stock, \$1 par value, were outstanding, and PSNC had total assets of \$618,753,000, operating revenues of \$330,672,000, and net income of \$24,837,000. As of May 11, 1999 it had approximately 1,000 employees. PSNC owns 750 miles of transmission pipelines, 6,727 miles of distribution mains, and ownership and leasehold interests in various buildings used in connection with its operations.

Under an Amended and Restated Agreement and Plan of Merger ("Merger Agreement"), dated as of February 16, 1999 and amended and restated as of May 10, 1999 by and among PSNC, SCANA, New Sub I, Inc. ("New Sub I")¹ and New Sub II, Inc. ("New Sub II"),² New Sub I will be merged with and into SCANA, with SCANA as the surviving

¹ New Sub I will be incorporated under the laws of South Carolina prior to the consummation of the First Merger and will be a wholly owned subsidiary of SCANA. SCANA states that at no time will New Sub I have any operations other than the activities contemplated by the Merger Agreement as necessary to merge New Sub I with and into SCANA.

² New Sub II will be incorporated under the laws of South Carolina prior to the consummation of the Preferred Second Merger and will be a wholly owned subsidiary of SCANA. SCANA states that at no time will New Sub II have any operations other than the activities contemplated by the Merger Agreement as necessary to merge PSNC with and into New Sub II.

corporation ("First Merger"). PSNC will be merged with and into New Sub II, with New Sub II as the surviving corporation ("Preferred Second Merger" and, together with the First Merger, "Mergers").³ As a result of the Preferred Second Merger, PSNC will become a wholly owned subsidiary company of SCANA.

The terms of the First Merger provide holders of SCANA common stock with an opportunity to exchange their shares for a specified cash payment. In the First Merger, each share of SCANA common stock outstanding immediately prior to that merger's effective time will be converted into the right to receive either (i) \$30 in cash or (ii) one share of SCANA common stock. This provision is subject to a requirement that SCANA pay \$700 million in total cash as consideration in the Mergers. If the First Merger occurs, it will be consummated prior to the consummation of the Preferred Second Merger. The First Merger will not involve the acquisition of any securities of a public utility company, and SCANA does not seek any Commission approvals in connection with the First Merger.

The terms of the Preferred Second Merger provide holders of PSNC common stock with an opportunity to exchange their shares for a specified sum of cash, shares of SCANA common stock, or a combination of each. Immediately prior to the effective time of the Preferred Second Merger, each share of PSNC common stock then outstanding will be converted into the right to receive (1) \$33.00 in cash, subject to the limitation that no more than 50% of the aggregate consideration to be paid to PSNC shareholders be in cash, (2) a number of shares of SCANA common stock determined according to a formula described below, or (3) a combination of cash and shares of SCANA common stock. The ratio by which PSNC shares will be exchanged for SCANA shares will be established immediately prior to the Preferred Second Merger and will be based upon the average market price of SCANA common stock over the preceding 20 trading day period. This ratio is subject to the limitation that PSNC shareholders will receive no more than 1.45 and no less than 1.02 shares of SCANA

³ The Merger Agreement also provides that, in the event it is not possible to consummate the Preferred Second Merger, the parties would, subject to certain conditions, carry out an "alternative merger" transaction in which PSNC would be merged directly into SCANA's existing public utility subsidiary, SCE&G. The request for approval made in SCANA's application concerns only the Preferred Second Merger.

common stock for each share of PSNC common stock.

The Preferred Second Merger will be accounted for under the purchase method of accounting, in accordance with Generally Accepted Accounting Principles. As a regulated utility, the assets and liabilities of the acquired company, PSNC, will not be revalued to estimates of fair value, but will be maintained at their recorded amounts. If the Mergers are consummated, SCANA's financial statements will reflect effects of transaction adjustments only from the time Preferred Second Merger is effective. The First Merger will be treated as a reorganization with no change in the recorded amount of SCANA's assets and liabilities. The financial statements of SCANA will become the financial statements of the surviving corporation in the First Merger, and the results of the surviving corporation's operations will include the results of PSNC's operations commencing at the time the Preferred Second Merger becomes effective.

Following the Preferred Second Merger, PSNC will become a wholly owned public utility company subsidiary of SCANA. The Merger Agreement provides that SCANA's principal corporate office will remain in Columbia, South Carolina and that PSNC's principal corporate office will remain in Gastonia, North Carolina.

SCANA Corporation (70-9533)

SCANA Corporation ("SCANA"), a South Carolina public utility holding company exempt from registration under section 3(a)(1) of the Act, and its subsidiaries South Carolina Electric and Gas Company ("SCE&G"); South Carolina Generating Company, Inc. ("GENCO"); South Carolina Fuel Company, Inc.; South Carolina Pipeline Corporation; SCANA Energy Marketing Inc.; SCANA Propane Gas, Inc.; SCANA Propane Storage, Inc.; SCANA Communications, Inc.; Servicecare Inc.; Primesouth, Inc.; SCANA Resources Development Corporation; SCANA Petroleum Resources, Inc.; and SCANA Service Company ("SCANA Service"), all located at 1426 Main Street, Columbia, South Carolina 29201; Public Service Company of North Carolina, Incorporated ("PSNC"), a North Carolina public utility company, and its subsidiaries Sonat Public Service Company LLC; Clean Energy Enterprises; Cardinal Pipeline Company, LLC; Pine Needle LNG Company, LLC; PSNC Blue Ridge Corporation; PSNC Cardinal Pipeline Company; and PSNC Production Corporation, all located at 400 Cox Road, Gastonia, North Carolina 28054

(collectively "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 42, 43, 45, 54, 87, 88, 90, and 91 under the Act.

SCANA has also filed a related application-declaration in File No. 70-9521 seeking approvals required to complete its proposed acquisition of PSNC ("Merger"). a notice of that filing is being issued simultaneously with this notice.

The Applicants propose to enter into numerous types of financing transactions to meet SCANA's capital requirements immediately following the Merger and to plan future financing. They request authorization to engage in these financing transactions for five years commencing on the date of an order issued responding to their application-declaration ("Authorization Period").

1. General Terms and Conditions of Financing

Financings by each Applicant would be subject to the following limitations: (i) the effective cost of money on long-term debt securities will not exceed 300 basis points over comparable term U.S. Treasury securities, and the effective cost of money on short-term securities will not exceed 300 basis points over the comparable term London Interbank Offered Rate; (ii) maturity of indebtedness will not exceed 50 years; (iii) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security will not exceed 5% of the principal amount of the financing; and (iv) at all times during the Authorization Period SCANA's common equity will be at least 30% of its consolidated capitalization.

The proceeds from the sale of securities in external financing transactions would be used for general corporate purposes including: (i) the financing, in part, of the capital expenditures of the SCANA system; (ii) the financing of working capital requirements of the SCANA system; (iii) the acquisition, retirement, or redemption of existing securities; and (iv) direct or indirect investment in companies whose activities the Commission authorizes in connection with the Merger, as well as energy-related and gas-related companies, as defined in rule 58(b), and exempt telecommunications companies, as defined in section 34(a) of the Act.

2. External Financing

SCANA requests authorizations for four types of external financing. First it seeks authorization to issue common

stock, no par value (subject to adjustment to reflect any stock split), up to an aggregate amount of 13.6 million shares, including issuances under its benefit and dividend reinvestment plans. SCANA also proposes to issue common-stock options.

Second, SCANA requests authorization to issue long-term debt securities in an amount, when combined with its issuances of common stock (other than for benefit or dividend reinvestment plans), not to exceed \$1.435 billion. the long-term debt securities would consist of medium-term notes issued under an indenture.

Third, SCANA requests authorization to have outstanding at any one time up to \$950 million of short-term debt, consisting of bank borrowings, commercial paper, or bid notes. The short-term debt would be used to refund pre-Merger short-term debt, to provide for the reissuance of pre-Merger letters of credit, and to provide financing for general corporation purposes, working capital requirements, and capital expenditures for the Applicants other than SCANA until long-term financing can be obtained.

Fourth, SCANA requests authorization to engage in hedging transactions intended to manage the volatility of interest rates, including interest rate swaps, caps, floors, collars, and forward agreements or any other similar agreements. SCANA would employ interest rate swaps to manage the risk associated with any of its outstanding debt authorized by the Commission.

3. Utility Subsidiary Financing

The Applicants request authorization for SCE&G, GENCO, and PSNC ("Utility Subsidiaries") to issue up to \$300 million in short-term debt consisting of commercial paper, unsecured bank loans, and borrowings under a SCANA holding company system money pool. These issuances of securities would comply with the general terms and conditions for financing transactions described above. Any short-term borrowings by the Utility Subsidiaries, when combined with short-term borrowings by SCANA, would not exceed \$1.2 billion at any time during the Authorization Period. In addition, the Applicants request authorization for the Utility Subsidiaries to enter into hedging transactions of the same type under the same conditions as those applicable to SCANA.

4. Nonutility Subsidiary Financing

The Applicants believe that in most cases rule 52(b) under the Act would exempt borrowings by any Applicant

other than SCANA and the Utility Subsidiaries (excluding SCANA, the "Nonutility Subsidiaries") from Commission authorization requirements. However, the Nonutility Subsidiaries request that the Commission reserve jurisdiction over the issuance to nonassociates of securities that are not exempt under rule 52(b). The Nonutility Subsidiaries state that when a proposed issuance of a security is not exempt under rule 52(b) they will file a post-effective amendment requesting the necessary authorization.

5. Other Securities

SCANA may find it necessary or desirable to issue and sell other types of securities during the Authorization Period in addition to those specifically enumerated in the application-declaration. SCANA requests that the Commission reserve jurisdiction over the issuance of additional types of securities.

6. Guarantees

SCANA requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements, or otherwise provide support that its direct or indirect subsidiaries existing at the time the Merger is consummated or that are subsequently formed ("System Subsidiaries") need in the ordinary course of their respective businesses. The aggregate principal amount of this credit support would not exceed \$305 million. The debt would comply with the general terms and conditions for financing transactions described above.

7. Money Pool

SCANA and the Utility Subsidiaries request authorization to establish a utility money pool, and the Nonutility Subsidiaries request authorization to establish a Nonutility money pool. The Utility Subsidiaries, to the extent that a transaction is not exempt under rule 52, request authorization to make unsecured short-term borrowings from the utility money pool, contribute surplus funds to the utility money pool, and lend and extend credit to (and acquire promissory notes from) one another through the utility money pool.

The Nonutility Subsidiaries may participate in a Nonutility money pool. The application-declaration states that rule 52 exempts the Nonutility money pool activities of the Nonutility Subsidiaries from the Act's prior-approval requirements. SCANA is requesting authorization to contribute surplus funds and to lend and extend credit to (a) the Utility Subsidiaries through the utility money pool and (b)

the Nonutility Subsidiaries through the Nonutility money pool.

SCANA Service will administer the utility and Nonutility money pools on an "at cost" basis and will maintain separate records for each money pool. Surplus funds of the two money pools may be combined in common short-term investments, but SCANA Service will maintain separate records of these funds. The Applicants request the Commission to reserve jurisdiction over participation in a money pool by future companies formed by SCANA until a post-effective amendment is filed naming the new participant.

8. Changes in Capital Stock

The Applicants request authority to change the terms of the authorized capital stock of any wholly owned System Subsidiary by an amount SCANA or an immediate parent company deems appropriate. The application-declaration states that a System Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval. Any action of this type by a Utility Subsidiary would be subject to, and would be taken only upon receipt of, necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

9. Payment of Dividends

The Applicants request authorization to pay dividends out of the additional paid-in-capital account of PSNC up to the amount of PSNC's aggregate retained earnings just prior to the Merger and out of earnings before the amortization of the goodwill thereafter.

10. Financing Entities

The Applicants seek authorization for any Applicant other than SCANA to organize new corporations, trusts, partnerships, or other entities created for the purpose of facilitating financings through issuance of securities to third parties. The Applicants also request authority for (1) the issuance of debt instruments by an Applicant other than SCANA to a financing entity in return for the financing proceeds, (2) the acquisition by an Applicant other than SCANA of voting interests or equity securities issued by a financing entity, and (3) the guarantee by the Applicant of the financing entity's obligations. Each of the Applicants other than SCANA requests authorization to enter into expense agreements with its respective financing entity, under which it would agree to pay all expenses of that entity. Any amounts issued by financing entity to a third party would

be included in the overall external financing limitation authorized for the financing entity's immediate parent.

11. Service Company

SCANA Service will be incorporated in South Carolina and will act as the SCANA holding company system's service company following the Merger. It will provide a variety of administrative, management, and support services. The Applicants anticipate that SCANA Service will be staffed through a transfer of personnel from SCANA, SCE&G, and PSNC. The Applicants state that SCANA Service's accounting and cost allocation methods will comply with Commission standards for service companies in registered holding-company systems, and that its billing system will follow the Commission's Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies. Except as permitted by the Act or the Commission, all services that SCANA Service provides to affiliated companies will be performed on an "at cost" basis in accordance with rules 90 and 91.

To ensure adequate oversight and realize economies of scale, some administrative and service functions for the SCANA holding company system will be consolidated and provided through SCANA Service. As a general rule, the individual system companies will perform those services that can best be done at the company level, with SCANA Service offering system-wide coordination, strategy, oversight, and other services when that proves to be more efficient.

12. Other Services

SCE&G, PSNC and other associate companies of SCANA request authorization to enter into leases of office or other space with associate companies. The Utility Subsidiaries may also provide services to each other that are incidental to their utility businesses, such as maintenance and emergency repairs and the services of personnel with special expertise. The Utility Subsidiaries will enter into software license agreements with other companies in the SCANA holding company system. The Applicants state that all of these agreements and services will comply with the requirements of rules 87, 90, and 91.

SCANA Fuel Company, Inc. ("SCANA Fuel") enters into contracts with SCE&G to provide environmental and fuel-related services. SCANA Fuel provides these services "at cost," as determined under rules 90 and 91.

13. Tax Allocation Agreement

The Applicants have requested approval of an agreement to allocate consolidated taxes among SCANA and the other Applicants ("Tax Allocation Agreement"). The Applicants require this approval because the Tax allocation Agreement allows SCANA to retain certain payments for tax losses it has incurred, rather than allocate them to the other Applicants without payment, as rule 45(c)(5) would otherwise require. SCANA will create tax credits through the Merger that are nonrecourse to the other Applicants. The Applicants state that SCANA should retain the benefits of those tax credits.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41808; File No. SR-Amex-99-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Revise the Exchange's Margin Requirements

August 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 23, 1999, the American Stock Exchange LLC ("Exchange" or "Amex") 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 revise Exchange Rule 462, "Minimum Margins." Principally, the revisions would permit the extension of credit on certain long term options and warrants (i.e., more than 9 months from expiration); revise the margin requirements for butterfly spreads and box spreads; and modify the

maintenance margin requirements for hedging strategies that pair stock positions with options (e.g., conversions, collar).

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and 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 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 section 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

The Exchange proposes to revise Exchange Rule 462, "Minimum Margins," to: (i) permit the extension of credit on certain long term options and warrants, and certain long box spreads comprised entirely of European-style options; (ii) recognize butterfly and box spread strategies for purposes of margin treatment and establish appropriate margin requirements; (iii) recognize various strategies involving stock (or other underlying instruments) paired with a long option, and provide for lower maintenance margin requirements on such hedged stock positions; (iv) expand the types of short positions that would be considered "covered" in a cash account; specifically, certain short positions that are components of limited risk spread strategies (e.g., butterfly and box spreads); (v) allow a bank issued escrow agreement to serve as cover for certain spread positions held in a cash account; and (vi) update and improve, as necessary, current margin rules.

Previously, the margin requirements governing options were set forth in Regulation T, "Credit by Brokers and Dealers."³ However, amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options self-regulatory

organizations ("OSROs"), subject to approval by the Commission.⁴ In a rule filing approved by the Commission in 1997, the Exchange adopted various margin requirements pertaining to options that were to be deleted from Regulation T.⁵ That previous margin filing also contained several necessary changes that clarified certain provisions and established better consistency with the margin rules of the New York Stock Exchange.

In accordance with Regulation T, the OSROs have the ability, subject to SEC approval, to adopt rules governing the margin treatment of options.⁶ The Exchange therefore proposes to revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant recognition for purposes of establishing more equitable margin requirements. Currently, the components of such strategies must be margined separately. The Exchange believes the risk limitation that results in the component positions are viewed collectively is not reflected in current margin requirements. The Exchange further believes that market participants should have the ability to utilize these strategies for the least amount of margin necessary. The other significant change sought by the Exchange would permit the extension of credit on certain long term options and warrants.

In developing this proposal, the Exchange reviewed all of its margin rules with a view toward updating or improving margin provisions as necessary. The Exchange also found it necessary to propose minor changes to certain rules because they are closely related to, and will be impacted by, the more substantive proposals.

a. Definitions Section. Presently, the Exchange's definition of "current market value" is equivalent to the definition found in Regulation T. Instead of repeating the Regulation T definition, the proposal would revise

⁴ See Board of Governors of the Federal Reserve System Docket No. R-0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

⁵ See Securities Exchange Act Release No. 38710 (June 2, 1997), 62 FR 31638 (June 10, 1997).

⁶ The Chicago Board Options Exchange ("CBOE"), New York Stock Exchange ("NYSE"), and Pacific Exchange ("PCX") have filed similar margin proposals with the Commission. The CBOE proposal was approved on July 27, 1999. See Securities Exchange Act Release No. 41658 (July 27, 1999), 64 FR 47736 (Aug. 5, 1999). The NYSE and PCX margin proposals are still pending with the Commission. See File Nos. SR-NYSE-99-03 and SR-PCX-98-59.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System adopted Regulation T pursuant to Section 7(a) of the Act.

the definition found in the Exchange's rules to note that the meaning of the term "current market value" is as defined in Regulation T. Because the Exchange and other OSROs intend to seek a change in the Regulation T definition, a linkage to the Regulation T definition will keep the Exchange's definition equivalent without requiring a future rule filing.

The Exchange also seeks to adopt definitions for the "butterfly spread" and "box spread" options strategies. The definitions are an important part of the Exchange's proposal to recognize and specify cash and margin account requirements for butterfly and box spreads. These proposals are outlined below in Sections II(A)(1) (c) and (d). The Exchange believes that the definitions are necessary to establish in specific terms what multiple options positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for proposed cash and margin treatment.

Finally, the Exchange seeks to define the term "listed." Because the term "listed" is frequently used in the Exchange's margin rules, the Exchange believes it would be more efficient to define the term once rather than specifying the meaning of the term each time it is used.

b. *Extension of Credit on Long Term Options, Stock Index Warrants, Foreign Currency Warrants, and Currency Index Warrants.* The Exchange proposes to permit the extension of credit on certain listed, long term options and warrant products (including currency and index warrants, but excluding traditional stock warrants issued by a corporation on its own stock).⁷ Only those long term options or warrants that are more than 9 months from expiration will be eligible for credit extension. The proposal requires initial and maintenance margin of not less than 75% of the current market value of a listed, long term option or warrant. Therefore, a broker-dealer would be able to loan up to 25% of the current market value of a listed, long term option or warrant.

The proposal also will permit the extension of credit on long term options and warrants not listed or traded on a registered national securities exchange or a registered securities association ("OTC options"). However, in addition to being more than 9 months from expiration, an OTC option or warrant must be in-the-money and guaranteed by the carrying broker-dealer. The proposal requires initial and

maintenance margin of not less than 75% of the OTC's option's (warrant's) in-the-money amount (i.e., intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for an option or warrant (listed and OTC) on which credit has been extended reached 9 months, the maintenance margin requirement will become 100% of the current market value.

c. *Extension of Credit on Long Box Spread Comprised Entirely of European-style Options.* The Exchange also proposes to allow the extension of credit on a long box spread comprised entirely of European-style options. A long box is a strategy comprised of four option positions that essentially lock-in the ability to buy and sell the underlying component or index for a profit, even after netting the cost of establishing the long box. The two exercise prices embedded in the strategy determine the buy and the sell price. The Exchange believes that because the cost of establishing the long box spread is covered by the profit realizable at expiration, there is no risk in carrying the debit incurred to establish the long box spread. Although the Exchange believes that 100% of the debit could be loaned, the Exchange proposes a margin requirement that approximates 50% of the debit. The Exchange's proposal will require 50% of the aggregate difference in the two exercise prices (buy and sell), which results in a margin requirement slightly higher than 50% of the debit typically incurred. This is both an initial and maintenance margin requirement. The proposal will afford a long box spread position a market value for margin equity purposes of not more than 100% of the aggregate exercise price differential.

d. *Cash Account Treatment of Butterfly and Box Spreads.* The proposal will make butterfly and box spreads in cash-settled, European-style options eligible for the cash account. To qualify for carrying in the cash account, the butterfly and box spreads must meet the specifications contained in the proposed definition section. The proposal will require full cash payment of the debit that is incurred when a long butterfly or long box spread strategy is established. The Exchange believes that if the debit is fully paid, there is no market risk to the carrying broker-dealer.

Short butterfly spreads generate a credit balance when established. However, in the worst case scenario, where all options are exercised, a debit (loss) greater than the initial credit

balance received would accrue to the account. This debit or loss, however, is limited. To pose no market risk to the carrying broker-dealer, the proposal will require that the initial credit balance, plus an amount equal to the difference between the initial credit and the total risk, must be held in the account in the form of cash or cash equivalents. The total risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices. With respect to short butterfly spreads comprised of put options, the total risk potential is the aggregate difference between the two highest exercise prices. Therefore, to carry short butterfly spreads in the cash account, the proposal will require that cash or cash equivalents equal to the maximum risk must be held or deposited.

Short box spreads also generate a credit balance when established. The net credit received from selling a box spread will cover nearly all, but not 100%, of the debit (loss) that would accrue to the account if held to expiration. The Exchange believes that the credit should be retained in the account. Therefore, the proposal will require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, must be held or deposited.

In addition, the proposal will allow an escrow agreement to be used in lieu of the cash or cash equivalents required to carry short butterfly and box spreads in the cash account.

e. *Margin Account Treatment of Butterfly and Box Spreads.* Currently, the Exchange's margin rules do not recognize butterfly and box spreads for margin purposes. Therefore, margin requirements tailored to the risks of these respective strategies, which the Exchange believes have limited risk, are not currently provided. A butterfly spread is a paring of two standard spreads, one bullish and one bearish. The two spreads (bullish and bearish) must be margined separately under the Exchange's current margin rules. The Exchange believes that this practice requires more margin than necessary because the two spreads serve to offset each other with respect to risk. The Exchange believes that the two individual spreads should be viewed in combination to form a butterfly spread, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements.

The Exchange's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts, and

⁷ Throughout the entirety of this notice, the term "warrant(s)" means this type of warrant.

specify requirements that are the same as the cash account requirements for butterfly spreads.⁸ Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in a margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that is incurred when the spread strategy is established. For short box spreads held in the margin account, the proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be deposited and maintained. The net credit received from the sale of the short option components may be applied towards the requirement.

Generally, long and short box spreads will not be recognized for margin equity purposes; however, the proposal will allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer. As noted above in Section II(A)(1)(c), the margin required for a long box spread comprised entirely of European-style options is 50% of the aggregate difference in the two exercise prices framing the strategy. This is both an initial and maintenance margin requirement. For margin equity purposes, a long box spread made up of European-style options could not be valued at more than 100% of the aggregate exercise price differential.

f. Margin Account Treatment of Stock Positions Held with Options Positions. In addition to butterfly and box spreads, the Exchange proposes to recognize five options strategies that are designed to limit the risk of a position in the

underlying component. The five strategies are: (i) Long Put/Long Stock; (ii) Long Call/Short Stock; (iii) Conversion; (iv) Reverse Conversion; and (v) Collar. Proposed Exchange Rule 462(d)(10)(B)(iv), "Exceptions," will identify and set forth the margin requirements for these hedging strategies.

The five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options). However, the proposal is structured to also apply to components that underlie index options and warrants.

The Exchange's proposal only addresses maintenance margin relief for the stock component (or other underlying instrument) of the five proposed strategies. The Exchange believes that a reduction in the initial margin requirement for the stock component of these strategies is not currently possible because the 50% initial margin requirement in Regulation T continues to apply, and the Exchange has no independent authority to lower the initial margin requirement for stock. However, the Exchange notes that the Federal Reserve Board is considering recognizing the reduced risk afforded stock by these options strategies for the purpose of lowering initial stock margin requirements, and is also considering other changes that would facilitate risk-based margins.

The "Long Put/Long Stock" and the "Long Call/Short Stock" hedging strategies are very similar to the "Collar" and "Reverse Conversion" strategies, respectively, and are addressed below in reference to the Collar and Reverse Conversion descriptions.

A "Conversion" is a long stock position held in conjunction with a long put and a short call. The put and call must have the same expiration and exercise price. The long put/short call is essentially a synthetic short stock position that offsets the long stock, and the exercise price of the options acts like a predetermined sale price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the put exercise price. Regardless of any decline in market value, the stock is, in effect, worth no less than the put exercise price.

A "Reverse Conversion" is a short stock, short put, and long call trio. Again, the put and call must have the same expiration and exercise price. The long call/short put is essentially a synthetic long stock position that offsets the short stock, and the exercise price of the options acts like a predetermined

purchase (buy-in) price. The short put is covered by the short stock and the long call is a right to buy the stock (in this case closing the short position) at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price; in effect, the short position is valued at no more than the call exercise price. The Long Call/Short Stock hedge described above is a Reverse Conversion without the short put, or simply short stock offset by a long call.

A "Collar" is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the put is lower than the exercise price of the call in the Collar strategy; therefore, the options do not constitute a pure synthetic short stock position. The Long Put/Long Stock hedge mentioned above is similar to a Collar without the short call, or simply long stock hedged by a long put.

The proposal would establish reduced maintenance margin requirements for the stock component of these five strategies as follows:

1. Long Put/Long Stock

The lesser of:

- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the-money; or
- 25% of the long stock market value.

2. Long Call/Short Stock

The lesser of:

- 10% of the call exercise price, plus 100% of any amount by which the call is out-of-the-money; or
- the maintenance margin requirement on the short stock

3. Conversion

- 10% of the exercise price.

The stock may not be valued at more than the exercise price.⁹

4. Reverse Conversion

- 10% of the exercise price, plus any in-the-money amount.¹⁰

5. Collar

The lesser of:

⁹ The writer of a call option has an obligation to sell the underlying component at the call exercise price. The writer cannot receive the benefit of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price.

¹⁰ The writer of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position effectively closed) at the exercise price, even in the event the market price is lower. To offset the benefit to the account of a lower market value, the put in-the-money amount is added to the requirement.

⁸ The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the-money; or
- 25% of the call exercise price.

The stock may not be valued at more than the call service price.

These same maintenance margin requirements will apply, for example, when these strategies are used with a mutual fund or a stock basket underlying index option or warrants.

g. *Effect of Mergers and Acquisitions on the Margin Required for Short Equity Options.* The Exchange proposes to adopt Commentary .10 to Exchange Rule 462 to provide an exception to the margin requirement for short equity options in the event trading in the underlying security ceases due to a merger or acquisition. Under this exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount.

h. *Determination of Value for Margin Purposes.* The proposal will revise Exchange Rule 462(d)(1) to make it consistent with the other portion of the Exchange's proposal that allows the extension of credit on certain long term options. Currently, Exchange Rule 462(d)(1) does not allow the market value of long term options to be considered for margin equity purposes. The revision will allow options and warrants eligible for loan value pursuant to proposed Exchange Rules 462(c) and (d) to be valued at current market prices for margin purposes. The Exchange believes this change is necessary to ensure that the value of the option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

i. *OTC Options.* The proposal makes some minor corrections to the table in Exchange Rule 462 that displays the margin requirements for short OTC options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act.¹¹ In general, and furthers the objectives of Section 6(b)(5),¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and does not permit unfair

discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change From Members, Participants or Others

The Exchange did not solicit or receive comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-99-27 and should be submitted by September 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99-23239 Filed 9-7-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41814; File No. SR-BSE-99-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Implementing a Post Primary Session

August 31, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 13, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the close of trading on the BSE from 4:00 p.m.³ to 4:15 p.m., creating a new Post Primary Session ("PPS"). The text of the proposed rule is available at the BSE, 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 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.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ All references to time are Eastern Time.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the close of trading on the BSE from 4:00 p.m. to 4:15 p.m., creating a new PPS. Pursuant to Chapter I-B Section 1 (Primary Session), the current trading hours at the Exchange are from 9:30 a.m. until 4:00 p.m. The PPS will extend these hours for an additional fifteen minutes until 4:15 p.m. Under the proposal, all Exchange rules applicable to floor trading during the Exchange's Primary Session will continue to apply during the PPS, with the following exceptions: (1) only orders that are designated "PPS" will be eligible for execution; (2) limit orders on the book from the Primary Session will not be eligible for execution, but will carry over to the next day; (3) there will be no automated executions; (4) there will be no application of the Execution Guarantee Rule;⁴ and (5) GTX⁵ orders will be executable after the close of the PPS (*i.e.*, GTX orders are executable after 4:15 p.m. instead of 4:00 p.m.). Accordingly, the Exchange proposed to amend the following rules: (1) Chapter I-B, Sections 2 and 3, and (2) Chapter IIB, Sections 1 and 3.

PPS Eligible Securities. Pursuant to the proposed amendment of Chapter IIB, Section 3, only orders designated "PPS" will be eligible for execution during the PPS. Since the PPS is merely an extension of the Exchange's auction market, wherein bids and offers are continuously updated for trading under normal auction market principles, Exchange rules will continue to apply. Thus, to be designated PPS eligible, a market, limit, or contingent order must be acceptable under current Exchange rules.

The Exchange notes that, under the proposal, limit orders on the book from the Primary Session are not eligible for the PPS, and must be carried over to the next day. Also, those limit orders received during the PPS (and thus PPS eligible) remain subject to the Limit Order Display Rule.⁶

GTX Orders. GTX Order is an agency limit order that is good until canceled, and is eligible for primary market protection based on the volume that prints on the after hours trading session of the New York Stock Exchange or the American Stock Exchange. Thus, a GTX

Order may be executed during regular trading hours or after the PPS, at 5:00 p.m., but no GTX Order may be executed during the PPS.

BEACON as a Routing System. "BEACON" is the acronym for the Boston Exchange Automated Communication Order-routing Network. It provides a system for the automated execution of orders on the Exchange under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis. The Exchange proposes to amend Chapter IIB, Section 3(b), to indicate that BEACON will continue to operate as a routing system for PPS eligible orders, but will not provide an automatic execution mechanism.

Operation of the ITS System During the PPS. In the amendment to Chapter IIB, Section 3(a), the BSE represents that ITS will be available for both inbound and outbound commitments during the PPS to the extent that other market centers (*i.e.*, the Pacific Exchange, Inc. ("PCX"),⁷ the Philadelphia Stock Exchange, Inc. ("PHLX")⁸ and the Chicago Stock Exchange, Inc. ("CHX"))⁹ are open for trading. The BSE also represents that it will perform surveillance during the PPS in the same manner and using the same techniques as those used during the Primary Session. To facilitate the surveillance of the PPS, BSE's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS.

Execution Guarantee Does Not Apply. The Execution Guarantee provides that Specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. According to the proposed amendment to Chapter IIB, Section 3(d), the Execution Guarantee will not be available in any form during the PPS.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in securities; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR-BSE-99-11 and should be submitted by September 29, 1999.

⁴ See BSE Rules, Paragraph 2039A, Section 33.

⁵ For a description of GTX Orders, See "GTX Orders" *infra*.

⁶ See Chapter IIB, Section 3(c)(i)-(ii).

⁷ PCX's regular equity session closes at 4:30 p.m. During the crossing session, PCX does not utilize ITS. See PCX Rule 4.2, Commentary .02.

⁸ PHLX operates a Post Primary Session from 4:00 p.m. until 4:15 p.m. which is an extension of its regular auction market. During the Post Primary Session, PHLX utilizes ITS to the same extent it does during regular trading hours. See PHLX Rule 101.

⁹ CHX's primary session closes at 4:00 p.m. CHX conducts an Extended Session from 4:00 p.m. until 4:30 p.m. Both sessions utilize ITS. See generally Article 20, CHX Rules 20, 37, 39, 40 and 41.

¹⁰ 15 U.S.C. 78f(b)(5).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23240 Filed 9-7-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41809; File No. SR-BSE-99-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Amending Its Revenue Sharing Program

August 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 30, 1999, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. The Commission is publishing this notice of 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 revise its Revenue Sharing Program to exclude non-BSE automated transaction fees.

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 BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

The purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the Exchange shares 50% of any excess monthly transaction related revenue above \$1,300,000 with those firms that generate \$50,000 in both BSE and non-BSE automated transaction fees. The Exchange proposes to exclude non-BSE automated transaction fees from this computation.³ Thus, under the proposed rule change, only firms that generate \$50,000 in BSE transaction fees will receive a share of excess revenue.⁴

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among its members.⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change.

³ Non-BSE automated transactions refer to trades executed through the New York Stock Exchange's Designated Order Turnaround (DOT) system. The Exchange wishes to tailor its Revenue Sharing Program to apply only to Base executed transactions. Telephone conversation between Kathy Marshall, Assistant Vice President, Finance, BSE, Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, and Sonia Patton, Attorney, Division, Commission, on August 26, 1999.

⁴ Eligible firms will receive excess revenue in the form of a credit that will be applied toward each firm's total monthly transaction fees. See Securities Exchange Act Release No. 40591 (Oct. 22, 1998), 63 FR 58078 (Oct. 29, 1998).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b-10 and 11 Ac1-3 under the Act, 17 CFR 240.10b-10 and 17 CFR 240.11Ac1-3, respectively.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the BSE and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder. At any time within 60 days of the filing of such 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR-BSE-99-12 and should be submitted by September 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23241 Filed 9-7-99; 8:45 am]

BILLING CODE 8010-01-M

⁸ 15 U.S.C. 78s(b)(3)(A)(ii)

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ In reviewing this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19n-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41811; File No. SR-CBOE-99-46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Market-Maker Surcharges

August 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the CBOE. On August 23, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage*.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, on August 20, 1999, the Equity Floor Procedure Committee approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book of-ficial broker-age rate (per contract) ⁵
Coca-Cola (KO)	\$0.03	\$0.00
Johnson and Johnson (JNJ)	0.07	0.00

These fees will be assessed on Monday, August 23, 1999. Exchange Rules provide that an option be listed for trading on another exchange before a surcharge fee can be assessed. Thus, since these classes have been certified by the Options Clearing Corporation to be listed on the Philadelphia Stock Exchange, and are proposed to be listed for trading on Monday August 23, 1999, the CBOE will assess these three surcharges on that date. The Exchange interprets its rules to allow the Equity Floor Procedure Committee to vote on market-maker surcharges before the class has been listed for trading on another exchange. However, the Rule provides that the surcharge may not actually be assessed until the class has been listed for trading on another exchange. These fees will remain in effect until such time as the Equity Floor Procedure Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4)⁶ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from members, Participants, or Others

Not written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)⁷ of the Act and subparagraph (f)(2) of Rule 18b-4 thereunder.⁸ At any time within 60 days of the date of filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange eliminated a proposed surcharge in an options class that is no longer eligible for the surcharge program. See letter from Stephanie C. Mullins, Attorney, CBO, to Kenneth Rosen, Attorney, Division of market Regulation, Commission, dated August 23, 1999 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

⁵ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-46 and should be submitted by September 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23238 Filed 9-7-99; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 3083]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Notice of Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on September 17, 1999 from 1:30 pm to 3:30 pm to obtain public comment on the issues to be addressed at the October 4-8, 1999 Twenty-first Consultative Meeting of the Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-second Scientific Group Meeting of the London Convention held in May 1999.

The meeting will be held at Environmental Protection Agency offices located at the Fairchild Building, 499 South Capitol Street SW, Washington, DC 20003, Room 809. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. David Redford, Acting Chief, Marine Pollution Control Branch, telephone (202) 260-1952.

Dated: September 2, 1999.

Susan K. Bennett,

Director, Office of Transportation Policy.

[FR Doc. 99-23423 Filed 9-3-99; 2:49 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23-XX-29, Systems and Equipment Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) AC 23-XX-29 and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 23-XX-29, Systems and Equipment Guide for Certification of Part 23 Airplanes. This proposed AC provides information and guidance concerning an acceptable means, but not the only means, of showing compliance with Title 14 Code of Federal Regulations (14 CFR) part 23, subpart D from § 23.671 and subpart F, which is applicable to the certification of systems and equipment in normal, utility, acrobatic, and commuter category airplanes. This proposed AC consolidates existing policy documents, and certain AC's that cover specific paragraphs of the regulations, into a single document. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy Branch (ACE-111), 601 East 12th Street, Kansas City, Missouri 64106. You may also submit comments on the internet to: pat.nininger@faa.gov.

FOR FURTHER INFORMATION CONTACT: Les Taylor, Standards Office, (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 426-6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this proposed AC by contacting the person named above under the **FOR FURTHER INFORMATION CONTACT** section or on the internet at: <http://www.faa.gov/avr/air/airhome.htm>. We invite interested

parties to submit comments on the proposed AC by electronic mail to the **ADDRESSES** section specified above. Commenters must identify the AC title and number when submitting any comments. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except on Federal holidays.

Background

In 1968, the Federal Aviation Administration (FAA) instituted an extensive review of the airworthiness standards of part 23. Since then, the regulations have been amended through Amendment 23-52. These amendments have changed most of the sections of part 23. This document is intended to provide guidance for the original issue of part 23 and the various amendments. This version of the advisory circular covers policy available through June 30, 1994. Policy that became available after June 30, 1994, will be covered in future amendments to the advisory circular.

Issued in Kansas City, Missouri, on August 27, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23292 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: SR 20 (Sharpes Corner to SR 536) Skagit County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent and notice of scoping.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared to evaluate potential solutions to identify safety problems and traffic congestions along SR 20 in Skagit County, Washington.

FOR FURTHER INFORMATION CONTACT:

Gene Fong, Federal Highway Administration, 711 South Capital Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753-9480; or John Okamoto, Washington State Department of Transportation, Northwest Region,

¹⁰ 17 CFR 200.30-3(a)(12).

PO Box 330310, Seattle, WA 98133-9710.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), will prepare an Environmental Impact Statement (EIS) on alternative solutions that can reduce the accident rate and provide capacity to meet current and future needs along a 7-mile stretch of the State Route 20 corridor near Anacortes. The SR EIS is a National Environmental Policy Act (NEPA) "pilot" project, intended to evaluate and improve the application of the NEPA process. The "pilot" process was developed cooperatively by Washington State and Federal agencies, and is jointly sponsored by FHWA and WSDOT.

This segment of SR 20 includes two designated "high accident corridors," due to the number and severity of accidents that have occurred at intersections. The predominant accident types are rear-end collisions and entering-at-angle accidents.

The accident rate is made worse by increasing traffic volumes. Travel demand forecasts indicate continued traffic growth over the next 20 years. Forecasts indicate that traffic growth may increase travel time along portions of this segment of SR 20.

Solutions are needed to reduce the rate of fatal accidents and to provide for the projected traffic demand. While alternative have not been identified, preliminary alternatives that could meet the need and may be considered in the EIS include: taking no action; traffic calming; transportation demand management; transportation system management; eliminating left turns; transit improvements and/or improved transit access; improvement of alternative modes of travel; improved freight movement by truck and/or rail; additional traffic signals; modified signage; grade separation at intersections; and/or added lanes or frontage roads. Combinations of these solutions are possible. The list of alternatives to be addressed in the EIS will be finalized after taking scoping comments into account.

Scoping

Letters soliciting comments on the scope of the EIS and describing the purpose, need, and potential alternatives will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two meetings will be held to identify the scope of issues to be addressed, the significant issues, and the alternatives.

The meeting will be conducted on *October 6, 1999*, at, *Anacortes City Hall Chambers* in Anacortes, Washington. The first meeting from 9 a.m. to noon will be conducted to focus on input from governmental agencies and tribes. The second, from 4 p.m. to 8 p.m., will be conducted primarily for the public. Written scoping comments may be submitted to the FHWA or WSDOT at the address provided above.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this action and the EIS should be directed to FHWA or WSDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 27, 1999.

Donald A. Petersen,

Transportation and Environmental Engineer, Olympia, Washington.

[FR Doc. 99-23249 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the proposed Atlantic/Central Bus Base Expansion Project in Seattle, Washington

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the King County Metro Transit Division intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). King County will ensure that the EIS also satisfies the requirements of the Washington State Environmental Policy Act (SEPA). The FTA will be the NEPA lead agency. King County will be the SEPA lead agency.

King County Metro Transit, a division of the King County Department of Transportation, may expand the operating capacity of the existing Atlantic/Central bus base complex located in Seattle's North Duwamish Industrial District. The existing complex consists of the existing Atlantic Base, which supports electric trolley service

within the City of Seattle, and the Central Base, which supports a fleet of diesel buses that provide service within the City of Seattle and between the City and neighboring jurisdictions. In addition, all night owl service is dispatched from Central Base.

Metro Transit uses the existing 22-acre complex for maintenance and storage of approximately 340 buses. The agency's Operating Facilities Strategic Plan identified a need for central Seattle maintenance capacity for up to 185 additional buses within the next 10 years and an additional 200 buses within the next 25 years (for a total of 385 additional buses). Increased capacity will allow maintenance service for planned increases in transit service within the City of Seattle as well as some increases in service for routes between Seattle and other jurisdictions. Among other things, King County's system is slated to accommodate up to 85 of Sound Transit's Express Service buses.

The EIS will evaluate a no action alternative as well as feasible and prudent alternatives to expand the maintenance base. Study to date suggests that reasonable alternatives are limited to an upward structured expansion of employee parking combined with an expansion of the footprint of the base either westward or to the south. Expansion to the west might impact a group of buildings that could have historical significance. Expansion to the south might have an effect on a privately owned industrial business that handles approximately 10% of the Port of Seattle's export business. Expansion to non-contiguous property would not be prudent or meet project objectives because of the significantly higher operating costs, which would occur. This would reduce funds available for revenue (passenger carrying) service. Expansion to non-contiguous properties would also require acquisition of a larger amount of industrial property, which would be contrary to City policy directed toward maximum preservation of industrial property.

The existing base complex occupies land that is industrially zoned. Applicable zoning regulations allow expansion of the base facilities within the industrial zone subject to a showing that impacts on industrial property and activities have been minimized.

King County Transit and FTA will determine the scope of environmental review after receiving input from interested parties and organizations and from federal, state, regional, and local agencies. A similar scoping process was recently completed in accordance with

the State Environmental Policy Act (SEPA). A SEPA scoping meeting took place on August 12, 1999 in the Atlantic/Central base neighborhood, and comments were solicited from project stakeholders, interested parties, government agencies and property owners and tenants within the project area and vicinity.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to King County Metro Transit by Thursday, October 7, 1999. See **ADDRESSES** below.

ADDRESSES: *Written comments on the project scope should be sent to:* Paul Leland, Senior Transit Environmental Planner, King County Metro Transit, Design and Construction Section, MS KSC-TR-0431, 201 S. Jackson St., Seattle, WA 98104-3856; phone (206) 684-1168; fax (206) 684-1900.

FOR FURTHER INFORMATION CONTACT: Linda Gehrke, Federal Transit Administration, Region X, 915 Second Avenue, Room 3142, Seattle, WA 98174; phone (206) 220-7954.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and King County Transit invite interested individuals and organizations, and federal, state, regional, and local agencies to participate in defining the alternatives for expanding the capacity of the Atlantic/Central Base complex, and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made by submitting in writing by letter or fax: See the **ADDRESSES** section above for the appropriate address and fax number. Scoping comments may also be submitted by E-mail using the electronic scoping form, which is available at <http://www6.metrokc.gov/kcdot/transit/sepacomm.cfm>. Scoping comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are more cost-effective or have fewer environmental impacts while achieving similar transit objectives.

A project scoping document providing more detail on project alternatives, alternatives considered but deemed inappropriate for further refinement or consideration, potential project impacts, and required permits and approvals is being forwarded to all potentially interested parties and agencies and is also available on the internet at: <http://www.metrokc.gov/kcdot/basepgm/sepa/enviro.htm>. Copies

of the project scoping document can be requested by calling King County Metro Transit at (206) 684-6776. If you wish to be placed on the mailing list to receive further information as the project proceeds, please contact Barbara de Michele at Metro Transit; (206) 263-3792.

II. Description of Study Area and Project Need

The existing Atlantic Central base complex and the adjacent areas within which expansion might occur are within the North Duwamish industrial neighborhood situated a short way south of the Seattle central business district, south of the International District and east of the area occupied by Seattle's new Safeco baseball field and King County Transit's Ryerson transit base. King County's other existing transit bases include North Base north of Seattle in the City of Shoreline, Bellevue and East Bases east of Lake Washington in the City of Bellevue, and South Base south of Seattle in Tukwila. Bases are located throughout the metropolitan area to achieve operating efficiencies related to the maintenance, dispatch and storage of transit buses.

The Atlantic/Central Base Expansion project is expected to include the following improvements: increased bus parking space; additional repair and inspection bay capacity; expanded body repair, paint, upholstery and tire shop capacity; and other additional specialty bay capacity; expanded electronics shop; expanded driver and support area including (including transit police); additional employee parking to support expanded base (including consideration of structured parking to reduce use of industrial land); and possible provision of additional layover capacity adjacent to the base and within the base during peak hours to accommodate existing layover space that will be lost due to Sound Transit's conversion of the downtown bus tunnel and associated stations to light rail use, and other local transportation infrastructure projects; possible additional bus fueling and washing capacity; and possible joint use industrial space if it is determined to be economically feasible. If an on-site alternative is selected, functions that can operate efficiently from other locations (such as the information distribution warehouse, and work center for transit facilities maintenance) may be moved to another location to minimize the amount of additional land needed.

Expansion of base capacity using non-contiguous property will not meet King County Transit's project objectives and needs. Expanding on a non-contiguous

site would increase operating expenses by requiring significant duplication of overhead costs (staffing & equipment) totaling over one million dollars per year. Expansion on a non-contiguous industrial site would preclude potential operating and spatial efficiencies which could be achieved with a consolidated complex and would therefore utilize more industrial property than a consolidated facility. Expanding to a non-contiguous site outside of the Duwamish area would not meet King County Transit's objectives due to the increased non-revenue deadhead time which would be required for buses traveling between the maintenance base and transit service routes. The Transit Operating Facilities Strategic Plan provides more detail concerning project needs and is available through King County Transit at (206) 684-1846.

Contiguous expansion of the Atlantic/Central Bus Base complex to accommodate up to 385 additional buses is expected to require acquisition of approximately 13.3 to 13.6 acres of abutting industrial property. The location of the existing Atlantic/Central Bus Base complex limits potential contiguous expansion options to either westward or southward expansion. The complex is bounded on the north by Interstate 90/SR 519 ramps, and to the east by Airport Way South and Interstate 5.

Immediately contiguous to the west is an assemblage of buildings to either side of Sixth Avenue South, all of which were built in the late 1920's to early 1930's and have a similar appearance and functional relationship to now removed railroad spurs and 6th Avenue South. A previously completed historic resource assessment of Sixth Avenue South concluded that the buildings constitute a district that is eligible for listing on the National Register of Historic Places under the National Historic Preservation Act. However, the integrity of the district has been seriously compromised as a result of its having been bisected by a recent major elevated freeway ramp project, and the cumulative impact of extensive building upgrading and modernization projects undertaken by tenants over the years. Also, there are unresolved questions about the uniqueness of the district within the metropolitan Seattle area.

The size and configurations of the parcels and buildings in the historic district, as well as their structural condition relative to earthquake hazards and building seismic standards, tends to render them functionally obsolete for many modern industrial uses, including possible transit maintenance base operations. Therefore, westward

expansion of the base would have to eliminate a significant portion of the buildings within the southern half of the historic district.

Expansion of the base complex southward across Massachusetts Avenue would require the use of industrial property with existing rail spur access, and would displace one or more existing industrial businesses that supply a significant portion of the Port of Seattle's export business. The City of Seattle's land use code allows transit base facilities and expansion within industrially zoned property, subject to a demonstration that all reasonable measures have been taken to minimize impacts related to significant displacement of other viable industrial businesses, and that the use of land with access to industrial shorelines or major rail facilities has been minimized.

III. Alternatives

Project alternatives include a No-Build Alternative and two build alternatives. Under Alternative A, the No-Build Alternative, expansion of the existing base complex would not occur. Without expanded base capacity within the City, King County Metro Transit could not operate new or expanded services. Implementation of the new Six-Year Transit Plan would be in jeopardy. And Metro could not implement the contract with Sound Transit for provision of regional express bus services.

Under Alternative B, the Atlantic Central Base complex would be expanded in 3 phases over the next 15 to 25 years to accommodate 385 additional buses, including the above mentioned project elements. The expansion of the complex would be westward, encompassing currently privately owned business properties on both sides of 6th Avenue South between Royal Brougham Way and South Massachusetts Street, and properties on the west side of 6th Avenue South between South Massachusetts Street and South Holgate Street. It is possible that this would affect historic properties.

Alternative C is premised on Sound Transit electing to proceed with a light-rail maintenance base south of the Atlantic/Central base between South Massachusetts Street and South Holgate Street. Alternative C would include all of the improvements proposed under Alternative B except that the proposed layover capacity on Sixth Avenue South would be entirely on site. Sound Transit's light rail maintenance facility would require vacation of Sixth Avenue South between South Massachusetts Street and South Holgate Street. Since Metro could not expand south of South

Massachusetts, accommodating Metro's base expansion needs would require vacating Sixth Avenue South from South Massachusetts Street north to South Royal Brougham Way. The Sound Transit light rail facility is a separate project being planned and analyzed in a separate NEPA/SEPA document by Sound Transit and the Federal Transit Administration. Alternative C could include some shared facilities on the Sound Transit site, such as employee parking, control center and fueling for general service vehicles.

The EIS will also document a range of project alternatives considered that might lessen or avoid taking out portions of the adjacent historic district. It is anticipated based on preliminary analysis of these alternatives that none of them are prudent or feasible.

IV. Probable Effects/Potential Impacts for Analysis

King County plans to use a single EIS document to satisfy both SEPA and NEPA for the proposed project. Presently, the issue of principal concern related to NEPA is potential impacts on historic resources, which may be National Register eligible. Other NEPA concerns include environmental justice. King County may be preparing a Section 4(f) and Section 106 analysis of historic resources as a part of the NEPA EIS documentation. Issues principally of concern under SEPA include impacts on industrial land uses and business within the project area, including potential impacts on industrial traffic. Other impacts, which will be evaluated, include water quality; archaeological resources; hazardous materials; air quality (including air quality conformity); noise; consistency with local land-use and transportation plans and policies; business displacements and relocations; and economics. These impacts will be evaluated both for the construction phase and in relation to ongoing operations as appropriate. Reasonable measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The NEPA EIS process will address the social, economic, and environmental impacts of the Atlantic Central Base expansion alternatives. A draft EIS will be published and made available for public and agency review and comment, and a public comment meeting will be held to receive review comments pertaining to the draft EIS. On the basis of the draft EIS and the comments received, King County Metro Transit will complete the final EIS.

Issued on: September 1, 1999.

Linda Gehrke,

Acting Regional Administrator.

[FR Doc. 99-23334 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6161; Notice 1]

Mercedes-Benz U.S.A., Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz U.S.A., Inc. (MBUSA) has determined that 1,482 of its 1999 model year vehicles were equipped with convex passenger-side mirrors that did not meet certain labeling requirements contained in Federal Motor Vehicle Safety Standard (FMVSS) No. 111, "Rearview Mirrors," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." MBUSA 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.

We are publishing this notice of receipt of an application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision or other exercise of judgment concerning the merits of the application.

If a vehicle has a convex passenger-side mirror, paragraph S5.4.2 of FMVSS No. 111 requires that it have the words "Objects in Mirror Are Closer Than They Appear" permanently and indelibly marked at the lower edge of the mirror's reflective surface.

From April 5 through April 9, 1999, MBUSA sold and/or distributed 1,482 C-Class, E-Class, and E-Class Wagons that contain a typographical error in the text of the warning label required in paragraph S5.4.2. The text on the subject vehicles' mirrors reads "Objects in Mirror Closer Than They Appear." The word "Are" is not clearly printed or visible.

MBUSA supports its application for inconsequential noncompliance with the following statements:

MBUSA does not believe that the foregoing noncompliance will impact motor vehicle safety for the following reasons. FMVSS 111 sets forth requirements for the performance and location of rearview mirrors to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear. Provisions regarding the use of a convex side view mirror were added by

the National Highway Traffic Safety Administration (NHTSA or the Agency) in an 1982 rulemaking, 47 FR 38698 (1982). The final rule specifically allowed the use of convex passenger side outside mirrors. "Convex mirrors" are defined as "a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere." See *Id.* at 38700, codified at 49 CFR 571.111 S4. NHTSA determined that allowing the installation of a convex mirror on the passenger side of vehicles could confer a substantial safety benefit in that such mirrors tend to provide a wider field of vision than ordinary flat or plane mirrors. Such a view could be highly desirable in maneuvers such as moving to the right into an adjacent lane. *Id.* at 38699.

NHTSA also recognized, however, that there were inherent drawbacks to the use of convex mirrors as well. One of the more significant drawbacks was that images of an object viewed in a convex mirror tend to be smaller than those of the same object viewed in a plane mirror. Consequently, drivers used to plane mirrors may erroneously assume that vehicles situated immediately behind the driver and to the right may be further away than anticipated. Such an erroneous perception may cause the driver to move to the right and change lanes before it is actually safe to do so. In order to address this concern, and at the suggestion of several automobile manufacturers, NHTSA required that a warning be permanently etched into all convex passenger side view mirrors. This suggestion was favored over NHTSA's original proposal which would have provided for an orange border around the convex mirror to alert the driver of a potential difference in mirror characteristics. The written warning was chosen because, based on studies performed at the request of NHTSA, the Agency found that (1) The fact that a convex mirror image appears different from that of a plane mirror does not, in the Agency's view, provide an adequate warning that objects viewed in the convex mirror are closer than they appear; (2) the etched warning would serve as a reminder to the driver with each use and would assist drivers who may not read such a warning alternatively placed in the owner's manual; and (3) the etched warning conveys a much clearer warning than the rather ambiguous orange border. *Id.* at 38700.

In the case of MBUSA's affected vehicles, the etched warning provides that "Objects in Mirror Closer Than They Appear." The missing word "Are" is contrary to the exact wording of the warning required by FMVSS 111. The cause of this error was traced to a defective stencil used in the laser printer which etches the warnings onto mirrors. MBUSA believes that the stencil defect, which caused the laser printer to inadvertently leave the word "Are" from the warning, was caused by dirt or some other cosmetic flaw in the stencil. This situation apparently was not immediately noticed by MBUSA's supplier's quality control department. MBUSA does not believe, however, that the foregoing error in the warning statement etched onto the affected mirrors, affects their safety in any discernible

way. Specifically, as provided in the preamble to the final rule amending FMVSS 111 to allow the use of convex mirrors, one of the potential drawbacks associated with convex mirrors is that images in such mirrors tend to appear further away than their actual position. NHTSA recognized the need to provide an adequate warning to vehicle operators at all times regarding this distortion. The Agency rejected an earlier proposal for a symbolic warning because such a warning did not adequately convey the message regarding the distortion caused by convex mirrors. Instead, NHTSA required a specifically worded warning that would serve to inform drivers about the distortion caused by convex mirrors. Although not technically in compliance with the exact requirements of FMVSS 111, MBUSA believes that the etched warning on the noncompliant Mercedes-Benz vehicles still conveys the necessary warning consistent with the purpose set forth in the preamble to the final rule. The change caused by the missing word "Are" does not alter the meaning of the warning statement or the spatial relationship between two objects. Thus, when used in the phrase "Objects in Mirror Closer Than They Appear," the warning, although grammatically incorrect in the foregoing context, still conveys the same meaning.

In addition, convex mirrors have been in use since the final rule amending FMVSS 111 became effective in 1982. In the ensuing 17 years, the driving public has become accustomed to seeing the etched warning on convex passenger side view mirrors. In fact, almost all passenger vehicles currently manufactured have convex, rather than plane, passenger side view mirrors. Because of this, drivers know that convex side view mirrors contain a slight distortion and are able to react accordingly. The importance of the warning, while still viable, is not as critical as when convex mirrors first came into use. Instead of a message of first impression, the warning now serves as a reminder to drivers that a convex mirror is in use. Consequently, the driving public is likely to note that the warning on affected Mercedes-Benz vehicles is present, thus notifying them of the existence of a convex mirror, but unlikely to notice a minor grammatical error that does not effect the meaning of the warning.

Although NHTSA has not previously addressed this exact issue in prior petitions for inconsequential noncompliance, MBUSA believes that there are examples of prior petitions which are sufficiently analogous to support the Company's current petition. Specifically, NHTSA has previously granted numerous petitions for inconsequential noncompliance regarding errors contained in various labels or markings. One of the more frequent areas where inconsequential mislabeling occurs is in the area of tire labeling. See e.g., General Motors Corporation, 64 FR 7944 (1999) (tire information label on glove compartment containing erroneous information regarding the maximum number of occupants allowed in vehicle deemed inconsequential since seat capacity is evident from number of seating positions and seatbelts); Mercedes-Benz of

North America Inc., 63 FR 59623 (1998) (tire information label with incorrect sized lettering and incorrect mounting position deemed inconsequential since information was accurate and legible and location of label was in a position likely to be found by vehicle operator); Red River Manufacturing, Inc., 63 FR 59624 (1998) (tire information on trailer certification labels with English only units of measure deemed inconsequential since correct English unit information sans metric is present and label is in compliance with regulations in all other respects); Cooper Tire and Rubber Company, 62 FR 45474 (1997) (tires with incorrect load and inflation label on the serial side were deemed inconsequential since incorrect information was within tire tolerances and accurate information was provided in two other locations); Bridgestone/Firestone Inc., 57 FR 45865 (1992) (tire serial code with missing number determined inconsequential since missing number was contained in the code identifying the manufacturer of the tire and such information was otherwise discernible from other markings on affected tires); Cooper Tire & Rubber Co., 56 FR 11300 (1991) (tires maximum inflation pressure marked "65 p.s.i. max. press." instead of "65 p.s.i. cold" deemed inconsequential since both phrases have the same meaning and all other information is otherwise correct and in compliance).

In each of the foregoing cases, NHTSA determined that although a noncompliance of the relevant safety standard had occurred, the noncompliances were inconsequential with regards to motor vehicle safety since the erroneous information was corrected elsewhere or did not otherwise alter the meaning of the information conveyed. The last two examples cited above are particularly analogous to MBUSA's current situation. In the Bridgestone/Firestone case, the tire manufacturer had failed to include the number "2" in the tire serial code. The number 2 was part of the serial marker that identified Bridgestone/Firestone as the tire manufacturer. Despite the missing number, NHTSA determined that the violation was inconsequential since the tires bore the brand name "Firestone" and were labeled with the old serial code for Firestone. The tires also bore the date code, size, model and "Made in U.S.A." markings which allowed sufficient identification of the tires in the event a notification and remedy campaign was required. Thus, the noncompliance was deemed inconsequential. Like Bridgestone/Firestone, the missing word "Are" does not alter the information conveyed to the consumer. The warning "Objects in Mirror (Blank) Closer Than They Appear" still provides enough information to the vehicle operator so that the operator is aware a convex passenger side view mirror is in use and that some distortion will result.

Likewise, the second Cooper Tire & Rubber Company case is also analogous to MBUSA's current petition. Specifically, in that case the tire manufacturer had incorrectly stamped a lot of tires with the label "MAX. LOAD 2540 LBS. AT 65 P.S.I. MAX. PRESS" instead of the appropriate "MAX. LOAD 2540 LBS. AT 65 P.S.I. COLD." NHTSA determined, however, that since "MAX PRESS" was

understood to mean the maximum cold inflation pressure to which the tire may be inflated and that the term "COLD" carried the same meaning, that the noncompliance was inconsequential with regards to motor vehicle safety. Like Cooper Tire & Rubber Company's mislabeled tires, MBUSA's convex passenger side view mirror warnings the word "Are" is not clearly printed or visible. The two warning statements, however, have the same meaning. Consequently, if the word "Are" is not clearly printed or visible, it has no impact to the meaning of the warning and should be deemed an inconsequential noncompliance.

As provided above, MBUSA has identified the cause of the original error in the etched warning on convex passenger side view mirrors to a defective stencil used in the laser printer which etched the affected mirrors. MBUSA has since addressed this issue by ensuring that the complete and visible warning statement on all vehicles meets the requirements of FMVSS 111 S5.4.3 and is properly etched onto the mirror. MBUSA does not believe that the noncompliance described above has any appreciable impact on motor vehicle safety. The warning provided in noncompliant vehicles, although grammatically incorrect, still conveys the exact same meaning as the warning required by FMVSS 111. In fact, only one word was not clearly printed or visible in the required warning. This omission of the word did not change the meaning of the warning itself. MBUSA requests this application be granted so that an unnecessary and costly consumer

recall action may be avoided. MBUSA expects a particularly low owner response to such a recall, if it were undertaken, because the basic message of the warning is adequately conveyed despite the error in format. In addition, since convex passenger side view mirrors with warnings have been in widespread use since 1982, MBUSA does not believe that the driving public will even note the error since the warning, if even noticed, will only serve as a reminder to what drivers have long become accustomed to.

We invite you to comment in writing on MBUSA's application. Comments should refer to the docket number and be submitted in two copies to: U.S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC, 20590.

We will consider comments received before the close of business on the closing date indicated below. We will file the application and supporting materials. We will consider, to the extent possible, all comments received after the closing date. When we grant or deny the application, we will publish the notice in the **Federal Register**.

Comment closing date: October 8, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 2, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99-23311 Filed 9-7-99; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending March 31, 1998.

Last name	First name	Middle name
BAEK	CHOON	HO
BAIG	MIRZA	M. F.
BARNES	MARY	ANN
BELKNAP	PATRICIA	LOUISE D'ARCY NEE
BELL	JOY	NETTIE
BERNARD	MARY	CLAUDE
BLACKADDER	ARIEL	FIONA-MARGARET
BORZELLO	ROBERT	ANDREW
BOWEN	DOROTHY	ELIZABET
BOWSER	MANUELA	GERTRUDE
BOYD	MYONG	HUI
BUTLER	WILFRED	LERYO
BYUN	DONG	RYU
CHA	DAL	JOONG
CHA	DON	JIN
CHO	CHIN	BOK
CHO	MI-KUN	
CHOI	MYENG	CHOL
CHOI	SARAH	YOON
CHONG	SUN	HEE
CHUNG	WOO-SUN	
CHUNGNAM-DO	TAEJON	
CUTTER	ALBERT	WILSON
DAUM	BRIAN	ALAN
DEBONO	DENNIS	
DEL PINO	SERGIO	ALBERTO- FERNANDEZ DELEHANTY
DI STEFANO	LYNNE	
DITLEVSEN	LARS	
DONG	YOUNG	JAE
DUNDON	REBECCA	ANNE
ERLER	GABRIELE	
FELDMAN	YVONNE	TOBA
FOERSTER	KARL	F.
GARDNER-GILMORE	LINDA	
GEORGE	CARL	HERMAR

Last name	First name	Middle name
GETTY	EUGENE	PAUL
GHIMSTAD	LISA	
GIBBONS 3RD	EDMUND	GRAHAM
GODOSAR	URSULA	MARIA
GRENNESS	MORTEN	
HAAS	BENJAMIN	MICHAEL
HALL	NANCY	THERESIA
HAN	FRED	SANG-CHON
HAN-KIM	LISA	INSUN
HARBUR	MEREDITH	TEICH
HARBUR	MILES	MURRAY
HARPER	MARY	MAXWELL
HILL	LOUISE	ANNE
HURD	STEPHEN	CHARLES
JAKOBSEN	BENNING	W.
JANG	BOK	YO
JELINEK	KURT	RUDOLF
JENKINS	ARTHUR	LLEWELLYN
JOHNSON	GLADYS	SOULIER NEE
JORGENSEN,NEE GARHARDT	KIRA	GERHARDT
KANG	JAMES	R.
KIM	EUISUNG	
KIM	HYO-GUN	
KIM	JESSICA	
KIM	JUNG	SOO
KIM	MYUNG-SHYNN	
KIM	SHAM	
KIM	YEONG	JAE
KITSON	SCOTT	GORHAM
KLONARIS	MIKE	ANTHONY
KLONARIS	PAMELA	KPUCE
KORNFELD	ROBIN	BETH
KURIHARA	YOSHIKO	
KWAN	SUK	YIN LAM
LARSSON	ROBERT	BENGT-ANDERS
LAW	JAPHET	SEBASTIAN
LEE	BERNARD	
LEE	WAN	CHEOL
LEVELEGIAN 2ND	JACK	H.
LIMB	BEN	QUINCY
LOGAN	YOUNG	SUK
MAC PHERSON	THOMAS	ARTHUR
MADRIZ	TATIANA	MARIA-LESKO
MASON	MORGAN	
MC VEIGH III	CHARLES	SEFFF
MCDOWELL	JOHN	ESTABROOK
MERCIER	BERNARD	JEAN
MIN-MONTGOMERY	OK	KI
MOORE	SEDANNA	
MOREHOUSE	ELEANOR	ESMONDE
MOSES	MALKA	GOLUB
MOSKO	NICOLAS	EMANUEL-PETER
MULIATI	TAN	RIA
NG	NGAM	HING
OESTERLE	BRIGITTE	MARIE
OKUBO	TAKEO	
OSMENA	EMILLIO	MARIO-RENNER
PAGE	ROBERT	SAMUEL
PARK	MIN	KYU
PARK	THOMAS	PEARSON
PAULSON	JAN	
PAYNE	MARK	RANDALL
PEMBROKE	PAUL	WILLIAM
PEMBROKE	WESLEY	ALAN
PENISTON	ELMINA	H.
PINEDA	ELIZABETH	RAMOS
POWDERLY	ANNEMARIE	
POWELL	MAJORIE	MARY
RANDOLPH	AUGUSTUS	GRIFFITH
RESCHENTHALER	GILBERT	BROWN
RESTEINER	ELISABETH	
RESTEINER	ERIC	EDWARD
RIGGS	WILLIAN	BEGG
RIM	HELGA	SUNCHO

Last name	First name	Middle name
ROBERTS	NIKOLE	
ROSE	ELINOR	CAROL
ROTHMOSER	GABRIELLE	
SANDERS	J.	D.
SAWAMURA	THOMAS	SHOGO
SCHABAS	MICHAEL	HUNTLY
SCHLIMPERT	FRANK	WERNER
SHARMA	GHANSHYAM	DATT
SIEBERT	EDWIN	OTTO
SKINNER	JODY	DANIEL
STAPP	RHONDA	JEAN
SULTAN	SAMIRY	IBRAIM
SWANSON	OK	SUN]
TAN	ANDREQ	CHUA
TANKERSLEY	NECOL	IRMA
THORSTEINSON	DEBORAH	ANN
TRAN	KIM	CHUNG
VANCE	GREGORY	EDWARD
VUKO	BOSKO	
WATANABE	YOSHIMI	
WEFELNBERG	BRIGID	ANNE
WEIGEN	JOANNE	SANDRA
WENDEL	MELANIE	ALEXANDRA
WILKINSON	JULIE	ISABELLA
WOOLEY	ALWYN	MARGUERITE
ZIEGLER	LIEBGARD	ERNA
ZINK	DOLPH	WARREN

Approved: April 14, 1998.

Doug Rogers,

*Chief, Special Projects & Support Branch,
International District.*

[FR Doc. 99-23242 Filed 9-7-99; 8:45 am]

BILLING CODE 4830-01-U

Corrections

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

Correction

In notice document 99-22463 beginning on page 47167 in the issue of Monday, August 30, 1999, make the following correction(s):

1. On page 47168, in the table, at "Italy: Certain Pasta, A-475-818", under the fourth entry, add "N. Puglisi & F. Industria Paste Alimentari S.p.A.".

2. On the same page, in the table, at "Italy: Certain Pasta, C-475-819", "1/1/98-12/31/99" should read "1/1/98-12/31/98".

[FR Doc. C9-22463 Filed 9-7-99; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

Correction

In notice document 99-22568 appearing on page 47489 in the issue of Tuesday, August 31, 1999, in the first column, in the **DATES:** section, "September 1999 (800 a.m. to 1600

p.m.)" should read "21 September 1999 (800 a.m. to 1600 p.m.)".

[FR Doc. C9-22568 Filed 9-7-99; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

Correction

In notice document 99-22647 beginning on page 47490 in the issue of Tuesday, August 31, 1999, make the following corrections:

1. On page 47490, in the second column, in the **ADDRESSES** section, in the second line, "SW" should read "NW".

2. On the same page, in the third column, in the second full paragraph, in the fourth line,

"AmericaCounts@ed.gov" should read "America__Counts@ed.gov".

3. On the same page, in the same column, in the same paragraph, in the fifth line, "Jamila Rattler@ed.gov" should read "Jamila__Rattler@ed.gov".

[FR Doc. C9-22647 Filed 9-7-99; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[WO-620-1430-00-24 1A]

RIN 1004-AD31

Locating, Recording, and Maintaining Mining Claims or Sites; and Extension of Currently Approved Information Collection, OMB Approval Number 1004-0114

Correction

In proposed rule document 99-21911 beginning on page 47023, in the issue of

Friday, August 27, 1999, make the following correction:

§ 3830.91 [Corrected]

On page 47034, in the second column, in § 3830.91(a), in the last line, "3830.960" should read "3830.96".

[FR Doc. C9-21911 Filed 9-7-99; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ACE-40]

Amendment to Class E Airspace; Nevada, MO

Correction

In rule document 99-22220 beginning on page 47386, in the issue of Tuesday, August 31, 1999, make the following correction:

§ 71.1 [Corrected]

On page 47387, in the third column, under **ACE MO E5 Nevada, MO [Revised]**, in the tenth line, "616-mile" should read "6.6-mile".

[FR Doc. C9-22220 Filed 9-7-99; 8:45 am]

BILLING CODE 1505-01-D

Registered Trademark

Wednesday
September 8, 1999

Part II

**Department of
Commerce**

Patent and Trademark Office

**37 CFR Part 1 et al.
Trademark Law Treaty Implementation
Act Changes; Final Rule**

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Parts 1, 2, 3 and 6**

[Docket No. 980826226-9185-02]

RIN 0651-AB00

Trademark Law Treaty Implementation Act Changes**AGENCY:** Patent and Trademark Office, Commerce.**ACTION:** Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending its rules to implement the Trademark Law Treaty Implementation Act of 1998 (TLTIA), Pub. L. 105-330, 112 Stat. 3064 (15 U.S.C. 1051), and to otherwise simplify and clarify procedures for registering trademarks, and for maintaining and renewing trademark registrations. TLTIA implements the Trademark Law Treaty (TLT). TLT is to make the procedural requirements of the different national trademark offices more consistent.

DATES:*Effective Date:* October 30, 1999.*Applicability Dates:* See**SUPPLEMENTARY INFORMATION.****FOR FURTHER INFORMATION CONTACT:**

Mary Hannon, Office of Assistant Commissioner for Trademarks, by telephone at (703) 308-8910, extension 137; by facsimile transmission addressed to her at (703) 308-9395; or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

SUPPLEMENTARY INFORMATION:**Applicability Dates**

Pending Applications for Registration: The TLTIA amendments to the Act, and these rule changes, shall apply to any application for registration of a trademark pending on, or filed on or after, October 30, 1999.

Informal Applications: Application papers filed before October 30, 1999, but not reviewed by the Office for compliance with minimum filing requirements until after October 30, 1999, will be required to meet the minimum filing requirements (§ 2.21) in effect as of the date of filing. If the application fails to meet the minimum filing requirements in effect on the date of filing, but meets the minimum filing requirements in effect on the date the papers are reviewed, the application will be assigned a filing date of October 30, 1999.

Petitions to Revive: Petitions to revive pending on October 30, 1999, will be

reviewed under the unintentional delay standard. See the discussion below of the changes to § 2.66.

Post Registration: The revised provisions of sections 8 and 9 of the Act, and these amendments to the rules, apply only to affidavits and renewal applications filed on or after October 30, 1999. The old law applies to affidavits and renewal applications filed before October 30, 1999, even if the sixth or tenth anniversary, or the expiration date of the registration is on or after October 30, 1999. This is true even for affidavits and renewal applications that are filed before, but examined after, October 30, 1999.

The revised provisions of section 9 of the Act do not apply to applications for renewal of registrations that expire before October 30, 1999, even if the applications are examined after October 30, 1999. For example, if a registration expires on October 29, 1999, the registrant may file a renewal application within the three-month grace period provided under the old law. The new six-month grace period does not apply to registrations with expiration dates prior to October 30, 1999.

Likewise, the new law does not apply to a section 8 affidavit due before October 30, 1999, even if the affidavit is not examined until after October 30, 1999. For example, if a registration issued on October 29, 1993, the registrant must meet the statutory requirements of section 8 of the Act on or before October 29, 1999. The registrant cannot take advantage of the six-month grace period, or the deficiency period, provided under the new law.

The revised provisions of section 8 of the Trademark Act, 15 U.S.C. 1058, and these rule changes, apply to the filing of an affidavit of continued use or excusable nonuse under section 8 of the Act if: (1) The sixth or tenth anniversary of registration, or the sixth anniversary of publication under section 12(c) of the Act, is on or after October 30, 1999; and (2) the affidavit is filed on or after October 30, 1999. However, the provisions of section 8(a)(3) of the Act, requiring the filing of a section 8 affidavit at the end of each successive ten year period after registration, do not apply to a registration issued or renewed for a twenty year term (*i.e.*, a registration issued or renewed before November 16, 1989) until a renewal application is due.

A Notice of Proposed Rulemaking was published in the **Federal Register** (64 FR 25223) on May 11, 1999, and in the *Official Gazette* of the Patent and Trademark Office (1223 TMOG 41) on

June 8, 1999. A public hearing was held on June 10, 1999.

Written comments were submitted by two organizations, two law firms, and five trademark attorneys. Three organizations and one attorney testified at the oral hearing.

References below to "the Act," "the Trademark Act" or "the statute" refer to the Trademark Act of 1946, as amended, 15 U.S.C. 1051 *et seq.* "TMEP" is the *Trademark Manual of Examining Procedure* (2nd ed., Rev. 1.1, August 1997).

Application Filing Dates

TLTIA section 103 adds sections 1(a)(4) and 1(b)(4) of the Act to give the Office authority to establish and change filing date requirements. The Office is amending § 2.21 to require the following elements for receipt of a filing date: (1) The name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) a list of the goods or services; and (5) the filing fee for at least one class of goods or services.

Comment: One comment stated that the proposed requirement in § 2.21(a)(3) for a "clear drawing of the mark" was confusing, and that it could impose a hardship on some applicants, *e.g.*, where the attorney's only copy of the drawing is a fax received from a foreign client.

Response: The requirement for a "clear drawing of the mark" is intended to be more lenient than the current requirement for a drawing "substantially meeting all the requirements of § 2.52." A clear drawing of the mark is essential, so that the application can be properly examined, and so that the public will have adequate notice of the mark.

The following elements will no longer be required for receipt of a filing date: a certified copy of the foreign registration in a section 44(e) application; an allegation of the applicant's use or bona fide intention to use the mark in commerce; a specimen and date of first use in commerce in a section 1(a) application; a stated filing basis; and a signature. These elements will instead be required during examination.

Comment: One comment stated that while a filing date should not be denied if the application does not include a filing basis, the basis should be made of record as soon as possible.

Response: The Office expects that most applicants will state the filing basis in the original application. If the application does not include the filing basis, this information will be required in the first Office action.

Bulky Specimens

Amended § 2.56(d)(1) requires that specimens be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with current § 2.56. Section 2.56(d)(2) is added, stating that if an applicant submits a specimen that exceeds the size requirement (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long), insert it in the application file wrapper, and destroy the original bulky specimen.

Currently, when an applicant submits a specimen that does not meet the requirements of § 2.56 (i.e., is not flat, exceeds the size limitation, etc.), the Office retains the specimen even though it is impossible to attach it to the application file wrapper. This requires substantial special handling because the Office must store and track the specimens separately from the application file wrappers. Because the number of newly filed applications has increased from approximately 83,000 to over 233,000 per year over the past ten years, and the number of pending applications has increased from less than 100,000 to over 350,000 in the same period, it has become increasingly difficult to ensure that the bulky specimens follow the application files. As the number of applications has increased, bulky materials submitted as specimens have also increased, requiring an increased use of limited resources to handle the bulky materials. Further, because specimens of this nature are often misplaced or lost during examination processing, the Office must then require new specimens, slowing examination and inconveniencing applicants.

Because the requirement for flat specimens can be easily satisfied through the use of photographs, photocopies, or other means of reproduction, the Office will no longer retain bulky materials submitted as specimens. In very limited circumstances, the Office will continue to accept specimens consisting of videotapes, audiotapes, CDs, computer diskettes, and similar materials where there are no non-bulky alternatives, and the submission is the only means available for showing use of the mark.

Comment: One comment supported the proposed procedure for creating facsimiles of bulky specimens. Another comment supported the proposed procedure, provided that the Office makes copies of the front, back, and all portions of the specimens.

Response: The Office will attempt to capture the mark as used on the specimen, but may not copy all portions of the bulky specimens. If an additional specimen is needed, the examining attorney will require a substitute specimen that meets the size requirements of the rules.

Number of Specimens Required

The Office is amending §§ 2.56(a), 2.76(b)(2), 2.86(b), and 2.88(b)(2) to require one rather than three specimens with an application under section 1 of the Act, or an amendment to allege use or statement of use of a mark in an application under section 1(b) of the Act. The Office previously required three specimens so that an interested party, such as a potential opposer, could permanently remove a specimen from an application file, yet not leave the file without specimens. TMEP § 905.01. However, multiple copies of specimens are no longer necessary because the public may make photocopies of a single specimen.

Comment: Three comments opposed the proposed requirement for only one specimen, stating that if only one specimen is required, and that specimen is lost, the file will be left with no specimen; that multiple specimens enable interested third parties to obtain an original without having to contact the applicant directly; and that current photocopying technology does not adequately reproduce color, small details, tones, low-contrast images, or highly ornate/intricate or densely worded specimens.

Response: The Office does not permit the removal of other documents from application files and will no longer permit specimens to be removed from files. Prohibiting the removal of specimens will ensure that there is a complete record of the submissions made by the applicant. Where removal is permitted, a third party could mistakenly remove a unique specimen, thinking it is merely a duplicate. This would leave the application file incomplete.

Currently, 10% of new applications for registration are filed electronically, and the Office expects this number to increase dramatically in the near future. Only one specimen is required with an electronically filed application, and it is submitted as a digitized image (§ 2.56(d)(4)). Considering the increasing number of electronic filings and the move in the future to a paperless Office, the Office believes that three specimens are unnecessary.

Comment: One comment stated that it generally supports the proposed requirement for only one specimen, but

noted that there will be a greater urgency for the Office to ensure that the single specimen is always available for public inspection.

Response: As noted above, the Office will no longer permit specimens to be removed from files. The Office now microfilms all incoming applications, so that a record of the specimen is available to the public if it is lost. In the near future, the Office will be scanning all incoming applications and allegations of use and will have an electronic image of any specimen that is lost.

Comment: One comment asked whether more than one specimen may be submitted.

Response: Yes, while only one specimen will be required, a party may choose to file more than one specimen. Multiple specimens will be retained in the file as long as they do not exceed the size limitations of § 2.56(d)(1).

Persons Who May Sign

Currently, sections 1(a)(1)(A) and 1(b)(1)(A) of the Act require that an application by a juristic applicant be signed "by a member of the firm or an officer of the corporation or association applying." TLITIA section 103 amends sections 1(a) and 1(b) of the Act to eliminate the specification of the appropriate person to sign on behalf of an applicant.

The applicant or registrant, and the applicant's or registrant's attorney, are best able to determine who should sign documents filed in the Office. Therefore, the Office will no longer question the authority of the person who signs a verification, or a renewal application, unless there is an inconsistency in the record as to the signatory's authority to sign.

Proposed § 2.33(a) stated that a person properly authorized to sign on behalf of the applicant "includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant."

Comment: One comment suggested that § 2.33(a) be amended to state that a person who is properly authorized to sign on behalf of the applicant includes: (1) A person with legal authority to bind the applicant, (2) a person with firsthand knowledge of the facts asserted, and actual or implied authority to act on behalf of the applicant, and (3) an attorney as defined in § 10.1(c) of this chapter who has an actual or implied, written or verbal power of attorney from the applicant, provided that the Office may require written confirmation of

such power of attorney subsequent to the filing of the verified statement.

Response: The suggestion has been adopted, but modified slightly. The Office will not require written confirmation of a power of attorney, but will accept the attorney's word that he or she is authorized to sign on behalf of the applicant.

Comment: One comment suggested that "and/or" be changed to "or."

Response: The suggestion has been adopted.

Comment: One comment suggested that "implied authority" be changed to "apparent authority."

Response: The suggestion has not been adopted. The Office believes that the "implied authority" standard is broad enough to cover most circumstances and to allow applicants flexibility in determining who can sign verifications.

Comment: Four comments requested clarification as to whether attorneys can sign on behalf of clients, and whether any special power of attorney is needed.

Response: Sections 2.33(a) and 2.161(b) have been amended to provide for signature of verifications by attorneys. No special power of attorney will be required.

Renewal applications may also be signed by attorneys. Verification of renewal applications is no longer required. Section 2.183(a) requires that the renewal application be executed by "the registrant or the registrant's representative."

Filing by Owner

Although TLTIA amends the statute to eliminate the specification of the proper party to sign on behalf of an applicant or registrant, the statute still requires that the owner of the mark file an application for registration, amendment to allege use, statement of use, request for extension of time to file a statement of use, and section 8 affidavit. See sections 1(a)(1), 1(b)(1), 1(d)(1), 1(d)(2), and 8(b) of the Act.

TLTIA section 105 amends section 8 of the Act to require that the owner of the mark file an affidavit of continued use or excusable nonuse within the time period set forth in section 8(a) of the Act. The legislative history states:

Throughout the revised section 8, the term "registrant" has been replaced by the term "owner." The practice at the Patent and Trademark Office has been to require that the current owner of the registration file all the post-registration affidavits needed to maintain a registration. The current owner of the registration must aver to actual knowledge of the use of the mark in the subject registration. However, the definition of "registrant" in section 45 of the Act states

that the "terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of each applicant and registrant." Therefore, use of the term "registrant" in section 8 of the Act would imply that any legal representative, predecessor, successor or assign of the registrant could successfully file the affidavits required by sections 8 and 9. To correct this situation, and to keep with the general principal (sic), as set out in section 1, that the owner is the proper person to prosecute an application, section 8 has been amended to state that the owner must file the affidavits required by the section.

H.R. Rep. No. 194, 105th Cong., 1st Sess. 18-19 (1997).

Therefore, the Office is amending §§ 2.163(a) and 2.164(b) to make it clear that filing by the owner is a minimum requirement that cannot be cured after expiration of the filing period set forth in section 8 of the Act.

Under sections 1(a) and 1(b) of the Act, an application for registration of a mark must also be filed by the owner. Therefore, new § 2.71(d) states that although a mistake in setting out the applicant's name can be corrected, the application cannot be amended to set forth a different entity as the applicant; and that an application is void if it is filed in the name of an entity that did not own the mark as of the filing date of the application. This codifies current practice. *TMEP* § 802.07. *Huang v. Tzu Wei Chen Food Co. Ltd.*, 7 USPQ2d 1335 (Fed. Cir. 1988) (application filed in name of individual two days after mark was acquired by newly formed corporation held void); *Accu Personnel Inc. v. Accustaff Inc.*, 38 USPQ2d 1443 (TTAB 1996) (application filed in name of entity that did not yet exist not void); *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991) (application filed by joint venturer void where mark owned by joint venture); *U.S. Pioneer Electronics Corp. v. Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974) (misidentification of applicant's name may be corrected).

The Office is also amending §§ 2.88(e)(3), 2.89(a)(3), and 2.89(b)(3) to state that if a statement of use or request for an extension of time to file a statement of use is unsigned or signed by the wrong party, a substitute verification must be submitted before the expiration of the statutory period for filing the statement of use. This is consistent with current practice. See *TMEP* §§ 1105.05(f)(i)(A) and 1105.05(d). Sections 1(d)(1) and (2) of the Act require verification by the owner within the statutory period for filing the statement of use. Therefore, the Office cannot extend or waive the deadline for filing the verification. *In re*

Kinsman, 33 USPQ2d 1057 (Comm'r Pats. 1993).

Material Alteration

The Federal Circuit held in *In re ECCS*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996) that an applicant may amend an application based on use to correct an "internal inconsistency" in the original application. *Id.* at 1581, 39 USPQ2d at 2004. An application is "internally inconsistent" if the mark on the drawing does not agree with the mark on the specimens filed with the application. *Id.* As a result, the Office has been accepting all amendments to drawings in use-based applications if there is an inconsistency in the initial application.

However, the Office does not believe that it is in the public interest to accept amendments that materially alter the mark on the original drawing. When the Office receives a new application, the mark on the drawing is promptly filed in the Trademark Search Library and entered into the Office's electronic and administrative systems. Because the granting of a filing date to an application potentially establishes a date of constructive use of the mark under section 7(c) of the Act, timely and accurate public notification of the filing of applications is important. Accepting an amendment that materially alters the mark on the original drawing is unfair to third parties who search Office records between the application filing date and the date of the amendment, because they do not have accurate information about earlier-filed applications. Relying on the search of Office records, a third party may innocently begin using a mark that conflicts with the amended mark, but not with the original mark. Also, an examining attorney may approve a later-filed application for registration of a mark that conflicts with the amended mark, but not with the original mark. Therefore, the Office is amending § 2.72 to prohibit amendments that materially alter the mark on the original drawing.

Comments: One law firm opposed any amendment of § 2.72, stating that the decisions in *ECCS* and *In re Dekra*, 44 USPQ2d 1693 (TTAB 1997) established a fair compromise between the rights of the applicant and the rights of third parties. One organization stated that minor changes like the change permitted in *ECCS* should be allowed, but that it "does not endorse the type of substantial change to a drawing permitted in *Dekra*," and expressed concern that the amendment to § 2.72 could lead to a more stringent standard for determining material alteration than the standard set forth in *ECCS*. The

comment further noted that the standard for determining whether the mark in the drawing agrees with the mark in the foreign registration in a section 44 application is stricter than the standard used to determine whether specimens support use of a mark in an application under section 1 of the Trademark Act, and suggested that if a uniform standard for determining material alteration is adopted, the more liberal standard applied to section 1(a) or section 1(b) applications should be used.

Response: ECCS held that under current § 2.72(b), the specimens filed with the original application in a use-based application must be considered in determining what mark the applicant seeks to register. However, the court specifically noted that seven decisions cited in the ECCS decision were not affected: "We have carefully examined all * * * (seven) cases and find that none has any bearing on the situation before us in which an original application is *internally inconsistent* as to what the mark is, the specimen displaying one mark and the drawing a *slightly different mark*." * * * *Id.* at 1581, 39 USPQ2d at 2004 (emphasis added). ECCS specifically cited *In re Abolio y Rubio S.A.C.I. y G.*, 24 USPQ2d 1152 (TTAB 1992) and *In re Meditech Int'l Corp.*, 25 USPQ2d 1159 (TTAB 1990). ECCS at 1581, 39 USPQ2d at 2004. *Abolio y Rubio* involved an application based on a foreign registration (15 U.S.C. 1026(e)) in which the drawing omitted the design shown in the foreign registration submitted with the application. *Meditech* concerned a use-based application in which the drawing contained the typed words "DESIGN OF A BLUE STAR" while the specimens showed a design of twenty blue stars without the words shown in the drawing. In both of these cases, the applicants were not permitted to amend their drawings. Subsequently, the Federal Circuit in *In re Hacot-Colombier*, affirmed the Board's refusal to permit an applicant to amend its drawing in an application based on a foreign-filed application, 15 U.S.C. 1126(d). 105 F.3d 616, 41 USPQ2d 1523 (Fed. Cir. 1997). Citing *Abolio y Rubio* with approval, the Court gave deference to the agency's interpretation that § 2.72 includes both a prohibition against material alterations and a requirement that any alteration conform to the mark in the foreign registration. *Id.* at 619, 41 USPQ2d at 1526. The present amendment to § 2.72 is not intended to change the standard for determining what constitutes a material alteration as discussed in the Board cases cited in ECCS, or in *Hacot-Colombier*.

Color Drawings

Section 2.52 is amended to delete the color lining chart currently in § 2.52(e).

Comment: One comment asked whether the Office would accept drawings in actual color.

Response: The Office will no longer deny an application a filing date if the mark is depicted in color. However, the Office does not yet have the technology to scan marks in color, and the marks will be uploaded into the Office's automated systems in black and white.

Comment: One comment asked whether marks would be published in the *Official Gazette* and issued in color.

Response: The Office will not publish and issue marks in color on October 30, 1999. However, the Office anticipates publishing and issuing marks in color in the future.

Comment: Two comments requested that color photocopies be made available to the public.

Response: Color photocopies are very expensive and will not be available to the public on October 30, 1999. The Office is looking into purchasing a color copier for use by the public, for a fee, and will make it available as soon as possible.

Comment: One comment suggested that the Office should permit the use of lining or stippling to indicate color on a drawing, at least until an alternative method of indicating color gains wide acceptance.

Response: There will be a transition period in which the Office will continue to publish and register marks that contain the color linings currently in § 2.52(e). An *Official Gazette* notice will advise when color lining is no longer acceptable.

Comment: One comment noted that proposed § 2.52(a)(2)(i) referred to color lining, while the color lining chart was deleted from § 2.52(e).

Response: The reference to color lining has been deleted from § 2.52(a)(2)(i).

Comment: One comment suggested that the Office clarify what is a sufficient description and location of color applied to a mark.

Response: The application must include a clear and specific description of the mark, identifying the mark as consisting of the particular color as applied to the goods or services. If the color is applied only to a portion of the goods, the description must indicate the specific portion. Similarly, if the mark includes gradations of color, the description should so indicate. The Office will issue an examination guide giving further guidance as to how it will process color drawings.

Comment: One comment suggested that the Office accept color photographs to describe the color claimed in a mark.

Response: In addition to a written description of a mark, the Office will accept color photographs for the record to describe the color claimed in a mark.

Comment: Two comments suggested that applicants should have the option to identify color using a generally accepted color identification system.

Response: The Office does not endorse any one commercial color identification system. However, in addition to a written description of the color contained in a mark, an applicant may refer to a commercial color identification system to describe color.

Revival of Abandoned Applications

Effective October 30, 1999, sections 1(d)(4) and 12(b) of the Act, and section 2.66 permit the revival of an abandoned application where the delay in responding to an Office action or notice of allowance is "unintentional." A showing of "unavoidable" delay is no longer required. All petitions to revive pending on or filed on or after October 30, 1999, will be reviewed under the unintentional delay standard.

Under § 2.66(a), the applicant must file a petition to revive (1) within two months of the mailing date of the notice of abandonment; or (2) within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application. These deadlines will be strictly enforced.

The written statement that the delay was unintentional must be signed by someone with firsthand knowledge of the facts, but it need not be verified or supported by a declaration under § 2.20.

It is not necessary to explain the circumstances that caused the unintentional delay. The Office will generally not question the applicant's assertion that the delay in responding to an Office action or notice of allowance was unintentional, and will grant the petition, unless there is information in the record indicating that the delay was in fact intentional.

See the discussion below of the amendments to § 2.66 for further information on the requirements for filing a petition to revive.

Comment: One comment suggested that § 2.66(a) (1) and (2) be amended to provide for filing a petition to revive within two months of "the mailing date of an adverse decision on a Request For Reinstatement," so as to avoid a disincentive for filing requests for reinstatement.

Response: The suggestion has not been adopted because it is unnecessary. When the Office denies a request for reinstatement, the Office routinely gives the applicant an opportunity to pay the petition fee and convert the request for reinstatement into a petition to revive.

Comment: One comment suggested that § 2.66(a) be amended to provide for the filing of a petition to revive where the applicant did not timely respond to "a decision on the petition (other than a petition to revive under this rule)," because "(t)here may be instances where a decision on petition is misdirected by the U.S. Postal Service and results in the abandonment of the application. For example, consider a petition for an extension of time to commence judicial review under 37 CFR 2.145(e)."

Response: The suggestion has not been adopted. Sections 1(d)(1) and 12(b) of the Act, 15 U.S.C. 1051(d)(1) and 1062(b), provide for revival of an abandoned application based on a showing of unintentional delay only where there is a delay in responding to an Office action or filing a statement of use or request for an extension of time to file a statement of use. In the example provided, the remedy is found in § 2.145(e)(2), which provides that the Commissioner may extend the time for filing an appeal or commencing a civil action "upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect." In other situations, the remedy is to file a petition to the Commissioner under § 2.146(a)(5), under which the Commissioner may waive any provision of the rules that is not a provision of the statute, where an extraordinary situation exists, justice requires, and no other party is injured thereby.

Due Diligence

Sections 2.66(a)(2) and 2.146(i) are amended to indicate that where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled due to the alleged loss or mishandling of papers mailed to or from the Office, the petition will be denied if the petitioner was not diligent in checking the status of the application or registration. This codifies the long-standing past practice of the Office. TMEP sections 413, 1112.05(b)(ii), and 1704. To be considered diligent, the petitioner must check the status of the application or registration that is the subject of the petition within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

The Office now denies petitions when the petitioner waits too long before checking the status of an application or registration. The rationale is that granting the petition would be unfair to third parties who may have searched Office records and relied to their detriment on information that an application was abandoned or that a registration had expired or been cancelled. A third party may have diligently searched Office records and begun using a mark because the search showed no earlier-filed conflicting marks, or an examining attorney may have searched Office records and approved a later-filed application for a conflicting mark.

A party can check the status through the Trademark Status Line ((703) 305-8747) or through the Trademark Applications and Registrations Retrieval (TARR) database on the Office's World Wide Web site at <http://www.uspto.gov/go/tarr/>. Written status inquiries are discouraged.

Comment: One comment suggested that the one-year due diligence standard be expressly incorporated into §§ 2.66(a)(2) and 2.146(i).

Response: The suggestion has been adopted.

Comment: One comment requested guidance as to how one proves that he or she has been diligent in monitoring the status of a pending matter.

Response: A party may call the Status Line, or access status information through the World Wide Web, and make a notation in the party's own file noting the date of the status inquiry, and the substance of the information learned. If it is ever necessary to petition for corrective action, the dates and substance of the status inquiries should be summarized in the petition. No further documentation is necessary.

Comment: One comment objected to the requirement that petitioners be diligent in monitoring the status of pending matters, noting that docketing a one-year status check every time a paper is filed or received results in a maze of confusing entries in docketing systems that makes it difficult to tell which dates have been superseded.

Response: To protect the interests of third parties and to maintain the integrity of the register, the Office believes that requests to reactivate abandoned applications or cancelled registrations must be made within a reasonable time; the Office does not believe that requiring a status check once per year is unreasonable. Therefore, the Office will continue its long-standing practice of denying petitions to revive under § 2.66 and petitions to the Commissioner under

§ 2.146 if the petitioner has waited too long before investigating the problem.

Amendment of Basis After Publication

Proposed § 2.35(b) prohibited an amendment to add or substitute a basis after publication.

Comments: Four comments opposed the proposed prohibition against amending the basis after publication, and one comment supported the proposal.

Response: Because of the arguments submitted by the opponents of the proposed rule prohibiting amendment of the basis after publication, the Office is withdrawing the proposal. Section 2.35(b) is instead amended to incorporate current practice, i.e., to state that an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended to add or substitute a basis after publication, if the applicant files a petition to the Commissioner; and that republication will always be required. TMEP § 1006.04. An application that is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by § 2.133(a).

Specification of Type of Commerce No Longer Required

The Office will no longer require a specification of the type of commerce in which a mark is used in an application for registration based on use in commerce under section 1(a) of the Act, allegation of use in an application based on section 1(b) of the Act, affidavit of continued use under section 8 of the Act (section 8 affidavit), or affidavit of incontestability under section 15 of the Act (section 15 affidavit).

The Office proposed to eliminate the requirements that sections 8 and 15 affidavits specify the type of commerce in which the mark is used, currently required by §§ 2.162(e) and 2.167(c). Sections 8 and 15 of the Act do not require that the affidavits list the type of commerce. Because the definition of "commerce" in section 45 of the Act is "all commerce which may lawfully be regulated by Congress," the Office will presume that a registrant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate.

Comment: No comments opposed the proposed deletion of the requirement that section 8 and section 15 affidavits specify the type of commerce. One comment suggested that §§ 2.33(b)(1), 2.34(a)(1)(iii), 2.76(b)(1)(ii), and 2.88(b)(1)(ii) be amended to require an allegation that the mark is in "use in

commerce that can be regulated by the Congress of the United States of America," rather than a specification of the type of commerce in which the mark is used, in an application for registration or allegation of use.

Response: The suggestion has been adopted, but modified slightly. Sections 1(a), 1(c), and 1(d) of the Act do not require that an applicant specify the type of commerce in which the mark is used in an application or allegation of use. Sections 2.33(b)(1), 2.34(a)(1)(iii), 2.76(b)(1)(ii), and 2.88(b)(1)(ii) are amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. The Office will not require that the applicant specifically state that the mark is in use in commerce that the United States Congress can regulate. Instead, the Office will presume that an applicant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate.

Statement of Method of Use or Intended Use of Marks No Longer Required

The rules no longer require a statement of the applicant's method or intended method of use of a mark, because sections 1(a), 1(b), and 1(d) of the Act have been amended to omit these requirements.

Post Registration

TLTIA sections 105 and 106 amend: (1) section 8 of the Act, 15 U.S.C. 1058, to add a requirement for filing an affidavit or declaration of continued use or excusable nonuse in the year before the end of every ten-year period after the date of registration; and (2) section 9 of the Act, 15 U.S.C. 1059, to delete the requirement for a declaration of continued use or excusable nonuse in a renewal application. Thus, every tenth year, the owner of a registration must file both a section 8 affidavit and a renewal application.

The statutory filing periods for the ten year section 8 affidavits are the same as the statutory filing periods for renewal applications. The Office will create a combined "Sections 8 and 9" form to make it easy to make both filings in a single document. In substance, the requirements of the combined filing under amended sections 8 and 9 of the Act will be the same as the requirements for renewal under current law.

A section 8 affidavit between the fifth and sixth year after the date of registration is also required. This is consistent with current law. No renewal application is required during the sixth year.

TLTIA sections 105 and 106 amend sections 8 and 9 of the Act to permit filing within a six-month grace period after the deadline set forth in the statute, with an additional surcharge. The surcharge for filing a section 8 affidavit or section 9 renewal application during the grace period is \$100 per class. If a combined filing under sections 8 and 9 of the Act is filed during the grace period, two grace period surcharges must be included for each class, one for the section 8 affidavit and another for the section 9 renewal application.

TLTIA sections 105 and 106 also amend sections 8(c)(2) and 9(a) of the Act to allow for the correction of most deficiencies after the deadline set forth in the statute, with payment of an additional surcharge. The surcharge for correcting a deficiency in a section 8 affidavit or a section 9 renewal application is \$100. Only a single deficiency surcharge will be required for correcting deficiencies in a combined sections 8 and 9 filing, even if both the section 8 affidavit and the renewal application are deficient.

Comment: One comment requested clarification as to how the deficiency and grace period fees would be applied to section 8 affidavits and renewal applications pending before or around the date of implementation.

Response: The new fees do not apply to section 8 affidavits and renewal applications filed before October 30, 1999. The revised provisions of sections 8 and 9 of the Act, and these amendments to the rules, apply only to affidavits and renewal applications filed on or after October 30, 1999. The old law, and the old fees, apply to affidavits and renewal applications filed before October 30, 1999, even if the sixth or tenth anniversary, or the expiration date, of the registration is on or after October 30, 1999. This is true even for affidavits and renewal applications that are filed before, but examined after, October 30, 1999. See the discussion under the heading "Dates/Applicability Dates," *supra*, for further information about the effective date of TLTIA and this final rule.

Comment: One comment suggested that it would be unfair to charge the deficiency surcharge if large backlogs prevent examination in a timely manner.

Response: Ultimately, it is the registrant who is responsible for filing documents that meet the requirements of the Act and the rules. The surcharges required by sections 8(c)(2) and 9(a) of the Act will be charged regardless of whether there are backlogs in examination. Under current law, statutory requirements must be met

before the end of the filing period set forth in the Act, or the registration will be cancelled. The new law provides a benefit to registrants because it permits correction of most statutory deficiencies after the expiration of the statutory filing period, albeit for an additional fee. To avoid deficiency fees, registrants are encouraged to file section 8 affidavits and renewal applications early in the statutory period. Under both sections 8 and 9 of the Act, there is a one-year period in which a section 8 affidavit or renewal application can be filed, plus an additional six-month grace period. Section 8 affidavits are now examined within six months of filing, and renewal applications are examined less than two months after filing.

Comment: One comment stated that it would be unfair to charge a deficiency surcharge if the information needed to cure defects is within the control of the PTO, e.g., an assignment or change of name waiting to be recorded.

Response: If the party who filed was the owner of the registration at the time of filing, there will be no deficiency surcharge for recording documents or submitting other evidence of ownership, before or after the expiration of the filing periods set forth in the Act.

Comment: One comment asked why there was a surcharge for correcting deficiencies in a section 8 affidavit, but not for a section 15 affidavit.

Response: Section 8(c)(2) of the Act requires a surcharge for correcting deficiencies after expiration of the deadline set forth in section 8 of the Act, while section 15 of the Act does not require a deficiency surcharge. There is no statutory cutoff date for filing a section 15 affidavit. Amendments or corrections to section 15 affidavits are not accepted, but substitute affidavits may be filed. TMEP § 1604.03.

Comment: The Office had proposed decreasing the renewal fee from \$300 to \$200 per class, and increasing the filing fees for sections 8 and 15 affidavits from \$100 to \$200 per class. Two comments objected to the proposed increase in filing fees for sections 8 and 15 affidavits.

Response: The Office is withdrawing these proposals at this time.

Comment: One comment suggested that the automated records of the Office should specify which affidavits had been filed under section 8 of the Act, e.g., "first section 8 affidavit," "second section 8 affidavit," etc.

Response: The Office's automated records will identify a section 8 affidavit as "Section 8 (6 year)" or "Section 8 (10 year). Further information may be obtained from the Status Line at (703) 305-8747, or from the Trademark

Applications and Registrations Retrieval (TARR) database on the Office's World Wide Web site at <http://www.uspto.gov/go/tarr/>. The prosecution history will show the number of section 8 affidavits that have been filed.

Recording Assignments and Changes of Name

Currently, the Office will record only an original document or a true copy of an original. TLIA section 107 amends section 10 of the Act to allow recordation of a document that is not an original or a true copy.

Comment: One comment suggested that § 3.25(a)(4) should be amended to delete the requirement for signature by the assignee when an assignment is supported by a statement explaining how the conveyance affects title. The comment noted that assignments signed only by the assignor have been routinely recorded for many years; that the rule as written would be a major change in policy; that the assignment of trademarks and the associated goodwill is regarded as a matter of state law, and signature by the assignee is not required by the law of a number of states; and that the proposed rule would seek to impose by Federal law an additional requirement in a transaction that is clearly covered by state law, and raises a question as to whether there is Federal authority for doing so.

Response: The suggestion has not been adopted. Section 3.25(a) sets forth a number of types of underlying documents one can submit to the Office to support a request to record an assignment. Section 3.25(a)(4) is not a requirement, but only one alternative available to a party seeking to record an assignment. Traditionally, the only document that the Office accepted to support a request to record an assignment was the original assignment document or a true copy of the original document. Amended § 3.25(a) provides a wider range of supporting documents. The Office will continue to accept an original assignment document, or a true copy of an original, that is signed only by the assignor.

Comment: One comment suggested that § 3.25(b) should be amended to continue the current requirement for an original or a true copy of an original with a request to record a change of name. The comment noted that it is generally easy to obtain a document reflecting a name change, and would therefore not be a significant burden to parties seeking to record assignments; and that the proposed rule requiring only a legible cover sheet would result in a burden to members of the public

seeking to confirm the change in ownership.

Response: The suggestion has not been adopted. The deletion of the requirement for an underlying document supporting a request to record a change of name was made because section 10 of the Act no longer requires an underlying document in a request to record a name change.

Assignment of Section 1(b) Applications

TLIA section 107 amends section 10 of the Act to permit an assignment after the applicant files an amendment to allege use under section 1(c) of the Act. Currently, a section 1(b) application cannot be assigned until after the filing of a statement of use under section 1(d) of the Act, except to a successor to the applicant's business, or the portion of the business to which the mark pertains. This amendment corrects an oversight in the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100-667, 102 Stat. 3935 (15 U.S.C. 1051)), which amended section 10 of the Act to permit an assignment of a section 1(b) application to someone other than a successor to the applicant's business only after the filing of a statement of use under section 1(d) of the Act. The substance of statements of use and amendments to allege use are the same, and the only difference is the time of filing, so there is no reason to treat them differently.

Discussion of Specific Rules Changed or Added

The Office is amending rules 1.1, 1.4, 1.5, 1.6, 1.23, 2.1, 2.6, 2.17, 2.20, 2.21, 2.31, 2.32, 2.33, 2.34, 2.35, 2.37, 2.38, 2.39, 2.45, 2.51, 2.52, 2.56, 2.57, 2.58, 2.59, 2.66, 2.71, 2.72, 2.76, 2.86, 2.88, 2.89, 2.101, 2.111, 2.146, 2.151, 2.155, 2.156, 2.160, 2.161, 2.162, 2.163, 2.164, 2.165, 2.166, 2.167, 2.168, 2.173, 2.181, 2.182, 2.183, 2.184, 2.185, 2.186, 3.16, 3.24, 3.25, 3.28, 3.31, and 6.1.

Section 1.1(a)(2) is amended to set forth all the addresses for filing trademark correspondence in one rule.

Section 1.1(a)(2)(i) is amended to exempt papers filed electronically from the requirement that correspondence be mailed to the street address of the Office.

Section 1.1(a)(2)(v) is amended to state that an applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Office's electronic form.

Section 1.4(a)(2) is amended to correct a cross-reference.

Section 1.4(d)(1)(iii) is added to provide for signature of electronically transmitted trademark filings, where permitted.

Section 1.5(c) is amended to clarify the requirements for identifying trademark applications and registrations.

Section 1.6(a) is amended to provide that the Office will consider trademark-related correspondence transmitted electronically to have been filed on the date of transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. This is consistent with the treatment of correspondence filed as Express Mail with the United States Postal Service (USPS) under § 1.10.

Comment: One comment suggested that § 1.6(a)(1) be amended to state that Express Mail deposited on a Saturday, Sunday, or Federal holiday will receive a filing date as of the date of deposit with the USPS.

Response: The suggestion has not been adopted. Sections 1.6(a)(2) and 1.10(a) already state that correspondence filed by Express Mail will be considered filed as of the date of deposit with USPS, and these sections do not limit the date of deposit as Express Mail to a day that is not a weekend or Federal holiday. Therefore, it is not necessary to repeat this information in § 1.6(a)(1). The Office now stamps correspondence filed by Express Mail under § 1.10 with the USPS "date in," regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. TMEP § 702.02(f); MPEP § 513.

The current text of § 1.23 is designated as paragraph (a), and amended to clarify that payment must be made in U.S. dollars, and in the form of a cashier's or certified check, Treasury note, or USPS money order to be considered unconditional payment of a fee. As with current practice, payment of a fee by other forms (e.g., by personal or corporate check, or authorization to charge a credit card) is subject to actual collection of the fee.

Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.

Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.

Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge "all required fees" or "the filing fee" to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the "required fee" or the applicable "filing fee") within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (e.g., certain debit cards or check cards).

Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

Section 2.1 is amended to update a cross-reference.

Section 2.6(a)(6) is amended to delete reference to the three-month renewal grace period. TLTIA changes the grace period to six months.

Section 2.6(a)(14) is removed because it is unnecessary. The cost of a combined affidavit or declaration under sections 8 and 15 of the Act is the sum of the cost of the individual filings.

Section 2.6(a)(14) is added, requiring a \$100 surcharge per class for filing a section 8 affidavit during the grace period.

Section 2.6(a)(20) is added, requiring a \$100 surcharge for correcting a deficiency in a section 8 affidavit.

Section 2.6(a)(21) is added, requiring a \$100 surcharge for correcting a deficiency in a renewal application.

Section 2.17(c) is added, stating that to be recognized as a representative in a trademark case, an attorney as defined in § 10.1(c) may file a power of attorney, appear in person, or sign a paper that is filed with the Office on behalf of an applicant or registrant. This codifies current practice.

Section 2.17(d) is added, stating that someone may file a power of attorney that relates to more than one trademark application or registration, or to all

existing and future applications and registrations; and that someone relying on such a power of attorney must: (1) Include a copy of the previously filed power of attorney; or (2) refer to the previously filed power of attorney, specifying: The filing date; the application serial number, registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

Comment: One comment requested clarification as to whether a "global" power of attorney will be effective for all registrations, including those that have no immediate deadline.

Response: Yes, the power of attorney will be effective for registrations that have no immediate deadline. When the attorney later takes an action, such as filing an affidavit of continued use or a renewal application, he or she must comply with the requirements of § 2.17(d) in order to rely on the power of attorney.

Comment: One comment asked whether a global power of attorney will remain valid if the application for which the power was filed is abandoned.

Response: Yes. The Office will maintain a record of the power of attorney, and the power will remain valid even if the original power was filed with an application that is later abandoned, or with a registration that is later cancelled.

Comment: One comment suggested that the Office should require attorneys to set forth the jurisdiction in which they are admitted and their bar number in a power of attorney.

Response: The suggestion has not been adopted, because the Office does not need this information to process applications and other documents. The purpose of TLT is to minimize the number of formal requirements for applications, powers of attorney and other documents, and to make the procedural requirements of the different national trademark offices more consistent. Instituting a new requirement that an attorney include the jurisdiction in which he or she is admitted and a bar number would not serve this purpose.

Section 2.20 is revised to delete the requirement for a declaration by a "member of the firm or an officer of the corporation or association," because this requirement has been deleted from sections 1(a) and 1(b) of the Act.

Comment: One comment suggested that § 2.20 be amended to permit the use of the language of 28 U.S.C. 1746 in a declaration.

Response: The suggestion has been adopted. Section 2.20 is amended to permit the filing of a verification under 28 U.S.C. 1746 in lieu of either an affidavit or a declaration under § 2.20. This reflects current practice. TMEP § 803.02.

Section 2.21 is revised to require the following minimum requirements for receipt of an application filing date: (1) The name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) an identification of goods or services; and (5) the filing fee for at least one class of goods or services. See the discussion under the heading "Supplementary Information/Application Filing Dates," *supra*.

The following minimum requirements for receiving a filing date have been deleted: A stated basis for filing; a verification or declaration signed by the applicant; an allegation of use in commerce, specimen, and date of first use in commerce in an application under section 1(a) of the Act; an allegation of the applicant's bona fide intention to use the mark in commerce in an application under section 1(b) or section 44 of the Act; a claim of priority in an application under section 44(d) of the Act; and a certified copy of a foreign registration in an application under section 44(e) of the Act. A claim of priority under section 44(d) must be filed before the end of the priority period. All other elements must be provided during examination.

Section 2.21(a)(3) is amended to require a "clear drawing of the mark" rather than the drawing "substantially meeting all the requirements of § 2.52" that is now required.

Section 2.21(b) is amended to state that the Office "may" rather than "will" return the papers and fees to the applicant when an application does not meet the minimum filing requirements. A new procedure is being considered under which the Office would retain applications that do not meet the minimum filing requirements. Applicants would have an opportunity to supply the missing element and receive a filing date as of the date the Office receives the missing element. Until a new policy is announced, the Office will continue to return the papers and fees to the applicant.

Comment: One comment stated that it reserves judgment on the possible future change in procedures for handling informal applications.

Response: If the Office does decide to change procedures for handling informal applications, it will seek input from the public before instituting the changes.

The center heading "THE WRITTEN APPLICATION" before § 2.31 is deleted because it is unnecessary. The heading "APPLICATION FOR REGISTRATION," immediately before § 2.21, encompasses the rules that now fall under the heading "THE WRITTEN APPLICATION."

Section 2.31 is removed and reserved. The substance of the requirement that the application be in English has been moved to revised § 2.32(a).

The heading of § 2.32 is changed to "Requirements for a complete application." Revised § 2.32(a) lists the requirements for the written application, now listed in § 2.33(a)(1).

Proposed § 2.32(a)(3)(ii) required that a juristic applicant set forth the state or nation under the laws of which the applicant is organized. This is consistent with current § 2.33(a)(1)(ii).

Comment: One comment suggested that "state or nation" in § 2.32(a)(3)(ii) be changed to "jurisdiction (usually state or nation)," because juristic persons such as corporations may be incorporated under the law of a jurisdiction that is not a state or nation.

Response: The suggestion has been adopted.

Section 2.32(a)(6) requires a list of the goods or services on or in connection with which the applicant uses or intends to use the mark, and states that in an application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration.

Comment: One comment suggested that § 2.32(a)(6) be amended to state that an application may be filed under multiple bases, with some of the goods/services supported by only one of the bases.

Response: The suggestion has not been adopted because it is unnecessary. Section 2.34(b)(1) clearly states that an applicant may claim more than one basis in a single application, and § 2.34(b)(2) indicates that the goods/services in such an application may be covered by different bases.

The heading of § 2.33 is changed to "Verified statement."

Section 2.33(a) is amended to state that the application must include a statement that is signed and verified by a person properly authorized to sign on behalf of the applicant. Section 2.33(a) further states that a person who is properly authorized to sign on behalf of

the applicant is: (1) A person with legal authority to bind the applicant; or (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant; or (3) an attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the applicant. See the discussion under the heading "Supplementary Information/Persons Who May Sign," *supra*.

The substance of current § 2.32(b) is moved to § 2.33(c). Revised § 2.33 states that the Office may require a substitute verification of the applicant's continued use or bona fide intention to use the mark when the applicant does not file the verified statement within a reasonable time after the date it is signed. This codifies present practice. Section 2.32(b) now states only that a verification of the applicant's continued use of the mark is required where the application is not filed within a reasonable time after it is signed. However, the Office also requires verification of the applicant's continued bona fide intention to use the mark in commerce when a verification under section 1(b) or section 44 of the Act is not filed within a reasonable time after it is signed. TMEP § 803.04.

Section 2.33(b)(1) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Section 2.33(d) is added, stating that where an electronically transmitted filing is permitted, the person who signs the verified statement must either: (1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic document; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or (2) use some other form of electronic signature that the Commissioner may designate.

Section 2.34 is added, setting forth the requirements for the four bases for filing. New § 2.34(a)(1) lists the requirements for an application under section 1(a) of the Act, now listed in section §§ 2.21(a)(5)(i), 2.33(a)(1)(iv), 2.33(a)(1)(vii), 2.33(a)(2), and § 2.33(b)(1). Section 2.34(a)(2) lists the requirements for an application under section 1(b) of the Act, now listed in §§ 2.21(a)(5)(iv) and 2.33(a)(1)(iv).

Section 2.34(a)(iii) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the

discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Comment: One comment suggested that § 2.34(a)(1)(i), which pertains to applications based on use in commerce under section 1(a) of the Act, be amended to change "application filing date" to "application filing date (in the case of an application claiming priority under section 44(d), such use in commerce shall be required as of the U.S. filing date not the filing date of the priority application)," to avoid any confusion, because in a section 44(d) application that claims priority, the effective filing date is the filing date of the foreign application.

Response: The suggestion has not been adopted, because it is unnecessary, and could be confusing to domestic applicants who base their applications solely on use in commerce and are unfamiliar with the requirements of section 44(d). Under § 1.6, correspondence is stamped with the date of receipt in the Office, unless the correspondence is filed under § 1.10, which provides for the filing of papers and fees by Express Mail. The term "application filing date" is now commonly used to refer to the date the application is received in the Patent and Trademark Office, and the priority date in a section 44(d) application is referred to as the "effective filing date." TMEP § 708.02. The Office knows of no instances in which a party whose application was based on both sections 44(d) and 1(a) mistakenly believed that the requirements for the section 1(a) basis must be met as of the priority date.

Section 2.34(a)(3) lists the requirements for an application under section 44(e) of the Act, now listed in §§ 2.21(a)(5)(ii) and 2.33(a)(1)(viii). Section 2.34(a)(3)(ii) requires a certified copy of a foreign registration. Currently, a section 44(e) applicant must submit a foreign certificate to receive a filing date. However, TLITIA section 108 amends section 44(e) of the Act to delete the requirement that the application be "accompanied by" the foreign certificate. The Office will require that the applicant submit the certificate during examination.

New § 2.34(a)(3)(iii) is added, stating that if it appears that the foreign registration will expire before the mark in the United States application will register, the applicant must submit a certification from the foreign country's trademark office, showing that the registration has been renewed and will be in force at the time the United States registration will issue. This codifies current practice. TMEP § 1004.03.

Comment: One comment suggested that the phrase "before the United States registration will issue," be changed to "before the United States registration is expected to issue assuming no unusual delays," because at the time of examination the exact date of issue is subject to wide variance.

Response: The suggestion has not been adopted. Even if there is a delay in issuance of a registration in an application under section 44(e) of the Act, due to an opposition or for other reasons, the United States registration will not issue unless the foreign registration has been renewed and is in force.

New § 2.34(a)(4) lists the requirements for an application under section 44(d) of the Act, now listed in §§ 2.21(a)(5)(iii), 2.33(a)(1)(ix), and 2.39. Section 2.34(a)(4)(i) requires that a priority claim be filed within six months of the filing date of the foreign application. This is consistent with Articles 4(C)(1) and 4(D)(1) of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967 (Paris Convention).

New § 2.34(b)(1) states that an applicant may claim more than one basis, provided that the applicant meets the requirements for all bases claimed. This codifies current practice. Section 2.34(b)(1) also states that the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in one application.

Revised § 2.34(b)(2) requires that the applicant specify which basis covers which goods or services when an applicant claims more than one basis.

New § 2.34(c) sets forth the definition of "commerce," currently found in § 2.33(a)(3).

Section 2.37 is removed.

Section 2.35 is redesignated as § 2.37.

Section 2.35 is added: "Adding, deleting, or substituting bases."

New § 2.35(a) states that the applicant may add or substitute a basis for registration before publication, and that the applicant may delete a basis at any time.

Section 2.35(b) is amended to state that an application may be amended to add or substitute a basis after publication, if the applicant files a petition to the Commissioner; and that republication will always be required. This codifies current practice. TMEP § 1006.04. See the discussion under "Supplementary Information/Amendment of Basis After Publication," *supra*.

New § 2.35(c) changes current practice to allow a section 44(d) applicant to retain the priority filing date when the applicant substitutes a

new basis after the expiration of the six-month priority period. Currently, if an application is filed solely under section 44(d), and the applicant amends to substitute a different basis after the expiration of the six-month priority period, the effective filing date of the application becomes the date the applicant perfects the amendment claiming the new basis. TMEP § 1006.03.

Comment: Proposed § 2.35(c) stated that when the applicant substitutes a basis, the Office will presume that the original basis was valid, unless there is contradictory evidence in the record. One comment questioned whether an application that was amended from section 1(a) to section 1(b) would be subject to attack on the ground that the original basis was invalid because there was no use as a mark.

Response: A party who filed an application based on use in commerce, but later discovered that what he or she thought was appropriate trademark use was not in fact technical trademark use, clearly had a bona fide intention to use the mark in commerce as of the filing date. If the use basis is invalid, the applicant is entitled to retain the original filing date because the applicant had a bona fide intention to use the mark in commerce at all times. Section 2.35(c) is therefore amended to delete the statement that the Office will presume that the original basis was valid and substitute a statement that the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record.

New § 2.35(d) states that if an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects. This codifies current practice. TMEP § 1006.01.

New § 2.35(e) states that the applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application. This is consistent with current practice (TMEP § 1006.05), and with Articles 4(C)(1) and 4(D)(1) of the Paris Convention.

New § 2.35(f) states that an applicant who adds a basis must state which basis covers which goods or services.

New § 2.35(g) states that if an applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis. This codifies current practice.

New § 2.35(h) states that once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the

application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

Section 2.38(a) is amended to update a cross-reference.

Section 2.39 is removed and reserved. The requirements for filing a priority claim under section 44(d) of the Act are moved to § 2.34(a)(4), discussed above.

Sections 2.45 (a) and (b) are revised to: (1) Delete the requirement for a statement of the method or intended method of use in a certification mark application; and (2) require a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services. Sections 1(a) and 1(b) of the Act, as amended, no longer require a statement of the method or intended method of use of a mark. The requirement for a copy of the certification standards codifies current practice. TMEP § 1306.06(g)(ii).

Sections 2.51 (c) through (e) are removed. The substance of those rules is moved to new § 2.52.

Section 2.52(a) is revised to define the term "drawing," to indicate that a drawing may only depict a single mark, and to define the terms "typed drawing" and "special form drawing."

Section 2.52(a) is revised to add guidelines for drawings of various types of unusual marks, such as marks that include color, three-dimensional objects, motion, sound or scent; and to add guidelines for showing placement of the mark on goods, packaging for goods, or in advertising of services.

Section 2.52(b) is revised to indicate the recommended format for the drawing of a mark.

Section 2.52(c) is revised to state that for an electronically filed application, if the mark cannot be shown as a "typed drawing," the applicant must attach a digitized image of the mark to the application.

Sections 2.56, 2.57, and 2.58 are consolidated into § 2.56.

Sections 2.57 and 2.58 are removed and reserved.

Section 2.56(a) is revised to require one rather than three specimens with an application under section 1(a) of the Act, or an allegation of use under section 1(c) or section 1(d) of the Act in an application under section 1(b) of the Act. See the discussion under "Supplementary Information/Number of Specimens Required," *supra*.

Section 2.56(b)(1) is added, stating that a trademark specimen is a label, tag, or container for the goods, or a display associated with the goods; and that the Office may accept another document

related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods. This is consistent with the current § 2.56.

Comment: One comment suggested that the second sentence of § 2.56(b)(1) should be amended to substitute “will” for “may,” and that the following sentence be added at the end of the paragraph: “The Office may accept a display associated with the goods when this is the customary method of use of a trademark in the relevant trade or industry.”

Response: The suggestion has not been adopted. The first sentence of § 2.56(b)(1) already states that a specimen may be a display associated with the goods, so the suggested third sentence is unnecessary. The word “may” is used in the second sentence of § 2.56(b)(1) because it is within the discretion of the examining attorney to determine whether specimens are acceptable.

Section 2.56(b)(2) is added, stating that a service mark specimen must show the mark as actually used in the sale or advertising of the services. This is consistent with the current § 2.58(a).

Section 2.56(b)(3) is added, stating that a collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services. This codifies current practice. TMEP § 1303.02(b).

Section 2.56(b)(4) is added, stating that a collective membership mark specimen must show use by members to indicate membership in the collective organization. This codifies current practice. TMEP § 1304.09(c).

Section 2.56(b)(5) is added, stating that a certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of the person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services. This codifies current practice. TMEP § 1306.06(c).

Section 2.56(c) is added, stating that a photocopy or other reproduction of a specimen is acceptable, but that a photocopy or facsimile that merely reproduces the drawing is not a proper specimen. This is consistent with the current § 2.57.

New § 2.56(d)(1) states that a specimen must be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with the current § 2.56.

Section 2.56(d)(2) is added, stating that if the applicant files a specimen that is too large (a “bulky specimen”), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper. See the discussion under “Supplementary Information/Bulky Specimens,” *supra*.

Section 2.56(d)(4) is added, stating that if the application is filed electronically, the specimen must be submitted as a digitized image.

Section 2.59, which governs the filing of substitute specimens, is revised to clarify and simplify the language. Section 2.59(b)(1) provides that when an applicant submits substitute specimens after filing an amendment to allege use under § 2.76, the applicant must verify the substitute specimens were in use in commerce prior to filing the amendment to allege use.

Comment: One comment suggested that § 2.59(b)(1) be amended to provide for the filing of substitute specimens that were in use “prior to filing the substitute specimen(s),” even if the specimens were not in use as of the filing date of the amendment to allege use. The comment noted that under the current rule, if the substitute specimens are not in use as of the filing date of the amendment to allege use, then the applicant must cancel the first amendment to allege use and substitute a new one, and stated that this serves no useful purpose.

Response: The suggestion has not been adopted. Section 1(c) of the Act provides for the filing of an amendment to allege use only after the applicant “has made use of the mark in commerce.” Under § 2.76(e)(2), a minimum filing requirement for an amendment to allege use is a specimen showing that the mark is in use in commerce on or in connection with the goods or services. If the applicant cannot show use in commerce as of the filing date of the amendment to allege use, then the amendment cannot be considered “filed” as of that date. The Office believes that its records should accurately show the date when an intent-to-use applicant files an acceptable amendment to allege use under section 1(c) of the Act, because this date can be significant. For example, under § 2.75(b), if an intent-to-use applicant amends to the Supplemental Register, the effective filing date of the application becomes the date the amendment to allege use was perfected. It would be unfair to grant the intent-to-use applicant an effective filing date on the

Supplemental Register before the mark was actually in use in commerce.

Section 2.66 is revised to set forth the requirements for filing a petition to revive an abandoned application when the delay in responding to an Office action or notice of allowance is “unintentional.” See the discussion under “Supplementary Information/Revival of Abandoned Applications,” *supra*.

Sections 2.66(a)(1) and (2) are added, requiring that the applicant file a petition to revive within (1) two months of the mailing date of the notice of abandonment; or (2) two months of actual knowledge of abandonment. Currently, the deadline for filing a petition to revive is sixty days from the mailing date of the notice of abandonment or the date of actual knowledge of abandonment. TMEP § 1112.05(a). The two-month deadline will make it easier to calculate the due date for a petition because it will not be necessary to count days.

Section 2.66(a)(2) states that an applicant must be diligent in checking the status of an application, and that to be diligent, the applicant must check the status of the application within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. This codifies current practice. TMEP sections 413 and 1112.05(b)(ii). See the discussion under the heading “Supplementary Information/Due Diligence,” *supra*.

Sections 2.66(b)(2) and (c)(2) are amended to require “a statement, signed by someone with firsthand knowledge of the facts, that the delay * * * was unintentional.” This statement need not be verified.

Section 2.66(b)(3) is amended to state that if the applicant did not receive the Office action, the applicant need not include a proposed response to an Office action with a petition to revive. This codifies current practice.

Sections 2.66(c)(3) and (4) are amended to state that if the applicant did not receive the notice of allowance and requests cancellation of the notice of allowance, the petition to revive need not include a statement of use or request for an extension of time to file a statement of use, or the fees for the extension requests that would have been due if the application had never been abandoned. This codifies current practice.

Section 2.66(c)(5) is added, stating that the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use

unless: (1) A statement of use is filed with or before the petition to revive, or (2) the petition states that the applicant did not receive the notice of allowance and requests cancellation of the notice of allowance. This codifies current practice.

Section 2.66(f)(3) is added, stating that if the Commissioner denies the petition to revive, the applicant may request reconsideration by: (1) Filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with new § 2.146(j).

Section 2.71(a) is revised to state that the applicant may amend the identification to clarify or limit, but not broaden, the identification of goods and/or services. This simplifies the language of the current § 2.71(b).

New § 2.71(b)(1) states that if the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong person, the applicant may submit a substitute verification or declaration under § 2.20. This changes current practice. Currently, the applicant must submit a signed verification to receive an application filing date, and if the verification is signed by the wrong party, the applicant cannot file a substitute verification unless the party who originally signed had "color of authority" (i.e., firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant). TMEP Section 803. As discussed above, the Office is deleting the requirement that the applicant submit a signed verification in order to receive a filing date. If the verification is unsigned or signed by the wrong party, the applicant must replace the declaration during examination.

The requirement for a verification "by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association" has been removed from § 2.71(c). This is consistent with the amendments to sections 1(a) and 1(b) of the Act. See the discussion under "Supplementary Information/Persons Who May Sign," *supra*.

The "color of authority" provisions have been deleted from § 2.71(c). Because the statute no longer specifies

who has "statutory" authority to sign, the "color of authority" provisions are unnecessary.

New § 2.71(b)(2) states that if the declaration or verification of a statement of use under § 2.88 or a request for extension of time to file a statement of use under § 2.89 is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

Section 2.71(d) is added, stating that a mistake in setting out the applicant's name can be corrected, but the application cannot be amended to set forth a different entity as the applicant; and that an application filed in the name of an entity that did not own the mark on the filing date of the application is void. This codifies current practice. TMEP § 802.07. See the discussion under "Supplementary Information/Filing by Owner," *supra*.

Section 2.72 is revised to remove paragraph (a), and redesignate paragraphs (b) through (d) as (a) through (c).

New paragraphs (a) through (c) will each state that an applicant may not amend the description or drawing of the mark if the amendment materially alters the mark; and that the Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the original application. See the discussion under the heading "Supplementary Information/Material Alteration," *supra*.

Comment: One comment suggested that § 2.72(b) should be amended to provide that in an application based on section 1(b) of the Act, the applicant "may amend the heading on the drawing to reflect a change in applicant's name, jurisdiction of citizenship or organization, and/or address at any time," to encourage the prompt amendment of applications to reflect changes in the applicant's name, address and/or jurisdiction.

Response: The suggestion has not been adopted because it is unnecessary. Section 2.72(b) pertains only to amendment of the "description or drawing of the mark," not to amendment of the heading on a drawing. An applicant who submits a substitute drawing is free to amend the heading in the substitute drawing.

Comment: One comment suggested that § 2.72(c)(1) be amended to provide that in an application based on § 44(d) of the Act, the applicant may amend the drawing of the mark if the amendment is supported by the foreign application, "because there may never be a 'foreign

registration certificate' if the foreign priority application lapses."

Response: The suggestion has not been adopted. Section 44(d) is a basis for filing an application, not a basis for registration. If the applicant perfects the section 44(e) basis, the mark in the United States application must be a substantially exact representation of the mark in the home country registration. If the applicant elects not to perfect the section 44(e) basis, the mark in the United States application must be a substantially exact representation of the mark on the specimens filed with a section 1(a) application or with an allegation of use in a section 1(b) application. A mark would not be registrable if it were a substantially exact representation of the mark in the foreign application, but not a substantially exact representation of the mark in the foreign registration in a section 44(e) application, or the specimens in a use-based application.

Section 2.76(b)(1) is revised to state that a complete amendment to allege use must include a statement that is verified or supported by a declaration under section 2.20 by a person properly authorized to sign on behalf of the applicant.

Section 2.76(b)(1) is further revised to delete the requirement for a statement of the method or manner of use of the mark in an amendment to allege use, because this requirement has been removed from section 1(a) of the Act.

Section 2.76(b)(1)(ii) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Section 2.76(b)(2) is revised to require one rather than three specimens with an amendment to allege use.

Section 2.76(i) is added, stating that if an amendment to allege use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

Section 2.76(j) is added, noting that the requirements for multi-class applications are stated in § 2.86.

The heading of § 2.86 is changed to "Application may include multiple classes." The current § 2.86(a), which states that an applicant may recite more than one item of goods, or more than one service, in a single class, if the applicant either has used or has a bona fide intention to use the mark on all the goods or services, is removed. The

substance of this provision is moved to §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv), and 2.34(a)(4)(iv).

Section 2.86(a) is revised to include sections now found in § 2.86(b), stating that the applicant may apply to register the same mark for goods and/or services in multiple classes in a single application, provided that the applicant specifically identifies the goods and services in each class; submits a fee for each class; and either includes dates of use and one specimen, or a statement of a bona fide intention to use the mark in commerce, for each class.

Section 2.86(a)(3) is amended to add a provision that the applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

Section 2.86(b) is amended to state that a statement of use or amendment to allege use must include the required fee, dates of use, and one specimen for each class.

Section 2.86(b) is amended to add a provision that the applicant may not file the statement of use or amendment to allege use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. This is consistent with the current §§ 2.76(c) and 2.88(c).

Section 2.86(c), which prohibits an applicant from claiming both use in commerce and intent-to-use in a single multi-class application, is deleted. However, new § 2.86(a)(3) will state that the applicant may not claim both use in commerce and intent-to-use for the identical goods or services in one application.

The substance of the last sentence of the current § 2.86(b) is moved to new § 2.86(c).

Section 2.88(b)(1) is revised to state that a complete statement of use must include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant.

Section 2.88(b)(1) is revised to delete the requirement for a statement of the method or manner of use in a statement of use. This requirement has been removed from section 1(d)(1) of the Act.

Section 2.88(b)(1)(ii) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Section 2.88(b)(2) is revised to require one specimen with a statement of use, rather than the three specimens now required.

Section 2.88(e)(3) is revised to state that if the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP

§ 1105.05(f)(i)(A). Section 1(d)(1) of the Act specifically requires verification by the applicant within the statutory period for filing the statement of use.

Section 2.88(k) is added, stating that if the statement of use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

Section 2.88(l) is added, noting that the requirements for multi-class applications are stated in § 2.86.

Sections 2.89(a)(3) and (b)(3) are revised to require that the statement that the applicant has a bona fide intention to use the mark in commerce in a request for an extension of time to file a statement of use be verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant; and that if the extension request is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(d). Sections 1(d)(1) and (2) of the Act specifically require verification by the applicant within the statutory filing period.

Section 2.89(d) is revised to remove paragraph (1), which requires a statement that the applicant has not yet made use of the mark in commerce on all the goods and services. The Commissioner has held that an extension request that omits this allegation is substantially in compliance with § 2.89(d) if the request contains a statement that the applicant has a continued bona fide intention to use the mark in commerce. *In re Schering-Plough Healthcare Products Inc.*, 24 USPQ2d 1709 (Comm'r Pats. 1992). Therefore, the requirement is unnecessary.

Section 2.89(g) is amended to change the time limit for filing a petition to the Commissioner from the denial of a request for an extension of time to file a statement of use from one month to two months. The two-month deadline is consistent with the deadline for filing a petition to revive an unintentionally abandoned application under § 2.66, and with the amendment of the

deadline for filing petitions under § 2.146(d).

Section 2.89(h) is added, stating that if the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the applicant still has a bona fide intention to use the mark in commerce. This codifies current practice. TMEP § 803.04.

Section 2.101(d)(1) is revised to update a cross-reference.

Section 2.111(c)(1) is revised to update a cross-reference.

Section 2.146(d) is revised to delete "sixty days" and substitute "two months" as the deadline for filing certain petitions. This will make it easier to calculate the due date for a petition, because it will not be necessary to count days.

Section 2.146(i) is added, stating that where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled due to the loss or mishandling of papers mailed to or from the Office, the petition will be denied if the petitioner was not diligent in checking the status of the application or registration; and that to be considered diligent, the applicant must check the status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. This codifies current practice. TMEP sections 413 and 1704. See the discussion under the heading "Supplementary Information/Due Diligence," *supra*.

Section 2.146(j) is added, stating that if the Commissioner denies the petition, the petitioner may request reconsideration by: (1) Filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with new § 2.66(f)(3), discussed above.

Section 2.151 is revised to update a cross-reference and simplify the language.

Section 2.155 is revised to update a cross-reference and simplify the language.

Section 2.156 is revised to update a cross-reference and simplify the language.

Section 2.160 is added, "Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation." New §§ 2.160(a) (1) and (2) list the deadlines for filing the affidavit or declaration, and new § 2.160(a)(3) states that the owner may file the affidavit or declaration within six months after expiration of these deadlines, with an additional grace period surcharge. Currently, there is no grace period for filing a section 8 affidavit.

Comment: Since many registrations are still in twenty-year registration terms, one comment suggested that § 2.160(a)(2) be amended to require filing of an affidavit or declaration of continued use or excusable nonuse "within the year before the end of every ten-year period after the date of registration or renewal."

Response: The suggestion has not been adopted. The language of new § 2.160(a)(2) tracks the language of § 8(a)(3) of the Act. However, the provisions of section (a)(3) of the Act, requiring the filing of a section 8 affidavit at the end of each successive ten year period after registration, do not apply to a twenty-year registration until a renewal application is due. See the discussion under the heading "Dates/ Applicability Dates," *supra*.

Comment: One comment suggested that § 2.160(a)(1)(i) should be amended to require filing "after the fifth anniversary of the date of registration and no later than the sixth anniversary of the date of registration," rather than "between the fifth and sixth year after the date of registration," because the phrase "between the fifth and the sixth year" could be interpreted to be a single day.

Response: The suggestion has been adopted, but modified slightly.

Section 2.160(a)(1)(i) is amended to state that an affidavit of continued use or excusable nonuse must be filed "on or after the fifth anniversary and no later than the sixth anniversary after the date of registration." This makes it clear that the affidavit may be filed on the fifth anniversary of the registration. A similar amendment is made to § 2.160(a)(1)(ii).

Comment: One comment suggested that § 2.160(a)(2) be amended to require filing "after the ninth anniversary of either the date of registration or the most recent renewal, and no later than the tenth anniversary of the date of registration or the date of the most recent renewal, respectively," rather than "within the year before the end of every ten-year period after the date of registration," because the "rule as proposed appears to allow the filing of a renewal application (sic) on the ninth

anniversary of the date of registration, which may not be allowed by the statute."

Response: The suggestion has not been adopted. The Office will accept section 8 affidavits filed on either the ninth or the tenth anniversary after the date of registration. This is consistent with current practice, which permits the filing of a section 8 affidavit on either the fifth or the sixth anniversary after the date of registration. TMEP § 1603.03.

New § 2.160(b) advises that § 2.161 lists the requirements for the affidavit or declaration.

The heading of § 2.161 is changed to "Requirements for a complete affidavit or declaration of continued use or excusable nonuse." Section 2.161 is revised to list the requirements for the affidavit or declaration.

Section 2.161(a) is revised to state that the owner must file the affidavit or declaration within the period set forth in section 8 of the Act.

Comment: One comment suggested that § 2.161(a) be amended to require that the affidavit "be filed within the time period set forth in § 2.160 by the owner, provided that if the owner is an assignee or other transferee, then such assignment or transfer shall be recorded with the Office on or before the filing of a section 8 (affidavit), or within six months after an official action requiring such recordal."

Response: The suggestion has not been adopted. An assignee is not required to record the assignment in order to file a section 8 affidavit. Under § 3.73(b), the assignee also has the option of submitting other proof of the change of ownership (*i.e.*, material showing the transfer of title). TMEP section 502 and § 1603.05(a).

Section 2.161(b) is revised to state that the affidavit or declaration must include a verified statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. Section 2.161(b) further states that a person properly authorized to sign on behalf of the owner is: (1) A person with legal authority to bind the owner; or (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or (3) an attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner. See the discussion under the heading "Supplementary Information/ Persons Who May Sign," *supra*.

Section 2.161(b) also states that the verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a).

Section 2.161(d)(2) is added, requiring a surcharge for filing an affidavit or declaration of continued use or excusable nonuse during the grace period.

Section 2.161(d)(3) is added, stating that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the particular class(es) covered by the affidavit or declaration are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.164 are met; and that if additional fees are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

New § 2.161(e) requires that the affidavit or declaration list both the goods or services on which the mark is in use in commerce and the goods or services for which excusable nonuse is claimed. Currently, a list of the goods or services is not required when excusable nonuse is claimed. *In re Conusa Corp.*, 32 USPQ2d 1857 (Comm'r Pats. 1993). However, TLTIA section 105 amends section 8(b)(2) of the Act to specifically require "an affidavit setting forth those goods on or in connection with which the mark is not in use."

Comment: One comment stated that if the goods for which excusable nonuse is claimed are not listed in a section 8 affidavit, registrants should be given the opportunity to correct the oversight.

Response: If the goods or services for which excusable nonuse is claimed are not listed in an affidavit, the registrant will be given an opportunity to correct the deficiency. However, because section 8(b)(2) of the Act specifically requires that the affidavit set forth the goods or services on or in connection with which the mark is not in use in commerce, a deficiency surcharge will be required if the deficiency is corrected after the deadline specified in section 8 of the Act.

The requirement that the affidavit or declaration specify the type of commerce in which the mark is used, currently required by § 2.162(e), is removed. See the discussion under the heading "Supplementary Information/ Specification of Type of Commerce No Longer Required," *supra*.

The substance of § 2.162(f) is moved to § 2.161(f)(2). New § 2.161(f)(2) is revised to add a requirement that the affidavit state the date when use of the mark stopped and the approximate date when use will resume. This codifies current practice. Office actions are often issued requiring a statement as to when use of the mark stopped and when use will resume, because this information is needed to determine whether the nonuse is excusable, within the meaning of section 8 of the Act.

The substance of § 2.162(e) is moved to § 2.161(g). New § 2.161(g) is revised to state that the affidavit must include a specimen for each class of goods or services; that the specimen should be no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long; and that if the applicant files a specimen that exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper. See the discussion under "Supplementary Information/Bulky Specimens," *supra*.

Section 2.161(h) is added, requiring a designation of a domestic representative if the registrant is not domiciled in the United States. This reflects section 8(f) of the Act, as amended, and is consistent with current practice.

The substance of § 2.163 is moved to § 2.162. New § 2.162 is revised to state that the only notice of the requirement for filing the section 8 affidavit or declaration of continued use or excusable nonuse is sent with the certificate of registration when it is originally issued. This merely clarifies, and does not change, current practice.

The substance of current § 2.164 is moved to the introductory text of new § 2.163.

New § 2.163(a) states that if the owner of the registration files the affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

Section 2.163(b) is added, stating that a response to an examiner's Office action must be filed within six months of the mailing date, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later, or the registration will be cancelled.

Section 2.164 is added, "Correcting deficiencies in affidavit or declaration." This section changes current practice. There are now some deficiencies that can be corrected after the statutory deadline for filing the affidavit or

declaration, while other requirements must be satisfied before the expiration of the statutory deadline to avoid cancellation of the registration.

TLTIA section 105 adds section 8(c)(2) of the Act to allow correction of deficiencies, with payment of a deficiency surcharge. The Act does not define "deficiency," but instead gives the Office broad discretion to set procedures and fees for correcting deficiencies.

New § 2.164(a)(1) states that if the owner files the affidavit or declaration within the period set forth in section 8(a) or section 8(b) of the Act, deficiencies can be corrected before the end of this period without paying a deficiency surcharge; and deficiencies can be corrected after the expiration of this period with payment of the deficiency surcharge.

New § 2.164(a)(2) states that if the owner files the affidavit or declaration during the grace period, deficiencies can be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with a deficiency surcharge.

New § 2.164(b) states that if the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

See the discussion under the heading "Supplementary Information/Post Registration," *supra*, for additional information about curing deficiencies in section 8 affidavits.

The heading of § 2.165 is changed to "Petition to Commissioner to review refusal." The last two sentences of the current § 2.165(a)(1) are removed.

Old § 2.166 is removed because it is unnecessary. New §§ 2.163(b) and 2.165(b) set forth the times when a registration will be cancelled.

New § 2.166 is added, "Affidavit of continued use or excusable nonuse combined with renewal application," stating that an affidavit or declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined in a single document.

Section 2.167(c) is revised to delete the requirement that an affidavit or declaration under section 15 of the Act specify the type of commerce in which the mark is used.

The heading of § 2.168 is changed to "Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application." Section 2.168(a) is revised to state that a section 15

affidavit may be combined with a section 8 affidavit, if the combined affidavit meets the requirements of both sections 8 and 15 of the Act. Section 2.168(b) is revised to state that a section 15 affidavit can be combined with a renewal application under section 9 of the Act, if the requirements of both sections 9 and 15 of the Act are met.

Section 2.173(a) is revised to simplify the language.

Sections 2.181(a)(1) and (2) are revised to indicate that renewal of a registration is subject to the provisions of section 8 of the Act. This is consistent with the amendment to section 9(a) of the Act.

Comment: One comment suggested that § 2.181(a)(1) should be amended to provide that registrations remain in force "from their date of issue or the date of expiration of their preceding term," rather than "from their date of issue or expiration," because an expired registration cannot be renewed.

Response: The suggestion has been adopted and modified slightly to simplify the language. Section 2.181(a)(1) is amended to state that registrations issued prior to November 16, 1989, remain in force for twenty years "from their date of issue or the date of renewal." A similar amendment is made to § 2.181(a)(2).

The heading of § 2.182 is changed to "Time for filing renewal application." The section is revised to state that the renewal application must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date with an additional fee.

The heading of § 2.183 is changed to "Requirements for a complete renewal application." This section is revised to delete the present renewal requirements and substitute new ones based on amended section 9 of the Act. The requirements for a specimen and declaration of use or excusable nonuse on or in connection with the goods or services listed in the registration are removed, because these requirements have been removed from section 9 of the Act. The new requirements for renewal are: (1) A request for renewal, signed by the registrant or the registrant's representative; (2) a renewal fee for each class; (3) a grace period surcharge for each class if the renewal application is filed during the grace period; (4) if the registrant is not domiciled in the United States, a designation of a domestic representative; and (5) if the renewal application covers less than all the goods or services, a list of the particular goods or services to be renewed.

New § 2.183(f) states that if the fee submitted is enough to pay for at least

one class, but not enough to pay for all the classes, and the class(es) covered by the renewal application are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.185 are met; and that if the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

Section 2.184 is revised to simplify the language and to transfer some of its provisions to new § 2.186. Section 2.184 states that the Office will issue a notice if the renewal application is not acceptable; that a response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later; and that the registration will expire if the renewal application is not filed within the time periods set forth in section 9(a) of the Act.

Section 2.185 is added, "Correcting deficiencies in renewal application."

Under amended section 9, the renewal application must be filed within the renewal period or grace period specified in section 9(a) of the Act, or the registration will expire. However, if the renewal application is timely filed, any deficiencies may be corrected after expiration of the statutory filing period, with payment of a deficiency surcharge.

New § 2.185(a)(1) states that if the renewal application is filed within one year before the registration expires, deficiencies may be corrected before the registration expires without paying a deficiency surcharge, or after the registration expires with payment of the deficiency surcharge required by section 9(a) of the Act.

New § 2.185(a)(2) states that if the renewal application is filed during the grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with payment of the deficiency surcharge required by section 9(a) of the Act.

New § 2.185(b) states that if the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

Comment: One comment noted that § 2.184(c) appears to be a duplicate of § 2.185(b) and suggested that one be deleted.

Response: The suggestion has not been adopted. Sections 2.184 and 2.185 are not duplicates, and both are necessary for the following reason. Section 2.184(c) states the general rule that a registration will expire if the renewal application is not filed during the proper time period. Section 2.185(b) specifically addresses whether the failure to file a renewal application in the proper time period will be considered a deficiency that can be cured during a six-month deficiency period. The rule states that "[t]his deficiency cannot be cured" (emphasis added).

Section 2.186 is added, "Petition to Commissioner to review refusal of renewal."

New § 2.186(a) states that a response to the examiner's initial refusal is required before filing a petition to the Commissioner, unless the examiner directs otherwise. This is consistent with the current § 2.184(a).

New § 2.186(b) states that if the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the action may be filed within six months of the mailing date of the Office action maintaining the refusal; and that if no petition is filed within six months of the mailing date of the Office action, the registration will expire. This is consistent with the current § 2.184(b).

New § 2.186(c) states that a decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court. This is consistent with the current § 2.184(d).

Section 3.16 is amended to state that an applicant may assign an application based on section 1(b) of the Act once the applicant files an amendment to allege use under section 1(c) of the Act.

The heading of § 3.24 is changed to "Requirements for documents and cover sheets relating to patents and patent applications." The recording requirements for patents are listed in § 3.24. New § 3.25 is added to list the recording requirements for trademark applications and registrations.

Section 3.25 identifies the types of documents one can submit when recording documents that affect some interest in trademark applications or registrations. The section also sets forth the Office's preferred format for cover sheets and other documents.

Section 3.28 is revised to state that separate cover sheets should be used for patents and trademarks.

Section 3.31(a)(4) is revised to set forth the requirements for identifying a trademark application when the application serial number is not known.

Section 3.31(a)(7) requires that a cover sheet state that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative. This is consistent with current § 3.31(a)(8).

Comment: One comment suggested that § 3.31(a)(7) be amended to require that the domestic representative "either sign the cover sheet or countersign the indication," in order to prevent a foreign assignee from designating a domestic representative who is unaware of the designation.

Response: The suggestion has not been adopted. The Office has never required a domestic representative to countersign a designation or a cover sheet, and knows of no instances where an assignee or applicant designated a domestic representative who is not aware of the fact that he or she has been designated. Instituting a new requirement that a domestic representative sign each cover sheet could be burdensome to assignees and is contrary to the goal of minimizing formal requirements and making the procedural requirements of the different national trademark offices more consistent.

The requirement currently in § 3.31(a)(9) that a cover sheet contain a statement that the information on the cover sheet is correct and that any copy of the document submitted is a true copy is deleted.

Section 3.31(b) is amended to state that a cover sheet should not refer to both patents and trademarks; and to put the public on notice that if a cover sheet contains both patent and trademark information, all information will become public after recordation.

Section 3.31(d) is added, stating that a trademark cover sheet should include the serial number or registration number of the trademark affected by the conveyance or transaction, an identification of the mark, and a description of the mark.

Section 3.31(e) is added, stating that the cover sheet should include the total number of applications, registrations, or patents identified on the cover sheet and the total fee.

Section 6.1 is revised to incorporate classification changes that became effective January 1, 1997, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (7th ed. 1996), published by the World Intellectual Property Organization (WIPO).

Rulemaking Requirements

The Office has determined that the rule changes have no federalism

implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rule implements the Trademark Law Treaty Implementation Act and simplifies and clarifies procedures for registering trademarks and maintaining and renewing trademark registrations. The rule will not significantly impact any businesses. The principal effect of the rule is to make it easier for applicants to obtain a filing date. No additional requirements are added to maintain registrations.

Furthermore, this rule simplifies the procedures for registering trademarks in new §§ 2.21, 2.32, 2.34, 2.45, 2.76, 2.88, 2.161, 2.167 and 2.183 of the Trademark rules. As a result, an initial regulatory flexibility analysis was not prepared.

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). No comments were received regarding the certification under the Regulatory Flexibility Act. The changes have been determined to be not significant for purposes of Executive Order 12866.

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

This final rule contains collections of information requirements subject to the PRA. This rule discusses changes in the information required from the public to obtain registrations for trademarks and service marks, to submit affidavits or declarations of continued use or excusable nonuse, statements of use, requests for extensions of time to file statements of use, and to renew registrations. This rule deletes requirements to identify the method of use of a mark and the type of commerce in which a mark is used. Additionally, the rule removes the requirement that requests for recordation of documents be accompanied by originals or true copies of these documents. The rule allows the filing of powers of attorney that pertain to multiple registrations or applications for registration, and sets

forth certain requirements for filing such powers of attorney. Additionally, the rule sets forth requirements for submitting section 8 affidavits of continued use or excusable nonuse combined with section 9 renewal applications, or section 15 affidavits or declarations of incontestability combined with either section 8 affidavits or declarations or with section 9 renewal applications.

An information collection package supporting the changes to the above information requirements, as discussed in this final rule, was submitted to OMB for review and approval. This information collection has been approved by OMB under OMB Control Number 0651-0009. The public reporting burden for this collection of information is estimated to average as follows: Seventeen minutes for applications to obtain registrations based on an intent to use the mark under section 1(b) of the Act, if completed using paper forms; fifteen minutes for applications to obtain registrations based on an intent to use the mark under section 1(b) of the Act, if completed using an electronic form; twenty-three minutes for applications to obtain registrations based on use of the mark under section 1(a) of the Act, if completed using paper forms; twenty-one minutes for applications to obtain registrations based on use of the mark under section 1(a) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under section 44(d) of the Act, if completed using paper forms; nineteen minutes for applications to obtain registrations based on an earlier-filed foreign application under section 44(d) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act; thirteen minutes for allegations of use of the mark under sections 2.76 and 2.88; ten minutes for requests for extension of time to file statements of use under section 2.89; fourteen minutes for renewal applications under section 9 of the Act combined with affidavits or declarations of continued use or excusable nonuse under section 8 of the Act; fourteen minutes for combined affidavits/declarations of use and incontestability under sections 8 and 15 of the Act; eleven minutes for an affidavit or declaration of continued use or excusable nonuse under section 8 of the Act; eleven minutes for a renewal application under section 9 of the Act;

eleven minutes for a declaration of incontestability under section 15 of the Act; three minutes for powers of attorney and designations of domestic representatives; and thirty minutes for a trademark recordation form cover sheet. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

This final rule also involves information requirements associated with amendments, oppositions, and petitions to cancel. The amendments and the oppositions have been previously approved by OMB under control number 0651-0009. The petitions to cancel have been previously approved by OMB under control number 0651-0040. These requirements are not being resubmitted for review at this time. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20230 (Attn: PTO Desk Officer).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

37 CFR Part 6

Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 6 and 15 U.S.C. 41, as amended, the Patent and Trademark Office is amending parts 1, 2, 3, and 6 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Amend § 1.1 by revising paragraph (a)(2) to read as follows:

§ 1.1 Addresses for correspondence with the Patent and Trademark Office.

(a) * * *

(2) *Trademark correspondence.* (i) Send all trademark filings and correspondence, except as specified below or unless submitting electronically, to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

(ii) Send trademark-related documents for the Assignment Division to record to: Commissioner of Patents and Trademarks, Box Assignment, Washington, DC 20231.

(iii) Send requests for certified or uncertified copies of trademark applications and registrations, other than coupon orders for uncertified copies of registrations, to: Commissioner of Patents and Trademarks, Box 10, Washington, DC 20231.

(iv) Send requests for coupon orders for uncertified copies of registrations to: Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

(v) An applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Patent and Trademark Office's electronic form.

* * * * *

3. Amend § 1.4 by revising the last sentence of paragraph (a)(2), revising paragraphs (d)(1), introductory text, and (d)(1)(ii), and adding a new paragraph (d)(1)(iii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) * * * See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of reexamination of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; and of trademark applications and registrations, §§ 2.11 to 2.186.

* * * * *

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and

(f) of this section, filed in an application, patent file, trademark registration file, or other proceeding in the Office which requires a person's signature, must:

(i) * * *

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted, the person who signs the filing must either:

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or

(B) Sign the verified statement using some other form of electronic signature specified by the Commissioner.

* * * * *

4. Amend § 1.5 by revising paragraph (c) to read as follows:

§ 1.5 Identification of application, patent or registration.

* * * * *

(c)(1) A letter about a trademark application should identify the serial number, the name of the applicant, and the mark.

(2) A letter about a registered trademark should identify the registration number, the name of the registrant, and the mark.

* * * * *

5. Amend § 1.6 by revising paragraph (a)(1), and adding new paragraph (a)(4), to read as follows:

§ 1.6 Receipt of correspondence.

(a) * * *

(1) The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted by facsimile under paragraph (a)(3) of this section, or filed electronically under paragraph (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

* * * * *

(4) Trademark-related correspondence transmitted electronically will be stamped with the date on which the Office receives the transmission.

* * * * *

6. Revise § 1.23 to read as follows:

§ 1.23 Method of payment.

(a) All payments of money required for Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Commissioner of Patents and Trademarks. Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Office will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for Patent and Trademark Office fees in an electronically filed trademark application or electronic submission in a trademark application may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

PART 2—RULES APPLICABLE TO TRADEMARK CASES

7. The authority citation for part 2 continues to read as follow:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

8. Revise § 2.1 to read as follows:

§ 2.1 Sections of part 1 applicable.

Sections 1.1 to 1.26 of this chapter apply to trademark cases, except those parts that specifically refer to patents, and except § 1.22 to the extent that it is inconsistent with §§ 2.85(e), 2.101(d), 2.111(c), 2.164, or 2.185. Other sections of part 1 incorporated by reference in part 2 also apply to trademark cases.

9. Section 2.6 is amended by revising the introductory text, paragraphs (a)(6) and (a)(14) and by adding paragraphs (a)(20) and (a)(21) to read as follows:

§ 2.6 Trademark fees.**The Patent and Trademark Office
requires the following fees and charges:**

(a) * * *

(6)	Additional fee for filing a renewal application during the grace period, per class	\$100.00
	* * * * *	
(14)	Additional fee for filing a section 8 affidavit during the grace period, per class	\$100.00
	* * * * *	
(20)	For correcting a deficiency in a section 8 affidavit	\$100.00
(21)	For correcting a deficiency in a renewal application	\$100.00

* * * * *

10. Amend § 2.17 by adding paragraphs (c) and (d) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(c) To be recognized as a representative, an attorney as defined in § 10.1(c) of this chapter may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office in a trademark case.

(d) A party may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations of that party. A party relying on such a power of attorney must:

(1) Include a copy of the previously filed power of attorney; or

(2) Refer to the power of attorney, specifying the filing date of the previously filed power of attorney; the application serial number (if known), registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

11. Revise § 2.20 to read as follows:

§ 2.20 Declarations in lieu of oaths.

Instead of an oath, affidavit, verification, or sworn statement, the language of 28 U.S.C. 1746, or the following language, may be used:

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

12. Revise § 2.21 to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application that contains all of the following:

- (1) The name of the applicant;
 - (2) A name and address for correspondence;
 - (3) A clear drawing of the mark;
 - (4) A listing of the goods or services; and
 - (5) The filing fee for at least one class of goods or services, required by § 2.6.
- (b) If the applicant does not submit all the elements required in paragraph (a) of this section, the Office may return the papers with an explanation of why the filing date was denied.

(c) The applicant may correct and resubmit the application papers. If the resubmitted papers and fee meet all the requirements of paragraph (a) of this section, the Office will grant a filing date as of the date the Office receives the corrected papers.

§ 2.31 [Removed and reserved]

13. Remove and reserve § 2.31.
14. Revise § 2.32 to read as follows:

§ 2.32 Requirements for a complete application.

(a) The application must be in English and include the following:

- (1) A request for registration;
- (2) The name of the applicant(s);
- (3)(i) The citizenship of the applicant(s); or
- (ii) If the applicant is a corporation, association, partnership or other juristic person, the jurisdiction (usually state or nation) under the laws of which the applicant is organized; and
- (iii) If the applicant is a partnership, the names and citizenship of the general partners;
- (4) The address of the applicant;
- (5) One or more bases, as required by § 2.34(a);
- (6) A list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark. In a United States application filed under section 44 of the Act, the

scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration; and

(7) The international class of goods or services, if known. See § 6.1 of this chapter for a list of the international classes of goods and services.

(b) The application must include a verified statement that meets the requirements of § 2.33.

(c) The application must include a drawing that meets the requirements of §§ 2.51 and 2.52.

(d) The application must include fee required by § 2.6 for each class of goods or services.

(e) For the requirements for a multiple class application, see § 2.86.

15. Revise § 2.33 to read as follows:

§ 2.33 Verified statement.

(a) The application must include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant. A person who is properly authorized to sign on behalf of the applicant is:

- (1) A person with legal authority to bind the applicant; or
- (2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant; or
- (3) An attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the applicant.

(b)(1) In an application under section 1(a) of the Act, the verified statement must allege:

That the applicant has adopted and is using the mark shown in the accompanying drawing; that the applicant believes it is the owner of the mark; that the mark is in use in commerce; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; that the specimen shows the mark

as used on or in connection with the goods or services; and that the facts set forth in the application are true.

(2) In an application under section 1(b) or section 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with the specified goods or services; that the applicant believes it is entitled to use the mark; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(c) If the verified statement is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verification or declaration under § 2.20 of the applicant's continued use or bona fide intention to use the mark in commerce.

(d) Where an electronically transmitted filing is permitted, the person who signs the verified statement must either:

(1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or

(2) Sign the verified statement using some other form of electronic signature specified by the Commissioner.

16. Add § 2.34 to read as follows:

§ 2.34 Bases for filing.

(a) The application must include one or more of the following four filing bases:

(1) *Use in commerce under section 1(a) of the Act.* The requirements for an application based on section 1(a) of the Act are:

(i) The trademark owner's verified statement that the mark is in use in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date;

(ii) The date of the applicant's first use of the mark anywhere on or in connection with the goods or services;

(iii) The date of the applicant's first use of the mark in commerce as a trademark or service mark; and

(iv) One specimen showing how the applicant actually uses the mark in commerce.

(v) An application may list more than one item of goods, or more than one service, provided the applicant has used the mark on or in connection with all the specified goods or services. The dates of use required by paragraphs (a)(1) (ii) and (iii) of this section may be for only one of the items specified.

(2) *Intent-to-use under section 1(b) of the Act.* (i) In an application under section 1(b) of the Act, the trademark owner must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(3) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(i) The trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) A certification or certified copy of a registration in the applicant's country of origin showing that the mark has been registered in that country, and that the registration is in full force and effect. The certification or certified copy must show the name of the owner, the mark, and the goods or services for which the mark is registered. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iii) If the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a certification or certified copy from the country of origin to establish that the registration has been renewed and will be in force at the time the United States registration will issue. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iv) The application may list more than one item of goods, or more than

one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(4) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(i) A claim of priority, filed within six months of the filing date of the foreign application. Before publication or registration on the Supplemental Register, the applicant must either:

(A) Specify the filing date and country of the first regularly filed foreign application; or

(B) State that the application is based upon a subsequent regularly filed application in the same foreign country, and that any prior-filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(ii) Include the trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(iii) Before the application can be approved for publication, or for registration on the Supplemental Register, the applicant must establish a basis under section 1(a), section 1(b) or section 44(e) of the Act.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(b)(1) The applicant may claim more than one basis, provided that the applicant satisfies all requirements for the bases claimed. However, the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) If the applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(c) The word "commerce" means commerce that Congress may lawfully regulate, as specified in section 45 of the Act.

§ 2.37 [Removed]

17. Remove § 2.37.

§ 2.35 [Redesignated as § 2.37]

18. Redesignate § 2.35 as § 2.37.

19. Add new § 2.35, to read as follows:

§ 2.35 Adding, deleting, or substituting bases.

(a) Before publication, the applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(b) An applicant may amend an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board to add or substitute a basis after the mark has been published for opposition, but only with the express permission of the Commissioner, after consideration on petition. Republication will be required. The amendment of an application that is the subject of an *inter partes* proceeding before the Board is governed by § 2.133(a).

(c) When the applicant substitutes one basis for another, the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record, and the application will retain the original filing date, including a priority filing date under section 44(d), if appropriate.

(d) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(e) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(f) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(g) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(h) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

20. Amend § 2.38 by revising paragraph (a) to read as follows:

§ 2.38 Use by predecessor or by related companies.

(a) If the first use of the mark was by a predecessor in title or by a related company (sections 5 and 45 of the Act), and the use inures to the benefit of the applicant, the dates of first use (§§ 2.34(a)(1) (ii) and (iii)) may be asserted with a statement that first use was by the predecessor in title or by the related company, as appropriate.

* * * * *

§ 2.39 [Removed and reserved]

21. Remove and reserve § 2.39.

22. Revise § 2.45 to read as follows:

§ 2.45 Certification mark.

(a) In an application to register a certification mark under section 1(a) of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: Specify the conditions under which the certification mark is used; allege that the applicant exercises legitimate control over the use of the mark; allege that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied; and include a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

(b) In an application to register a certification mark under section 1(b) or section 44 of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is intended to be used; allege that the applicant intends to exercise legitimate control over the use of the mark; and allege that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied. When the applicant files an amendment to allege use under section 1(c) of the Act, or a statement of use under section 1(d) of the Act, the applicant must submit a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

§ 2.51 [Amended]

23. In § 2.51, remove paragraphs (c), (d) and (e).

24. Revise § 2.52 to read as follows:

§ 2.52 Types of drawings and format for drawings.

(a) A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark

when the application is filed. There are two types of drawings:

(1) *Typed drawing*. The drawing may be typed if the mark consists only of words, letters, numbers, common forms of punctuation, or any combination of these elements. In a typed drawing, every word or letter must be typed in uppercase type. If the applicant submits a typed drawing, the application is not limited to the mark depicted in any special form or lettering.

(2) *Special form drawing*. A special form drawing is required if the mark has a two or three-dimensional design; or color; or words, letters, or numbers in a particular style of lettering; or unusual forms of punctuation.

(i) Special form drawings must be made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. Every line and letter, including lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose.

(ii) If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must include in the body of the application a written description of the mark and explain the purpose of the broken lines.

(iii) If the mark has three-dimensional features, the applicant must submit a drawing that depicts a single rendition of the mark, and the applicant must include a description of the mark indicating that the mark is three-dimensional.

(iv) If the mark has motion, the applicant may submit a drawing that depicts a single point in the movement, or the applicant may submit a square drawing that contains up to five freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also submit a written description of the mark.

(v) If the mark has color, the applicant may claim that all or part of the mark consists of one or more colors. To claim color, the applicant must submit a

statement explaining where the color or colors appear in the mark and the nature of the color(s).

(vi) If a drawing cannot adequately depict all significant features of the mark, the applicant must also submit a written description of the mark.

(3) *Sound, scent, and non-visual marks.* The applicant is not required to submit a drawing if the applicant's mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed written description of the mark.

(b) *Recommended format for special form drawings—(1) Type of paper and ink.* The drawing should be on a piece of non-shiny, white paper that is separate from the application. Black ink should be used to depict the mark.

(2) *Size of paper and size of mark.* The drawing should be on paper that is 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The drawing should be between 2.5 inches (6.1 cm.) and 4 inches (10.3 cm.) high and/or wide. There should be at least a 1 inch (2.5 cm.) margin between the drawing and the edges of the paper, and at least a 1 inch (2.5 cm.) margin between the drawing and the heading.

(3) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge, the applicant should type the following: Applicant's name; applicant's address; the goods or services recited in the application, or a typical item of the goods or services if numerous items are recited in the application; the date of first use of the mark and first use of the mark in commerce in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application under section 44(d) of the Act. If the information in the heading is lengthy, the heading may continue onto a second page, but the mark should be depicted on the first page.

(c) *Drawings in electronically transmitted applications.* For an electronically transmitted application, if the drawing is in special form, the applicant must attach a digitized image of the mark to the electronic submission.

25. Revise § 2.56 to read as follows:

§ 2.56 Specimens.

(a) An application under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 must each include one specimen showing the mark as used on

or in connection with the goods, or in the sale or advertising of the services in commerce.

(b)(1) A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods.

(2) A service mark specimen must show the mark as actually used in the sale or advertising of the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by § 2.51 is not a proper specimen.

(d)(1) The specimen should be flat, and not larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen of this size is not available, the applicant may substitute a suitable photograph or other facsimile.

(2) If the applicant files a specimen exceeding these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

(3) In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD-ROM, or other appropriate medium.

(4) For an electronically transmitted application, or other electronic submission, the specimen must be submitted as a digitized image.

§ 2.57 [Removed and reserved]

26. Remove and reserve § 2.57.

§ 2.58 [Removed and reserved]

27. Remove and reserve § 2.58.

28. Revise § 2.59 to read as follows:

§ 2.59 Filing substitute specimen(s).

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. The applicant must verify by an affidavit or declaration under § 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. Verification is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. If the applicant submits substitute specimen(s), the applicant must:

(1) For an amendment to allege use under § 2.76, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under § 2.88, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the deadline for filing the statement of use.

29. Revise § 2.66 to read as follows:

§ 2.66 Revival of abandoned applications.

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:

(1) Within two months of the mailing date of the notice of abandonment; or

(2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application. To be diligent, the applicant must check the status of the application within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

(b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts,

that the delay in filing the response on or before the due date was unintentional; and

(3) Unless the applicant alleges that it did not receive the Office action, the proposed response.

(c) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional;

(3) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(4) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, either a statement of use under § 2.88 or a request for an extension of time to file a statement of use under § 2.89; and

(5) Unless a statement of use is filed with or before the petition, or the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

(d) In an application under section 1(b) of the Act, the Commissioner will not grant the petition if this would permit the filing of a statement of use more than 36 months after the mailing date of the notice of allowance under section 13(b)(2) of the Act.

(e) The Commissioner will grant the petition to revive if the applicant complies with the requirements listed above and establishes that the delay in responding was unintentional.

(f) If the Commissioner denies a petition, the applicant may request reconsideration, if the applicant:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

30. Revise § 2.71 to read as follows:

§ 2.71 Amendments to correct informalities.

The applicant may amend the application during the course of examination, when required by the Office or for other reasons.

(a) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services.

(b)(1) If the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification or declaration under § 2.20.

(2) If the declaration or verification of a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89, is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

(c) The applicant may amend the dates of use, provided that the applicant supports the amendment with an affidavit or declaration under § 2.20, except that the following amendments are not permitted:

(1) In an application under section 1(a) of the Act, the applicant may not amend the application to specify a date of use that is subsequent to the filing date of the application;

(2) In an application under section 1(b) of the Act, after filing a statement of use under § 2.88, the applicant may not amend the statement of use to specify a date of use that is subsequent to the expiration of the deadline for filing the statement of use.

(d) The applicant may amend the application to correct the name of the applicant, if there is a mistake in the manner in which the name of the applicant is set out in the application. The amendment must be supported by an affidavit or declaration under § 2.20, signed by the applicant. However, the application cannot be amended to set forth a different entity as the applicant. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.

31. Revise § 2.72 to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

(a) In an application based on use in commerce under section 1(a) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens originally filed, or substitute specimens filed under § 2.59(a), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office

will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(b) In an application based on a bona fide intention to use a mark in commerce under section 1(b) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens filed with an amendment to allege use or statement of use, or substitute specimens filed under § 2.59(b), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(c) In an application based on a claim of priority under section 44(d) of the Act, or on a mark duly registered in the country of origin of the foreign applicant under section 44(e) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The description or drawing of the mark in the foreign registration certificate supports the amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

32. Amend § 2.76 by revising paragraphs (b), (e)(2), and (e)(3), and adding paragraphs (i) and (j) to read as follows:

§ 2.76 Amendment to allege use.

* * * * *

(b) A complete amendment to allege use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, and those goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) * * *

(2) One specimen or facsimile of the mark as used in commerce; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

* * * * *

(i) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(j) For the requirements for a multiple class application, see § 2.86.

33. Revise § 2.86 to read as follows:

§ 2.86 Application may include multiple classes.

(a) In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

(1) Specifically identify the goods or services in each class;

(2) Submit an application filing fee for each class; and

(3) Include either dates of use (see §§ 2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

(b) An amendment to allege use under § 2.76 or a statement of use under § 2.88 must include, for each class, the required fee, dates of use, and one specimen. The applicant may not file the amendment to allege use or statement of use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

(c) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

34. Amend § 2.88 by revising paragraphs (b) and (e) and by adding paragraphs (k) and (l) to read as follows:

§ 2.88 Filing statement of use after notice of allowance.

* * * * *

(b) A complete statement of use must include:

(1) A statement that is signed and verified (sworn to) or supported by a

declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, and those goods or services specified in the notice of allowance on or in connection with which the applicant uses the mark in commerce;

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee for at least a single class, required by § 2.6;

(2) One specimen of the mark as used in commerce;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

* * * * *

(k) If the statement of use is not filed within a reasonable time after the date it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(l) For the requirements for a multiple class application, see § 2.86.

35. Amend § 2.89 by revising paragraphs (a), (b), and (d), amending the fifth sentence of paragraph (g), and by adding paragraph (h) to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the mailing date of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person

properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the mailing date of the notice of allowance.

(b) Before the expiration of the previously granted extension of time, the applicant may request further six month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the previously granted extension; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

* * * * *

(d) The showing of good cause must include a statement of the applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the relevant goods or services. Those efforts may include product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain governmental approval, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts to use the mark in commerce.

* * * * *

(g) * * * A petition from the denial of a request for an extension of time to file a statement of use shall be filed within two months of the mailing date of the denial of the request. If the petition is granted, the term of the requested six month extension that was the subject of the petition will run from the date of the expiration of the previously existing six month period for filing a statement of use.

(h) If the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the applicant

still has a bona fide intention to use the mark in commerce.

36. Amend § 2.101 by revising paragraph (d)(1) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6). If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an opposition, the opposition will not be refused if the required fee(s) is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

* * * * *

37. Amend § 2.111 by revising paragraph (c)(1) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.6). If the fee submitted is insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner a set time in which to submit the required fees(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

* * * * *

38. Amend § 2.146 by revising paragraph (d) and by adding paragraphs (i) and (j) to read as follows:

§ 2.146 Petitions to the Commissioner.

* * * * *

(d) A petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

* * * * *

(i) Where a petitioner seeks to reactivate an application or registration

that was abandoned or cancelled because papers were lost or mishandled, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, the applicant must check the status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

(j) If the Commissioner denies a petition, the petitioner may request reconsideration, if the petitioner:

- (1) Files the request within two months of the mailing date of the decision denying the petition; and
- (2) Pays a second petition fee under § 2.6.

39. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, a certificate will be issued stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the date on which the application for registration was filed in the Office, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of section 8 of the Act will accompany the certificate.

40. Revise § 2.155 to read as follows:

§ 2.155 Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

41. Revise § 2.156 to read as follows:

§ 2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

42. Add § 2.160 to read as follows:

§ 2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

- (1)(i) For registrations issued under the Trademark Act of 1946, on or after

the fifth anniversary and no later than the sixth anniversary after the date of registration; or

(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and § 2.6.

(b) For the requirements for the affidavit or declaration, see § 2.161.

43. Revise § 2.161 to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

(a) Be filed by the owner within the period set forth in § 2.160(a);

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a). A person who is properly authorized to sign on behalf of the owner is:

(1) A person with legal authority to bind the owner; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner.

(c) Include the registration number;

(d)(1) Include the fee required by § 2.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by § 2.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If

the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 2.161(f)(2);

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 2.161(f)(2). The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper;

(h) If the registrant is not domiciled in the United States, the registrant must list the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served.

44. Revise § 2.162 to read as follows:

§ 2.162 Notice to registrant.

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the

affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

45. Revise § 2.163 to read as follows:

§ 2.163 Acknowledgment of receipt of affidavit or declaration.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) If the owner of the registration filed the affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

(b) A response to the refusal must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later. If no response is filed within this time period, the registration will be cancelled.

46. Revise § 2.164 to read as follows:

§ 2.164 Correcting deficiencies in affidavit or declaration.

(a) If the owner of the registration files an affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 8(a) and 8(b) of the Act.* If the owner timely files the affidavit or declaration within the relevant filing period set forth in section 8(a) or section 8(b) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 8(c)(1) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(b) If the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

47. Revise § 2.165 to read as follows:

§ 2.165 Petition to Commissioner to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.163(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, a petition to the Commissioner to review the action may be filed. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration and issue a notice of the cancellation.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

48. Revise § 2.166 to read as follows:

§ 2.166 Affidavit of continued use or excusable nonuse combined with renewal application.

An affidavit or declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined into a single document, provided that the document meets the requirements of both sections 8 and 9 of the Act.

49. Amend § 2.167 by revising paragraph (c) to read as follows:

§ 2.167 Affidavit or declaration under section 15.

* * * * *

(c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

* * * * *

50. Revise § 2.168 to read as follows:

§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15.

(b) The affidavit or declaration filed under section 15 of the Act may be combined with an application for renewal of a registration under section 9 of the Act, if the requirements of both sections 9 and 15 are met.

51. Amend § 2.173 by revising the heading and paragraph (a) to read as follows:

§ 2.173 Amendment of registration.

(a) The registrant may apply to amend the registration or to disclaim part of the mark in the registration. A written request specifying the amendment or disclaimer must be submitted. The request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark, must be submitted. The certificate of registration or, if the certificate is lost or destroyed, a certified copy of the certificate, must also be submitted. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

* * * * *

52. Amend § 2.181 by revising paragraph (a) to read as follows:

§ 2.181 Term of original registrations and renewals.

(a)(1) Subject to the provisions of section 8 of the Act requiring an affidavit or declaration of continued use or excusable nonuse, registrations issued or renewed prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or the date of renewal, and may be further renewed for periods of ten years, unless previously cancelled or surrendered.

(2) Subject to the provisions of section 8 of the Act requiring an affidavit or declaration of continued use or excusable nonuse, registrations issued or renewed on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years from their date of issue or the date of renewal, and may be further renewed for periods of ten years, unless previously cancelled or surrendered.

* * * * *

53. Revise § 2.182 to read as follows:

§ 2.182 Time for filing renewal application.

An application for renewal must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date of the registration. If

no renewal application is filed within this period, the registration will expire.

54. Revise § 2.183 to read as follows:

§ 2.183 Requirements for a complete renewal application.

A complete renewal application must include:

(a) A request for renewal of the registration, signed by the registrant or the registrant's representative;

(b) The fee required by § 2.6 for each class;

(c) The additional fee required by § 2.6 for each class if the renewal application is filed during the six-month grace period set forth in section 9(a) of the Act;

(d) If the registrant is not domiciled in the United States, the name and address of a United States resident on whom notices or process in proceedings affecting the registration may be served; and

(e) If the renewal application covers less than all the goods or services in the registration, a list of the particular goods or services to be renewed.

(f) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.185 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

55. Revise § 2.184 to read as follows:

§ 2.184 Refusal of renewal.

(a) If the renewal application is not acceptable, the Office will issue a notice stating the reason(s) for refusal.

(b) A response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later, or the registration will expire.

(c) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire.

56. Add § 2.185 to read as follows:

§ 2.185 Correcting deficiencies in renewal application.

(a) If the renewal application is filed within the time periods set forth in section 9(a) of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in renewal applications filed within one year before the expiration date of the registration.* If the renewal application is filed within one year before the expiration date of the registration, deficiencies may be corrected before the expiration date of the registration without paying a deficiency surcharge. Deficiencies may be corrected after the expiration date of the registration with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(2) *Correcting deficiencies in renewal applications filed during the grace period.* If the renewal application is filed during the six-month grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(b) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

57. Add § 2.186 to read as follows:

§ 2.186 Petition to Commissioner to review refusal of renewal.

(a) A response to the examiner's initial refusal of the renewal application is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.184(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the refusal may be filed. The petition must be filed within six months of the mailing date of the Office action maintaining the refusal, or the renewal application will be abandoned and the registration will expire.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

58. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

59. Revise § 3.16 to read as follows:

§ 3.16 Assignability of trademarks prior to filing of an allegation of use.

Before an allegation of use under either 15 U.S.C. 1051(c) or 15 U.S.C. 1051(d) is filed, an applicant may only assign an application to register a mark

under 15 U.S.C. 1051(b) to a successor to the applicant's business, or portion of the business to which the mark pertains, if that business is ongoing and existing.

60. Amend § 3.24 by revising the heading to read as follows:

§ 3.24 Requirements for documents and cover sheets relating to patents and patent applications.

* * * * *

61. Add § 3.25 to read as follows:

§ 3.25 Recording requirements for trademark applications and registrations.

(a) *Documents affecting title.* To record documents affecting title to a trademark application or registration, a legible cover sheet (see § 3.31) and one of the following must be submitted:

- (1) The original document;
- (2) A copy of the document;
- (3) A copy of an extract from the document evidencing the effect on title; or

(4) A statement signed by both the party conveying the interest and the party receiving the interest explaining how the conveyance affects title.

(b) *Name changes.* Only a legible cover sheet is required (See § 3.31).

(c) *All documents.* All documents submitted to the Office should be on white and non-shiny paper that is no larger than 8½ × 14 inches (21.6 × 33.1 cm.) with a one-inch (2.5 cm) margin on all sides. Only one side of each page should be used.

62. Revise § 3.28 to read as follows:

§ 3.28 Requests for recording.

Each document submitted to the Office for recording must include at least one cover sheet as specified in § 3.31 referring either to those patent applications and patents, or to those trademark applications and registrations, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets should be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and the incomplete cover sheet will be returned pursuant to § 3.51 for proper completion. The document and a completed cover sheet should be resubmitted.

63. Amend § 3.31 by revising paragraphs (a) and (b) and by adding paragraphs (d) and (e) to read as follows:

§ 3.31 Cover sheet content.

(a) Each patent or trademark cover sheet required by § 3.28 must contain:

(1) The name of the party conveying the interest;

(2) The name and address of the party receiving the interest;

(3) A description of the interest conveyed or transaction to be recorded;

(4) Identification of the interests involved;

(i) *For trademark assignments and trademark name changes:* Each trademark registration number and each trademark application number, if known, against which the Office is to record the document. If the trademark application number is not known, a copy of the application or a reproduction of the trademark must be submitted, along with an estimate of the date that the Office received the application; or

(ii) *For any other document affecting title to a trademark or patent application, registration or patent:* Each trademark or patent application number or each trademark registration number or patent against which the document is to be recorded, or an indication that the document is filed together with a patent application;

(5) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(6) The date the document was executed;

(7) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(8) The signature of the party submitting the document.

(b) A cover sheet should not refer to both patents and trademarks, since any information, including information about pending patent applications, submitted with a request for recordation of a document against a trademark application or trademark registration will become public record upon recordation.

* * * * *

(d) Each trademark cover sheet required by § 3.28 seeking to record a document against a trademark application or registration should include, in addition to the serial number or registration number of the trademark, identification of the trademark or a description of the trademark, against which the Office is to record the document.

(e) Each patent or trademark cover sheet required by § 3.28 should contain the number of applications, patents or registrations identified in the cover sheet and the total fee.

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

64. The authority citation for part 6 continues to read as follows:

Authority: 15 U.S.C. 1112, 1123; 35 U.S.C. 6, unless otherwise noted.

65. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (non-metallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of

wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush making materials; articles for cleaning purposes; steel wool; unworked or semi worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non textile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be classified in other classes.

Dated: August 30, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99-22957 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-16-P

Executive Order

**Wednesday
September 8, 1999**

Part III

The President

**Executive Order 13136—Amendment to
Executive Order 13090, President’s
Commission on the Celebration of
Women in American History**

Presidential Documents

Title 3—**Executive Order 13136 of September 3, 1999****The President****Amendment to Executive Order 13090, President's Commission on the Celebration of Women in American History**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in order to extend the life of the President's Commission on the Celebration of Women in American History ("Commission") to provide additional time to develop support systems and test the viability of the recommendations included in the Commission's report to the President, it is hereby ordered that section 2(c) of Executive Order 13090 is amended by deleting "March 1, 1999." and inserting "December 31, 2000." in lieu thereof.



THE WHITE HOUSE,
September 3, 1999.

Reader Aids

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-523-5227****Laws** **523-5227**

Presidential Documents

Executive orders and proclamations **523-5227****The United States Government Manual** **523-5227**

Other Services

Electronic and on-line services (voice) **523-4534**Privacy Act Compilation **523-3187**Public Laws Update Service (numbers, dates, etc.) **523-6641**TTY for the deaf-and-hard-of-hearing **523-5229**

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

47649-48074.....	1
48075-48242.....	2
48243-48526.....	3
48527-48700.....	7
48701-48932.....	8

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7219.....48701

Executive orders:

1390 (Amended by EO

13136).....48929

13136.....48929

7 CFR

246.....48075

272.....48246

273.....48246

301.....48245

924.....48077

948.....48079

955.....48243

1000.....47898

1001.....47898

1002.....47898

1004.....47898

1005.....47898

1006.....47898

1007.....47898

1012.....47898

1013.....47898

1030.....47898

1032.....47898

1033.....47898

1036.....47898

1040.....47898

1044.....47898

1046.....47898

1049.....47898

1050.....47898

1064.....47898

1065.....47898

1068.....47898

1076.....47898

1079.....47898

1106.....47898, 48081

1124.....47898

1126.....47898

1131.....47898

1134.....47898

1135.....47898

1137.....47898

1138.....47898

1139.....47898

1924.....48083

Proposed Rules:

210.....48459

220.....48459

225.....48459

226.....48459

246.....48115

928.....48115

9 CFR

93.....48258

Proposed Rules:

3.....48568

10 CFR

51.....48496, 48507

72.....48259

Proposed Rules:

31.....48333

51.....48117

12 CFR

201.....48274

Proposed Rules:

327.....48719

13 CFR

121.....48275

123.....48275

14 CFR

25.....47649

39.....47651, 47653, 47656,

47658, 47660, 47661, 48277,

48280, 48282, 48284, 48286

71.....47663, 47664, 47665,

48085, 48086, 48088, 48089,

48527, 48703, 48897

73.....47665, 48090

Proposed Rules:

39.....47715, 48120, 48333,

48721, 48723

71.....47718, 48123, 48459

15 CFR

742.....47666

774.....47666

Proposed Rules:

806.....48568

16 CFR

1051.....48703

1615.....48704

1616.....48704

Proposed Rules:

460.....48024

19 CFR

12.....48091

113.....48528

151.....48528

178.....48528

351.....48706

21 CFR

5.....47669

74.....48288

175.....48290

178.....47669, 48291, 48292

510.....48293

520.....48295, 48543

522.....48293, 48544

524.....48707

556.....48295, 48544

558.....48295

Proposed Rules:

2.....47719

111.....48336	37 CFR	44 CFR	1806.....48560
23 CFR	1.....48900	206.....47697	1813.....48560
Proposed Rules:	2.....48900	46 CFR	1815.....48560
Ch. I.....47741, 47744, 47746,	3.....48900	Proposed Rules:	1835.....48560
47749	6.....48900	10.....48136	1852.....48560
24 CFR	39 CFR	15.....48136	1872.....48560
Proposed Rules:	111.....48092	90.....48136	
990.....48572	Proposed Rules:	98.....48136	49 CFR
26 CFR	776.....48124	125.....48136	383.....48104
1.....48545	40 CFR	126.....48136	384.....48104
301.....48547	52.....47670, 47674, 48095,	127.....48136	390.....48510
Proposed Rules:	48297, 48305	128.....48136	393.....47703
1.....48572	62.....47680, 48714	129.....48136	571.....48562
28 CFR	180.....47680, 47687, 47689,	130.....48136	575.....48564
Proposed Rules:	48548	131.....48136	1000.....47709
302.....48336	271.....47692, 48099	132.....48136	1001.....47709
29 CFR	439.....48103	133.....48136	1004.....47709
697.....48525	Proposed Rules:	134.....48136	Proposed Rules:
2700.....48707	49.....48725, 48731	170.....48136	390.....48519
30 CFR	52.....47754, 48126, 48127,	174.....48136	
Proposed Rules:	48337, 48725, 48731, 48739	175.....48136	50 CFR
901.....48573	62.....48742	47 CFR	17.....48307
33 CFR	148.....48742	63.....47699	21.....48565
Proposed Rules:	261.....48742	73.....47702, 48307	622.....47711, 48324, 48326
117.....47751	268.....48742	74.....47702	635.....47713, 48111, 48112
165.....47752	271.....47755, 48135, 48742	Proposed Rules:	660.....48113
34 CFR	302.....48742	3.....48337	679.....47714, 48329, 48330,
379.....48052	403.....47755	48 CFR	48331, 48332
	439.....48103	235.....48459	Proposed Rules:
	43 CFR	552.....48718	17.....47755, 48743
	Proposed Rules:	553.....48718	600.....48337
	3830.....48897	570.....48718	648.....48337, 48757
			697.....47756

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 8, 1999**COMMERCE DEPARTMENT
International Trade Administration**

Antidumping and countervailing duties: Preliminary critical circumstances findings; published 9-8-99

CONSUMER PRODUCT SAFETY COMMISSION

Practice and procedure: Rulemaking petition procedures; correction; published 9-8-99

**HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration**

Animal drugs, feeds, and related products: New drug applications—Selamectin; published 9-8-99

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Meats, prepared meats, and meat products; grading, certification, and standards: Livestock and poultry products; voluntary, user-fee funded program to inspect and certify processing equipment; meeting; comments due by 9-14-99; published 7-16-99

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Animal welfare: Nonhuman primates; policy; comments due by 9-13-99; published 7-15-99
Exportation and importation of animals and animal products: Hog cholera; importation and in-transit movement of fresh pork and pork products from Mexico into

U.S.; comments due by 9-17-99; published 7-19-99

Pork and pork products; comments due by 9-13-99; published 7-14-99

User fees:

Veterinary services; biosecurity level three laboratory inspection; comments due by 9-13-99; published 7-14-99

AGRICULTURE DEPARTMENT**Agricultural Research Service**

National Agricultural Library; loan and copying fees; comments due by 9-15-99; published 8-16-99

AGRICULTURE DEPARTMENT**Food and Nutrition Service****Child nutrition programs:**

Women, infants, and children; special supplemental nutrition program—

Vendor management systems; mandatory selection criteria, limitation of vendors, training requirements, high-risk vendors identification criteria, etc.; comments due by 9-14-99; published 6-16-99

**COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration****Fishery conservation and management:**

Alaska; fisheries of Exclusive Economic Zone—

Pollock; comments due by 9-15-99; published 9-3-99

Pollock; comments due by 9-15-99; published 9-3-99

Pollock; comments due by 9-15-99; published 9-3-99

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 9-16-99; published 7-27-99

Gulf of Mexico Fishery Management Council; meetings; comments due by 9-13-99; published 8-2-99

CONSUMER PRODUCT SAFETY COMMISSION

Dive sticks; comment and information request;

comments due by 9-14-99; published 7-16-99

**EDUCATION DEPARTMENT
Postsecondary education:**

Federal Family Education and William D. Ford Federal Direct Loan Programs; comments due by 9-15-99; published 8-10-99

Federal Family Education Loan Program; comments due by 9-15-99; published 8-3-99

Federal Perkins Loan Program; comments due by 9-15-99; published 7-29-99

Student assistance general provisions; comments due by 9-14-99; published 7-16-99

Federal Family Education Loan Program; comments due by 9-15-99; published 8-6-99

Student financial assistance programs; institutional eligibility; comments due by 9-13-99; published 7-15-99

**ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office****Consumer products; energy conservation program:**

Electric and hybrid vehicle research, development, and demonstration program; petroleum-equivalent fuel economy calculation; comments due by 9-13-99; published 7-14-99

ENVIRONMENTAL PROTECTION AGENCY**Air pollutants, hazardous; national emission standards:**

Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, etc.; comments due by 9-17-99; published 8-18-99

Air pollution control; new motor vehicles and engines:

New nonroad spark-ignition handheld engines at or below 19 kilowatts; phase 2 emission standards; comments due by 9-17-99; published 7-28-99

Air quality implementation plans; approval and promulgation; various States:

Connecticut; comments due by 9-15-99; published 8-16-99

Minnesota; comments due by 9-13-99; published 8-13-99

Nevada; comments due by 9-15-99; published 8-6-99

New Hampshire; comments due by 9-15-99; published 8-16-99

Wisconsin; comments due by 9-15-99; published 8-16-99

Hazardous waste program authorizations:

Texas; comments due by 9-17-99; published 8-18-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities: Bentazon; comments due by 9-13-99; published 7-14-99

Imazamox; comments due by 9-13-99; published 7-14-99

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 9-13-99; published 8-12-99

National priorities list update; comments due by 9-15-99; published 8-16-99

National priorities list update; comments due by 9-15-99; published 8-16-99

National priorities list update; comments due by 9-15-99; published 8-16-99

National priorities list update; comments due by 9-15-99; published 8-16-99

Toxic chemical release reporting; community-right-to-know—

Lead and lead compounds; lowering of reporting thresholds; comments due by 9-17-99; published 8-3-99

Water programs:

Underground injection control program—

Alabama; Class II program withdrawn; public hearing; comments due by 9-16-99; published 8-10-99

FEDERAL COMMUNICATIONS COMMISSION**Common carrier services:**

Commercial mobile radio services—

Calling party pays service offering; regulatory obstacles removed; comments due by 9-17-99; published 8-17-99

Digital television stations; table of assignments:
Washington; comments due by 9-13-99; published 7-26-99

Multiple Address Systems; comments due by 9-17-99; published 7-19-99

Radio services, special:
Personal services—
Wireless medical telemetry service; comments due by 9-16-99; published 8-2-99

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
Advance participations; sales of whole advances; comments due by 9-15-99; published 8-16-99

FEDERAL TRADE COMMISSION

Trade regulation rules:
Amplifiers utilized in home entertainment products; power output claims; comments due by 9-17-99; published 7-19-99

GENERAL SERVICES ADMINISTRATION

Federal travel:
Travel charge card; mandatory use; comments due by 9-14-99; published 7-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT Food and Drug Administration

Food additives:
Adjuvants, production aids, and sanitizers—
Chrome antimony titanium buff rutile (C.I. Pigment Brown 24); comments due by 9-15-99; published 8-16-99
Nickel antimony titanium yellow rutile (C.I. Pigment Yellow 5); comments due by 9-15-99; published 8-16-99
Sucralose; comments due by 9-13-99; published 8-12-99

Human drugs and biological products:
Supplements and other changes to approved application; comments due by 9-13-99; published 6-28-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community development block grants:
Expenditure documentation; clarification; comments

due by 9-17-99; published 7-19-99
HUD-owned properties:
Up-front grants and loans in disposition of multifamily projects; comments due by 9-13-99; published 7-15-99

INTERIOR DEPARTMENT Land Management Bureau

Indian allotments:
Federal regulatory review; comments due by 9-13-99; published 7-15-99

INTERIOR DEPARTMENT National Park Service

National Park System:
Glacier Bay National Park, AK; commercial fishing activities; comments due by 9-16-99; published 8-2-99

INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 9-16-99; published 8-17-99
Indiana; comments due by 9-15-99; published 8-16-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon presidential materials:
Private and personal segments of tape recordings; return to Nixon estate; comments due by 9-13-99; published 7-14-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Potassium iodide in emergency plans; comments due by 9-13-99; published 6-14-99
Risk-informed revisions, Option 3; workshop; comments due by 9-15-99; published 8-13-99

POSTAL SERVICE

Domestic Mail Manual:
Curbside mailboxes; design standards; Consensus Committee establishment and meeting; comments due by 9-14-99; published 8-17-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:
California; comments due by 9-13-99; published 7-15-99

Regattas and marine parades:
Winston Offshore Cup; comments due by 9-16-99; published 8-2-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Digital flight data recorder requirements for Airbus airplanes; comment request; comments due by 9-17-99; published 8-24-99

Airworthiness directives:

Aerospatiale; comments due by 9-17-99; published 8-3-99

Airbus; comments due by 9-16-99; published 8-17-99

Allison Engine Co.; comments due by 9-16-99; published 8-17-99

BMW Rolls-Royce GmbH; comments due by 9-16-99; published 8-17-99

Boeing; comments due by 9-17-99; published 8-3-99

Bombardier; comments due by 9-13-99; published 8-12-99

British Aerospace; comments due by 9-13-99; published 8-12-99

Construcciones Aeronauticas, S.A.; comments due by 9-13-99; published 8-12-99

Dassault; comments due by 9-13-99; published 8-12-99

Israel Aircraft Industries, Ltd.; comments due by 9-16-99; published 8-17-99

Pilatus Aircraft Ltd.; comments due by 9-13-99; published 8-13-99

Pratt & Whitney; comments due by 9-15-99; published 8-16-99

Airworthiness standards:

Special conditions—

Bombardier Model DHC-8-400 airplane; comments due by 9-13-99; published 8-12-99

Dassault Aviation Falcon Model 20-C5/-D5/-E5/-F5 airplanes; comments due by 9-13-99; published 8-12-99

Class D and Class E airspace; comments due by 9-17-99; published 8-18-99

Class E airspace; comments due by 9-13-99; published 7-30-99

Class E Airspace; comments due by 9-15-99; published 8-9-99

Class E airspace; comments due by 9-15-99; published 8-9-99

TRANSPORTATION DEPARTMENT Federal Highway Administration

Motor carrier safety standards:
Transportation Equity Act for 21st Century; implementation—
Safety fitness procedures; comments due by 9-15-99; published 8-16-99

TRANSPORTATION DEPARTMENT

Maritime Administration

Vessel financing assistance:
Obligation guarantees; Title XI program—
Putting customers first; comments due by 9-13-99; published 8-13-99

TREASURY DEPARTMENT Internal Revenue Service

Income taxes:
Solely for voting stock requirement in certain corporate reorganizations; comments due by 9-13-99; published 6-14-99

UNITED STATES INFORMATION AGENCY

Exchange visitor program:
Reinstatement of J-1 exchange visitors who fail to maintain valid program status; monitoring requirements; comments due by 9-13-99; published 8-13-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

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H.R. 211/P.L. 106-48

To designate the Federal building and United States

courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106-49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106-50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106-51

Emergency Steel Loan Guarantee and Emergency Oil

and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106-52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106-53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106-54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106-55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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