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Wednesday
September 29, 1999

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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 39

[Docket No. 97–ANE–51–AD; Amendment 39–11332; AD 98–17–01 R1]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that currently requires installation of an improved flexible (flex) fuel tube. This amendment clarifies that installation of the improved flex fuel tube and that the use of a clamp on the original rigid fuel tube are optional for engines installed on Learjet 35, 36, and 55 series airplanes. This amendment is prompted by confusion from operators regarding the applicability of these Learjet engine installations. The actions specified by this AD are intended to prevent cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

DATES: Effective November 29, 1999.

The incorporation by reference of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A73–3132, dated April 9, 1997, and ASB TFE731–A73–3128, dated February 26, 1997, was approved by the Director of the Federal Register as of May 19, 1999 (63 FR 42691, Aug. 11, 1998).

The incorporation by reference of AlliedSignal Inc. Service Bulletin TFE731–73–3107, Revision 4, dated April 20, 1994, listed in the regulations is approved by the Director of the Federal Register as of November 29, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising Airworthiness Directive (AD) 98–17–01, Amendment 39–10703 (63 FR 42691, August 11, 1998), which is applicable to AlliedSignal Inc. TFE731 series turbofan engines, was published in the **Federal Register** on April 19, 1999 (64 FR 19096). The action proposed to clarify that installation of the improved flexible (flex) fuel tube and that the use of a clamp on the original rigid fuel tube are optional for engines installed on Learjet 35, 36, and 55 series airplanes.

Since the issuance of AD 98–17–01, the FAA has received reports from operators expressing confusion as to the applicability of engines installed on Learjet 35, 36, and 55 series airplanes. That AD did not affect the AlliedSignal engine Model TFE731–2–2B and engine series TFE731–3A and –3AR installed on Learjet Models 35, 36, and 55 because starter generators are not used on these airplanes. In addition, for this application, there have been no reported fuel line failures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

As this revision is merely a clarification, there is no additional economic impact on operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10703 (63 FR 42691, August 11, 1998), and by adding a new airworthiness directive,

Amendment 39–11332, to read as follows:

98–17–01 R1 AlliedSignal Inc.: Amendment 39–11332. Docket 97–ANE–51–AD. Revises AD 98–17–01, Amendment 39–10703.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines with fuel tubes, part numbers (P/Ns) 3071051–1, 3073729–1, or 3072886–1, installed. These engines are installed on but not limited to the following airplanes: Avions Marcel Dassault Falcon 10, 50, and 100 series; Cessna Model 650, Citation III, VI, and VII; Learjet 31 (M31) 35, 36 and 55 series, Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

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 cracked fuel tubes and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire, accomplish the following:

(a) Except for engines installed on Learjet 35, 36, and 55 airplanes, within 160 hours time-in-service (TIS) after the effective date of this AD, or prior to December 20, 1999, whichever occurs first, install an improved flexible fuel tube, as follows:

(1) For engines installed on Cessna airplanes, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3132, dated April 9, 1997.

(2) For engines installed on all other airplanes except for the Learjet 35, 36 and 55 series, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A73–3128, dated February 26, 1997.

(b) For engines installed on Learjet 35, 36, and 55, the improved flex tube and the clamp assembly installed on the original rigid fuel tube are optional. If the clamp assembly is used, install the clamp assembly in accordance with the Accomplishment Instructions of AlliedSignal Inc. SB No. TFE731–73–3107, Revision 4, dated April 20, 1994.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an 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 AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. service documents:

Document No.	Pages	Revision	Date
ASB TFE731–A73–3132 Total pages: 12.	1–12	Original	Apr. 9, 1997.
ASB TFE731–A73–3128 Total pages: 14.	1–14	Original	Feb. 26, 1997.
SB TFE731–73–3107 Total pages: 8.	1–8	4	Apr. 20, 1994.

(f) The incorporation by reference of AlliedSignal Inc. ASB TFE731–A73–3132, dated April 9, 1997, and ASB TFE731–A73–3128, dated February 26, 1997, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 19, 1999.

(g) The incorporation by reference of AlliedSignal Inc. SB TFE731–73–3107, Revision 4, dated April 20, 1994, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(h) Copies of these service documents may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on November 29, 1999.

Issued in Burlington, Massachusetts, on September 16, 1999.

Thomas A. Boudreau,

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

[FR Doc. 99–24700 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–68–AD; Amendment 39–11341; AD 99–20–11]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob Luft-Und Raumfahrt GmbH & CO KG Models G103 TWIN II and G103A TWIN II ACRO Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Burkhart Grob Luft-Und Raumfahrt GmbH & CO KG (Grob) Models G103 TWIN II and G103A TWIN II ACRO sailplanes. This AD requires accomplishing preflight checks of the fastening (knurled) nut at the rear control stick for cracks, and replacing the nut with one made of stainless steel either immediately or at a certain time period depending on whether a crack(s) is found. The checks are no longer required after the knurled nut is replaced. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the inability to use the rear control stick because of a cracked knurled nut, which could result in loss of control of the sailplane during flight instruction operations.

DATES: Effective October 21, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region,

Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–68–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Grob-Werke GmbH & Co., Aerospace Division, P.O. Box 12 57, D–87712 Mindelhein, Federal Republic of Germany; telephone: ++ 49 8268 998–0; facsimile: ++ 49 8268 988–190. This information may also be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–68–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934, facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob Models G103 TWIN II and G103A TWIN II ACRO sailplanes. The LBA reports four instances of cracks in the fastening (knurled) nut at the rear control stick.

These sailplanes are utilized extensively in flight instruction operations where the student is sitting in the front of the sailplane and the instructor is sitting in the rear of the sailplane. The instructor being able to utilize the rear control stick is imperative to the safety of these sailplanes.

If a cracked knurled nut at the rear control stick is not detected and corrected in a timely manner, loss of control of the sailplane during flight instruction operations could occur because the instructor may lose the ability to utilize the rear control stick.

Relevant Service Information

Grob has issued Service Bulletin 315–61/2, dated June 28, 1999, which specifies accomplishing preflight checks of the fastening (knurled) nut at the rear control stick for cracks, and replacing the nut with one made of stainless steel, part number (P/N) 103–4205.03/2, either immediately or at a certain time period depending on whether cracks are found. The P/N 103–4205.03/2 knurled nut is included as part of Grob Service Bulletin 315–61/2, dated June 28, 1999.

The LBA classified this service bulletin as mandatory and issued German AD 1999–216/2, dated July 15, 1999, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the referenced service information; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Grob Models G103 TWIN II and G103A TWIN II ACRO sailplanes of the same type design registered for operation in the United States, the FAA is issuing an AD. This AD requires accomplishing preflight checks of the fastening (knurled) nut at the rear control stick for cracks, and replacing the nut with one made of stainless steel either immediately or at a certain time period depending on whether cracks are found.

Compliance Time of This AD

The replacement compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). Although cracking of the knurled nut at the rear control stick is a direct result of flight operations, the cracks could begin at any time and, if undetected, could cause the nut to break off and result in the inability to use the rear control stick. The cracks could initiate after 50 hours TIS on one sailplane, but not initiate until 500 hours TIS on another sailplane. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Determination of the Effective Date of the AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–68–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures

(44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–20–11 Burkhart Grob Luft-Und Raumfahrt GmbH & CO KG: Amendment 39–11341; Docket No. 99–CE–68–AD.

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

Model	Serial Numbers
G103 TWIN II	3501 through 3729.
G103A TWIN II ACRO.	3501K through 3729K.

Note 1: This AD applies to each sailplane 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 sailplanes 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 (g) 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 in the body of this AD, unless already accomplished.

To prevent the inability to use the rear control stick because of a cracked knurled nut, which could result in loss of control of the sailplane during flight instruction operations, accomplish the following:

(a) Prior to each flight, check the fastening (knurled) nut at the rear control stick for cracks.

(b) At whichever of the following times that occurs first, replace the knurled nut at the rear control stick with a stainless steel nut, part number 103–4205.03/2. This part is included with Grob Service Bulletin 315–61/2, dated June 28, 1999:

(1) Prior to further flight if any cracked knurled nut is found during any preflight check required by paragraph (a) of this AD; or

(2) Within the next 4 calendar months after the effective date of this AD if no cracks are found during any preflight check required by paragraph (a) of this AD.

(c) Replacing the knurled nut at the rear control stick with a stainless steel nut, part number 103–4205.03/2, is considered terminating action for the preflight checks required by paragraph (a) of this AD.

(d) The preflight checks required by paragraph (a) of this AD may be accomplished by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) As of the effective date of this AD, no person may install, on any affected sailplane, a knurled nut at the rear control stick that is not part number 103–4205.03/2.

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

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(h) Questions or technical information related to Grob-Werke GmbH & Co., Aerospace Division, P.O. Box 12 57, D–87712 Mindelhein, Federal Republic of Germany; telephone: ++ 49 8268 998–0; facsimile: ++ 49 8268 988–190. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 1999–216/2, dated July 15, 1999, and in Grob Service Bulletin 315–61/2, dated June 28, 1999.

(i) This amendment becomes effective on October 21, 1999.

Issued in Kansas City, Missouri, on September 20, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25220 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–8]

Correction of Class D Airspace; Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which corrects the Class D airspace area at Laughlin/Bullhead International Airport, Bullhead City, AZ. On January 4, 1996, the Class D airspace ceiling of Laughlin/Bullhead International Airport was published and charted in error as 2,500 feet Above Ground Level (AGL). FAA Order 7400.9G requires all altitudes to be published in feet above Mean Sea Level (MSL). The corrected altitude of 3,200 feet MSL will not change the boundaries or volume of Class D airspace area associated with Laughlin/Bullhead International Airport but will only correct the ceiling of existing Class D airspace area from an AGL height to reflect the same altitude using MSL.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

ADDRESSES: Send comments on the direct final rule confirmation date in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Division, Airspace Specialist, AWP–520.1, Western-Pacific Region, Federal

Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: On July 28, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments, which corrected the Class D airspace at Bullhead City, AZ, by changing the ceiling of the Class D from 2,500 feet above ground level to 3,200 feet mean sea level. (FR Document 99–17173, 64 FR 40745, Airspace Docket No. 99–AWP–8). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received; therefore this document confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California, on September 9, 1999.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–25224 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–11]

Amendment to Class E Airspace; Moundsville, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Marshall County Airport, Moundsville, WV. The development of a Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) has made this action necessary.

Amendments to the controlled airspace extending upward from 700 Feet Above Ground Level (AGL) are needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, October 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by extending the Class E airspace extending upward from 700 feet above the surface at Marshall County Airport, Moundsville, WV was published in the **Federal Register** (64 FR 1331).

Interesed parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feed AGL are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feed AGL for aircraft executing SIAPs at Marshall County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) 9is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999 and effective September 16, 1999 is amended as follows:

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

* * * * *

AEA WV E5, Moundsville, WV [Revised]

Marshall County Airport, Moundsville, WV (Lat. 39°52′85″N., long. 80°44′85″W.)

That airspace extending upward from 700 feet above the surface within a 6.2 mile radius of Marshall County Airport and within 2 miles each side of a 051° bearing from the Marshall County Airport, extending from the 6.2 mile radius of the airport to 12 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York on September 13, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–25063 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 990330083–9166–02; I.D. 091499E]

RIN 0648–AK32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Effective Date Notification and Office of Management and Budget (OMB) Control Numbers

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; effective date of OMB control numbers.

SUMMARY: This rule makes effective the collection-of-information requirements in the final rule implementing procedures for the testing and certification of bycatch reduction devices (BRDs) for use in shrimp trawls in the exclusive economic zone in the Gulf of Mexico published in the *Federal Register* on July 13, 1999. OMB has approved those collection-of-information requirements.

DATES: The collection-of-information requirements in § 622.41(h)(3)(i) and (h)(3)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer are effective September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: On July 13, 1999, NMFS published a final rule (64 FR 37690) that established procedures for the testing and certification of BRDs for use in shrimp trawls in the exclusive economic zone in the Gulf of Mexico. That final rule was published prior to OMB's approval of the information collection requirements in § 622.41(h)(3)(i) and (h)(3)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer; therefore, the effectiveness of those information collection requirements was deferred pending OMB approval. Those information collection requirements are related to the BRD certification process and include applications for pre-certification and certification of a new BRD, pre-certification adjusting, the testing itself, the submission of the test results, application for observer position, and references for observers. On August 20, 1999, OMB approved those information collection requirements. This notice informs the public of the OMB approval of those information collection requirements under OMB control number 0648–0345 and makes them effective.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

15 CFR Chapter IX

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

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

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

2. In § 902.1, paragraph (b) table, under 50 CFR, the following entries are added in numerical order to read as follows:

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

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
622.41	–0345
* * * * *	

[FR Doc. 99–25237 File 9–28–99; 8:45 am]

BILLING CODE 3510–22–F

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41905; File No. S7–27–98]

RIN 3235–AH48

Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission) today is adopting an amendment to Rule 10b–18 (Rule) under the Securities Exchange Act of 1934 (Exchange Act). Rule 10b–18 provides a ''safe harbor'' from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 thereunder, when an issuer or affiliated purchaser of the issuer bids for or buys shares of its common stock in compliance with the Rule's conditions. In order to improve liquidity during severe market downturns, the amendment modifies the Rule's timing condition during the trading session immediately following a market-wide trading suspension. In particular, the safe harbor now is available to an issuer that bids for or purchases its common stock either: from the reopening of trading until the close of trading on the same day as the imposition of the market-wide trading suspension; or at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading. The safe harbor requires that the issuer continue to comply with the Rule 10b–18 conditions governing the manner, price and volume of market purchases of its common stock.

EFFECTIVE DATE: October 29, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Brigagliano, Assistant Director; and Joan Collopy, Attorney; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, or at (202) 942–0772.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 29, 1998, in response to a petition for rulemaking (Petition) [1] filed by the New York Stock Exchange, Inc. (NYSE), the Commission proposed to amend the Rule 10b–18 timing condition during the trading session immediately following a market-wide trading suspension (Proposing Release).[2] The amendment would

[1] The Petition was filed on January 9, 1998 and is publicly available in File No. 4–409 in the Commission's Public Reference Room. The NYSE Petition stated that it had surveyed floor brokers, upstairs traders and listed-company representatives. Those groups agreed that expanding the Rule 10b–18 safe harbor to issuer repurchases effected during the trading session following a severe market decline could offer an important source of liquidity and provide balance to selling activity.

[2] The amendment, as proposed and adopted, defines market-wide trading suspension as either: (i) A market-wide trading halt imposed pursuant to the rules of a national securities exchange or a registered national securities association in response to a market-wide decline during a single trading session; or (ii) a market-wide trading suspension ordered by the Commission pursuant to Section 12(k) of the Exchange Act. Rule 10b–18(a)(15). For example, the alternative safe harbor would apply in the trading session following a trading halt pursuant to NYSE Exchange Rule 80B or Market Closing Policy of the National Association of Securities Dealers, Inc. (NASD). The Commission approved the NASD's market closing policy statement, codified in IM–4120–3. Securities Exchange Act Release No. 39846 (April 9, 1998), 63

extend the safe harbor to Rule 10b–18 bids or Rule 10b–18 purchases [3] effected either: (i) from the reopening of trading until the close of trading immediately following, and on the same day as, a market-wide trading suspension; or (ii) at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading. Under the proposal, the safe harbor would also be available in the trading session following a market-wide trading suspension declared pursuant to a Commission emergency order.[4] At such times, an issuer and its affiliated purchasers [5] would still also have to comply with the manner, price and volume conditions in Rule 10b–18 to satisfy the requirements of the safe harbor.

We received letters from seven commenters in response to the Proposing Release, all of which supported the amendment.[6] After considering the comments, we are adopting the amendment to Rule 10b–18 substantially as proposed.

II. Rule 10b–18 Safe Harbor

Before Rule 10b–18 was adopted, issuers conducting repurchase programs were uncertain about their potential liability under the anti-manipulation provisions of the Exchange Act. Those provisions offer little practical guidance with respect to the scope of permissible issuer market activity. Since 1967, the Commission has periodically considered whether, and how, to regulate an issuer's market repurchases of its securities.[7] As adopted in 1982, Rule 10b–18 provides a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b), and Rule 10b–5, of the Exchange Act to an issuer in connection with its bids for or purchases of its common stock that comply with the Rule's conditions.[8] Because Rule 10b–18 is a safe harbor, compliance with the Rule's conditions is voluntary. Thus, issuer bids for or purchases of its common stock that do not comply with Rule 10b–18 are not necessarily manipulative.[9]

The following Rule 10b–18 safe harbor conditions both ensure that the price of an issuer's repurchases will be set by independent market forces and offer clear guidance concerning the scope of non-manipulative issuer repurchasing:

- The *manner of purchase* condition requires an issuer to use a single broker or dealer on any given day to bid for or purchase its common stock.[10] This provision deters an issuer from creating the appearance of widespread broker-dealer interest and trading activity in its security.
- The *price condition* specifies the highest price an issuer may bid or pay for its common stock.[11] Because the price condition generally limits the issuer to bidding for or buying its security at a price that is no higher than the current independent published bid or last independent transaction price, it ensures that the issuer would not lead the market for its security through its repurchases.
- The *volume condition* is designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity. Generally, the issuer may effect daily purchases, excluding block purchases, in an amount up to 25 percent of the trading volume in its shares.[12] Although excepted from the volume condition, all other Rule 10b–18 conditions apply to block purchases.[13]
- The *timing condition* specifies that an issuer's purchase may not be the opening transaction reported to the consolidated transaction reporting system nor may purchases be made during the last half-hour before the scheduled close of trading.[14] Because they tend to forecast the direction of trading and suggest the strength of demand, purchases effected at the opening or close of trading are generally considered to be significant indicators of the current market value of the security. Therefore the safe harbor does not cover opening bids and purchases and bids and purchases near or at the close of trading by the issuer.

III. NYSE Petition and Proposed Amendment to Rule 10b–18

Last year, the Commission approved a proposal by the NYSE and other self-regulatory organizations to amend their rules establishing ''circuit breakers.'' [15]

FR 18477 (April 15, 1998) (Circuit Breaker Approval Order). *See generally*, Securities Exchange Act Release No. 40617 (October 29, 1998), 63 FR 59911 (November 6, 1998) (Proposing Release).

[3] Rule 10b–18 bid is defined as a bid for securities that, if accepted, or a limit order to purchase securities, that if executed, would result in a Rule 10b–18 purchase. 17 CFR 240.10b–18(a)(4). A Rule 10b–18 purchase is defined as a purchase of common stock of an issuer by or for the issuer, with certain exceptions. 17 CFR 240.10b–18(a)(3).

[4] Section 12(k) of the Exchange Act gives the Commission authority to respond to market disruptions and extreme market volatility that could result from a variety of contingencies. Section 12(k)(1)(B) authorizes the Commission to suspend summarily all trading in the markets for up to ninety calendar days when such suspension is required by the public interest and for the protection of investors. The Commission has never invoked this provision.

[5] The safe harbor is also available for affiliates of the issuer (affiliated purchasers). In this release, the term ''issuer'' includes affiliated purchasers.

[6] The comment letters and a summary of comments prepared by the Division of Market Regulation have been placed in Public File No. S7–27–98, which is available for public inspection in the Commission's Public Reference Room. Comment letters were received from the New York Stock Exchange, Inc. (NYSE); American International Group, Inc. (AIG); Morgan Stanley & Co. (Morgan Stanley); Intel Corporation (Intel); the National Association of Securities Dealers, Inc. (NASD); BellSouth Corporation (BellSouth).

[7] The Commission first proposed Rule 10b–10 to govern issuer repurchases in connection with proposed legislation that became the Williams Act Amendments of 1968. Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968), reprinted in Hearings on S. 510 before Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 214–216 (1967). The Commission then published for public comment proposed Rule 13e–2 in 1970, 1973 and 1980. Rule 13e–2 would have been a proscriptive rule with disclosure requirements, purchasing limitations and general anti-fraud liability. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (July 16, 1970); 10539 (Dec. 6, 1973), 38 FR 34341 (Dec. 13, 1973); and 17222 (Oct. 17, 1980), 45 FR 70890 (Oct. 27, 1980).

[8] Adopting Release, *supra* note 1, at 53334. Some conduct that meets the safe harbor requirement of Rule 10b–18 may still violate the anti-fraud provisions of the Exchange Act. For example, as the Commission noted in 1982 when adopting Rule 10b–18, ''Rule 10b–18 confers no immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material nonpublic information concerning its securities.'' *Id.*, note 5.

[9] 17 CFR 240.10b–18(c).

[10] 17 CFR 240.10b–18(b)(1). This manner condition applies only to Rule 10b–18 bids or Rule 10b–18 purchases solicited by or on behalf of the issuer.

[11] 17 CFR 240.10b–18(b)(3). The price limitation varies on whether the security is a reported, exchange-traded, Nasdaq or other security, and whether the bid or purchase is effected on an exchange. *Id.*

[12] For nonreported securities, volume may not exceed one round lot on a single day or on such day plus the five preceding days, 1/20th of the percent of outside shares. 17 CFR 240.10b–18(b)(4). Trading volume is defined generally as the average daily trading volume reported to the consolidated transaction reporting system or to the NASD for the security in the four calendar weeks preceding the week that the Rule 10b–18 purchase or bid is to be effected. 17 CFR 240.10b–18(a)(11).

[13] Block is defined as a quantity of stock that either: (i) has a purchase price of $200,000 or more; or (ii) is at least 5,000 shares and has a purchase price of at least $50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (0.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate. Block does not include any amount a broker or dealer, acting as principal, has accumulated for the purpose of selling to the issuer or affiliated purchaser, if the issuer or affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor does it include any amount that a broker or dealer has sold short to the issuer, if the issuer or affiliated purchaser knows or has reason to know that the sale was a short sale. 17 CFR 240.10b–18(a)(14).

[14] 17 CFR 240.10b–18(b)(2).

[15] *See* Circuit Breaker Approval Order, *supra* note 2. (Order approving circuit breakers for rules

Continued

Circuit breakers are coordinated market-wide trading halts that are intended to avoid systemic breakdown when a severe one-day market drop interferes with the orderly operation of the financial markets.[16] The new circuit breaker rule sets trigger values representing a one-day decline in the Dow Jones Industrial Average (DJIA) of 10%, 20%, and 30%. It also modifies the duration of the market-wide trading halt depending on when the circuit breaker is triggered.[17] It is likely these circuit breakers will rarely be triggered, and only during significant market declines when liquidity may evaporate. In conjunction with the new circuit breaker rules, the NYSE asked the Commission to expand the Rule 10b–18 timing condition to permit an issuer to bid for or purchase its security either: (1) At the reopening of trading on the same day as the trading halt, and during the half hour prior to the scheduled close of trading of such trading session; or (2) at the next day's opening, if the market-wide trading halt is in effect at the scheduled close of trading. The Petition did not propose to change the other Rule 10b–18 conditions.[18]

In its Petition, the NYSE acknowledged that Rule 10b–18 is neither mandatory nor the exclusive means for an issuer to make repurchases without manipulating the market price of its securities. However, it noted that in practice many issuers are reluctant to undertake repurchases without the certainty that their bids or purchases fall within the Rule 10b–18 safe harbor. The NYSE highlighted the need for liquidity in the period following a significant market decline, and suggested that issuer repurchases offer a source of liquidity that could ease the stress of volatile markets.

We have noted before that issuers rarely buy back their securities with improper intent, at least in the absence of a significant corporate transaction by the issuer,[19] but generally conduct repurchase programs for legitimate business reasons.[20] We also recognize the benefit of offering clear guidance and certainty to issuers and broker-dealers concerning permissible market activity when repurchasing their stock. The Rule 10b–18 safe harbor allows issuers and their broker-dealer agents to bid for and purchase their common stock within the Rule's conditions and thereby avoid the risks of liability under the general anti-manipulation provisions of the Exchange Act. Expanding the safe harbor during the trading session following a market break may encourage issuers to participate in reestablishing equilibrium between buying and selling interests.

IV. Response to Comments on the Proposed Amendment to Rule 10b–18

In the Proposing Release, the Commission sought comment on whether the proposed amendment provides an appropriate safe harbor condition for issuers and their affiliated purchasers during periods of severe market downturns. The Commission also sought comment on whether the proposal raised a risk of manipulation and whether legal or policy reasons would suggest the Commission should consider a different approach.

The Commission received letters from seven commenters in response to the Proposing Release. All commenters supported the proposal's revision of the timing condition as facilitating short-term liquidity and providing issuers flexibility during periods of severe market downturns. Most commenters observed that the presence of issuers provide an important source of liquidity, or buy-side interest, during volatile markets when investors may wish to liquidate their securities holdings. Several commenters observed that the proposal would also assist specialists and market makers in eliminating sell-order imbalances and reestablishing market equilibrium.[21] Commenters stated that Rule 10b–18's silence as to the scope of permissible issuer activity during volatile markets in practice prevents issuers from buying back their shares during severe market declines.[22]

Four commenters recommended raising the volume limits following a trading suspension as a more effective means of enhancing liquidity and restoring market equilibrium.[23] One commenter noted that the resetting of circuit breakers meant that they would be triggered only in severe market declines and argued that the liquidity provided by issuer repurchases should benefit the market in instances of less extreme volatility.[24] This commenter, therefore, recommended that the volume limit be scaled in a manner that would allow increases in issuer repurchases to occur in tandem with market-wide price declines short of current circuit breaker levels, such as a 350 point decline in the DJIA.

The Commission has considered these comments. As discussed above, in proposing the amendment to Rule 10b–18, the Commission considered the significant benefits of providing clear guidance to issuers about the scope of permissible market activity following a market-wide trading halt and of facilitating liquidity when sell-order imbalances disrupt the orderly operation of the financial markets. The triggering of a circuit breaker is an extraordinary event and reflects an abnormal market condition. The circuit breaker levels indicate a market judgment that ordinary market mechanisms can operate adequately under less severe market conditions. Further, given that circuit breakers should rarely be triggered, the expansion of the safe harbor's timing condition is limited. At this time, the Commission considers the Rule 10b–18 volume condition, including the block exception, appropriate limits that should continue to apply in the trading session following a market-wide trading suspension and believes the expanded timing condition as adopted today will effectively enhance liquidity.[25]

After considering the comments, the Commission is adopting today the amendment to Rule 10b–18 substantially as proposed. In particular, the safe harbor now is available to an issuer that bids for or purchases its

governing market-wide trading halts on the NYSE, American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, NASD, and Philadelphia Stock Exchange).

[16] *Id.*

[17] *Id.* NYSE Rule 80B (Rule 80B) governs the imposition of trading halts on the NYSE due to extraordinary market volatility. Rule 80B provides both the trigger values (circuit breakers) for trading halts on the NYSE, which are expressed as a decline in the DJIA from the closing value on the previous trading day, and the duration of the trading halt for each circuit breaker. The circuit breakers contained in Rule 80B have been coordinated with: (i) All other U.S. stock exchanges and the NASD with respect to trading of stocks, stock options, and stock index options; and (ii) all U.S. futures exchanges with respect to the trading of stock index futures and options on such futures, so that all such markets would cease trading when a circuit breaker is triggered by a decline in the DJIA.

[18] *See* Petition, *supra* note 1.

[19] For example, Rule 10b–18's safe harbor is not available during the Regulation M restriction period and during mergers, acquisitions and tender offers. 17 CFR 240.10b–18(a)(3).

[20] *See* Proposing Release, *supra* note 2. *See also*, Clifford P. Stephens and Michael S. Weisbach, ''Actual Share Reacquisitions in Open-Market Repurchase Programs,'' *Journal of Finance*, February 1998 (observing that firms increase their repurchasing depending on the degree of perceived undervaluation of its stock and on expected cash flow).

[21] Letters from Morgan Stanley and BellSouth.

[22] *See* Memo from Larry Bergmann To Public Files (S7–27–98), dated November 10, 1998, regarding, among other matters, the Rule 10b–18 timing condition.

[23] Letters from AGI, Morgan Stanley, Intel, and NASD.

[24] Letter from the NASD.

[25] *See* discussion of Rule 10b–18 volume limitation, *supra* Part II. The Commission will reconsider the commenters' recommendations about the volume condition, as well as the manner, timing and price conditions in a forthcoming broad review of Rule 10b–18.

common stock either: from the reopening of trading until the close of trading on the same day as the imposition of the market-wide trading suspension; or at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading.[26] As adopted, the safe harbor would also be available in the trading session following a market-wide trading suspension declared pursuant to a Commission emergency order.[27] The safe harbor requires that the issuer continue to comply with the Rule 10b–18 conditions governing the manner, price and volume of market purchases of its common stock.

V. Costs and Benefits of the Adopted Amendment

To assist the Commission in evaluating the costs and benefits that may result from the proposal to amend Rule 10b–18, the Commission sought comment on the costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals to issuers, investors, broker-dealers and others. The Commission also requested that commenters provide, if possible, analysis and data to support their views. The Commission initially identified certain costs and benefits relating to the proposals and encouraged commenters to discuss any additional costs or benefits. The Commission received letters from seven commenters concerning the proposed amendment, however, none of the commenters responded specifically to the request for comment on the cost/benefit analysis. After considering the comments and the costs and benefits, the Commission continues to believe that the amendment to Rule 10b–18 should be adopted. Since the Commission is adopting the amendment as proposed, it is not making any changes that would increase the cost estimates for compliance with the Rule.

A. Benefits

The Commission's amendment to Rule 10b–18 generally would help improve the liquidity of markets for equity securities following a market-wide trading suspension. Securities sellers would benefit from improved liquidity while issuers could buy shares at relatively low prices. We continue to believe that the specific benefits set forth below would flow from the adopted amendment.

The Commission believes that the amendment will facilitate trading in the issuer's securities by reducing issuer reluctance to purchase in response to sell-order imbalances that may occur during periods of severe market declines. By extending the safe harbor, the adopted amendment may encourage issuers to purchase their securities at a time when other market participants may be unable or unwilling to do so. We therefore believe that extending the safe harbor to issuers during the trading session following a market-wide trading suspension will improve the liquidity of markets in the issuer's securities. The safe harbor, as amended, also provides clarity as to the scope of permissible market activity for issuers and the broker-dealers that assist issuers in their stock repurchases.

The Commission does not have data to quantify the value of the benefits described above. The Commission did not receive comments on how it may quantify these benefits and did not receive comments concerning any other benefits, not already identified, that may result from the adoption of the amendment.

B. Costs

By extending the safe harbor in the trading session following a market-wide trading suspension, the adopted amendment may encourage issuers to purchase their securities at a time when other market participants may be unable or unwilling to do so. Issuers would have to comply with all the Rule 10b–18 conditions, including the price provision which limits issuer bids and purchases to the higher of the current independent bid or last independent transaction price. Nonetheless, issuer bids for its security would compete against the bids of other buyers in the market following a market-wide trading suspension. Also, issuer bids may retard a further decline in the price of the issuer's stock.

The adopted amendment to Rule 10b–18 would not increase or decrease the current reporting burdens by imposing any new reporting, recordkeeping, or other compliance requirements. In the Proposing Release, the Commission noted that the Rule does implicitly require an issuer, seeking to avail itself of the safe harbor, to collect information regarding the manner, timing, price, and volume of its purchases of the issuer's common stock, on a transaction by transaction basis, in order to verify compliance with the Rule's safe harbor conditions. Under the adopted amendment to Rule 10b–18, issuers would continue to collect and keep such records should they make Rule 10b–18 purchases during the trading session following a market-wide trading suspension. The Commission also notes that any costs related to complying with Rule 10b–18, and the adopted amendment, are assumed voluntarily because the Rule provides an optional rather than mandatory safe harbor that issuers may use for purchasing their securities.

VI. Effects on Efficiency, Competition, and Capital Formation

In adopting rules under the Exchange Act, Section 23(a)(2) requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, and when considering the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[28] In the Proposing Release, the Commission solicited comment on the proposal's effect on competition, efficiency and capital formation. The Commission received no comments specifically regarding these issues. All commenters, however, did support the proposal's revision of the timing condition as facilitating short-term liquidity and providing issuers flexibility during periods of severe market downturns.

The Commission has considered the amendment in light of the standards cited in Section 23(a)(2) of the Act and believes they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. As discussed above in the Cost-Benefit Section, the Commission recognizes that issuers bear a cost in order to demonstrate compliance with the Rule, but issuers assume this burden voluntarily. Nonetheless, the Commission continues to believe that the safe harbor, as amended, should improve market efficiency by providing additional purchasers, namely issuers, during a time of sell-order imbalance. This effect likely would enhance market liquidity following a market-wide trading suspension.

The proposed amendment to Rule 10b–18 would not have any anticompetitive effect because it would apply equally to all issuers and the safe

[26] *See* discussion of proposal and accompanying footnotes, *supra* Part I.

[27] *See* discussion, *supra* note 4.

[28] 15 U.S.C. 78c(f).

harbor would only be triggered in extremely rare circumstances. Further, an issuer currently is able to purchase its shares outside the Rule 10b–18 safe harbor conditions without raising a presumption of manipulation.

VII. Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the adopted amendment to Rule 10b–18 in accordance with Section 4 of the Regulatory Flexibility Act (RFA).[29]

A. Need for and Objectives of the Rule 10b–18 Amendment

On January 9, 1998, the NYSE filed a petition for rulemaking with the Commission pursuant to Rule 192 of the Commission's Rules of Practice.[30] The NYSE requested that the Commission initiate rulemaking proceedings to amend Rule 10b–18 to include in its safe harbor bids and purchases made following a market-wide trading suspension: (1) at the reopening on the day of the market-wide trading suspension; (2) during the half-hour prior to the scheduled close of trading on the day of the trading suspension; and (3) at the next day's opening if the market-wide trading suspension is in effect at the scheduled close of trading. The proposal adjusted the Rule's time of purchase condition but provided that the issuer must continue to comply with the other Rule 10b–18 conditions governing the manner, price and volume of market purchases of its common stock.

The amendment to Rule 10b–18, as adopted, will allow issuers who otherwise comply with the current Rule 10b–18 safe harbor conditions governing manner, price and volume to use the amended timing condition during the trading session following an emergency market-wide trading suspension. The events following the market breaks in October 1987 and October 1997 have underscored the significant role of issuer repurchases during market downturns and the need for clarity as to the applicability of Rule 10b–18 in periods of extreme market downturns. On those occasions, issuer repurchases provided an important source of liquidity that helped ease market stress. The Rule 10b–18 amendment, by modifying the safe harbor's timing condition during the trading session following a market break, likely will improve liquidity and facilitate market participants' ability to reestablish equilibrium between buying and selling interests.

B. Significant Issues Raised by Public Comment

In response to the Proposing Release, the Commission received letters from seven commenters. All commenters supported the proposal's revision of the timing condition as facilitating short-term liquidity and providing issuers flexibility during periods of severe market downturns. Several commenters noted that since market declines are beyond the control of individual issuers, the proposal, applicable only in the trading session following a market-wide trading suspension, did not raise the same manipulation concerns traditionally underlying the safe harbor conditions.[31] Many commenters observed that the presence of issuers provides an important source of liquidity, or buy-side interest, during volatile markets when investors may wish to liquidate their securities holdings. Several commenters observed that the proposal would also assist specialists and market makers in eliminating sell-order imbalances and reestablishing market equilibrium.[32] Commenters stated that Rule 10b–18's silence as to the scope of permissible issuer activity during volatile markets in practice prevents issuers from buying back their shares during severe market declines.[33]

Four commenters recommended raising the volume limits following a trading suspension as a more effective means of enhancing liquidity and restoring market equilibrium.[34] One commenter noted that the resetting of circuit breakers meant that they would be triggered only in severe market declines and suggested that the liquidity provided by issuer repurchases should benefit the market in instances of less extreme volatility.[35] This commenter, therefore, recommended that the volume limit be scaled in a manner that would allow increases in issuer repurchases to occur in tandem with market-wide price declines short of current circuit breaker levels, such as a 350 point decline in the DJIA.

C. Small Entities Subject to the Rule

The adopted amendment may affect those small entity issuers and affiliated purchasers that wish to avail themselves of the safe harbor provisions in the trading session following a market-wide trading suspension. Based on Exchange Act Rule 0–10(a), a small issuer is one that has total assets of $5,000,000 or less on the last day of its most recent fiscal year. Based on information about issuer repurchase programs conducted in 1997, the Commission estimates that approximately 1,455 issuers could avail themselves of the safe harbor each year, of which about 10 may be considered small entities.

In the IRFA, the Commission's staff estimated that 10 issuers that are small entities may avail themselves of the safe harbor per year.[36] The Commission sought comment on the number of issuers engaged in market repurchases of their stock and the number of such issuers that are small entities. No commenters responded to these estimates.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The adopted amendment to Rule 10b–18 would not impose any new reporting, recordkeeping, or other compliance requirements.

E. Agency Action To Minimize the Effect on Small Entities

Section 4(a) of the RFA [37] directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers and broker-dealers. Pursuant to Section 3(a) of the RFA,[38] the Commission considered the following alternatives in connection with the adopted amendment:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption from coverage of the Rule, or any part thereof, for small entities.

With respect to the adopted amendment, the Commission believes that the establishment of different requirements for small entities is neither necessary nor practicable, because the amendment provides a voluntary safe harbor from liability for manipulation

[29] 5 U.S.C. 604.

[30] *See* Petition, *supra* note 1.

[31] Letter from Intel and the NASD.

[32] Letters from Morgan Stanley and BellSouth.

[33] *See* Memo from Larry Bergmann To Public Files (S7–27–98), dated November 10, 1998, regarding, among other matters, the Rule 10b–18 timing condition.

[34] Letters from AIG, Morgan Stanley, Intel, and the NASD.

[35] Letter from the NASD.

[36] Proposing Release, *supra* note 2, Part VII. This estimate was based on informaiton about issuer repurchase programs conducted in 1997.

[37] 5 U.S.C. 604(a).

[38] 5 U.S.C. 603(a).

under the Exchange Act. The amendment to Rule 10b–18, as adopted, should not adversely affect small entities because it does not impose any new reporting, recordkeeping or compliance requirements. Therefore, it is not feasible to further clarify, consolidate or simplify the rule for small entities.

VIII. Paperwork Reduction Act

Certain provisions of the amendment to Rule 10b–18 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA);[39] the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Purchases of certain equity securities by the issuer and others.'' This collection of information has previously been assigned OMB Control No. 3235–0474. An agency may not sponsor, conduct, or require a response to an information collection unless a currently valid OMB control number is displayed. In the Proposing Release, the Commission solicited comment on its evaluation of the proposal's estimated burden. The Commission received no comments specifically addressing these issues.

Rule 10b–18 provides that an issuer or any affiliated purchaser of an issuer will not incur liability under Sections 9(a)(2) and 10(b) of the Exchange Act, or Rule 10b–5 under the Exchange Act if its purchases of the issuer's common stock are made in compliance with the manner, timing, price, and volume limitations of the rule. The amendment to the Rule's timing condition expands the safe harbor's availability during the trading session following a market-wide trading suspension.

The adopted amendment to Rule 10b–18 would not increase or decrease the current reporting burdens by imposing any new reporting, recordkeeping, or other compliance requirements. In the Proposing Release, the Commission noted that the Rule does implicitly require an issuer, seeking to avail itself of the safe harbor, to collect information regarding the manner, timing, price, and volume of its purchases of the issuer's common stock, on a transaction by transaction basis, in order to verify compliance with the Rule's safe harbor conditions. Under the adopted amendment to Rule 10b–18, issuers would continue to collect and keep such records should they make Rule 10b–18 purchases during the trading session following a market-wide trading suspension. The Commission also notes that any costs related to complying with Rule 10b–18, and the adopted amendment, are assumed voluntarily because the Rule provides an optional rather than mandatory safe harbor that issuers may use for purchasing their securities.

[39] 44 U.S.C. 3501 *et seq.*

IX. Statutory Basis and Text of Adopted Amendment

The rule amendment is being adopted pursuant to Sections 2, 3, 9(a)(6), 10(b), 13(e), 15(c) and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c) and 78w(a).

List of Subjects in 17 CFR Part 240

Broker-dealers, Issuers, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation to part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b–18 is amended by adding paragraphs (a)(15) and (d) and revising paragraph (c) to read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

(a) *Definitions.* * * *

(15) The term *market-wide trading suspension* means either:

(i) A market-wide trading halt imposed pursuant to the rules of a national securities exchange or a registered national securities association, in response to a market-wide decline during a single trading session; or

(ii) A market-wide trading suspension ordered by the Commission pursuant to Section 12(k) of the Act, 15 U.S.C. 78*l*(k).

* * * * *

(c) *Conditions following a market-wide trading suspension.* The conditions of paragraph (b) of this section shall apply in connection with a Rule 10b–18 bid or a Rule 10b–18 purchase effected during a trading session following the termination of a market-wide trading suspension, except that the time of purchase condition in paragraph (b)(2) of this section shall not apply, either:

(1) From the reopening of trading until the scheduled close of trading; or

(2) At the opening of trading on the next trading day, if a market-wide trading suspension is in effect at the scheduled close of a trading session.

(d) No presumption shall arise that an issuer or affiliated purchaser of an issuer has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act, 15 U.S.C. 78i(a)(2) or 78j(b), or § 240.10b–5, if the Rule 10b–18 bids or Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraphs (b) or (c) of this section.

By the Commission.

Dated: September 23, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–25252 Filed 9–28–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans, LA Regulation 99–022]

RIN 2115–AA97

Safety Zone Regulations; Mile 94.0 to Mile 96.0, Lower Mississippi River, Above Head of Passes

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from mile 94.0 to mile 96.0, Lower Mississippi River, Above Head of Passes, extending the entire width of the river. The safety zone has been established to protect personnel involved in pollution response and underwater diving operations within the channel. Entry into this zone while divers are deployed is prohibited to all vessels, with the exception of towing vessels operating without tows, unless authorized by the Captain of the Port. Entry into this zone while divers are not deployed will be managed by the Coast Guard Traffic Light Operator at Governor Nicholls Traffic Light, VHF–FM Channel-67. The Governor Nicholls and Gretna Traffic Lights will be in operation until the safety zone expires. Authorization to enter the safety zone while divers are deployed will only be granted during emergency situations which affect the safety of vessels or the safety of the port.

EFFECTIVE DATES: This temporary final rule is effective from 6:00 p.m. (CDT)

September 17, 1999, to 6:00 p.m. (CDT) October 1, 1999.

FOR FURTHER INFORMATION CONTACT: COTP New Orleans representative, LT(jg) Kevin Lynn at (504) 589–4221.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential hazards to local marine traffic and personnel involved in pollution response and diving operations.

Background and Purpose

The hazardous condition requiring this regulation is a result of personnel involved in pollution response and diving operations on the Lower Mississippi River between 94.0 and mile 96.0 Above Head of Passes. A safety zone is needed to protect personnel involved in pollution response and underwater diving operations in the area. Entry into this zone is prohibited to all vessels, with the exception of towing vessels operating without tows, unless authorized by the Captain of the Port. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This temporary final rule is not a significant regulatory evaluation under Executive Order 12866 and is not significant under the ''Department of Transportation Regulatory Policies and Procedures'' (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Collection of Information

This temporary final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will only be in effect for several days and the impacts on small entities are expected to be minimal.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Chapter 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 1605; 49 CFR 1.46.

2. A new § 165.T08–034 is added to read as follows:

§ 165.T08–034 Safety Zone.

(a) *Location*. The following area is a safety zone: Lower Mississippi River from mile 94.0 to mile 96.0 Above Head of Passes, in the vicinity of Algiers Point extending the entire width of the river.

(b) *Effective date*. This section will become effective on September 17, 1999 at 6:00 p.m. (CDT). It will be terminated on October 1, 1999, at 6:00 p.m. (CDT), unless sooner terminated by the Captain of the Port. The Captain of the Port will notify the public of changes in the status of this zone by Marine Radio Safety Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

(c) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by any vessel, with the exception of towing vessels operating without tows, is prohibited unless authorized by the Captain of the Port New Orleans.

Dated: September 16, 1999.

S.W. Rochon,

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

[FR Doc. 99–25447 Filed 9–27–99; 1:45 pm]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–038–7165a; A–1–FRL–6445–4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Stage II Comparability and Clean Fuel Fleets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions that the New Hampshire Department of Environmental Services (DES) submitted to EPA: New Hampshire's Stage II comparability demonstration submitted on July 9, 1998, and Clean Fuel Fleets opt out submitted on June 7, 1994. The intended effect of this action is to approve both submittals into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule is effective on November 29, 1999 without further notice, unless EPA receives adverse comment by October 29, 1999. 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 Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th

floor, Boston, MA and at the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047, for Stage II Comparability and Matthew B. Cairns, (617) 918–1667, for Clean Fuel Fleets.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?
What are the CAA requirements for Stage II comparability?
What measures are included in New Hampshire's Stage II comparability SIP?
What is the relationship between New Hampshire's previously approved Stage II serious area SIP and its Stage II comparability SIP?
What is New Hampshire's Stage II comparability reduction target?
How is New Hampshire achieving its reduction target?
What are the Clean Fuel Fleets requirements?
How is New Hampshire meeting the Clean Fuel Fleets requirements?
Why is EPA approving New Hampshire's Stage II comparability and Clean Fuel Fleets opt out SIP revisions?
What is the process for EPA's approval of these SIP revisions?
Administrative Requirements

What Action Is EPA taking?

The Environmental Protection Agency is approving the Stage II comparability demonstration the New Hampshire DES submitted on July 9, 1998 and the Clean Fuel Fleets opt out submitted on June 7, 1994. EPA is approving these submittals into the New Hampshire SIP because they meet the requirements of section 184(b)(2) and section 182(c)(4), respectively, of the CAA. 42 U.S.C. 7401, 7511c(b)(2), and 7511a(c)(4).

What Are the CAA Requirements for Stage II Comparability?

Section 184(b)(2) of the CAA requires states in the Ozone Transport Region (OTR) to adopt Stage II or comparable measures within one year of EPA completion of a study identifying control measures capable of achieving emissions reductions comparable to the reductions achievable through section 182(b)(3) Stage II vapor recovery controls. EPA completed its study ''Stage II Comparability Study for the Northeast Ozone Transport Region'' (EPA–452/R–94–011) on January 13, 1995.

Stage II vapor recovery controls reduce volatile organic compound (VOC) emissions that occur during the refueling of motor vehicles. VOC emissions contribute to the formation of ground-level ozone (the main component of smog).

What Measures Are Included in New Hampshire's Stage II Comparability SIP?

To demonstrate that it has met the CAA Stage II comparability requirement, New Hampshire relies on VOC reductions achieved from implementing its Stage II vapor recovery program and its reformulated gasoline (RFG) program.

What Is the Relationship Between New Hampshire's Previously Approved Stage II Serious Area SIP and its Stage II Comparability SIP?

By meeting the CAA Stage II serious area requirements, the state has also met the CAA Stage II comparability requirements for the two areas in New Hampshire classified as serious ozone nonattainment pursuant to the CAA Amendments of 1990. New Hampshire's Stage II comparability demonstration, therefore, focuses on demonstrating Stage II comparability in the rest of the state, specifically in the Manchester area (originally classified as marginal pursuant to the CAA Amendments of 1990) and in the counties of Belknap, Carroll, Cheshire, Coos, Grafton, and Sullivan.

Under the CAA section 182(b)(3) Stage II vapor recovery requirement for serious ozone nonattainment areas, New Hampshire adopted a Stage II program in Hillsborough, Merrimack, Rockingham, and Strafford counties. At the time New Hampshire adopted its Stage II program, these four counties included the state's one marginal and two serious ozone nonattainment areas. On December 7, 1998 (63 FR 67405), EPA approved New Hampshire's Stage II program pursuant to the CAA section 182(b)(3) Stage II requirement for serious ozone nonattainment areas.

What Is New Hampshire's Stage II Comparability Reduction Target?

The State has calculated that it must achieve a 9,551 pounds per day (ppd) reduction in VOC emissions to meet the Stage II comparability requirement (not counting the Stage II reductions achieved in the two serious areas). In its Stage II comparability SIP, New Hampshire refers to this 9,551 ppd reduction as the Stage II comparability reduction target.

As noted in EPA's Stage II comparability guidance, states should make comparability determinations for the year 1999. New Hampshire's Stage II comparability demonstration states that uncontrolled 1999 refueling emissions in the Manchester marginal area and in the other six counties would be 6,529 ppd and 6,148 ppd, respectively. New Hampshire DES estimates that the implementation of a CAA required Stage II program in New Hampshire would achieve a 75.34 percent overall reduction in refueling emissions.[1] Applying this 75.34 percent reduction to the uncontrolled refueling emissions results in a reduction target of 9,551 ppd.

How Is New Hampshire Achieving Its Reduction Target?

In its Stage II comparability demonstration, New Hampshire commits to reserving all of the available emission reductions from its Stage II program in the marginal nonattainment area (4,145 ppd) and a portion of the available emission reductions from its reformulated gasoline program (5,406 ppd out of 20,398 ppd) to meet the 9,551 ppd Stage II comparability target.

New Hampshire has reductions available from its Stage II program in the Manchester marginal nonattainment area that the State may use to meet the Stage II comparability requirement. The State estimates that in 1999, Stage II controls will achieve a 4,919 ppd reduction in emissions in this area. The State, however, previously reserved 774 ppd of the Stage II marginal area reductions as an additional environmental benefit as part of its Stage II serious area program approval. See 63 FR 50180 (September 21, 1998). Therefore, 4,145 ppd of the marginal area Stage II reductions are available to meet the Stage II comparability requirement.

The state also has emission reductions available from implementing its reformulated gasoline (RFG) program that may be used to meet the Stage II comparability requirement. New Hampshire is implementing RFG in the counties of Hillsborough, Merrimack, Rockingham, and Strafford. RFG reductions in this area can count toward determining Stage II comparability in the Manchester marginal area and in the other six counties, since EPA's Stage II comparability guidance allows States to determine comparability on a statewide basis. New Hampshire estimates that RFG in the counties of Hillsborough, Merrimack, Rockingham, and Strafford achieves an emission reduction of

[1] EPA's Stage II Comparability guidance estimates that the implementation of a CAA required Stage II program results in a 77 percent overall reduction in refueling emissions. This estimate is based in part on a nationwide average penetration rate of 90 percent, based on a study of metropolitan area service station size distributions. As noted in EPA's guidance, size distribution varies from area to area. New Hampshire's estimated 75.34 percent overall reduction is based in part on an 84 percent penetration rate, based on the service station size distribution found in New Hampshire.

20,529 ppd in 1999. New Hampshire, however, previously reserved 131 ppd of the RFG reductions as part of its June 7, 1994 Clean Fuel Fleet SIP submittal. Therefore, 20,398 ppd of the total RFG reductions are available for purposes of meeting the Stage II comparability requirement.

What Are the Clean Fuel Fleets Requirements?

Section 246 of the CAA requires that serious nonattainment areas with populations of more than 250,000 adopt a Clean Fuel Fleets program (CFFP). The New Hampshire portion of the Boston-Lawrence-Worcester nonattainment area (parts of Rockingham and Hillsborough Counties, otherwise known as the Southern nonattainment area) meets that criterion. Pursuant to the CAA of 1990, the Southern nonattainment area was classified serious nonattainment for ozone. See 56 FR 56694 (November 6, 1991).

Section 182 (c)(4)(A) of the CAA requires States with serious ozone nonattainment areas to submit for EPA approval a SIP revision that includes measures to implement the CFFP. Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles.

Alternatively, section 182(c)(4)(B) of the CAA allows States to ''opt out'' of the CFFP by submitting a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions in the appropriate nonattainment area as achieved by the CFFP. The CAA directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

How Is New Hampshire Meeting the Clean Fuel Fleets Requirements?

New Hampshire has decided to opt out of the CFFP. New Hampshire has emission reductions available from the implementation of its reformulated gasoline (RFG) program that may be used to meet substitute CFFP requirement. The implementation of RFG in New Hampshire is estimated to achieve an emission reduction of 7662 ppd in 1999 in the Southern nonattainment area. New Hampshire estimates a net reduction of 131 ppd of VOCs would result with a CFFP in the Southern nonattainment area. New Hampshire, however, previously reserved 5406 ppd of the RFG reductions in the Four County Area (which includes, but is larger than the Southern nonattainment area) as part of its July 9, 1998, Stage II comparability demonstration SIP submittal. Therefore, even if we conservatively assume that all of the Stage II-related reductions are from the Southern nonattainment area, and reduce the 7662 ppd RFG reductions by 5406 ppd, 2216 ppd of these RFG reductions are still available for purposes of meeting the substitute CFFP requirement.

EPA generally agrees with New Hampshire's assumption that reductions in toxic air emissions from the CFFP and RFG program are roughly proportional to the reductions in VOCs; any substitute plan which reduces VOCs will also reduce toxic air emissions in approximately the same proportion. New Hampshire has demonstrated that toxic air emissions reductions projected to be achieved by the CFFP are insignificant in the Southern nonattainment area. Therefore, New Hampshire's substitute plan will meet substitute CFFP requirements for air toxics.

Why Is EPA Approving New Hampshire's Stage II Comparability and Clean Fuel Fleets Opt Out SIP Revisions?

EPA is approving New Hampshire's Stage II comparability SIP revision because the State has successfully demonstrated that it has met its Stage II comparability reduction target through implementing its Stage II program and its reformulated gasoline program. New Hampshire's emission reduction calculations follow EPA guidance. Further information on New Hampshire's Stage II comparability SIP revision and EPA's evaluation of this SIP revision can be found in a memorandum dated May 21, 1999, entitled ''Technical Support Document—NH Stage II Comparability.'' Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving New Hampshire's Clean Fuel Fleets opt out SIP revision because the State has successfully demonstrated that it has achieved long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP through its reformulated gasoline program. New Hampshire's emission reduction calculations follow EPA guidance. Further information on New Hampshire's Clean Fuel Fleets opt out SIP revision and EPA's evaluation of this SIP revision can be found in a memorandum dated May 21, 1999, entitled ''Technical Support Document—Clean Fuel Fleets, New Hampshire.'' Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

What Is the Process for EPA's Approval of These SIP Revisions?

EPA is publishing this rule 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 these SIP revisions should relevant adverse comments be filed. This action will be effective November 29, 1999 without further notice unless the Agency receives relevant adverse comments by October 29, 1999

If the EPA receives such comments, then EPA will publish a notice 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 the proposed rule. Any parties interested in commenting on the this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 29, 1999 and no further action will be taken on the proposed rule.

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

Administrative Requirements

A. Executive Order 12866

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

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides

the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting 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.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, 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

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA,

EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

Dated: September 17, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraphs (c)(61) and (62) to read as follows:

§ 52.1520 Identification of plan.

* * * * * *

(c) * * *

(61) Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Services on July 9, 1998.

(i) Additional materials.

(A) ''New Hampshire Stage II Comparability Analysis,'' prepared by the New Hampshire Department of Environmental Services, dated July 1, 1998.

(62) Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Services on June 7, 1994.

(i) Additional materials.

(A) Letter from the New Hampshire Department of Environmental Services dated June 7, 1994 submitting a revision to the New Hampshire State Implementation Plan.

(B) ''Clean Fuel Fleet Equivalency Demonstration,'' prepared by the New Hampshire Department of Environmental Services, dated May, 1994.

[FR Doc. 99–25156 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI91–01–7322; FRL–6446–7]

Approval and Promulgation of Implementation Plans; Wisconsin; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for the approval of a site-specific revision to the Wisconsin sulfur dioxide (SO_2) State Implementation Plan (SIP). We published the direct final rule on August 16, 1999 (64 FR 44415), approving alternate SO_2 emission limits for Murphy Oil, located in Superior, Wisconsin. We stated in the direct final rule that if we received adverse comment by September 15, 1999, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on August 16, 1999 (64 FR 44451). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of September 29, 1999, EPA withdraws the direct final rule published at 64 FR 44415, on August 16, 1999.

ADDRESSES: Copies of the SIP revision, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

List of Subjects in 40 CFR Part 52

Environmental protection, Intergovernmental relations, Sulfur dioxide.

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

Therefore the amendment to 40 CFR part 52 which added § 52.2570(c)(99) is withdrawn.

Dated: September 17, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–25311 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300929; FRL–6385–6]

RIN 2070–AB78

Pymetrozine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent tolerance for pymetrozine [1,2,4-triazin-3(2*H*)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino]] in or on tuberous and corm vegetables (Subgroup 1-C), at 0.02 parts per million (ppm). Novartis Crop Protection, Inc. of Greensboro, North Carolina 27419, requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 29, 1999. Objections and requests for hearings, identified by docket control number OPP–300929, must be received by EPA on or before November 29, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each

method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300929 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Peacock, Registration Division (7504C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5407; and e-mail address: peacock.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed 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 OPP–300929. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805. Persons wishing to review copies of the actual studies summarized in this document need to file a Freedom of Information (FOI) request with Ms. Jeralean Green, Freedom of Information Office (1105), 401 M St., Washington, DC 20460. Specify the MRID number of each study needed. The FOI telephone number is (202) 260–4048.

II. Background and Statutory Findings

In the **Federal Register** of May 20, 1998 (63 FR 27723) (FRL–5773–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Novartis Crop Protection, Inc. of Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.556 be amended by establishing a tolerance for residues of the insecticide pymetrozine [1,2,4-triazin-3(2*H*)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino]], in or on hops at 5 ppm, fruiting vegetables at 0.05 ppm, and cucurbits and potatoes at 0.02 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pymetrozine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pymetrozine on tuberous and corm vegetables (Subgroup 1-C), at 0.02 ppm. EPA's assessment of the exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. In general, technical pymetrozine has low acute toxicity, being classified as Toxicity Category III for acute dermal and primary eye irritation studies and Toxicity Category IV for acute oral, acute inhalation and primary dermal studies. It is a slight sensitizer.

2. *Subchronic and chronic toxicity*. This section summarizes the results of

the subchronic and chronic toxicity, metabolism, and dermal penetration studies in animals.

i. *Subchronic toxicity*. A subchronic feeding study in rats (MRID No. 44024939, Guideline 82–1a), using 98% pymetrozine, exposed animals for 3 months at dose levels of 0, 50, 500 or 5,000 ppm. These dose levels correspond to 0, 3.42, 32.5 or 360 milligrams/kilograms/day (mg/kg/day) in males and 0, 3.63, 33.9 or 370 mg/kg/day for females. At 5,000 ppm, body weight was decreased. Food and water consumption also decreased. After 14 weeks, the numbers of white blood cells increased (leucocytosis) 42% in males and 73% in females. After the 4–week recovery period, the numbers of white blood cells were still elevated 6% in males and 35% in females. The lowest observable adverse effect level (LOAEL) is 5,000 ppm (~360 mg/kg/day) based primarily on body weight and liver effects. The no observable adverse effect level (NOAEL) is 500 ppm (~32.5 mg/kg/day).

A subchronic feeding study in beagle dogs (MRID No. 44572201, Guideline 82–1), using 98% pymetrozine, exposed animals for 13 weeks (4/sex/dose) at dose levels of 0, 100, 500 or 2,500 ppm. These dose levels corresponded to 0, 3.12, 14, or 54 mg/kg/day for either sex. Mean relative liver weights were increased at all dose levels. At 500 ppm, both absolute (17% males and 18% females) and relative (19% males and 17% female) liver weights were increased. In addition, skeletal muscle myopathy (disease) in 1/4 males and 2/4 females, liver pathology (bile duct proliferation in both sexes and hepatocyte necrosis in females), and lymphohistocytic infiltration (several organs) increased. At 2,500 ppm, there was one death attributable to anemia. Decreases in red blood cell (RBC) parameters and increases in bilirubin were observed at this dose level as well, which are also indicative of anemia. Body weight was decreased in males (24%) and females (30%). Additional pathology was found in the thymus (atrophy and decrease in weight), heart (inflammation and decrease in weight), testis (decrease in spermatogenesis and weight) and uterus (atrophy). The LOAEL is 500 ppm (~14 mg/kg/day) based on liver effects, skeletal muscle atrophy, liver pathology and lymphohistocytic infiltration. The NOAEL is 100 ppm (~3.12 mg/kg/day). Slight liver weight changes at 100 ppm were not considered in the LOAEL.

A subchronic feeding study in the mouse (MRID No. 44024938, Guideline 82–1c), using 98% pymetrozine and designed to determine the dose levels for the definitive carcinogenicity study, exposed mice for 3 months at 0, 1,000, 3,000 or 7,000 ppm. Mean relative liver weights were increased in the low (10.5%), mid (26%) and high (57%) dose males and in the low (12%, not significant), mid (33%) and high (54%) dose females. The liver also showed increases in centrilobular hypertrophy of hepatocytes (swelling of liver cells) with a dose response of 0, 3, 7 and 10 in males and 0, 2, 5, and 10 in females for four dose levels. The liver also was indicated as having ''slight centrilobular perivascular-like aggregates of lymphocytes'' in all dose groups except the control and demonstrated a marked dose response with treatment. Necrosis of the liver was also increased in a dose related manner. Relative spleen weight was also increased at 3,000 ppm (21% in males and 19% in females) and 7,000 ppm (53% in males and 16% in females) and was accompanied by splenic extramedullary hematopoiesis above background. Thus, the liver and blood forming system were indicated as target organs for pymetrozine. Body weight at termination was decreased (17%) in males in the high dose group but was actually slightly increased (7%, not significant) in females.

A 28–day dermal toxicity study in the rat (MRID No. 44024942, Guideline No. 82–2), using 98% pymetrozine, exposed animals at 0, 10, 100 or 1,000 mg/kg/day for 6 hours/day, 5 days/week for 4 weeks. The agent was suspended in distilled water and was applied directly to clipped skin using an occlusive dressing. No treatment-related clinical signs or signs of local irritation were observed. Hematology and clinical biochemistry performed on the test animals revealed no treatment-related effects. Macroscopic and microscopic examination of internal organs and the application site revealed no treatment-related findings. The NOAEL for both systemic effects and dermal irritation is 1,000 mg/kg/day, the highest dose tested (HDT). The LOAEL is greater than 1,000 mg/kg/day.

ii. *Chronic toxicity*. A chronic feeding study in beagle dogs (MRID No. 44024943, Guideline 83–1), using 98% pymetrozine, exposed animals for 12 months at 0, 20, 200 and 1,000 ppm (corresponding to approximately 0, 0.57, 5.33 or 27.8 mg/kg/day in both sexes). At 200 ppm, there were increases in mean absolute (11%) and relative (17%) liver weights in males. At 1,000 ppm, mean absolute (6%) and relative (11%) liver weights were higher in both males and females (absolute (18%) and relative (6%)). In addition, in males, there was also increased inflammatory cell infiltration in the liver (4/6 vs 2/6 in the control group); and myopathy (2/6 vs 0/6 in the control group) in the small and large intestine. Anemia was apparent in two females. The LOAEL is 1,000 ppm (27.8 mg/kg/day), based primarily on myopathy (muscle disease) and presence of anemia (reduction in red blood cells). The NOAEL is 200 ppm (5.33 mg/kg/day). Similar findings in the dog subchronic study (MRID No. 44572201) regarding anemia and liver pathology support the conclusions of this study.

An 18–month definitive carcinogenicity study in mice (MRID No. 44024944, OPPTS No. 870.4200 or Guideline No. 83–2), using 98% pymetrozine, exposed animals (50/sex/dose group) for 18 months at 0, 10, 100, 2,000 or 5,000 ppm. These dose levels correspond to approximately 0, 1.2, 12, 250 and 675 mg/kg/day pymetrozine in either sex. At 2,000 ppm, relative liver weight increased in males (36%) and females (17%), with hepatocyte hypertrophy occurring in most affected animals. Hemosiderosis (increase in storage of insoluble form of iron) and extramedullary hematopoiesis (red blood cell formation) were also increased. Relative liver weight was increased by 78% in males and by 62% in females. The systemic LOAEL was 2,000 ppm (~250 mg/kg/day) based on increases in liver weight as well as hepatocyte hypertrophy and hemosiderosis. The NOAEL is 100 ppm (~12 mg/kg/day). Liver tumors were associated with the higher doses (2,000 and 5,000 ppm) of pymetrozine exposure with 5, 5, 5, 9 and 23 (males) and 0, 0, 0, 0 and 4 (females) hepatocellular carcinomas and 4, 5, 5, 1 and 14 hepatocellular ''benign adenoma'' in females for the control, 10, 100, 2,000 and 5,000 ppm dose groups, respectively. Males did not show increases in adenomas. The increases in liver weight and presence of hypertrophy and hematopoieses may imply that the high dose was excessive for meaningful carcinogenicity evaluation.

A combined chronic feeding/carcinogenicity study in the rat (MRID No. 44024951, Guideline No. 83–5, using 98% pymetrozine, exposed animals for 12 and 24 months. Five groups of 80/sex were dosed at 0, 10, 100, 1,000 or 3,000 ppm in the diet, corresponding to 0, 0.377, 3.76, 38.52 or 123.4 mg/kg/day for males and 0, 0.454, 4.48, 46.26 or 148.3 mg/kg/day for females. Ten/sex/group were sacrificed at 12 months. Fifty/sex/group were reserved for carcinogenicity assessment after dosing for a scheduled 24 months. For the control, 10, 100, 1,000 and 3,000 ppm dietary groups (based on 60/sex),

hepatocellular hypertrophy was present with the following total incidence: for males, 0, 1, 5, 22 and 37 and for females, 2, 1, 0, 12 and 40. At the 1 year interim sacrifice, the incidence in males was 0, 0, 4, 10 and 10 (out of 10/group). Thus indicating in males that the 100 ppm dose is an effect level for induction of hepatocellular hypertrophy. At 1,000 ppm, body weight and gain were reduced (i.e., at 4 weeks males 6% and females 12%, $p < 0.05$ less gain) and relative liver (26%, $p < 0.05$), spleen (24%, $p < 0.05$) and kidney (14%, not significant) weights were increased in males at week 53. At 3,000 ppm, the magnitude of the effects at 1,000 ppm was increased and, in addition, female liver, spleen, kidney, brain and ovary as well as male brain and testis relative weights increased. The uterus showed increased dilation. The systemic LOAEL is 100 ppm (3.76 mg/kg/day) based on hepatocellular hypertrophy in males. The NOAEL is 10 ppm (0.377 mg/kg/day). In females, the systemic LOAEL is 1,000 ppm (46.26 mg/kg/day) and the NOAEL is 100 ppm (4.48 mg/kg/day) based on hepatocellular hypertrophy and reduced body weight and body weight gain. This study was considered positive for induction of liver tumors (benign hepatoma) at 1,000 and 3,000 ppm in females. The presence of hepatocellular hypertrophy at 1,000 and 3,000 ppm and decreased body weight at 3,000 ppm may provide a basis for determining that the dose levels associated with liver tumors were excessive.

3. *Neurotoxicity*. An acute neurotoxicity study in the rat (MRID No. 44411317, Guideline 81–8) exposed animals in groups of 10/sex at dose levels of 0, 125, 500 or 2,000 mg/kg/day. The LOAEL is 125 mg/kg based on decreases in body temperature, function observation battery (FOB) changes, and decreased motor activity (in males) related to decreased activity. The NOAEL is < 125 mg/kg/day.

A 13–week subchronic neurotoxicity study in the rat (MRID No. 44411318, Guideline No. 82–7) exposed groups of 10 animals/sex at dose levels of 0, 500, 1,000 or 3,000 ppm. Systemic effects of treatment were evident at 3,000 ppm only and were limited to decreased body weight gain (10–18% in males and 7–10% in females). At this dose, indications of neurotoxicity were limited to stereotypy (repetition of senseless movements) in males (3/10 affected at week 4 and 1/10 affected at weeks 8 and 13). There were also indications of tiptoe gait or walking on toes in females at all intervals but only statistically significant at week 13. The LOAEL is 3,000 ppm (equivalent to a mean of 201 mg/kg/day for males and 224 mg/kg/day in females) based on decreased weight and stereotypy in males as well as tiptoe gait in females. The NOAEL is 1,000 ppm (equivalent to a mean of 68 mg/kg/day in males and 81 mg/kg/day for females).

4. *Developmental toxicity*. A developmental study in the rat (MRID No. 44024948, OPPTS No. 870.3700 or Guideline No. 83–3a), using 98% pymetrozine, exposed groups of 24 animals in a 0.5% w/w aqueous solution of sodium carboxymethylcellulose at either 0, 30, 100 or 300 mg/kg/day by oral gavage from gestation days 6 through 15, inclusive. Maternal systemic toxicity was seen as reduced body weights gains in the 100 and 300 mg/kg/day dose groups during the dosing period (gestation days 6–16), the dosing period plus post-dosing period (gestation days 6–21 for 300 mg/kg/day) and the corrected body weight gain for the dosing period plus post-dosing period (statistically significant for both 100 and 300 mg/kg/day). There was reduced food consumption in the same groups during the dosing period. The maternal toxicity NOAEL was 30 mg/kg/day and the maternal toxicity LOAEL was 100 mg/kg/day based on reduced body weight gains and food consumption. Developmental toxicity was observed as an increase in skeletal observations at 300 mg/kg/day including dumbbell-shaped thoracic vertebral centers, absent ossification of metatarsal #1, shortened rib #13, absent ossification of the proximal phalanx of anterior digit #5, absent ossification of the proximal phalanx of posterior digit #2, #3 and #4, and absent and poor ossification of the proximal phalanx of posterior digit #5. The developmental toxicity NOAEL was 100 mg/kg/day and the developmental toxicity LOAEL was 300 mg/kg/day based on increased incidence of skeletal anomalies.

A developmental study in the rabbit (MRID No. 44024949, OPPTS No. 870.3700 or Guideline No. 83–3b), using 98% pymetrozine, exposed groups of 20 animals in a 0.5% w/w aqueous solution of sodium carboxymethylcellulose at either 0, 10, 75 or 125 mg/kg/day by oral gavage from gestation days 7 through 19, inclusive. Maternal systemic toxicity was seen as reduced body weight gains in the 75 and 125 mg/kg/day dose groups. There was also reduced food consumption in the mid and high dose groups. There was reduced food efficiency noted in the mid and high dose groups during all periods except for predosing (gestation days 0–7). At 125 mg/kg/day, two dams died and one aborted the entire litter during the dosing period. (Note: these observations were also noted in the rangefinding study). The maternal toxicity NOAEL was 10 mg/kg/day and the maternal toxicity LOAEL was 75 mg/kg/day based on reduced body weight gains and food consumption/efficiency. Developmental toxicity was observed as an increase in additional 13th ribs in the 75 and 125 mg/kg/day dose groups and an increase in skeletal observations at 125 mg/kg/day seen as fused sternebrae #2 & 3, #3 & 4 and #4 & 5, additional caudal vertebral centers, poor ossification of metacarpal #1, poor ossification of the talus of the hind limb, and poor ossification of the anterior digit #5 medial phalanx. Also, there was reduced litter size, increased resorptions and increased post-implantation loss in the 125 mg/kg/day dose group. The developmental toxicity NOAEL was 10 mg/kg/day and the developmental toxicity LOAEL was 75 mg/kg/day based on increased incidence of skeletal anomalies.

5. *Reproductive toxicity*. A multigeneration reproduction study in the rat (MRID No. 44024950, OPPTS No. 870.3800 or Guideline No. 83–4), using 98% pymetrozine, exposed groups of 30 animals at 0, 20, 200 or 2,000 ppm in the diet for two successive generations. Parental systemic toxicity included minimal hepatocellular hypertrophy in 5/30 200 ppm F0 males, 27/30 2,000 ppm F0 males and 2/30 2,000 ppm F0 females, in addition to minimal to moderate hyperplasia of lymphatic follicles of splenic white pulp in 25/30 2,000 ppm F0 females. The F1 animals had minimal hepatocellular hypertrophy in 2/30 200 ppm males, 26/30 2,000 ppm males and 10/30 2,000 ppm females, in addition to minimal to moderate hypertrophy of the basophilic cells in the adenohypophysis in 17/30 2,000 ppm males, compared to 7/30, 8/30, 7/30 for the control, 20 ppm and 200 ppm groups, respectively. Further, there were increased absolute and relative spleen and liver weights in the F0 and F1 2000 ppm animals plus decreased absolute and relative thymus weights in the 2,000 ppm F1 animals. The investigators concluded that the liver was the target organ in both sexes in both generations; in addition, the spleen was the target organ in F0 females, whereas the pituitary gland was affected in F1 males. Systemic toxicity to the paternal animals included reduced body weights, reduced body weight gains, and reduced food consumption. Systemic toxicity to F1 groups, included reduced body weights, reduced body weight gains, and reduced food consumption. The parental (paternal/

maternal) systemic toxicity NOAEL was 20 ppm (1.4–1.7 mg/kg/day for males and 1.6–1.8 mg/kg/day for females) and the parental (paternal/maternal) systemic toxicity LOAEL = 200 ppm (13.9–17.0 mg/kg/day for males and 16.0–18.1 mg/kg/day for females) based on liver effects in the F0 and F1 males. The reproductive toxicity NOAEL is equal to or greater than 2,000 ppm (136.9–179.0 mg/kg/day for males and 151.6–186.5 mg/kg/day for females) and the reproductive toxicity LOAEL is greater than 2,000 ppm (136.9–179.0 mg/kg/day for males and 151.6–186.5 mg/kg/day for females), since no reproductive effects were noted at the highest dose tested. The offspring systemic/developmental toxicity NOAEL was 200 ppm (13.9–17.0 mg/kg/day for males and 16.0–18.1 mg/kg/day for females) and the offspring systemic/developmental toxicity LOAEL was 2,000 ppm (136.9–179.0 mg/kg/day for males and 151.6–186.5 mg/kg/day for females) based on decreased pup weight and delay in eye opening in both F1 and F2 litters.

6. *Mutagenicity*. A reverse gene mutation assay in bacteria (MRID No. 44024952, Guideline No. 84–2), using 98% pymetrozine, exposed cultures of *Salmonella typhimurium* histidine-deficient (*his*-) mutant strains TA98, TA100, TA1535 and TA1537, and the *Escherichia coli* tryptophan-deficient (*try*-) strain WP2 *u*vrA in triplicate to five concentrations ranging from 312.5 to 5,000 µg/plate, in the presence or absence of a mammalian metabolic activation system (S9 plus cofactors) derived from the microsomal fraction (S9) of livers from adult male RAI rats pretreated with Aroclor 1254. In neither the initial nor confirmatory trial were any increased incidences of *his*+ or *try*+ colonies found, compared to solvent control values, in contrast to the strongly positive responses in all mutagen-treated cultures. Therefore, in this *in vitro* test, pymetrozine is considered negative for reverse gene mutation in these strains of bacteria.

A mammalian cell forward gene mutation assay in cultures of Chinese hamster lung (V79) cells (MRID No. 44024954, Guideline No. 84–2), using 98% pymetrozine, exposed cultures in duplicate at four concentrations ranging from 5.21 to 333.3 µg/mL, for 21 hours in the absence of a mammalian metabolic activation system or for 5 hours followed by 16 hours in test article-free tissue culture medium in the presence of activation provided by the microsomal fraction (S9) of livers from adult male RAI rats pretreated with Aroclor 1254. Cultures were negative for the induction of forward gene mutation at the HGPRT locus in this test system.

A mammalian cell cytogenetics (chromosome aberrations) assay in Chinese hamster ovary (CHO) cells (MRID No. 44024953, Guideline No. 84–2), using 98% pymetrozine, exposed cultures at eight concentrations ranging from 2.58 to 330 µg/mL for 18 hours in the absence of mammalian metabolic activation or for 3 hours in the presence of S9 activation (S9 microsomal fraction of livers from adult male rats pretreated with Aroclor 1254, plus co-factors) followed by recovery in treatment-free medium for 15 hours. Cultures were not clastogenic; at none of the concentrations nor harvest times was the incidence of structural chromosome aberrations reported to exceed either the concurrent or historical control values.

A micronucleus test in mice (MRID No. 44024955, Guideline 84–2), using 98% pymetrozine, exposed groups of 8 animals/sex orally by gavage in two series of trials: (1) Three groups at a single maximum tolerated dose (MTD) of 4,000 mg/kg and (2) three groups at single doses of 1,000, 2,000 and 4,000. No statistically significant increases over controls were found in MPCE in any group at any sacrifice time. In addition, no effects of treatment were calculated in PCE/NCE ratios at any time or dose point. CPA-treated positive control animals responded with highly significant increased MPCE.

An unscheduled DNA synthesis assay in primary rat hepatocyte cells (MRID No. 44024956, Guideline No. 84–2), using 98% pymetrozine, exposed cultures in two trials in dimethylsulfoxide (DMSO) at six concentrations ranging from 2.78 to 300 µg/mL for 16–18 hours in the presence of tritiated thymidine. In this genotoxicity mutagenicity test, there was no evidence that the treatment induced unscheduled DNA synthesis, as determined by radioactive tracer procedures (nuclear silver grain counts).

7. *Absorption, distribution and metabolism*. A metabolism study in rats (MRID No. 44024957, Guideline 85–1), using radiolabeled pymetrozine, exposed animals orally or intravenously in groups of 5 animals/sex to evaluate absorption and excretion. Within the first 24 hours post-dosing, the urine from all orally-dosed groups contained from 52.0% to 73.5% of the administered radioactivity. The intravenous treated rats also had comparable 24-hour urine levels which were 63.6% and 68.3% of the administered dose in males and females, respectively. At study termination (7 days post-dosing), the recovered radioactivity in urine (56.3–80.3%), expired air (0.2–1.4%), tissues (0.3–3.8%), feces (15.4–38.9%), and cage washes (0.2–0.7%) accounted for a total recovery of 91–100.7% of the administered dose in all groups. The relatively high urinary level of unchanged test material suggests metabolic saturation at the high dose of 100 mg/kg.

A metabolism study in female rats (MRID No. 44517720, OPPTS No. 870.7485, Guideline No. 85–1), using radiolabled pymetrozine, exposed animals orally to a single low dose (0.5 mg/kg) or a high dose (100 mg/kg). Irrespective of the label site, the time to maximum blood concentrations (tmax) were attained at 1 hour (0.1 ppm for both labels) and at 8 hours (41 ppm for triazine and 52 ppm for pyridine) following low and high oral dosing, respectively. While the peak blood levels were dependent on the dose but independent of the labeling site, the pyridine label was more persistent than the triazine label. At all time points and irrespective of the dose or labeling site, tissue residue levels (ppm) were highest in the kidneys and liver. For the low/high doses, the peak kidney levels were 0.6/75 ppm (triazine) and 0.6/101 ppm (pyridine), while the peak liver levels were 0.4/59 ppm (triazine) and 0.5/176 ppm (pyridine). Of all tissues (with the exception of the GI tract), the skeletal muscle had the highest percent of the administered dose (both labels) accounting for 7 to 8% of the low dose at 1 hour and for 19 to 21% of the high dose at 8 hours. The calculated half life times ($t^{1/2}$) for the triazine residue depletion from all the tissues ranged from 2.9 to 4.8 hours (low dose) and from 1.9 to 3.5 hours (high dose) and for the pyridine radiolabel depletion, from 31.7 to 110.3 hours (low dose) and from 2.5 to 13.9 hours (high dose).

Absorption was lower at the high dose representing nearly 82% of the administered dose for both radiolabels. Irrespective of the labeling site, the biliary excretion was higher at the low dose than at the high dose. The total 48–hour excretion, including cage wash, was higher at both dose levels for the triazine label (low dose/ high dose: 103%/95%) than the pyridine label (low dose/high dose: 85%/81%). These results confirm other findings (above) that of the two moieties, pyridine is more persistent than triazine.

8. *Dermal absorption*. A dermal absorption study in male rats (MRID No. 44024958, Guideline No. 85–3), using 98.1–99.5% radiolabeled pymetrozine, exposed 24 male animals in 0.5% carboxy-methyl cellulose aqueous suspension at dose levels of 0.084, 0.503, or 4.69 mg/rat (0.0067, 0.0402, or

0.375 mg/cm^2). After blood collection, four rats/dose were killed for assessment of dermal absorption after 0.5, 1, 2, 4, 10, and 24 hours of exposure. Urine and feces were also collected at the time of killing. After 24 hours of exposure, dermal absorption of CGA–215944 was minimal (0.05%, 0.01%, and <0.005% for the low, mid, and high dose groups, respectively). For all dose groups, the majority of the dose (81.4–100.0%) was not absorbed and was recovered in the skin wash. For all dose groups, adsorption to skin from the test site (0.18–8.84%) accounted for the next largest proportion of the dose and only trace amounts (≤0.05%) of radioactivity were excreted in the urine and feces. Within each dose group, radioactivity remaining in/on the skin after washing did not seem to increase with the duration of exposure; likewise, absorption (measured as amount excreted plus amount retained in the body) did not seem to increase over time.

9. *Special studies.* A cell proliferation study in young adult male mice (MRID No. 44024923), using 97.4% pymetrozine, exposed 15 groups of animals in a basal diet as follows: (i) Two groups at dietary concentrations of 0 and 5,000 ppm for 4 days (corresponding to intakes of 0 and 891.6 mg/kg/day); (ii) six groups at concentrations of 0, 10, 100, 500, 2,000 and 5,000 ppm for 14 days (intakes of 0, 1.6, 15.6, 83.9, 323.4 and 876.7 mg/kg/day); (iii) six groups at concentrations of 0, 10, 100, 500, 2,000 and 5,000 ppm for 42 days (intakes of 0, 1.6, 13.3, 70.7, 299.9 and 767.1 mg/kg/day); and (iv) a single group at a concentration of 5,000 ppm for 14 days (intake of 1,006 mg/kg/day), followed by a recovery period of 28 days, in order to test for reversibility of any treatment-related changes. No clinical signs of toxicity were observed in any group throughout the treatment and/or recovery periods. Absolute and relative liver weights were slightly increased at 4–days treatment with 5,000 ppm, but significantly so after 14 and 42 days at this high concentration as well as 2,000 ppm, indicating hypertrophy. Absolute and relative liver weights returned to control levels in the 14–day treatment/28 day recovery animals. Significant decreases in the mean number of total nuclei were recorded at 2,000 ppm (≈16%) and at 5,000 ppm (≈17–18%) after 14 and 42 days. These findings, in conjunction with evidence that the enlarged hepatocytes at 5,000 ppm (14 and 42 days) often contained vacuoles, slight focal single cell necrosis and PCNA+ inflammatory cell infiltration that occurred at a higher frequency in the livers of mice at 5,000 ppm (14 and 42 days) than in the vehicle control liver samples, indicate that the test material induced a cytotoxic effect on the target organ. Immunohistochemical staining of liver sections revealed significant increases in PCNA values in both 2,000 and 5,000 ppm groups at all time points. Cell proliferation effects were reversible in animals treated at 5,000 ppm for 14 days followed by a 28–day recovery. Thus, these results show that the observed hepatomegaly in mouse liver at the 2,000 and 5,000 ppm treatment levels was the combined result of hypertrophy and hyperplasia. Accordingly, the LOAEL is 2,000 ppm, based on increased liver weight, reduced total hepatocytes, microscopic evidence of necrosis and significant increases in the LI for cell proliferation; the NOAEL is 500 ppm level. Overall, the findings of this study offer support for the hypothesis that the increased incidence of hepatocellular carcinomas in a previous 18–month carcinogenicity study in mice was due to (reversible) replicative DNA synthesis, with a threshold effect at a NOAEL = 500 ppm.

A special study in male rats (MRID No. 44517723), using 97.8% pymetrozine and conducted to evaluate possible mechanisms for liver tumor formulation, exposed 6 groups of 16 animals in diets containing 0, 25, 50, 100 or 1,000 ppm for 18 weeks. Assessments were limited to cage side observations for clinical signs, body weight and food plus water consumption. Pathology was limited to organ assessment of the liver and thyroid for weight and macroscopic and histopathological lesions but also included a special assessment for the immunohistological evaluation of the glutathione S-transferase placental from positive hepatocyte (GST-P) foci, a foci induced by the presence of the initiators. Pymetrozine produced its expected increase in liver and thyroid weight but did not increase the GST-P foci thus was not considered positive for a promotional effect of proliferative lesions in the liver. Pymetrozine was associated with an increase ($p < 0.05$) in follicular cell adenomas only in the 100 ppm dose group but there was no associated increase in thyroid hyperplasia or similar effect at 1,000 ppm. Overall, it could not be concluded that pymetrozine resulted in promotion of proliferative lesions in either the rat liver or thyroid at dose levels up to and including 1,000 ppm.

B. Toxicological Endpoints

1. *Acute dietary toxicity* — i. *Females 13 years and older.* The Agency selected a NOAEL of 10 mg/kg/day from the rabbit developmental study (MRID No. 44024949) for the acute dietary endpoint, based on reduced body weight gains and reduced food consumption and efficiency in mothers and an increased incidence of skeletal anomalies in pups at the LOAEL of 75 mg/kg/day. The selection of the rabbit developmental toxicity study is comparable to the rat developmental toxicity study, which had a maternal NOAEL and LOAEL of 30 and 100 mg/kg/day, respectively.

ii. *Acute dietary toxicity (General Population and Infants and Children).* The Agency selected the LOAEL of 125 mg/kg (lowest dose tested) from the acute rat neurotoxicity study (MRID No. 44411317) for the acute dietary endpoint for the general population, including infants and children, based on decreased body temperature, decreased motor activity, and FOB parameters associated with decreased activity.

2. *Short- and intermediate-term toxicity.* For dermal exposure, the Agency selected a NOAEL of 1,000 mg/kg/day from a 28–day dermal toxicity in the rat (MRID No. 44024942) because there were no effects at the highest dose tested. Based on these results, the Agency did not perform a short- or intermediate-term dermal risk assessments.

For short-term (1–7 days) inhalation exposure, the Agency selected (in the absence of an inhalation study) an oral NOAEL of 10 mg/kg/day from a developmental study in the rabbit (MRID No. 44024949), based on reduced body weight gains and food consumption and efficiency in mothers and an increased incidence of skeletal anomalies in pups at the LOAEL of 75 mg/kg/day.

For intermediate (7 days to several months) inhalation exposure, the Agency selected (in the absence of an inhalation study) an oral NOAEL of 10 ppm (0.377 mg/kg/day) from a chronic feeding study in the rat (MRID No. 44024951), based on hepatocellular (liver) hypertrophy in males at an LOAEL of 100 ppm (3.76 mg/kg/day).

3. *Chronic toxicity.* For chronic dietary exposure, EPA has selected an oral NOAEL of 10 ppm (0.377 mg/kg/day) from a chronic feeding study in the rat (MRID No. 44024951), based on hepatocellular (liver) hypertrophy in males at an LOAEL of 100 ppm (3.76 mg/kg/day).

4. *Carcinogenicity.* EPA has classified pymetrozine as a''likely human carcinogen'' and recommended that quantification of risk be estimated for combined (benign hepatomas and/or carcinomas) liver tumors in male and

female mice and female rats. EPA selected a unit risk, Q1*, of 2.05 x 10^{-1} $(mg/kg/day)^{-1}$ for quantification of the cancer risk and has determined the cancer dose to be 0.0000049 mg/kg/day. The Agency reviewed ''mechanism of action'' studies, but these were insufficient to affect the classification of carcinogenicity.

5. *Dermal penetration*. The dermal penetration study (MRID No. 44024958) in rats indicated that the amount of pymetrozine capable of penetrating the skin is very small (no more than 0.28%). However, because the EPA concluded that the study may have underestimated the actual amount of dermal penetration, the Agency has used a dermal penetration value of 1% in risk assessments.

6. *Long-term (several months to lifetime) dermal and inhalation endpoints*. The current use pattern does not indicate a concern for long-term dermal or inhalation exposure potential.

7. *Safety (uncertainty) factors, including FQPA safety factor*. The Agency will use the above NOAELs and LOAELs levels to assess the risks of using pymetrozine to the general population and certain subgroups of the general population. However, the Agency first modifies these values numerically, downward, by dividing the NOAEL dose by one or more safety factors. These safety factors may represent the uncertainty of the individual variation among animals for all studies (10 fold safety or uncertainty factor), of using animal studies to assess human risk for all studies (10 fold safety factor); and of using a LOAEL in place of a NOAEL to estimate the risk (3 fold safety factor).

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. As noted, EPA has added an additional three-fold factor to the acute dietary risk assessment for infants and children due to the lack of a NOAEL in the critical study. An additional 3-fold factor is also needed due to the uncertainty resulting from the data gap for the developmental neurotoxicity study in rats. This latter safety factor is applicable to the following subgroup populations: Females 13–50; infants, children (1–6 years), and children (7–12 years) for all risk assessment scenarios for acute and chronic dietary and residential scenarios. No greater additional factor is needed because:

- There was no evidence of developmental effects being produced in fetuses at lower doses as compared to maternal animals nor was there evidence of an increase in severity of effects at or below maternally toxic doses following *in utero* exposure in the prenatal developmental toxicity studies in rats and rabbits.
- In the prenatal/postnatal 2–generation reproduction study in rats, there was no evidence of enhanced susceptibility in pups when compared to parental animals (i.e., effects noted in offspring occurred at maternally toxic doses or higher).
- There was no evidence of abnormalities in the development of the fetal nervous system in the prenatal/postnatal studies submitted to the Agency.
- Adequate actual data, surrogate data, and/or modeling outputs are available to satisfactorily assess food exposure and to provide a screening level drinking water exposure assessment.

i. *Acute dietary toxicity (females 13 years and older)*. The Agency divided the NOAEL dose of 10 mg/kg/day from the rabbit developmental study (MRID No. 44024949) by 300 (10 for individual variation x 10 for species variation x 3 for lack of a developmental neurotoxicity study) to calculate an acute population-adjusted dose (aPAD) of 0.033 mg/kg for females 13 years or older.

ii. *Acute dietary toxicity* (general population and infants and children). The Agency divided the LOAEL dose of 125 mg/kg from the acute neurotoxicity study (MRID No. 44411317) by 300 (3 for lack of a NOAEL x 10 for individual variation x 10 for species variation) to calculate an aPAD of 0.42 mg/kg for the general population (300-fold FQPA safety factor) and by dividing by an additional 3-fold FQPA safety factor for lack of a developmental neurotoxicity study to calculate an aPAD of 0.14 mg/kg for infants and children (900-fold safety factor).

iii. *Chronic toxicity*. EPA divided the NOAEL dose of 0.377 mg/kg/day from a chronic feeding study in the rat (MRID No. 44024951) by 100 (10 for individual variation x 10 for species variation) to calculate a chronic population-adjusted dose (cPAD) of 0.0038 mg/kg/day for the general population by dividing by a additional 3-fold FQPA safety factor to calculate a cPAD of 0.0013 mg/kg/day for females 13 years and older and for infants and children.

C. Exposures and Risks

1. *Proposed uses*. Pymetrozine is a new insecticide of the pyridine azomethine type. Pymetrozine is proposed for the control of aphids and suppression of whiteflies in a variety of crops. The mode of action of pymetrozine has not been precisely determined biochemically; physiologically, it appears to act by preventing these insects from inserting their stylus into the plant tissue.

Pymetrozine is proposed for use on tuberous and corm vegetables (Subgroup 1-C) and tobacco under Fulfill™ and ornamental plants under Relay™. Currently, there are no requested homeowner applications for pymetrozine. However; post-application (residential) exposure could occur due to contact with treated ornamental plants. As both Fulfill™ and Relay™, pymetrozine is formulated as a water-dispersible granule containing 50% active ingredient.

Fulfill™ may be applied by either ground or aerial broadcast equipment, in a minimum of 10 gallons of water per acre; chemigation is not permitted. Pymetrozine is applied to the foliage of affected plants where it is quickly absorbed. Potato and tobacco crops may be treated up to twice, each at a maximum rate of 0.09 pound (lb) active ingredient per acre (ai/acre). The maximum seasonal use rate is 0.17 lb ai/acre. The retreatment and pre-harvest intervals are 7 and 14 days, respectively. The label for Fulfill™ specifies a restricted-entry interval of 12 hours.

Relay™ is to be broadcast-applied to ornamentals at a rate not to exceed 10 oz./acre/application. Multiple applications may be made on a 7– to 14–day interval. For indoor use, the yearly application rate is not to exceed 100 oz./acre/year; for outdoor use, the maximum rate is 48 oz./acre/year.

The above uses result in food and feed, drinking water, and non-dietary (residential) exposures as outlined below (2–4).

2. *From food and feed uses*. This rule establishes the first tolerance for pymetrozine.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no

later than 5 years from the date of issuance of this tolerance.

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

Most of the dietary risk assessments performed on pymetrozine used a Tier 1 approach for fruiting vegetables, cucurbits, and potatoes, crops originally requested in the petition. That is, the Agency assumed 100% crop treated and tolerance level residues. For carcinogenicity risk assessment, the Agency used a Tier 3 chronic dietary exposure analysis for only tuberous and corm vegetables. This was based on 20% of the crop treated and an anticipated residue of 0.0046 ppm to refine the cancer risk. Novartis supplied this estimate of PCT to the Agency. Based on the number of existing alternatives, the PCT could be much lower. However, the market is looking for rotational alternatives to prevent the buildup of resistance and to replace organophosphate (OP) insecticides threatened by FQPA. The Agency reviewed Novartis' estimate and found it reasonable.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. EPA finds that the PCT information is reliable and has a valid basis. Before the petitioner can increase production of product for treatment of greater than 340,000 acres (20% of 1,700,000 total acres for the tuberous and corm subgroup), permission from the Agency must be obtained. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food in a particular area.

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

The Tier 1 Dietary Exposure Evaluation Model (DEEM™) analysis indicates that acute dietary (food only) exposure to pymetrozine from all in the original petition (tuberous and corm, fruiting, and curcubits) will be below EPA's level of concern (100% of the aPAD) and will not occupy more than 7% (of the aPAD for any population subgroup, including those of infants and children. For the maximum-exposed subgroup, the 95th percentile of exposure (children ages 1–6 years) is predicted to be 3.3% of the aPAD. Due to pymetrozine's lower acute endpoint for females 13–50 years (0.033 mg/kg) versus that of other population subgroups (0.14 mg/kg), the percentage of the aPAD occupied for females 13–50 years (6.5%) is slightly higher than that estimated for children 1–6 years. For a Tier 1 analysis, EPA considers exposure at the 95th percentile of exposure. Even at the 99.9th percentile of exposure, the acute risk is well below EPA's level of concern.

ii. *Chronic exposure and risk*. The Tier 1 DEEM™ chronic analysis indicates that exposure to pymetrozine from tuberous and corm vegetables (Subgroup 1-C), cucurbits and fruiting vegetables will occupy less than 74% of the cPAD for children ages 1–6 (the most highly exposed population subgroup). Chronic dietary risk to all other subgroups is less than that of children ages 1–6. See Table 1 below.

Table 1. Chronic Dietary (Food Only) Tier 1 Exposure and Risk Estimates for Pymetrozine Use

Population Subgroup	cPAD, mg/kg/day[b]	Exposure, mg/kg/day	% cPAD[c]
U.S. Population (total)[a]	0.0038	0.000455	12
Hispanics	0.0038	0.000496	13
Children 1–6 yrs	0.0013	0.000958	74
Females 13–19 (not pregnant or nursing)	0.0013	000.480	37
Males 13–19 yrs	0.0038	0.000500	13

[a]Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age.
[b]cPAD values incorporate the different FQPA Safety Factors for the various population subgroups.
[c]% cPAD = Exposure (mg/kg/day) ÷ cPAD (mg/kg/day) 100.

iii. Cancer exposure and risk. The Agency used a Tier 3 DEEM™ analysis for cancer risk estimates to the U.S. population. Based on use of pymetrozine on tuberous and corm vegetables only, the food only cancer risk is 1.7 10^{-7}, which is below the Agency's level of concern.

3. *From drinking water*. Pymetrozine is not persistent, breaking down in the environment through a number of mechanisms and degradation pathways including hydrolysis and aqueous and soil photolysis. Laboratory studies indicate that pymetrozine is a ''low mobility'' to ''no mobility'' chemical with respect to leaching. The environmental fate profile and application rates suggest that there should not be any notable concerns in the areas of soil mobility and persistence for pymetrozine resulting from its agriculture use to control aphids and whiteflies. Based on the low application rate, the field dissipation data, and the minimal concentrations relative to the parent (<10%, total), pymetrozine degradates should not enter ground and surface water to any appreciable extent.

EPA used the Screening Concentration In GROund Water (SCI-GROW) model to predict the

Environmental Estimated Concentrations (EECs) for pymetrozine in ground water. SCI-GROW is a regression model based on actual ground water monitoring data. SCI-GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites. Using the highest application rate of 0.187 lb ai/acre (hops), SCI-GROW estimates the concentration of pymetrozine in ground water to be 0.015 µg/L. As there is relatively little temporal variation in ground water, this estimate can be used for both acute and chronic exposure scenarios.

In addition, EPA used the Tier 2 GENeric Estimated Environmental Concentration (GENEEC) and Pesticide Root Zone Model-EXAMS (PRZM-EXAMS) model to obtain Estimated Environmental Concentrations (EECs) in surface water. The standard PRZM-EXAMS runoff modeling scenario is based on a 10 ha field draining into a 1 ha by 2 meter deep small water body. This scenario represents a watershed drainage area:water volume ratio of 5 m^2/m^3. Each PRZM modeling scenario represents a unique combination of climatic conditions (e.g., rainfall), crop specific management practices, soil specific properties, site specific hydrology, and pesticide specific application and dissipation processes. Each PRZM simulation is conducted for multiple years to provide a probabilistic exposure characterization for a single site. Based on 2 applications of pymetrozine on sweet potato, each at 0.176 lb ai/acre, PRZM- EXAMS estimates acute (peak) EEC of pymetrozine in surface water to be 1.85 µg/L and estimates the chronic (36–year mean) EEC of pymetrozine in surface water to be 0.222 µg/L.

The EEC's for surface water (1.85 µg/L and 0.222 µg/L) are higher than those for ground water (0.015 µg/L). Therefore, surface water EEC's will be used to: (1) Estimate actual concentrations of pymetrozine in water and (2) to compare those conentrations with the Drinking Water Levels of Comparison (DWLOCs) in µg/L. DWLOCs are acceptable concentrations of pymetrozine in drinking water as theoretical upper limits in light of total aggregate exposure to that pesticide from food, water, and residential uses. EPA calculates each DWLOC by subtracting the food and residential exposures (if appropriate) from the PAD or Cancer Dose and by converting this resulting dose, called the Maximum Water Exposure (in mg/kg/day), into a concentration of pymetrozine in water expressed in µg/L. Only pymetrozine was included in the drinking water assessment on the basis that the metabolites would not be found in drinking water.

Table 2 shows the DWLOC's for acute and chronic exposure.

Table 2. Drinking Water Levels of Comparison for Aggregated Exposures

Scenario/Population Subgroup[a]	Population-Adjusted Dose, mg/kg/day	Exposure mg/kg/day[b]	Maximum Water Exposure mg/kg/day	DWLOC µg/L[c]
ACUTE EXPOSURE				[EEC=1.9]
U.S. Population	0.42	0.001980	0.418020	15000
Hispanic	0.42	0.002285	0.417715	15000
Children (1–6 yrs)	0.14	0.004556	0.135444	1400
Females (13–19, not pregnant or nursing)	0.033	0.0021 39	0.030861	930
Males (13–19 yrs)	0.42	0.002052	0.417948	15000
SHORT-TERM[d] EXPOSURE				
Toddlers	0.033	0.00097	0.032030	320
CHRONIC EXPOSURE				[EEC=0.22]
U.S. Population	0.0038	0.000455	0.003345	120
Hispanic	0.00380	0.000496	0.003304	120
Children (1–6 yrs)	0.0013	0.000958	0.000342	3.4
Females (13–19, not pregnant or nursing)	0.0013	0.000480	0.000820	25
Males (13–19)	0.0038	0.000500	0.003300	120

[a]Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age for each exposure scenario.

[b]Exposure is the sum of dietary and non-dietary exposure. For the case of pymetrozine, only the short-term and cancer DWLOC have a non-dietary component. See Section 5.4 for clarification.

[c]DWLOC = Maximum Water Exposure (mg/kg/day) 1,000 µg/mg body weight (70 kg general population/males 13+, 60 kg females 13+, 10 kg infants and children) ÷ Water Consumption (2 L/day adults, 1 L/day infants and children). The acute EEC is 1.9 µg/L, the chronic and cancer EEC is 0.22 µg/L.

[d]For short-term exposure, the short-term oral NOAEL was converted to a PAD by applying the 100x and 3x safety factors. Chronic food exposure for children ages 1–6 was used to estimate background food exposure.

i. *Acute exposure and risk.* For acute aggregate exposure scenarios, the DWLOC values (930–15,000 µg/L) are all in excess of the modeled acute EEC values (1.9 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

ii. *Chronic exposure and risk.* For chronic (non-cancer) aggregate exposure scenarios, the DWLOC values (3.4–120 µg/L) are all in excess of the modeled EEC values (0.22 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

iii. *Cancer exposure and risk.* Preliminary analysis suggested that drinking water may be a significant contributor towards cancer risk. Therefore, the Agency did an aggregate quantitative risk assessment which is discussed in section D3 of this unit.

4. *From non-dietary exposure.* As currently proposed, pymetrozine could be used on the following residential non-food sites: ornamentals (landscape, ground-covers, interiorscapes); home nurseries, non-bearing orchards, and greenhouses. The end-use product, Relay™, may not be applied by homeowners, but post-application exposure could occur. There are no intermediate-term exposure scenarios for which a risk assessment is required. Short-term exposures are not applicable for adults but are applicable for toddlers.

Since there was no chemical-specific data to determine dislodgeable residues, EPA used its Standard Operating Procedures (SOPs) for Residential

Exposure Assessment (Draft, December 18, 1997) to estimate post-application exposure. This SOP does not include a scenario for ornamentals, landscapes and groundcover. Therefore, this assessment used the garden plants scenarios to determine post-application exposures.

The post-application scenarios and associated Margins of Exposure (MOEs) included: (1) Incidental non-dietary hand-to-mouth transfer of pesticide residues (770,000) (2) incidental non-dietary ingestion of pesticide-treated plants (not significant), and (3) incidental non-dietary ingestion of soil from pesticide-treated areas (660,000). The following assumptions were used for estimating post-application for the three post-application scenarios.

Hand-to-mouth transfer (incidental non-dietary ingestion)

-Maximum application rate of 0.3125 lbs ai/A as specified on the label

-20% of the application rate are available on the foliage as dislodgeable residue

-Exposure is assessed on the same day the pesticide is applied

-Medium surface area of both hands is 350 cm^2 for a toddler (age 3 yrs)

-Mean rate of hand-to-mouth activity is 1.56 events/hr

-Duration of exposure was assumed to be 0.18 hrs/day (10 mins) for toddlers

-A body weight of 15 kg was assumed for toddlers

-Short term NOAEL = 10 mg/kg/day (acute dietary)

-Hand-to-mouth exposure is not considered an intermediate-term exposure scenario

Accidental Ingestion of Plant Material

-According to the HED SOP for Residential Exposure, exposure via this route is considered negligible

Accidential Ingestion of Soil

-Maximum application rate of 0.3125 lbs ai per acre as specified on the label

-20% of the application rate are available on the foliage as dislodgeable residue

-Exposure is assessed on the same day the pesticide is applied

-The fraction of ai available in uppermost cm of soil is 1cm

-The assumed soil ingestion rate for children (ages 1–6 yrs) is 100 mg/day

-A body weight of 15 kg was assumed for toddlers

-Short term NOAEL = 10 mg/kg/day (acute dietary);

-Exposure from soil ingestion is not considered an intermediate-term exposure scenario

These exposure estimates are based on upper-percentile (i.e., maximum application rate, available residues and duration of exposure) and some central tendency (i.e., transfer coefficient, surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from gardens, and assumptions regarding dissipation, transfer of chemical residues, and hand-to-mouth activity. The estimated exposures are believed to be reasonable high-end estimates based on observations from chemical-specific field studies and professional judgement.

EPA determined that the FQPA Safety Factor to protect infants and children should be reduced to 3x and that the factor should apply to female (13–50 years), infant, and children population subgroups for all risk assessments. Thus, the levels of concern for these post-application exposure scenarios are MOEs that are less than 100 for adult populations and less than 300 for female (13–50), infant, and children populations.

i. *Chronic exposure and risk*. Based on the proposed uses of pymetrozine, EPA does not believe there will be chronic non-occupational exposure to this insecticide.

ii. *Cancer exposure and risk*. EPA has estimated the lifetime average daily dose for non-occupational exposure resulting from prining and planting treated ornamental plants is 0.0000012 mg/kg/day.

A quantitative cancer risk assessment was performed for post-application non-occupational exposure to treated ornamentals (e.g., a home garden). Exposures were estimated using EPA's default activity scenarios, transfer coefficients and input parameters as follows:

• The fraction of active ingredient retained on foliage is assumed to be 20% (0.2) on day zero (= percent dislodgeable foliar residue, DFR, after initial treatment). This fraction is assumed to further dissipate at the rate of 10% (0.1) per day on following days. These are EPA's default values for exposure.

• An application rate of 0.3125 lbs ai/acre (electrostatic spray, pulsfog and low volume systems) was used to represent the worst case scenario.

• Transfer coefficient of 4,500 was used to represent heaviest day of activity (planting, transplanting, and pruning) for contact with treated ornamental plants.

• Assumed homeowner worked 0.67 hours per day (Residential SOP for Gardening).

• Assumed homeowner worked a total of 2 days per year performing heaviest activities (planting, pruning) at time points shortly after pymetrozine application.

• Assumed homeowner would be exposed for 50 years of their life.

• Dermal absorption = 1%.

• Body weight = 70 kg.

• Life expectance = 70 years.

• Cancer Q* (mg/kg/day) = 2.05×10^{-1}.

The cancer risk estimate for this post-application exposure is 2.4×10^{-7} and does not exceed EPA's level of concern (in the range of 1×10^{-6}) for the general population.

iii. *Short- and intermediate-term exposure and risk*. EPA did not calculate MOEs for adults since there are no short-term dermal exposure scenarios. However, short-term oral exposures and risks were calculated for toddlers. For toddlers, the MOEs for short-term post-application exposure scenarios are 770,000 and 660,000 for hand-to-mouth and soil ingestion scenarios. These values are all greater than either of the threshold values; thus, short-term risks are below the Agency's level of concern.

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

According to our information, there are no other pesticides that have a common mechanism of toxicity with pymetrozine. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pymetrozine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pymetrozine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk*. The risk from aggregate acute exposure from food and drinking water from pymetrozine is below EPA's level of concern for the following reasons. As indicated in Table 2, the Tier 1 DEEM™ analysis indicates that acute dietary (food only) exposure to pymetrozine from fruiting vegetables, cucurbits, and tuberous and corm

vegetables (Subgroup 1-C) will occupy less than 1/2% (0.001980/0.42) of the aPAD for the U.S. Population, which is below EPA's level of concern of 100% of the aPAD. In addition, for drinking water, the DWLOC value (15000 µg/L) for the U.S. Population is greatly in excess of the modeled acute EEC value (1.9 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

2. *Chronic risk*. As indicated in Table 1, the Tier 1 DEEM™ analysis indicates that chronic dietary (food only) exposure to pymetrozine will utilize less than 12% (0.000455/0.0038) of the cPAD for the U.S. population. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. In addition, for drinking water, the DWLOC value (120 µg/L) for the U.S. Population is greatly in excess of the modeled EEC values (0.222 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure. Despite the potential for exposure in the diet, drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate chronic exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population*. For tuberous and corm vegetables (Subgroup 1-C), EPA based its cancer risk assessment on a Tier 3 estimate of dietary exposure, which incorporates anticipated residues for pymetrozine and an estimate that 20% of the crops will be treated. At this level of refinement, EPA's estimate of food exposure and cancer risk were 0.0000008 mg/kg/day and 1.7 $x10^{-7}$. EPA also calculated a lifetime average daily dose of 0.0000012 mg/kg/day for non-occupational exposure resulting from pruning and planting treated ornamental plants.

EPA does not generally use surface water modeling values for quantitative risk assessment. However, due to the statistical uncertainties regarding the significance of cancer risks, which are near 1 x 10^{-6}, EPA has calculated the cancer risk resulting from 0.22 µg/L in drinking water to be 1.3 x 10^{-6}. The aggregate cancer risk is thus 1.7 x 10^{-6} (1.7 x 10^{-7} for food, 1.3 x 10^{-6}, for water, and 2.4 x 10^{-7} for post-application residential exposure).

4. *Determination of safety*. EPA believes that the total risk estimate for pymetrozine from food, drinking water, and residential exposures of 1.7 x 10^{-6} generally represents a negligible risk, as EPA has traditionally applied that concept. EPA has commonly referred to a negligible risk as one that is in the range of 1 in 1 million (1 x 10^{-6}). Quantitative cancer risk assessment is not a precise science. There are a significant number of uncertainties in both the toxicology used to derive the cancer potency of a substance and in the data used to measure and calculate exposure. The Agency does not attach great significance to numerical estimates for carcinogenic risk that differ by less than a factor of 2. However, as a condition of product registration, the Agency will require the registrant to submit monitoring data. These data are expected to confirm that the actual concentration of pymetrozine in drinking water is less than the level of concern for all sub-populations and endpoints.

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

1. *Safety factor for infants and children* —i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of pymetrozine, EPA considered data from developmental toxicity studies in rabbit, an acute neurotoxicity study in the rat, and a chronic feeding study in the rat. See the Toxicological Profile (section A. of this unit) for a discussion of these tests.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and the additional 3-fold MOE/uncertainty factors, as described above, when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of these safety factors.

ii. *Conclusion*. EPA considered the available data and determined that the 10-fold FQPA factor could be reduced to 3. A discussion of these considerations may be found in B7 of this unit.

2. *Acute risk*. The risk from aggregate acute exposure from food and drinking water from pymetrozine is below EPA level of concern for the following reasons. The Tier 1 DEEM™ analysis indicates that acute dietary (food only) exposure to pymetrozine from tuberous and corm vegetables (Subgroup 1-C), fruiting vegetables and curcubits will occupy less than 4% (0.004556/0.14) of the aPAD for children (1 to 6 years old), which is below EPA's level of concern of 100% of the aPAD. In addition, for drinking water, the DWLOC value (1,400 µg/L) for children (1 to 6 years old) is greatly in excess of the modeled acute EEC values (1.9 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

3. *Chronic risk*. Using the residue concentration exposure assumptions described in this unit, the risk from aggregate chronic exposure from food and drinking water from pymetrozine is below EPA's level of concern for the following reasons. As indicated in the previous table, the Tier 1 DEEM™ analysis indicates that chronic dietary (food only) exposure to pymetrozine will utilize less than 74% (0.000958/0.0013) of the cPAD for children (1 to 6 years old). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. In addition, for drinking water, the DWLOC value (3.4 µg/L) for children (1 to 6 years old) exceeds the modeled chronic EEC values (0.222 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure. Despite the potential for exposure in the diet, drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate chronic exposure to exceed 100% of the cPAD.

4. *Short-term risk*. In aggregating short-term risk, EPA considered background average dietary exposure and short-term, non-dietary oral exposure. Non-dietary oral exposure may occur as hand-to-mouth transfer of residues from ornamental plants or incidental ingestion of surrounding soil. The lowest short-term MOE value is for toddlers. Combining this MOE (660,000) with that from dietary exposure (Short-term oral NOAEL/chronic dietary exposure = 10/0.00096 ≈ 10,000) results in an aggregate MOE of ≈ 10,000. As this value is greater than 300, the short-term aggregate risk is below the Agency's level of concern. Aggregated short-term exposure results in a DWLOC of 320 µg/L. This value is in excess of the peak EEC for pymetrozine (1.9 µg/L; see Table 2).

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

IV. Other Considerations

A. Metabolism in Plants and Animals

Data concerning the metabolism of pymetrozine in plants and animals have been previously submitted. The nature of residues in plants and animals is adequately understood. The tolerance expression is for pymetrozine *per se*. The residues of concern for risk assessment are pymetrozine; the plant metabolites GS–23199 [6-methyl-1,2,4-triazin-3,5 (2*H*,4*H*)-dione], CGA-215525 [4-amino-4,5-dihydro-6-methyl-1,2,4-triazin-3(2*H*)-one], CGA-249257 [4,5-dihydro-6-methyl-1,2,4-triazin-3(2*H*)-one], CGA-294849 [4-amino-6-methyl-1,2,4-triazin- 3,5(2*H*,4*H*)-dione]; and the ruminant metabolite CGA-313124 [4,5-dihydro-6-hydroxymethyl-4-[(3-pyndynyl methylene)amino]-1,2,4-triazin-3(2*H*)-one] (free acid conjugated).

B. Analytical Enforcement Methodology

Adequate enforcement methodology for pymetrozine (Novartis Analytical Method AG–643) is currently being validated. Following validation, it will be available to enforce the tolerance expression. At that time the method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov..

C. Magnitude of Residues

The crop field trial data support the proposed tolerances for residues of ''pymetrozine, *per se*.''

D. International Residue Limits

The are no established European (CODEX), Canadian, or Mexican Maximum Residue Limits (MRLs) for pymetrozine. There are provisional MRLs in Germany for hops (10 ppm) and potatoes (0.02 ppm). The European Union is currently evaluating a proposed tolerance of 5 ppm on hops. At this time, international harmonization of residue levels is not an issue.

E. Rotational Crop Restrictions

The label has been revised to include only the following sites: Tuberous and corm vegetables (Subgroup 1-C) and tobacco. The label also includes a plant back restriction of not less than 120 days for all leafy and root crops, and not less than 365 days for all other crops.

F. Pre-harvest Intervals

The pre-harvest interval for pymetrozine on the tuberous and corm vegetables (Subgroup 1-C) is 14 days.

V. Conclusion

Therefore, the tolerance is established for residues of pymetrozine *per se* in tuberous and corm vegetables (Subgroup 1-C), at 0.02 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300929 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 1999.

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

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

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300929, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In

person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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 the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 23, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.556 is added to read as follows:

§ 180.556 Pymetrozine; tolerances for residues.

(a) *General*. Tolerances are established for residues of the insecticide pymetrozine [1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino]] in or on the following raw agricultural commodities. The tolerance level for each commodity is expressed in terms of the parent insecticide only, which serves as an indicator or the use of pymetrozine on these raw agricultural commodities.

Commodity	Parts per million	Expiration/Revocation Date
Corm and Tuberous Vegetables Subgroup 1-C.	0.02	None

(b) *Section 18 emergency exemptions*. [Reserved]

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

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

[FR Doc. 99–25313 Filed 9–28–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300921; FRL–6382–1]

RIN 2070–AB78

Diflubenzuron; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of diflubenzuron (*N*-[[4-

chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites PCA (4-chloroaniline) and CPU (4-chlorophenylurea), expressed as parent compound in or on pears. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pears. This regulation establishes a maximum permissible level for residues of diflubenzuron in this food commodity. The tolerance will expire and is revoked on March 31, 2001.

DATES: This regulation is effective September 29, 1999. Objections and requests for hearings, identified by docket control number OPP–300921, must be received by EPA on or before November 29, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300921 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail:Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703)308-9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed 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 OPP–300921. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall ı2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide diflubenzuron and its metabolites PCA and CPU, expressed as parent compound, in or on pears at 0.5 part per million (ppm). This tolerance will expire and is revoked on March 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

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

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

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Diflubenzuron on Pears and FFDCA Tolerances

The Oregon and Washington Departments of Agriculture requested use of diflubenzuron on pears, for control of pear psylla, which had developed resistance to currently available pesticides, and was expected to cause significant economic loss if not adequately controlled. EPA has authorized under FIFRA section 18 the use of diflubenzuron on pears for

control of pear psylla in Oregon and Washington. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

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

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether diflubenzuron meets EPA's registration requirements for use on pears or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of diflubenzuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Oregon and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for diflubenzuron, contact the Agency's Registration Division at the address provided under the ''ADDRESSES'' section.

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diflubenzuron and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of diflubenzuron and its metabolites PCA and CPU, expressed as parent compound on pears at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

B. Toxicological Endpoint

1. *Acute toxicity.* A risk assessment for acute (1-day) dietary exposure is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 milligrams/kilogram/day (mg/kg/day).

2. *Short- and intermediate-term toxicity.* The toxicological endpoint for short-term occupational or residential exposure (1-7 days) is sulfhemoglobinemia observed in the 14-day subchronic oral study in mice dosed with technical grade diflubenzuron. The no observed adverse effect level (NOAEL) in this study was 40 mg/kg/day, and the lowest observed adverse effect level (LOAEL) was 200 mg/kg/day.

The toxicological endpoint for intermediate-term occupational or residential exposure (1 week to several months) is methemoglobinemia observed in the 13-week subchronic feeding study in dogs. For the purpose of risk assessments, the NOAEL of 1.64 mg/kg/day in this study should be rounded up to 2 mg/kg/day, so as to be consistent with the NOAEL of 2 mg/kg/day in the chronic study used to calculate the Reference Dose (RfD). The LOAEL in this study was 6.24 mg/kg/day. Since an oral NOAEL was selected for a dermal endpoint, a dermal absorption factor of 0.5% should be used for this risk assessment when converting dermal exposure to oral equivalents. Therefore, the dermal equivalent dose producing a NOAEL by the oral route is calculated to be 400 mg/kg/day (2.0 mg/kg/day divided by 0.005 = 400 mg/kg/day).

3. *Chronic toxicity.* EPA has established the RfD for diflubenzuron at 0.02 mg/kg/day, based on the NOAEL of 2.0 mg/kg/day from the 52- week chronic oral study in dogs. Increases in methemoglobin and sulfhemoglobin were observed at the next higher dose level (LOAEL) of 10.0 mg/kg/day. An uncertainty factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability. Diflubenzuron has been reviewed by the FAO/WHO joint committee on pesticide residues and an Acceptable Daily Intake (ADI) of 0.02 mg/kg/day was established in 1985. The ADI was based upon the 1- year oral toxicity study in dogs with a NOAEL of 2.0 mg/kg/day, with a safety factor of 100 applied to account for inter- and intra- species variability.

4. *Carcinogenicity.* Based on the available evidence, which included adequate carcinogenicity studies in rats and mice, and a battery of negative mutagenicity studies, diflubenzuron *per se* has been classified as Group E (evidence of non- carcinogenicity for humans). However, p-chloroaniline (PCA), a metabolite of diflubenzuron, was classified as a Group B2 carcinogen (probable human carcinogen). The classification for PCA was based on the results of a National Toxicology Program (N.T.P.) study reported in July 1989, in which PCA-HCL was administered by gavage to rats and mice for 2 years. In rats, clearly increased incidences of uncommon sarcomas (fibrosarcomas, hemangiosarcomas, and/or osteosarcomas) of the spleen were observed in males. In females, two additional sarcomas of the spleen were also found. Pheochromocytomas of the adrenal gland may also have been associated with the test material in male and female rats. In mice, increased incidences of hepatocellular neoplasms in the liver and of hemangiosarcomas in the spleen and/or liver were observed in males. In females, no evidence of carcinogenic activity was observed. The results of several mutagenicity studies on PCA were also included in the same N.T.P. Report. PCA was mutagenic in *Salmonella* strains TA98 and TA100 with metabolic activation. Gene

mutations were induced by PCA in cultured mouse lymphoma cells with and without metabolic activation. In cultured Chinese Hamster Ovary (CHO) cells, treatment with PCA produced significant increases in sister chromatic exchanges (SCEs) with and without metabolic activation. Chromosomal aberrations were also significantly increased in CHO cells in the presence of metabolic activation.

For the purpose of calculating dietary risk assessments, the following procedure was used:

i. P-chlorophenylurea (CPU) and p-chloroacetanilide (PCAA), additional metabolites of diflubenzuron that are closely related to PCA and for which there are no adequate carcinogenicity data available, should be considered to be potentially carcinogenic and to have the same carcinogenic potency (Q_1*) as PCA.

ii. The sum of PCA, CPU, and PCAA residues in ingested food should be used to estimate the dietary exposure of humans to the carcinogenic metabolites of diflubenzuron.

iii. In addition to ingested residues of these three metabolites, amounts of PCA, CPU, and/or PCAA formed in vivo following ingestion of diflubenzuron should also be included when estimating the total exposure of humans to the carcinogenic metabolites of diflubenzuron. The in vivo conversion of ingested diflubenzuron to PCA and/or CPU was estimated to be 2.0%, based on data in the rat metabolism study.

The Q_1* (estimated unit risk) for PCA, based upon spleen sarcoma rates in male rats, was calculated to be 6.38 x 10^{-2} $(mg/kg/day)^{-1}$ in human equivalents. It has been determined that PCAA does not occur in animal or plant tissues in significant amounts.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.377) for the residues of diflubenzuron per se, in or on citrus, artichokes, walnuts, mushrooms, cottonseed, soybean, rice, and associated livestock commodities. Existing tolerances range from 0.05 ppm in/on soybeans, to 6.0 ppm in/on artichokes. Tolerances of 0.05 ppm have also been established for residues of diflubenzuron in animal commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from diflubenzuron as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 mg/kg/day. Therefore, this risk assessment is not needed, as there are no significant acute effects observed.

ii. *Chronic exposure and risk.* For conducting the chronic dietary risk assessment, refined residue estimates were used for all commodities except for pears. Percent of crop treated figures were also used for certain commodities. The percent of RfD utilized for Non-Nursing Infants <1 Yr. Old (the most highly exposed subgroup) was 6.1%. For Nursing Infants, this figure was 2.2%, and for all other population subgroups, including the overall U.S. Population, the ARC utilized less than 1% of the RfD.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

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

The Agency used PCT information as follows: 1% for grass/rangeland; 3% for cottonseed; 8% for grapefruit; 3.1% for mushrooms; 2% for oranges; 4% for tangerines; 1% for soybean; and 5% for cattle bolus. Other commodities were assumed to be 100% treated.

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

2. *From drinking water.* The Agency currently lacks sufficient water- related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for diflubenzuron. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on the models GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond; and SCI-GROW, which predicts pesticide concentrations in groundwater. None of these models include consideration of the impact that processing of raw water, for distribution as drinking water, would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely

that drinking water concentrations would ever exceed human health levels of concern.

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

3. *From non-dietary exposure.* Diflubenzuron is a restricted use pesticide and therefore not available for use by homeowners, although it is possible that non- agricultural uses of diflubenzuron may expose people in residential locations. However, based on the low dermal absorption rate (0.5%), and the extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risks.

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

Diflubenzuron is structurally similar to other substituted benzoylurea insecticides including triflumuron and flucycloxuron. However, EPA does not have, at this time, available data to determine whether diflubenzuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diflubenzuron has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Since one day single dose oral studies in rats and mice indicated only marginal effects, this risk assessment is not needed, as there were no significant acute effects observed.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diflubenzuron from food will utilize <1 of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is Non-nursing infants, <1 year old, for which 6.1% of the RfD was utilized. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The Agency does not have monitoring data available to perform a quantitative drinking water risk assessment for diflubenzuron at this time. Based on PRZM/EXAMS modeling, the average annual mean concentration of diflubenzuron in surface water sources is not expected to exceed 0.05 ppb. Estimated concentrations of CPU in surface water sources is not expected to exceed 0.73 ppb. These values reflect the maximum concentrations for any of the crops treated with diflubenzuron (including pears). The DWLOCs for chronic (non-cancer) exposure to diflubenzuron in drinking water for the U.S. population and Non Nursing Infants (< 1 yr. old), and Females (13+ yrs. old/nursing) are 700, 190, and 600 ppb, respectively. The estimated maximum concentration of diflubenzuron in surface and ground water (0.05 ppb) is lower than the DWLOCs as a contribution to chronic aggregate exposure. Therefore, EPA concludes that residues of diflubenzuron and its metabolites in drinking water would not result in an unacceptable estimate of chronic, non-cancer risk. Despite the potential for exposure to diflubenzuron in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

As stated earlier, although residential exposure has been considered possible from, for example, area-wide gypsy moth or mosquito control, this contribution is anticipated to be negligible. Thus, it was determined that this risk assessment is not necessary.

4. *Aggregate cancer risk for U.S. population.* A cancer risk assessment was conducted for the metabolites of diflubenzuron, PCA and CPU. As a conservative measure, EPA assumes that PCA/CPU occupied 2% of diflubenzuron tolerance levels, based upon metabolism studies. Based upon the ARC estimates described above, the cancer risk for the overall U.S. population from dietary (food only) was calculated to be 5×10^{-7}, which does not exceed EPA's levels of concern. The DWLOC for cancer risk for the U.S. population is 0.26 ppb. Estimated drinking water concentrations from PCA/CPU (0.73 ppb) are greater than the DWLOC of 0.26, for cancer risk. However, EPA believes these estimates are significantly overstated for several reasons. The PRZM/EXAMS model used to derive these estimates was designed for ecological risk assessments, and uses a scenario of a body of water approximating the size of a 2.5 acre pond. This tends to overstate chronic drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger. Second, the scenario assumes that the whole basin receives an application of the pesticide, but in virtually all cases, basins used for drinking water will contain a substantial portion of the area that does not receive pesticide application. Third, there is often at least some flow or turnover of the water, so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming that the reservoir is directly adjacent to an agricultural field, the field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM/EXAMS scenario does not take into account reductions in residue-loading due to applications less than the maximum application rate or no treatment of the crop at all. Considering these uncertainties associated with the modeled water estimates noted above, and the fact that the estimated concentrations are within close range of the DWLOCs, EPA concludes with reasonable certainty that residues of diflubenzuron in drinking water will

not contribute significantly to the aggregate cancer human health risk.

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

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

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

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

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) and the developmental (fetal) NOAEL were both 1,000 mg/kg/day. No LOAELs were achieved, as no maternal or developmental toxicity was observed.

In the developmental toxicity study in rabbits, both the maternal (systemic) and the developmental (fetal) NOAELs were both 1,000 mg/kg/day. As with the rat study, mentioned above, no LOAELs were achieved, as no maternal or developmental toxicity was observed.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOAEL was considered to be less than 36 mg/kg/day for males, and less than 42 mg/kg/day for females based on hematological effects at all dose levels tested. For offspring effects, the NOAEL was equal to 427 mg/kg/day, and the LOAEL was equal to 4,254 mg/kg/day, based on statistically significant decreases in F-1 pup weight on days 4, 8, and 21 of lactation.

iv. *Pre- and post-natal sensitivity.* The toxicological database for evaluating pre- and post-natal toxicity for diflubenzuron is completed with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based upon the result of the developmental and reproductive studies mentioned above.

v. *Conclusion.* The OPP FQPA Safety Factor Committee recommended that the 10X factor for increased susceptibility of infants and children be reduced to 1X, for diflubenzuron. This decision was based on the determination that there was no indication of increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to diflubenzuron, and because exposure assessments do not indicate a concern for potential risk to infants and children. There is a complete toxicity database for diflubenzuron and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Since one day single dose oral studies in rats and mice indicated only marginal effects, this risk assessment is not needed, as there are no significant acute effects observed.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diflubenzuron from food will utilize 6.1% of the RfD for Non-Nursing Infants < 1 year old, the most highly exposed infant/children population subgroup. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diflubenzuron in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* As stated earlier, although residential exposure has been considered possible from, for example, area-wide gypsy moth or mosquito control, this contribution is anticipated to be negligible. Thus, it was determined that this risk assessment is not necessary.

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

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residue of concern is diflubenzuron and its metabolites p-chloroaniline (PCA) and p- chlorophenylurea (CPU), expressed as the parent compound.

B. Analytical Enforcement Methodology

Adequate methodology for the analysis of diflubenzuron is available to enforce the tolerance expression. Three analytical methods for diflubenzuron are published in PAM, Vol. II as Methods I, II, and III. All three methods have undergone successful Agency validations and are acceptable for enforcement purposes.

C. Magnitude of Residues

Residues of diflubenzuron and its metabolites are not expected to exceed 0.5 ppm in/on pears as a result of this use.

D. International Residue Limits

There is a Codex maximum residue limit (MRL) for pears at 1 mg/kg, a MRL for Mexico at 1.0 mg/kg, and no limits set for Canada for pears. This tolerance is to be set at a lower level than the MRLs. This is a time-limited tolerance, established solely in support of this section 18 use. In considering permanent tolerances for pears in the future, the Agency will take these circumstances into account.

E. Rotational Crop Restrictions

Available data for diflubenzuron indicate that tolerances for residues in rotational crops will not be required, provided the label specifies a restriction for the planting of rotational crops of at least 30 days.

VI. Conclusion

Therefore, the tolerance is established for combined residues of diflubenzuron and its metabolites PCA and CPU, expressed as parent compound in pears at 0.5 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300921 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 1999.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by the docket number OPP–300921, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This

action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the FFDCA, 21 U.S.C. 346a(n)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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 the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 14, 1999 .

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.377, by adding text to paragraph (b) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of diflubenzuron and its metabolites, PCA (4-chloroaniline) and CPU (4-chlorophenylurea), expressed as the parent diflubenzuron, in connection with use of this pesticide under a section 18 emergency exemption granted by EPA. The tolerances will expire on the dates specified in the following table.

Commodity	Parts per million	Expiration/ revocation date
Pears	0.5	3/31/00

* * * * *

[FR Doc. 99–25312 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300923; FRL–6383–6]

RIN 2070–AB78

Tebufenozide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of Tebufenozide benzoic acid, 3,5-dimethyl-,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide in or on turnips and canola. The Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 29, 1999. Objections and requests for hearings, identified by docket control number OPP–300923, must be received by EPA on or before November 29, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300923 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja @epamail.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 Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed 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 OPP–300923. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents

that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 9, 1999 (64 FR 6351) (FRL– 6058–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerance by IR–4. This notice included a summary of the petitions prepared by the Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.482 be amended by establishing tolerances for residues of the insecticide tebufenozide, in or on turnip tops, turnip roots, canola seed, and refined canola oil at 9.0, 0.25, 1.75, and 3.75 part per million (ppm), respectively. The petitions were subsequently amended by IR–4 to propose tolerances for turnip tops at 9.0 ppm, turnip roots at 0.3 ppm, canola seed at 2.0 ppm, and canola oil, refined at 4.0 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of tebufenozide on turnip tops, turnip roots, canola seed, and refined canola oil at 9.0, 0.3, 2.0, and 4.0 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in unit II.A. of the Final rule on Tebufenozide Pesticide Tolerances published in the **Federal Register** on April 7, 1999 (64 FR 16850) (FRL–6072–6).

B. Toxicological Endpoints

The toxicology endpoints for tebufenozide are discussed in Unit II.B. of the Final rule on Tebufenozide Pesticide Tolerances published in the **Federal Register** of April 7, 1999.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. Canola meal and turnip tops are ruminant feed item. Permanent tolerances for livestock commodities (excluding poultry) were published in the **Federal Register** (64 FR 39060, July 21, 1999). Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

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

The Agency used PCT information as follows:

Estimates of PCT were used for the following crops. In all cases the maximum estimate was used. Almonds: average < 1% maximum < 1%, apples: average 1% maximum 2%, beans/peas, dry: average 0% maximum 1%, cotton: average 1% maximum 4%, sugarcane: average 3% maximum 5%, and walnuts: average 10% maximum 16%.

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

have available information on the regional consumption of food to which may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neurological or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk assessment is not required. The Agency considers acute exposure/risk to be negligible.

ii. *Chronic exposure and risk.* The residue of concern for tebufenozide in plant and animal commodities is the parent compound per se. The chronic population adjusted dose (cPAD) used for the chronic dietary analysis is 0.018 mg/kg/day. In performing chronic dietary exposure and risk analysis, the Agency used the Dietary Exposure Evaluation Model (DEEM), which incorporates data from the Continuing Survey of Food Intake by Individuals (CSFII) for the period, 1989 to 1992. Some refinement to the dietary exposure estimates was made through the use of percent-of-crop-treated data. The resulting Anticipated Residue Contributions (ARC) for the U.S. population and various DEEM population subgroups can be determined. Of these subgroups, the highest exposure is projected for children ages 1–6 years, whose chronic intake is estimated as 73% of the cPAD. Percent cPAD values for other subgroups include: U.S. Population for the 48 states (36%), all infants less than 1 yr. (52%), and children 7 to 12 yrs. (46%). Generally, in the absence of additional safety factors, the Agency is not concerned with exposures less than 100% of the cPAD. Thus, for all populations, the chronic human health risk from exposure to tebufenozide in foods is below the Agency's level of concern.

2. *From drinking water.* Available data suggest that tebufenozide ranges from moderately persistent to persistent and is mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the ''Pesticides in Groundwater Database (EPA 734–12–92–001, September 1992).

i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide ranges from moderately persistent to persistent and is mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no established MCL for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the ''Pesticides in Groundwater Database.'' Monitoring data are not available to assess the human exposure to tebufenozide via drinking water. In lieu of these, EPA has calculated the Tier I estimated environmental concentrations in drinking water (EECs) for tebufenozide using generic expected environmental concentration (GENEEC) (surface water) and screening concentration in ground water (SCI-GROW) (ground water) for use in the human health risk assessment. The maximum application rate for tebufenozide is 0.25 pound (lb) active ingredient (a.i.) with 5 applications per year on pecans. This application scenario was used to calculate the EECs for the human health risk assessment. Due to the wide range of aerobic soil half-life values, GENEEC and SCIGROW were run based on aerobic half-lives of 66 (California Loam) and 729 (worst-case soil with low microbial activity) days. For surface water, the chronic (56–day) values are 13.3 parts per billion (ppb) and 16.5 ppb for the half-lives of 66 and 729 days, respectively. The ground water screening concentrations are 0.16 ppb and 1.04 ppb for the half-lives of 66 and 729 days, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water due to the use of tebufenozide on pecans. In performing this risk assessment, EPA has calculated drinking water levels of comparison (DWLOCs) for each of the DEEM population subgroups. Within each subgroup, the population with the highest estimated exposure was used to determine the maximum concentration of tebufenozide that can occur in drinking water without causing an unacceptable human health risk. As a comparison value, EPA has used the 16.5 ppb value in this risk assessment, as this represents a worst-case scenario. The DWLOCs for tebufenozide are above the drinking water estimated concentrations (DWEC) of 16.5 ppb for all population subgroups. Therefore, the human health risk from exposure to tebufenozide through drinking water in not likely to exceed EPA's level of concern.

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

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on residential non-food sites. The Agency concludes that there are no acute, chronic, short- or intermediate-term non-dietary exposure scenarios.

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

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism

of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Since no acute toxicity endpoints were identified for tebufenozide, the Agency concludes that acute aggregate risk from the use of the pesticide will not pose an unacceptable risk to human health.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure from food will utilize 10% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years old) at 21% of the cPAD discussed below. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than EPA's DWLOC. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there is no potential for exposure to tebufenozide from residential uses, EPA does not expect the aggregate exposure to exceed 100% of the cPAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Due to lack of endpoints and/or residential use registrations, the agency concludes that short- and intermediate-term risk via non-dietary routes (e.g., dermal, inhalation, non-dietary oral) will not pose an unacceptable risk to human health.

4. *Aggregate cancer risk for U.S. population.* Tebufenozide has been classified as a Group E chemical (no evidence of carcinogenicity for humans). The Agency concludes that the aggregate cancer risk for the U.S. population is not impacted by the establishment of these tolerances.

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

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

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

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

ii. *Developmental toxicity studies.* Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits. See discussion under Unit II.A of the Final rule for tebufenozide tolerances published in the **Federal Register** on April 7, 1999.

iii. *Reproductive toxicity study.* Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offsprings. See discussion under Unit II.A of the Final Rule for tebufenozide tolerances published in the **Federal Register** on April 7, 1999.

iv. *Pre- and post-natal sensitivity.* The Agency determined that available data provide no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide.

v. *Conclusion.* The Agency believes that reliable data support using the standard 100-fold safety factor for assessing sensitivity to residues of tebufenozide and that an additional 10-fold margin of safety for infants and children is not warranted. There is a complete toxicity database for tebufenozide and exposure data are complete or estimated based on data that reasonably account for potential exposures.

2. *Acute risk.* No acute toxicity endpoints for tebufenozide have been identified and this risk assessment is not required. No acute aggregate risk exist.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 21% of the cPAD for children (1–6) the most highly exposed population subgroup. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA does not expect the aggregate exposure from tebufenozide in food, drinking water, and from non-dietary exposure to exceed the Agency's level of concern.

4. *Short- or intermediate-term risk.* Since no short- or intermediate-term toxicological endpoints were identified by the Agency for tebufenozide and there are no registered uses that would result in residential exposure, the Agency concludes that this risk criterion is negligible and the subject tolerances adequately protect the safety of infants and children.

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

IV. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. EPA has concluded that the residue of regulatory concern is tebufenozide per se. The qualitative nature of the residues in animals is also adequately understood based on acceptable poultry and ruminant metabolism studies. For animals, EPA has concluded that the residues of regulatory concern are tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl) benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide.

B. Analytical Enforcement Methodology

Turnips. IR-4 used Rohm and Haas High Performance Liquid Chromatographic (HPLC)/Ultra Violet (UV) analytical method TR–34–94–41 to collect residue data from the field trials on turnips. IR–4 slightly modified the HPLC system used to quantify tebufenozide residues, but made no substantive changes. Adequate recovery data and representative chromatograms for turnip roots and tops were provided. The limit of quantitation (LOQ) in turnip roots and tops is 0.01 ppm. This method has been conditionally approved by the Agency as an analytical enforcement method, pending incorporation of the corrections noted during the Analytical Chemistry Branch/BEAD's petition method validation (PMV) trial. This method is considered adequate for the enforcement of tebufenozide residues in/on turnip roots and tops. A copy of the corrected version of TR–34–94–41 will be submitted for publication in the Pesticide Analytical Manual, Volume II (PAM II).

Canola. IR–4 used Rohm and Haas HPLC/UV analytical method TR–34–96–135 to collect residue data from the field trials on canola. Adequate validation data and representative chromatograms for canola commodities (seed, meal, oil, soapstock) were provided. The LOQ is 0.01 ppm for the seed and meal and 0.03 ppm for the oil and soapstock. A PMV is not required, as this method is similar to those for walnuts and apples which have been successfully validated. A copy of TR–34–96–135 incorporating the corrections specified in the Independent Laboratory Validation (ILV) study will be submitted for publication in PAM II.

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression for canola seed and refined oil and turnip roots and tops. These methods may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

Turnips. The submitted turnip top and root residue data are adequate to support the proposed use. The six studies on turnips adequately address the number and geographic representation of studies suggested in the OPPTS Test Guidelines. Residues of tebufenozide ranged from 0.02 to 0.23 ppm for turnip roots and from 0.31 to 8.31 ppm for turnip tops. The proposed tolerances of 9.0 ppm and 0.3 ppm are appropriate on turnip tops and turnip roots respectively.

Canola. The submitted canola residue data are adequate to support the proposed use. Residues of tebufenozide ranged from 0.29 to 1.64 ppm for canola seed. The proposed tolerance 2.0 ppm on canola seed is appropriate. Processed commodities from canola (meal, oil, and soapstock) were generated using procedures that mimic commercial practice. Residues of tebufenozide did not concentrate in canola meal (average concentration factor = 0.16X) or soapstock (1.1X), but did concentrate in refined oil (an average of 2.3X). Based on the highest average field trial value for canola seed (1.58 ppm), a tolerance of 4.0 ppm is appropriate for refined canola oil.

D. International Residue Limits

No CODEX, Canadian or Mexican limits for tebufenozide were established on the subject crops at the time of this review.

V. Conclusion

Therefore, the tolerance is established for residues of tebufenozide; benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide in turnip tops, turnip roots, canola seed, and refined canola oil at 9.0, 0.3, 2.0, and 4.0 ppm, respectively.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300923 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 1999.

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

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708,

Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300923, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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 the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.482, the table to paragraph (a)(1) is amended by adding entries for canola, seed; canola, refined oil; turnip, tops; and turnip, roots, to read as follows:

§ 180.482 Tebufenozide; tolerances for residues..

(a) * * *

Commodity	Parts per million
* * * *	*
Canola, refined oil	4.0
Canola, seed	2.0
* * * *	*
Turnip, roots	0.3
Turnip, tops	9.0

* * * * *

[FR Doc. 99–25314 Filed 9–28–99; 8:45 am

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6445–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Darling Hill Dump Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces the deletion of the Darling Hill Dump Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B (40 CFR Part 300), to the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act. After consultation with the State of Vermont, EPA has determined that the responsible parties have implemented all appropriate response actions required.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: William Lovely, Remedial Project Manager, U.S. EPA Region I , 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918-1240.

SUPPLEMENTARY INFORMATION:

The site to be deleted from the NPL is: Darling Hill Dump Site, Lyndon, Vermont.

A Notice of Intent to Delete for this site was published on August 16, 1999, 64 FR 44452. The closing date for comments on the Notice of Intent to Delete was September 15, 1999. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 1999.

John P. DeVillars,

Administrator, US EPA Region 1—New England.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site ''Darling Hill Dump, Lyndon, Vermont.''

[FR Doc. 99–25159 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6445–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Saco Tannery Waste Pits Site From the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces the deletion of the Saco Tannery Waste Pits Site from the National Priorities List (NPL). The NPL constitutes Appendix B (40 CFR Part 300), to the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) as amended by the Superfund Amendments and Reauthorization Act. After consultation with the State of Maine, EPA has determined that all appropriate response actions have been implemented.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly, Remedial Project Manager, U.S. EPA Region I , 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918–1373.

SUPPLEMENTARY INFORMATION:

The site to be deleted from the NPL is: Saco Tannery Waste Pits Site, Saco, Maine.

A Notice of Intent to Delete for this site was published on August 16, 1999, 64 FR 44458, which provided a thirty-day public comment period. The closing date for comments on the Notice of Intent to Delete was September 15, 1999. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 1999.

John P. DeVillars,

Regional Administrator, U.S. EPA Region I—New England.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777; 56 FR 54757; 3 CFR, 1991 Comp., p.351; E.O. 12580; 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site ''Saco Tannery Waste Pits, Saco, Maine''.

[FR Doc. 99–25158 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6447–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Tansitor Electronics, Inc. Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces the deletion of the Tansitor Electronics, Inc. Site from the National Priorities List (NPL). The NPL constitutes Appendix B (40 CFR Part 300), to the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) as amended by the Superfund Amendments and Reauthorization Act. After consultation with the State of Vermont, EPA has determined that the responsible parties have implemented all appropriate response actions required.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly, Remedial Project Manager, U.S. EPA Region I , 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918–1373.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Tansitor Electronics Site, Inc. Bennington, Vermont.

A Notice of Intent to Delete for this site was published on August 16, 1999, 64 FR 44456. The closing date for comments on the Notice of Intent to Delete was September 15, 1999. EPA received two comments about the amount of waste disposed at the Site and sampling of nearby residential wells.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 23, 1999.

Mindy Lubber,

Acing Regional Administrator, U.S. EPA Region I—New England.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site ''Tansitor Electronics, Inc., Bennington, Vermont''.

[FR Doc. 99–25308 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152; FCC 99–241]

Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document declines to reconsider the Commission's *Telemessaging and Electronic Publishing Order,* declines to adopt rules pursuant to the *Further Notice,* and clarifies several points concerning telemessaging and electronic publishing. The intended effect is to promote the pro-competitive and deregulatory objectives of the Telecommunications Act of 1996.

DATES: Effective October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle Carey, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580 or via the Internet at mcarey@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted September 8, 1999, and released September 13, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc99241.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Order on Reconsideration and Third Report and Order

I. Introduction

1. On February 8, 1996 the ''Telecommunications Act of 1996'' (1996 Act) became law. On February 7, 1997 the Commission released the *Telemessaging and Electronic Publishing Order,* 62 FR 7690, February 20, 1997, which implemented the telemessaging and electronic publishing provisions of the 1996 Act, sections 260 and 274, respectively. On March 24, 1997 AT&T Corp. (AT&T) and the Pacific Telesis Group (Pacific) filed separate petitions to reconsider various

aspects of the Telemessaging and Electronic Publishing Order. On the same day the Commission released the *Telemessaging and Electronic Publishing Order,* the Commission issued a *Further Notice,* 62 FR 7744, February 20, 1997, that sought comment on the meaning of ''control,'' ''financial interest'' and ''transaction'' in section 274. For the reasons set forth below, we grant AT&T's petition in part and deny in part, and grant Pacific's petition. We also decline to adopt rules in response to the *Further Notice.*

II. Background

2. Section 274 allows a Bell Operating Company (BOC) to provide electronic publishing service disseminated by means of its basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture'' that meets the separation, joint marketing, and nondiscrimination requirements in that section. In the *Telemessaging and Electronic Publishing Order,* the Commission concluded that the requirement in section 274(b) that a separated affiliate or electronic publishing joint venture be ''operated independently'' is not a separate, substantive requirement that imposes obligations in addition to those enumerated in this section, but rather that this requirement is satisfied if a BOC and its separated affiliate or electronic publishing joint venture comply with the separation requirements set forth in subsections 274(b)(1)–(9).

3. In this proceeding, AT&T asks the Commission to reconsider its decision and conclude that the ''operated independently'' requirement imposes additional, substantive requirements beyond those listed in subsections 272(b)(1)–(9). AT&T also asks the Commission to clarify that section 274(b)(3)(B) requires that any agreement between a BOC and a separated affiliate or joint venture for inbound telemarketing or referral services be pursuant to a written contract or a tariff that is filed with the Commission and made publicly available. Pacific asks the Commission to clarify that the restrictions on joint promotion, marketing, sales or advertising set forth in section 274(c)(1)(A) and (B) do not apply to activities between a BOC and an entity owned or controlled by a BOC if the services are disseminated through an unaffiliated carrier's basic telephone service, and no separated affiliate or other BOC affiliate is involved.''

4. In this Order on Reconsideration:

—We decline AT&T's request to reconsider the Commission's conclusion that the ''operated independently'' provision in section 274(b) is not a separate, substantive requirement;

—We clarify, as requested by AT&T, that section 274(b)(3)(B) requires any agreement between a BOC and a separated affiliate or electronic publishing joint venture for inbound telemarketing or referral services be pursuant to a written contract or a tariff that is filed with the Commission and made publicly available; and

—We clarify, as requested by Pacific, that the restrictions on joint promotion, marketing, sales, or advertising set forth in sections 274(c)(1)(A) and (B) do not apply to activities between a BOC and an entity owned or controlled by a BOC if the electronic publishing services are disseminated through an unaffiliated carrier's basic telephone service, and no separated affiliate or other BOC affiliate is involved in such promotion, marketing, sales, and advertising.

III. Order on Reconsideration

A. The ''Operated Independently'' Requirement of Section 274(b)

a. Background

5. Section 274(b) of the 1996 Act provides that ''[a] separated affiliate or electronic publishing joint venture shall be operated independently from the [BOC].'' In the *Telemessaging and Electronic Publishing Order,* the Commission concluded that the ''operated independently'' requirement of section 274(b) obligates a separated affiliate to comply with the requirements of subsections 274(b)(1)–(9), and an electronic publishing joint venture to comply with subsections 274(b)(1)–(4), (6), (8)–(9). Moreover, the Commission found that the phrase ''operated independently'' is not a separate substantive restriction, but rather that section 274(b) is satisfied if a BOC and its separated affiliate or electronic publishing joint venture comply with the applicable restrictions of subsections 274(b)(1)–(9).

6. The Commission also found that its interpretation of the ''operated independently'' requirement of section 274(b) is consistent with its interpretation of the ''operate independently'' provision in section 272(b). In the *Non-Accounting Safeguards Order,* 62 FR 2927, January 2, 1997, the Commission determined that the ''operate independently'' provision of section 272(b) imposes requirements beyond those set forth in subsections 272(b)(2)–(5). The Commission explained that section 272(b) imposes five structural and transactional requirements governing the relationship between a BOC and a section 272 affiliate, only one of which is that the affiliate ''shall operate independently from the [BOC].'' In the *Telemessaging and Electronic Publishing Order,* in contrast, the Commission found that the ''operated independently'' requirement in section 274(b) is followed by nine substantive restrictions, which it read as the criteria that must be satisfied to ensure operational independence under this section.

b. Discussion

7. We decline, at this time, to reinterpret the phrase ''operated independently'' to impose additional, separate substantive requirements, absent any indication that the requirements listed in section 274(b)(1)–(9) are inadequate to assure that a BOC and its separated affiliate or electronic publishing joint venture operate independently. Subsections (1)–(9) impose specific requirements to assure operational independence, including, among other things, a requirement to maintain separate books and accounts, a limitation on debt assumption, a requirement to carry out transactions independently, and a restriction on common ownership of property.

8. Section 272(b) sets forth the structural and transactional requirements for the separate affiliates BOCs must establish to provide, among other things, interLATA telecommunications and information services pursuant to section 272(a). Although section 274(b) contains similar language to section 272(b)(1), section 274(b) mandates that a separated affiliate or electronic publishing joint venture must be ''operated independently'' and then lists nine specific requirements governing the relationship between a BOC and a separated affiliate or joint venture. In contrast, section 272(b) imposes five statutory requirements governing the relationship between a BOC and a section 272 affiliate, only one of which is that the affiliate shall ''operate independently'' from the BOC. Between the *Non-Accounting Safeguards Order and the Telemessaging and Electronic Publishing Order,* the Commission provided sufficient explanation for its conclusion that the ''operated independently'' requirement of section 274(b) imposes different requirements than the ''operate independently'' provision of section 272(b).

9. As the Commission has previously concluded, sections 272(b) and 274(b) are organized and structured differently

and address different subject matters. Accordingly, we find that the terms ''operate independently'' in section 272(b)(1) and ''operated independently'' in section 274(b) do not have to be interpreted to impose the same obligations on the BOCs.

10. Although it is correct that the Commission, on its own authority, previously imposed requirements of operational independence in the context of *Computer II* and the cellular separation rules, in the *Telemessaging and Electronic Publishing Order* the Commission was interpreting a new statute, with new requirements, enacted by Congress. It was not adopting, on its own authority, a new standard for operational independence that contradicted earlier decisions. Accordingly, there is no need to distinguish the Commission's prior precedents or to impose the same requirements adopted prior to enactment of the 1996 Act.

B. Inbound Telemarketing or Referral Services

a. Background

11. In the *Telemessaging and Electronic Publishing Order*, the Commission held that ''[a] BOC may choose to provide inbound telemarketing or referral services either pursuant to a contractual arrangement or *during the normal course of its inbound telemarketing operations.*'' The Commission stated that to the extent ''a BOC chooses either or both of these approaches'' in providing inbound telemarketing or referral services, the nondiscrimination provisions of section 274(c)(2)(A) require that such services be made available to unaffiliated electronic publishers using the same approach, *i.e.*, pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations.

12. AT&T asks the Commission to clarify that section 274(b)(3)(B) requires any agreement between a BOC and its section 274 affiliate or joint venture partner for inbound telemarketing or referral services to be pursuant to a written contract or a tariff that is filed with the Commission and made publicly available. Section 274(b)(3)(B) provides that a separated affiliate or joint venture and the BOC with which it is affiliated shall ''carry out transactions * * * (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available.''

b. Discussion

13.We agree with AT&T that we should clarify the Commission's discussion in paragraph 150 of the *Telemessaging and Electronic Publishing Order.* In that paragraph, the Commission noted that a BOC may ''choose to provide inbound telemarketing or referral services either pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations.'' We clarify in this Order that any such agreement between a BOC and its section 274 affiliate or joint venture partner relating to an inbound telemarketing or referral service, whether it be pursuant to contract or through the ''normal course'' of business, constitutes a ''transaction'' for purposes of section 274(b)(3)(B). Accordingly, we conclude that any agreement whereby a BOC agrees to provide inbound telemarketing or referral services must be pursuant to a written contract or tariff that is filed with the Commission and made publicly available. We find that the requirements of section 274(b)(3)(B), by requiring all ''transactions'' to be publicly disclosed and auditable in accordance with generally accepted auditing standards, will help ensure that BOCs are complying with the nondiscrimination and accounting safeguards of the 1996 Act.

C. Dissemination by Means of an Unaffiliated Carrier's Basic Telephone Service

a. Background

14. In the *Telemessaging and Electronic Publishing Order*, the Commission held that, pursuant to the terms of section 274, in order for a BOC to be engaged in the provision of electronic publishing and subject to section 274, electronic publishing must be disseminated by means of the BOC's basic telephone service, and the BOC must have control of, or a financial interest in, the content of the information being provided. In reading section 274(a) together with the definition of ''basic telephone service'' in section 274(i)(2), the Commission concluded that, if a BOC or BOC affiliate disseminates electronic publishing services through the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider, a separated affiliate or electronic publishing joint venture is not required.

15. The Commission also noted that sections 274(c)(1)(A) and (B) generally prohibit a BOC from carrying out any promotion, marketing, sales, or advertising activities with a separated affiliate or an affiliate if, in the latter case, such activities ''relate to'' the provision of electronic publishing. Thus, the Commission held that a BOC affiliate that does not provide electronic publishing services itself, but rather provides services that ''relate to'' the provision of electronic publishing, is precluded from carrying out marketing and sales-related activities for or in conjunction with the BOC.

b. Discussion

16. Pacific asks the Commission to clarify that the restrictions on joint promotion, marketing, sales, or advertising set forth in sections 274(c)(1)(A) and (B) do not apply if the electronic publishing services are disseminated through an unaffiliated carrier's basic telephone service and no separated affiliate or other BOC affiliate is involved in the dissemination. We agree that such clarification is appropriate.

17. Section 274(i)(10) defines a BOC to include an entity or corporation owned or controlled by the BOC (other than an electronic publishing joint venture owned by such an entity or corporation). Consistent with the Commission's finding in the *Telemessaging and Electronic Publishing Order*, we find that an entity or corporation owned or controlled by a BOC pursuant to section 274(i)(10) may promote, market, sell, or advertise electronic publishing services, and engage in promotion, marketing, sales, and advertising related to electronic publishing, if: (1) The electronic publishing service is disseminated by means of the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service (CMRS) provider; and (2) no separated affiliate or other BOC affiliate is involved in such promotion, marketing, sales, and advertising.

18. As noted in the *Telemessaging and Electronic Publishing Order*, the dissemination of electronic publishing services through the basic telephone service of competing, unaffiliated providers significantly reduces the ability of a BOC (including an entity or corporation owned or controlled by the BOC) to engage in anticompetitive behavior. Accordingly, as the Commission held in the underlying order, to the extent a BOC (including an entity or corporation owned or controlled by the BOC) disseminates electronic publishing services through the facilities of a competing wireline local exchange carrier or CMRS provider, and thus not via its own basic telephone services, it is not required to

provide such services through a separated affiliate or electronic publishing joint venture. We clarify that, in this situation, the joint marketing restriction in section 274(c)(1)(A), which prohibits a BOC from carrying out ''promotion, marketing, sales, or advertising for or in a conjunction with a separated affiliate,'' would not apply. Similarly, we conclude that, in such a situation, the joint marketing restriction in section 274(c)(1)(B) would not apply unless the BOC is carrying out ''promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.''

IV. Third Report and Order

19. On the same day the Commission issued the *Electronic Publishing Order,* the Commission released a *Further Notice of Proposed Rulemaking (Further Notice)* that sought comment on the meaning of ''control'' and ''financial interest'' for the purpose of determining what constitutes BOC provision of electronic publishing services under section 274. The *Further Notice* also sought comment on how the Commission should resolve certain ambiguities in section 274(b)(3)(B), which requires that BOCs and their separated affiliates or electronic publishing joint ventures ''carry out transactions pursuant to written contracts or tariffs that are filed with the Commission and made publicly available.''

A. Definition of ''Control'' and ''Financial Interest''

a. Background

20. We concluded in the *Telemessaging and Electronic Publishing Order* that a BOC engaged in the provision of electronic publishing is subject to section 274 only to the extent that it controls, or has a financial interest in, the content of the information being disseminated over its basic telephone services. We sought further comment in the *Further Notice* on the meaning of ''control'' and ''financial interest'' in the context of section 274.

21. In the *Further Notice,* we tentatively concluded that section 274(i)(4)'s definition of control, *i.e.,* the ''possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise,'' is inappropriate for determining the meaning of ''control'' in the present context, *i.e.,* when a BOC has ''control of the content of information transmitted via its basic telephone service.'' In addition, the Commission also tentatively concluded that a BOC has a ''financial interest'' in the content of the information when the BOC owns the information or has a direct or indirect equity interest in the information being disseminated via its basic telephone services. The Commission sought comment on other forms of BOC participation that should be considered indicia of ''financial interest.''

b. Discussion

22. We decline to adopt rules further defining ''control'' or ''financial interest'' for purposes of section 274 for two reasons. First, the Commission has not, to date, received any complaints alleging a violation of section 274. Thus, there has been no showing that the Commission's current rules are inadequate to ensure that the objectives of section 274 are being fulfilled. Second, any rules we implemented would expire on February 8, 2000 when the requirements of section 274 automatically sunset. In the event any disputes arise before the sunset date regarding whether a BOC is actually engaged in the provision of electronic publishing, they may be resolved on a case-by-case basis through a section 208 complaint process. Given the availability of this complaint process and the limited duration any rules would have, therefore we find that the public interest would not be served by adopting further rules to implement this section.

B. Meaning of ''Transaction'' in Section 274(b)(3)

a. Background

23. In the *Further Notice,* the Commission sought comment on what constitutes a ''transaction'' for purposes of section 274(b)(3). The Commission noted that, in the *Accounting Safeguards Order,* 62 FR 2918, January 21, 1997, the Commission concluded that for purposes of a similar public disclosure requirement in section 272(b)(5), the BOC and its affiliate must have agreed upon the terms and conditions for telephone exchange and exchange access for the agreement to constitute a ''transaction.''

24. The commenters agreed that the definition of ''transaction'' should parallel the Commission's definition for ''transaction'' adopted in connection with section 272(b)(5). As noted above, AT&T asked the Commission to clarify that section 274(b)(3)(B) requires any agreement between a BOC and its section 274 affiliate or joint venture partner for inbound telemarketing or referral services to be pursuant to a written contract or tariff that is filed with the Commission and made publicly available.

b. Discussion

25. We decline to adopt further rules implementing section 274(b)(3)(B) for the same two reasons stated above. Moreover, we note that our conclusion in the Order on Reconsideration clarifies that section 274(b)(3)(B) requires any agreement whereby a BOC agrees to provide inbound telemarketing or referral services must be pursuant to a written contact or tariff that is filed with the Commission and made publicly available. Accordingly, any such agreement either through a written contract or ''normal course of business'' constitutes a ''transaction'' for purposes of section 274(b)(3)(B).

V. Final Regulatory Flexibility Certification

26. *Supplemental Final Regulatory Flexibility Certification.* In the *Telemessaging and Electronic Publishing Order,* the Commission concluded that the rules adopted in that Order pertain to only BOCs which do not qualify as small entities under the Regulatory Flexibility Act (RFA), as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996). The Commission therefore certified that the rules adopted in that order would not have a significant impact on a substantial number of small entities, as required by the RFA. The clarifications we adopt in the *Order on Reconsideration and Third Report & Order* do not affect our certification in the *Telemessaging and Electronic Publishing Order.*

27. The Commission's Office of Public Affairs shall send a copy of this *Order on Reconsideration,* including this certification, in a report to Congress pursuant to the SBREFA, 5 U.S.C. 801(a)(1)(A). A copy of this certification will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

VI. Final Paperwork Reduction Analysis

28. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the *Further Notice of Proposed Rulemaking* invited the general public and the OMB to comment on proposed changes to the Commission's information collection requirements contained in the *Further Notice of Proposed Rulemaking.* The collections

of information were approved by OMB under OMB control number 3060–0762. No comments were submitted in response to the Commission's request for comment on the information collections contained in the *Further Notice of Proposed Rulemaking*. In this *Third Report and Order*, we have decided to adopt all of the information collection requirements proposed in the *Further Notice of Proposed Rulemaking*.

VII. Ordering Clauses

29. Accordingly, it is ordered that, pursuant to Sections 1, 2, 4, 201–202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–202, 274, and 303(r), the Order on Reconsideration and Third Report and Order in CC Docket No. 96–152 is adopted.

30. It is further ordered that the Petition for Reconsideration filed by AT&T Corporation is granted to the extent described herein and is denied in all other respects and the Petition for Reconsideration filed by Pacific Telesis Group is granted to the extent described herein.

31. It is further ordered that the policies, rules, and requirements set forth in this Order on Reconsideration and Third Report and Order are effective thirty days after publication in the **Federal Register**.

32. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration and Third Report and Order, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 99–25026 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990416100–9256–02; I.D. 031999C]

RIN 0648–AL18

Pacific Halibut Fisheries; Local Area Management Plan for the Halibut Fishery in Sitka Sound

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

ACTION: Final rule; response to comments.

SUMMARY: NMFS issues a final rule to implement a Local Area Management Plan (LAMP) for the halibut fishery in Sitka Sound in the Gulf of Alaska. This rule prohibits a person using a vessel greater than 35 ft (10.7 meters(m)) in overall length from fishing for halibut with setline gear within Sitka Sound. The rule also prohibits a person using a vessel less than or equal to 35 ft (10.7 m) in overall length from fishing for halibut with setline gear within Sitka Sound from June 1 through August 31. Finally, the rule prohibits all charter vessels from fishing for halibut within Sitka Sound from June 1 through August 31 and from retaining halibut caught within Sitka Sound while engaging in sport fishing for other species from June 1 through August 31. This action is necessary to address the decreased availability of halibut in Sitka Sound and is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to management of halibut in and off Alaska.

DATES: Effective October 29, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from National Marine Fisheries Service, Sustainable Fisheries Division, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention), signed at Ottawa, Ontario, Canada, on March 2, 1953, and amended by a Protocol Amending the Convention, signed at Washington, D.C., United States of America, on March 29, 1979, authorizes the International Pacific Halibut Commission (Commission) to promulgate regulations for the conservation and management of the Pacific halibut fishery. The Northern Pacific Halibut Act (Halibut Act) implements the Convention (16 U.S.C. 773–773k).

The Halibut Act, in section 5, gives the Secretary of Commerce (Secretary) the general responsibility to carry out the Convention and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary has delegated this authority to the Assistant Administrator for Fisheries, NOAA. Section 5 of the Halibut Act also provides that the regional fishery management council having authority for the geographical area concerned may recommend management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the Commission.

The Sitka Sound Halibut Task Force (Task Force) determined that too many harvesters were targeting halibut in Sitka Sound. The Commission has no data that support or refute localized depletion. However, information on halibut commercial landings from the Commission and Alaska Department of Fish & Game creel survey data indicate a decline in non-charter and subsistence halibut harvests for 1992–1996. Local or anecdotal information indicates the opportunity for an individual fisherman to catch a halibut has greatly decreased due to increased competition. This increased competition among users is partially due to an increase in the number of guided charter vessels and the Individual Fishing Quota (IFQ) fishery that allows commercial fishing vessels to operate throughout the summer.

The Task Force then proposed an LAMP for Sitka Sound and submitted it to the Council. The Council approved the Task Force's proposal as the preferred alternative in February 1998, and on April 28, 1999, NMFS published a proposed rule to implement the LAMP (64 FR 22826). The proposed rule provides a detailed description of the regulatory amendments and the reasons for their implementation. This final rule makes no changes to the proposed rule.

Response to Comments

NMFS received five letters commenting on the proposed rule during the 30-day comment period ending May 28, 1999. Three letters supported approving the rule as proposed, and two letters supported approving the proposed rule with changes.

Comment 1. Three comments supported approving the rule as proposed.

Response. NMFS agrees.

Comment 2. NMFS should approve proposed rule, with the following change: Remove the provision that allows charter vessels to retain halibut caught outside the Sound while fishing

for other species within the closed area because it creates a loophole that would allow charter vessels to continue catching halibut in the Sound.

Response. NMFS was also concerned that this provision may be difficult to enforce. However, in light of reassurances from the U.S Coast Guard and public comment, the final rule implements the LAMP as created by the task force and adopted by the Council.

Comment 3. NMFS should approve the proposed rule, including the provision to allow charter vessels to retain halibut harvested outside the Sound, with the following addition: Reinstate the annual review of the LAMP specified in the original task force plan. All participants agreed by consensus that an annual review is necessary to fine tune the plan.

Response. Nothing in the proposed rule precludes annual review of the LAMP by the Task Force or members of the public. The Council did not include an annual review in the preferred alternative because the Alaska Board of Fisheries, which will first review all proposed changes to the LAMP before recommendations are made to the Council, reviews proposals on a 3-year cycle.

Small Entity Compliance Guide

A quick reference card will be produced as a small entity compliance guide to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a copy of the quick reference card (see **ADDRESSES**).

Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that this final rule is necessary for the management of the halibut fisheries in Sitka Sound. The Regional Administrator also determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, and other applicable laws.

The final rule has been determined to be not significant for purposes of E.O. 12866. This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council prepared a final regulatory flexibility analysis (FRFA). NMFS received no letters of public comment in response to the initial regulatory flexibility analysis. A summary of the FRFA follows.

This action is being implemented because local residents of Sitka Sound are concerned about the decreased availability of halibut. The objective is to allocate halibut fishing opportunities in Sitka Sound among fishermen fishing with commercial vessels, anglers fishing from charter vessels, subsistence/personal use fisheries, and sport fishermen. Section 5 of the Halibut Act authorizes the Council to recommend management measures governing Pacific halibut catch in Sitka Sound.

In 1996, 74 commercial longline vessels, with allocations of halibut in Area 2C, and 192 registered charter vessels fished in in Sitka Sound.

This rule does not contain new reporting or recordkeeping requirements and there are no relevant Federal rules which may duplicate, overlap, or conflict with this rule.

The alternative of not having a LAMP for Sitka Sound would not have a negative impact on the halibut resource but would increase competition for the resource in Sitka Sound. Creation of an alternative LAMP for Sitka Sound, which would (1) prohibit halibut commercial vessels greater than 35 ft (10.7 m) from harvesting halibut in Sitka Sound, (2) prohibit halibut commercial vessels less than or equal to 35 ft (10.7 m) from harvesting halibut in Sitka Sound during July, July, and August with a 1,000 lb (0.45 mt) trip limit during the remainder of the IFQ fishing season, and (3) during July, June, and August only allow for a subsistence/personal use fishery, and a non-guided sport fishery in Sitka Sound, would protect the interests of non-guided anglers but restrict the retention of halibut caught outside Sitka Sound by charter vessels while fishing inside the Sound.

None of the alternatives discussed in the EA/RIR/FRFA are likely to significantly affect the quality of the human environment, or are expected to have significant impacts on endangered or threatened species, or marine mammals.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 23, 1999

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300 is amended to read as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k

2. In § 300.61, the definitions for ''Charter vessel'', ''Fishing'', ''Individual Fishing Quota'', ''IFQ fishing trip'', ''IFQ halibut'', ''Overall length'', ''Setline gear'', and ''Sport fishing'' are added in alphabetical order to read as follows:

§ 300.61 Definitions.

* * * * *

Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator.

* * * * *

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

Individual Fishing Quota (IFQ), for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of halibut.

IFQ fishing trip, for purposes of the subpart, means the period beginning when a vessel operator commences harvesting IFQ halibut and ending when the vessel operator lands any species.

IFQ halibut means any halibut that is harvested with fixed gear in any IFQ regulatory area.

Overall length of a vessel means the horizontal distance, rounded to the nearest ft/meter, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

* * * * *

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing.

* * * * *

3. In § 300.63, the heading and introductory text of § 300.63 are revised, and paragraph (d) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

Catch sharing plans (CSP) and local area management plans (LAMP) may be developed by the appropriate regional fishery management council, and approved by NMFS, for portions of the fishery. Any approved CSP or LAMP may be obtained from the

Administrator, Northwest Region, or the Administrator, Alaska Region.

* * * * *

(d) The LAMP for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of § 300.63(d), Sitka Sound means (See Figure 1) to subpart E of the part:

(i) With respect to § 300.63(d)(2), that part of the Commission regulatory area 2C that is enclosed on the north and east by a line from Kruzof Island at 57°20'30'' N. lat., 135°45'10'' W. long. to Chichagof Island at 57°22'03'' N. lat., 135°43'00'' W. long., and a line from Chichagof Island at 57°22'35'' N. lat., 135°41'18'' W. long. to Baranof Island at 57°22'17'' N. lat., 135°40'57'' W. long.; and is enclosed on the south and west by a line from Cape Edgecumbe at 57°59'54'' N. lat., 135°51'27'' W. long. to Vasilief Rock at 56°48'56'' N. lat., 135°32'30'' W. long. to the green day marker in Dorothy Narrows at 56°49'17'' N. lat., 135°22'45'' W. long. to Baranof Island at 56°49'17'' N. lat., 135°22'36'' W. long.

(ii) With respect to § 300.63(d)(3) and (4), that part of the Commission regulatory area 2C that is enclosed on the north and east by a line from Kruzof Island at 57°20'30'' N. lat., 135°45'10'' W. long. to Chichagof Island at 57°22'03'' N. lat., 135°43'00'' W. long., and a line from Chichagof Island at 57°22'35'' N. lat., 135°41'18'' W. long. to Baranof Island at 57°22'17'' N. lat., 135°40'57'' W. lat.; and is enclosed on the south and west by a line running from Sitka Point at 56°59'23'' N. lat., 135°49'34'' W. long., to Hanus Point at 56°51'55'' N. lat., 135°30'30'' W. long., to the green day marker in Dorothy Narrows at 56°49'17'' N. lat., 135°22'45'' W. long. to Baranof Island at 56°49'17'' N. lat., 135°22'36'' W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined in § 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined in § 300.61, within Sitka Sound as defined in paragraph (d)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined in § 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lbs. (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel, as defined in § 300.61, shall engage in sport fishing, as defined in § 300.61, for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined in § 300.61, for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61, for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

4. In subpart E of part 300, Figure 1 is added following § 300.65.

BILLING CODE 3510–22–F

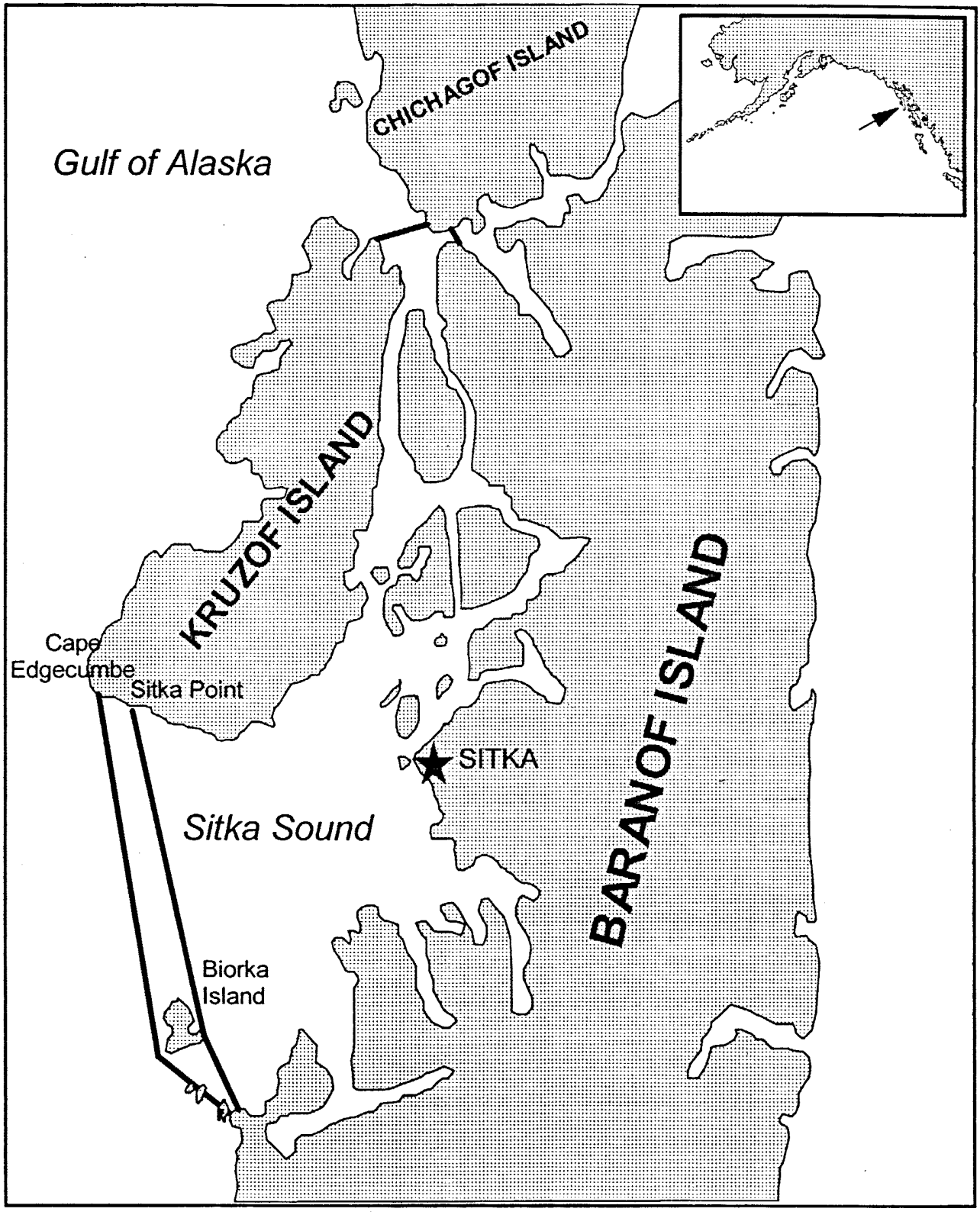

Figure 1. Sitka Local Area Management Plan
a. Map

Figure 1. Sitka Sound Local Area Management Plan Boundaries
b. Coordinates

Northern Boundary:

A line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and a line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. long.

Southern Boundaries:

(1) A line from the southernmost tip of Cape Edgecumbe at 57°59'54" N. lat., 135°51'27" W. long. to Vasilief Rock at 56°48'56" N. lat., 135°32'30" W. long. to the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(2) A line from the southernmost tip of Sitka Point at 56°59'23" N. lat., 135°49'34" W. long., to Hanus Point at 56°51'55" N. lat., 135°30'30" W. long., to the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

[FR Doc. 99–25240 Filed 9–28–99; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 092299A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the Bering Sea and Aleutian Islands management area (BSAI) Pacific cod that is projected to by unused by trawl catcher/processors and vessels using jig gear to vessels using hook-and-line or pot gear. This action is necessary to allow the 1999 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(5), the Final 1999 Harvest Specifications for Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the Pacific cod TAC, after the release of the reserves, for the BSAI as 163,725 metric tons (mt). Of this amount, 3,275 mt was allocated to vessels using jig gear, 38,475 mt to trawl catcher vessels, 38,475 mt to trawl catcher/processors, and 83,500 mt to vessels using hook-and-line or pot gear.

As of September 11, 1999, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 10,979 mt of Pacific cod remain in the catcher/processor allocation. Based on projected harvest rates of Pacific cod, and recognizing that directed fishing for Pacific cod by trawl catcher/processors will be constrained by Pacific halibut bycatch restrictions, the Regional Administrator has determined that trawl catcher/processors will not be able to harvest 5,000 mt of Pacific cod allocated to this sector under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(B), NMFS is apportioning the projected unused amount, 5,000 mt, of Pacific cod from trawl catcher/processors to vessels using hook-and-line or pot gear.

The Regional Administrator, also has determined that vessels using jig gear will not harvest 2,800 mt of Pacific cod by the end of the year. Therefore, in accordance with § 679.20(a)(7)(iii) NMFS is reallocating the unused amount of 2,800 mt of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to

allow full utilization of the Pacific cod TAC. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for hook-and-line or pot gear in the BSAI. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 679.20, and is exempt from OMB review under E.O. 12866.

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

Dated: September 23, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–25239 Filed 9–23–99; 5:03 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 092399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment opening the D fishing season for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 12 hours effective 1200 hrs, Alaska local time (A.l.t.), September 23, 1999, until 2400 hrs, A.l.t., September 23, 1999. This adjustment is necessary to manage the D seasonal allowance of the pollock total allowable catch (TAC) in Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, A.l.t., September 23, 1999, until 2400 hrs, A.l.t., September 23, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 8, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS issued a prohibition to directed fishing for pollock effective September 20, 1999, for Statistical Area 610, in accordance with § 679.20(d)(1)(iii) that was filed with the Office of the Federal Register September 20, 1999.

As of September 21, 1999, 1,923 metric tons (mt) of pollock remain in the D seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA. Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Therefore, a fishery opening must be a minimum of 24 hours. Current information shows the catching capacity of vessels catching pollock for processing by the inshore component in Statistical Area 610 of the GOA is in excess of 3,000 mt per day. The Administrator, Alaska Region, NMFS, has determined that the D seasonal allowance of the pollock TAC could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and will not allow a 24–hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i), is adjusting the D fishing season for pollock in Statistical Area 610 of the GOA by closing the fishery at 2400 hrs, A.l.t., September 23, 1999, at which time directed fishing for pollock will be prohibited. This action has the effect of opening the fishery for 12 hours. NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the D seasonal allowance of the pollock TAC designated in accordance with the emergency interim rule establishing Steller sea lion protection measures for pollock off Alaska (64 FR 3437, January 23, 1999). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., September 23, 1999, after a 12 hour opening is the least restrictive management adjustment to achieve the D seasonal allowance of the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS could not allow the D seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 8, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

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

Dated: September 23, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–25249 Filed 9–23–99; 5:03 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 092399E]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 initial total allowable catch (ITAC) of Atka mackerel allocated to this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 24, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications for Groundfish (64 FR 12103, March 11, 1999) established 20,720 metric tons (mt) as the Atka mackerel ITAC in the Central Aleutian District of the BSAI. See § 679.20(c)(6).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 ITAC of Atka mackerel allocated to the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 20,470 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 ITAC of Atka mackerel allocated to the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 23, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–25316 Filed 9–24–99; 2:26 p.m.]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 188
Wednesday, September 29, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–22]

Proposed Modification of Class E Airspace; Willows-Glen County Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Willows-Glen County Airport, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 34 at Willows-Glen County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 34 SIAP to Willows-Glen County Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Willows-Glen County Airport, Willows, CA.

DATES: Comments must be received on or before October 20, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–22, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AWP–22,'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Willows-Glen County Airport, CA. The establishment of a GPS RWY 34 SIAP at Willows-Glen County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedure at Willows-Glen County Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport, Willows, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

AWP CA E5 Willows-Glen County Airport, CA [Revised]

Willows—Glen County Airport, CA
(Lat. 39°30′59″N, long. 122°13′03″W)
Maxwell VORTAC
(Lat. 39°19′03″N, long. 122°13′18″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Willows-Glen County Airport and within 2 miles each side of the Maxwell VORTAC 360° radial, extending from the 6.4-mile radius to 3 miles north of the Maxwell VORTAC.

* * * * *

Issued in Los Angeles, California, on September 8, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–25225 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–24050; File No. S7–21–99]

RIN 3235–AH56

Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment a new rule and related rule amendments under the Investment Company Act of 1940 that would affect the ability of investment companies to invest in repurchase agreements and pre-refunded bonds under the Act. The proposed rule would generally codify and update staff positions that have permitted investment companies to ''look through'' counterparties to certain repurchase agreements and issuers of municipal bonds that have been ''refunded'' with U.S. government securities and treat the securities comprising the collateral as investments for certain purposes under the Act.

DATES: Comments must be received on or before November 23, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–21–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, Office of Regulatory Policy, at (202) 942–0690, or Alison M. Fuller, Assistant Chief Counsel, Office of Chief Counsel, (202) 942–0660, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 5b–3 [17 CFR 270.5b–3] and conforming amendments to rules 2a–7 [17 CFR 270.2a–7] and 12d3–1 [17 CFR 270.12d3–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'').[1]

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Executive Summary

Repurchase agreements provide investment companies (''funds'') with a convenient means to invest excess cash on a secured basis, generally for short periods of time. In a typical fund repurchase agreement, a fund enters into a contract with a broker, dealer or bank (the ''counterparty'' to the transaction) for the purchase of securities. The counterparty agrees to repurchase the securities at a specified future date or on demand for a price that is sufficient to return to the fund its original purchase price, plus an additional amount representing the return on the fund's investment.

The Commission is proposing a rule that would permit funds to ''look through'' certain repurchase agreements to the securities collateralizing the agreements for various purposes under the Act. Because a fund looks to the collateral as the ultimate source of repayment for its loan, the Commission staff has taken a ''no-action'' position in order to allow funds to treat certain repurchase agreements as investments in the securities making up the collateral rather than as a loan to the counterparty. Proposed rule 5b–3 would codify these positions and allow a fund to treat a repurchase agreement as an acquisition of the underlying collateral in determining whether it is in compliance with the investment criteria for diversified funds set forth in section 5(b)(1) of the Act.[2] The proposed rule also would codify staff no-action positions that allow a fund that enters into a repurchase agreement with a counterparty that is a broker-dealer to ''look through'' the repurchase agreement to the underlying collateral for purposes of section 12(d)(3) of the Act, which prohibits a fund from acquiring an interest in a broker-dealer.[3] The proposed rule would require the value of the collateral at all times to be sufficient to fully cover the amount payable under the repurchase agreement (that is, the amount that the counterparty would repay the fund to repurchase the securities). In addition, the fund must evaluate whether the counterparty is creditworthy and the repurchase agreement must qualify for an exclusion from any automatic stay of creditors' rights under the federal

[1] Unless otherwise noted, all references to rule 2a–7 or rule 12d3–1, or to any paragraph of those rules, will be to 17 CFR 270.2a–7 and 17 CFR 270.12d3–1, respectively.

[2] 15 U.S.C. 80a–5(b)(1).

[3] 15 U.S.C. 80a–12(d)(3).

Bankruptcy Code or other insolvency laws.

Proposed rule 5b–3 would provide similar ''look-through'' treatment for purposes of section 5(b)(1) of the Act in the case of investments in pre-refunded bonds, the repayment of which has been fully funded by escrowed U.S. government securities. As in the case of repurchase agreements, a fund may view its investment in pre-refunded bonds as an investment in the escrowed government securities rather than in the original bonds.

The conditions proposed for the treatment of repurchase agreements and pre-refunded bonds under the proposed rule would be substantially the same as those required by rule 2a–7, the rule governing money market funds, and would codify and update long-standing staff no-action positions.

I. Background

A. Repurchase Agreements

Repurchase agreements provide funds with a means to invest idle cash at competitive rates for periods as short as overnight. Economically, they may be viewed as loans from the fund to the counterparty in which the securities that the fund purchases serve as collateral for the loan and are placed in the possession or under the control of the fund's custodian during the term of the agreement.[4] By investing in repurchase agreements, funds can expand their available options for the productive investment of short-term cash. At the same time, fund participation in the market for repurchase agreements benefits other market participants by enhancing their ability to borrow to meet their short-term needs.

Two provisions of the Act may affect a fund's ability to invest in repurchase agreements. Section 12(d)(3) of the Act generally prohibits a fund from acquiring an interest in a broker, dealer, or underwriter.[5] Because a repurchase agreement may be considered to be the acquisition of an interest in the counterparty,[6] section 12(d)(3) may limit a fund's ability to enter into repurchase agreements with many of the firms that act as counterparties.[7] Section 5(b)(1) of the Act limits the amount that a fund that holds itself out as being a diversified investment company may invest in the securities of any one issuer (other than the U.S. government).[8] This provision may limit the amount of repurchase agreements that a diversified fund may enter into with any one counterparty.

A fund investing in a properly structured repurchase agreement looks primarily to the value and liquidity of the collateral rather than the credit of the counterparty for satisfaction of the repurchase agreement.[9] In two separate no-action positions issued in 1979 and 1980, the staff stated that, for purposes of sections 12(d)(3) and 5(b)(1) of the Act, a fund may treat a repurchase agreement as an acquisition of the underlying collateral if the repurchase agreement is ''collateralized fully.''[10] Because most repurchase agreements are collateralized fully by highly liquid U.S. government securities, this ''look-through'' treatment allowed funds to treat repurchase agreements as investments in government securities. As a result, a fund could invest in repurchase agreements with the same counterparty without the limitations of sections 12(d)(3) or 5(b)(1).[11]

The assumptions underlying the 1979 and 1980 no-action positions were challenged in the early 1980s as a result of the bankruptcy of Lombard-Wall, Inc., a large issuer of repurchase agreements, and the insolvency of several others.[12] The court in the *Lombard-Wall* case held that the purchaser of securities in a repurchase agreement was subject to the automatic stay of the Bankruptcy Code,[13] and could not close out its position without the approval of the bankruptcy court.[14] This decision created uncertainty regarding the status of repurchase agreements under the Bankruptcy Code and exposed a fund to the risk that it might be unable to liquidate the collateral securities immediately upon the insolvency of the counterparty.[15] Because of the possible adverse effect of counterparty insolvency on a fund's liquidity, the Commission issued a staff release that added a condition to the staff's earlier no-action position. In addition to requiring the repurchase agreement to be fully collateralized, the staff now required the fund to evaluate the creditworthiness of the counterparty.[16]

Congress later amended the Bankruptcy Code to resolve this uncertainty.[17] As amended, the

[4] *See* The Handbook of Fixed Income Securities 198 (Frank J. Fabozzi ed., 5th ed. 1997). Most repurchase transactions involve Treasury bills and other U.S. government securities, but bank certificates of deposit and bankers' acceptances, as well as commercial paper from major corporations, are used as well. *See* Jeanne L. Schroeder, *Repo Madness: The Characterization of Repurchase Agreements Under the Bankruptcy Code and the U.C.C.,* 46 Syracuse L. Rev. 999, 1005 (1996). When the counterparty lends to, rather than borrows from, the fund, the transaction is termed a ''reverse repurchase agreement.'' Reverse repurchase agreements raise issues under section 18 of the Act [15 U.S.C. 80a–18] because they can be viewed as the issuance by the fund of a senior security. These issues were addressed in Investment Company Act Release No. 10666 (Apr. 18, 1979) [44 FR 25128 (Apr. 27, 1979)] (''Release 10666'').

[5] With minor exceptions, section 12(d)(3) prohibits an investment company from purchasing or otherwise acquiring ''any security issued by or any other interest in the business of any person who is a broker, a dealer, [or] is engaged in the business of underwriting.'' The staff has taken the position that fund repurchase agreements with banks that are engaged in a securities-related business, including dealing in government securities, may be subject to the prohibitions of section 12(d)(3). *See* Letter from Gerald Osheroff, Associate Director, Division of Investment Management, to Matthew Fink, General Counsel, Investment Company Institute (May 7, 1985) (''May 7, 1985 Letter'').

[6] *See* American Medical Ass'n Tax-Exempt Income Fund, Inc., SEC No-Action Letter (Apr. 23, 1978); May 7, 1985 Letter, *supra* note 5.

[7] Brokers and dealers (as well as banks that are engaged in securities related activities) often act as counterparties in repurchase transactions. *See* Schroeder, *supra* note 4, at 1004. If funds are unable to enter into repurchase agreements with these counterparties, they effectively may be unable to participate in this market.

[8] To be classified as a ''diversified'' fund under section 5(b)(1) of the Act, a fund is required, with respect to 75 percent of its assets, to invest no more than 5 percent of its assets in the securities of any one issuer (excluding cash and cash items, government securities, and securities of other investment companies). The remaining 25 percent of the fund's assets may be invested in any manner. Section 13(a)(1) of the Act [15 U.S.C. 80a–13(a)(1)] prohibits a fund that is classified as a diversified company from changing to a non-diversified company without shareholder authorization.

[9] *See infra* note 16 and accompanying text.

[10] In 1979, the staff announced that it would not recommend enforcement action under section 12(d)(3) if the repurchase agreement was ''structured in a manner reasonably designed to collateralize fully the investment company loan.'' Release 10666, *supra* note 4. The following year, the staff applied this no-action position to a fund's compliance with the diversification requirements of section 5(b)(1) of the Act. MoneyMart Assets, Inc., SEC No-Action Letter (Sept. 3, 1980).

[11] Repurchase agreements with broker-dealers affiliated with the fund would, of course, continue to raise serious questions under sections 17(a) and 17(d) of the Act [15 U.S.C. 80a–17(a), 15 U.S.C. 80a–17(d)]. *See* Release 10666, *supra* note 4, at n.24.

[12] *See In re* Lombard-Wall Inc., No. 82 B 11556, bench op. (Bankr. S.D.N.Y. Sept. 16, 1982).

[13] 11 U.S.C. 101 *et seq.*

[14] *See Omnibus Bankruptcy Improvements Act of 1983,* S. Rep. No. 98–65, at 47 (1983) (discussing *In re* Lombard-Wall Inc.).

[15] As a consequence, the repurchase agreement might be an illiquid investment subject to restrictions on the amount of these investments in a fund's portfolio.

[16] Investment Company Act Release No. 13005 (Feb. 2, 1983) [48 FR 5894 (Feb. 9, 1983)] (''Release 13005''). Release 13005 called for the evaluation of the counterparty's creditworthiness to be made by the fund's board of directors. In a recent letter to the Investment Company Institute, the staff revised this position to permit a fund's investment adviser, rather than the fund's board, to evaluate the creditworthiness of counterparties and otherwise assume primary responsibility for monitoring and evaluating the fund's use of repurchase agreements. Investment Company Institute, SEC No-Action Letter (June 15, 1999).

[17] Before the passage of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98–353, 98 Stat. 333 (1984) (''BAFJA''), the treatment of a repurchase agreement under the

Continued

Bankruptcy Code now protects participants in repurchase agreements from the Code's automatic stay and preference avoidance provisions when the collateral consists of U.S. government and agency obligations, certificates of deposit, and eligible bankers' acceptances.[18] In 1996, when we amended the money market fund rule (rule 2a–7, which had codified the staff's position on repurchase agreements in connection with that rule's diversification requirements),[19] we tied the availability of the ''look-through'' more directly to the preferred treatment given to repurchase agreements under the Bankruptcy Code and related insolvency statutes.[20] We noted that if the collateral did not qualify for special treatment under these statutes, a fund could encounter significant liquidity problems if a large percentage of its assets were invested in a repurchase agreement with a bankrupt counterparty. In that case, the credit risks assumed by the fund would be directly tied to the counterparty rather than the issuers of the underlying collateral.[21]

The Commission is proposing a new rule 5b–3 that would codify the staff's positions that a fund may look through a fully collateralized repurchase agreement to the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act,[22] supplemented by the requirement of rule 2a–7 that the repurchase agreement qualify for an exclusion from any automatic stay of creditors' rights under applicable insolvency law. Because the conditions for looking through a repurchase agreement for purposes of sections 5(b)(1) and 12(d)(3) are substantially the same as the conditions under rule 2a–7, the Commission is proposing to codify the same standard for all three purposes.

B. Pre-Refunded Bonds

Pre-refunded bonds are municipal bonds the repayment of which has been fully funded by a deposit into escrow of U.S. government securities. From time to time, a municipality may choose to refund previously issued bonds prior to their call date by issuing a second bond, the proceeds of which are used to purchase U.S. government securities. These securities are placed in escrow, and the principal and interest on the escrowed securities are used to pay off the original bonds.[23] The holders of the original bonds no longer look to the municipal issuer for repayment, but rather to the escrowed securities.

In 1993, the staff issued a no-action position permitting funds, under certain conditions, to look through pre-refunded bonds to the escrowed government securities for purposes of the section 5(b)(1) diversification requirements.[24] When the Commission amended rule 2a–7 in 1996, it codified this position for purposes of the money market fund diversification requirements, but omitted the condition that the pre-refunded bonds of any one issuer could account for no more than 25 percent of the fund's assets.[25] The Commission proposes to codify this revised treatment of pre-refunded bonds for purposes of section 5(b)(1).[26]

II. Discussion

A. Proposed Rule 5b–3(a): Treatment of Repurchase Agreements

Proposed rule 5b–3 would permit a fund to treat the acquisition of a repurchase agreement as an acquisition of the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act, if the obligation of the seller to repurchase the securities from the fund is ''collateralized fully,'' as defined in the proposed rule.[27] Consistent with the staff's no-action positions, the proposed rule also would require the board of directors or its delegate to evaluate the counterparty's creditworthiness.[28] A similar requirement would be added to rule 2a–7.[29]

The proposed rule generally would incorporate the definition of ''collateralized fully'' currently employed in rule 2a–7.[30] A repurchase

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Bankruptcy Code depended upon whether it was characterized as a secured loan or a purchase and sale transaction. If the transaction was characterized as a secured loan, the borrower-counterparty would retain at least an equitable interest in the securities, and the securities would be subject to the automatic stay provisions of the Bankruptcy Code, preventing the lender from taking any action against the borrower's property. If the transaction was characterized as a purchase and sale, the repurchase obligation would be viewed as an executory contract, which the bankruptcy trustee could accept or reject. Until acceptance or rejection, the fund would be exposed to the market risk of the securities. Regardless of the transaction's characterization, it was unclear whether ''mark-to-market'' payments (the payments required to keep the repurchase agreement fully collateralized) could be voided by the trustee as preferential transfers. The BAFJA amendments removed qualifying repurchase agreements from the operation of the Bankruptcy Code's automatic stay and preference avoidance provisions. *See* 11 U.S.C. 101(47) (defining repurchase agreement); 11 U.S.C. 559 (protecting repurchase agreement participants from the Bankruptcy Code's automatic stay provisions).

[18] *See* 11 U.S.C. 101(47); 11 U.S.C. 559. The Federal Deposit Insurance Act also provides preferred treatment to repurchase agreements in which a bank is the counterparty. *See* 12 U.S.C. 1821(e)(8)(A), (C) (affording preferred treatment to ''qualified financial contracts''); 12 U.S.C. 1821(e)(8)(D)(i) (defining qualified financial contracts to include repurchase agreements); 12 U.S.C. 1821(e)(8)(D)(v) (defining repurchase agreement).

In broker-dealer insolvencies, the buyer's ability to liquidate the repurchase agreement collateral is subject to the possible imposition of a judicial stay obtained by the Securities Investor Protection Corporation (''SIPC''). Representatives of SIPC, however, have indicated that SIPC would consent, and urge the trustee to consent, to the liquidation of repurchase agreement collateral upon SIPC's receipt of certain documentation, including an affidavit from the buyer that it has a perfected security interest in the collateral. *See* Letter from Michael E. Don, President, SIPC, to Seth Grosshandler, Cleary, Gottlieb, Steen & Hamilton (Feb. 14, 1996); Letter from Michael E. Don, Deputy General Counsel, Office of the General Counsel, SIPC, to Eugene Marans, Cleary, Gottlieb, Steen & Hamilton (Aug. 29, 1988).

[19] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1991) [56 FR 8113 (Feb. 27, 1991)], at nn. 30–33 and accompanying text.

[20] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] (''1996 Amendments Proposing Release''), at nn. 168–74 and accompanying text; Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] (''1996 Amendments Adopting Release''), at nn. 116–19.

[21] 1996 Amendments Proposing Release, *supra* note 20, at n.172.

[22] The Commission expects to withdraw the staff positions if we adopt the proposed rule.

[23] *See, e.g.,* Robert Zipf, How Municipal Bonds Work 44–47 (1995).

[24] T. Rowe Price Tax-Free Funds, SEC No-Action Letter (June 24, 1993). In the letter, the Division of Investment Management agreed not to recommend any enforcement action if a fund treated an investment in municipal bonds refunded with escrowed government securities as an investment in the government securities for purposes of section 5(b)(1). This no-action position was based on certain representations, including that (1) the deposit of the government securities was irrevocable and pledged only to the debt service on the original bonds, (2) payments from the escrow would not be subject to the preference provisions or automatic stay provisions of the Bankruptcy Code, and (3) no fund would invest more than 25 percent of its assets in the pre-refunded bonds of any single municipal issuer.

[25] The Commission also eliminated the 25 percent limitation for funds other than money market funds that rely on the staff no-action position set forth in T. Rowe Price Tax-Free Funds. 1996 Amendments Adopting Release, *supra* note 20, at n.122.

[26] The Commission expects to withdraw the staff position if we adopt the proposed rule.

[27] Proposed rule 5b–3(a). A fund would be permitted to look through only that portion of the repurchase agreement that is collateralized fully. Any agreement or portion of an agreement that is not collateralized fully would be treated as a loan by the fund to the counterparty. Even if a repurchase agreement is collateralized fully, a fund may elect to look to the counterparty rather than the underlying securities in meeting the diversification requirements of section 5(b)(1).

[28] *Id. See* Release 13005, *supra* note 16; Investment Company Institute, *supra* note 16.

[29] Proposed rule 2a–7(c)(4)(ii)(A). This requirement is not new. In Investment Company Act Release No. 22383 (Dec. 10, 1996) [61 FR 66621 (Dec. 18, 1996)] (proposing technical amendments to rule 2a–7), at note 32, the Commission stated that a money market fund must continue to evaluate the counterparty's creditworthiness in order to minimize the risk of becoming involved in bankruptcy proceedings, consistent with the no-action position stated in Release 13005.

[30] Rule 2a–7(a)(5).

agreement would be collateralized fully if: (i) the value of the underlying securities (reduced by the costs that the fund reasonably could expect to incur if the counterparty defaults) is, and at all times remains, at least equal to the agreed resale price;[31] (ii) the collateral for the repurchase agreement consists entirely of cash items, U.S. government securities, or other securities of a high quality;[32] and (iii) the repurchase agreement qualifies for an exclusion from any automatic stay of creditors' rights against the counterparty under applicable insolvency law in the event of the counterparty's insolvency.[33]

The rule 2a–7 definition of ''collateralized fully'' also requires either the fund or its custodian to have physical possession of the collateral or a book entry to be maintained in the name of the fund or its custodian.[34] This provision derived from a Commission staff position requiring funds to acquire actual or constructive possession of repurchase agreement collateral.[35] In lieu of this requirement, the proposed rule would require the fund to perfect its security interest in the repurchase agreement collateral and maintain the collateral in an account with the fund's custodian or a third party that qualifies as a custodian under the Act.[36] This proposal, which we believe generally would not require a change from current practice, is intended to update the definition of ''collateralized fully'' in light of the 1994 revisions to the Uniform Commercial Code, which address the evolution of the indirect system for holding securities.[37] The updated requirement would, we believe, more accurately reflect the steps that a fund should take to protect its interests in repurchase agreement collateral. The Commission requests comment on this proposal. Should the definition of collateralized fully specifically require funds to perfect their security interests in repurchase agreement collateral by obtaining ''control'' of the collateral?[38]

We understand that some funds engage in ''hold-in-custody'' repurchase agreements (''HIC repos'')[39] with their custodians as a means of investing cash that they receive late in the business day. Some commentators have suggested that these transactions entail the risk that the fund would not be able to liquidate the collateral promptly if the custodian were to become insolvent.[40] The Commission requests comment on risks posed by these transactions and whether HIC repos should be considered ''collateralized fully'' under rule 5b–3.

Most repurchase agreements are collateralized with U.S. government securities, and the staff positions with respect to section 5(b)(1) have limited the collateral to those securities.[41] Under the proposed rule, cash collateral also could be used, as well as other high quality securities. The Commission is proposing to limit the high quality securities that may be used as collateral based on the same standards currently contained in rule 2a–7 for money market funds.[42] The high quality requirement is designed to limit a fund's exposure to the ability of the counterparty to maintain sufficient collateral.[43] In addition, use of this rule 2a–7 standard would permit a fund complex to establish uniform criteria for repurchase agreements among funds. Comment is requested whether the rule should include these minimum quality standards for collateral. Are there any other criteria that would be preferable?

As discussed above, the proposed rule also requires the fund to evaluate the counterparty's creditworthiness.[44] This evaluation, which currently is required

[31] Proposed rule 5b–3(c)(1)(i) requires the value of the securities collateralizing the repurchase agreement to be, and during the entire term of the agreement to remain, at least equal to the resale price. The term ''resale price'' is defined in paragraph (c)(7) of the proposed rule as the acquisition price paid to the seller plus the accrued resale premium, *i.e.*, the return on investment specified in the agreement. Consistent with prior staff positions, the market value of the securities held as collateral must be marked to market daily during the entire term of the agreement to ensure that the collateral is at all times at least equal to the resale price, and the repurchase agreement should provide for the delivery of additional collateral if the market value of the securities falls below the resale price. *See* Letter from Gerald Osheroff, *supra* note 5. Under the proposed rule, the fund's expected return on its investment may be either the full amount specified in the agreement or the daily amortization of the difference between the purchase price and the resale price specified in the agreement. This allows the counterparty to add to the collateral as interest on the loan accrues. *See* 1996 Amendments Proposing Release, *supra* note 20, at n.176 and accompanying text.

[32] Proposed rule 5b–3(c)(1)(iv). Any securities other than government securities must be rated in the highest rating category by the ''requisite NRSROs.'' *Id. See also infra* text accompanying notes 41–43 (describing this proposed quality requirement and requesting comment). ''Requisite NRSROs'' are defined in paragraph (c)(6) of the proposed rule as any two NRSROs, or, if only one NRSRO has issued a rating at the time the fund acquires the security, that NRSRO. ''NRSRO'' is defined in paragraph (c)(5) as any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 [17 CFR 240.15c3–1] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm], that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act [15 U.S.C. 80a–2(a)(3)(C)], of the issuer of, or any insurer or provider of credit support for, the security.

[33] Proposed rule 5b–3(c)(1)(v).

[34] Rule 2a–7(a)(5)(ii).

[35] *See* Release 13005, *supra* note 16, at n.2 and accompanying text. In Release 13005, the Division stated that the requirement of actual or constructive possession was intended to ensure that the fund would be able to liquidate the collateral immediately upon any default or insolvency of the seller. Constructive possession included the transfer of book-entry securities. *See id.* The staff also provided guidance with respect to the custody requirements in a letter from Kathryn McGrath, Director, Division of Investment Management, to Matthew Fink, General Counsel, Investment Company Institute (June 19, 1985). Among other things, the letter noted the staff's position that ''a repurchase agreement is fully collateralized only if the collateral is in the actual or constructive possession of the investment company.'' The letter also noted that the staff would consider a fund to have constructive possession of collateral when the collateral has been transferred to the fund's custodian or to the care of a third party to the repurchase agreement that would qualify as a custodian for fund assets under section 17(f) of the Act [15 U.S.C. 80a–17(f)].

[36] Proposed rule 5b–3(c)(1)(ii), (iii).

[37] *See generally* UCC, Revised Article 8—Investment Securities (With Conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments), 2C Uniform Laws Annotated (West Supp. 1997), Prefatory Note at I.D., II.B., II.C., II.D. As of April 1, 1999, the 1994 amendments to UCC Article 8 had been adopted by 48 states, the District of Columbia, and Puerto Rico. The most recent information regarding the status of proposed UCC revisions in the state legislatures can be obtained by contacting the National Conference of Commissioners on Uniform State Laws at (312) 915–0195.

[38] Under the 1994 revisions to the UCC, the primary means to perfect a security interest in investment securities is by obtaining ''control'' of the securities. *See* UCC, Revised Article 8, §§ 8–106, 9–115(4). In general, obtaining ''control'' means taking the steps necessary to place a secured lender in a position where it can have the collateral sold off without the further cooperation of the debtor. *See* UCC, Revised Article 8, Prefatory Note at II.D.

[39] In a HIC repo, the seller merely segregates the collateral during the term of the agreement, rather than transferring it to the buyer or to a third party. **Ellen Taylor, Trader's Guide to the Repo market** 25–26 (1995).

[40] *See* Seth Grosshandler, Lech Kalembka & Daniel Feit, Securities, Forward and Commodity Contracts and Repurchase and Swap Agreements Under U.S. Insolvency Laws (1995), *available in* LEXIS, 721 PLI/Comm 401, 434 (qualified financial contract provisions do not protect the right of a purchaser of securities under a HIC repo to compel delivery of the securities from the FDIC as conservator or receiver); *see also id.* at 416 (Bankruptcy Code does not appear to protect the right of a purchaser of securities under a HIC repo to compel delivery of the securities from the bankrupt).

[41] *See* MoneyMart Assets, *supra* note 10. The staff's no-action positions with respect to the treatment of repurchase agreements for purposes of section 12(d)(3) did not expressly limit the type of eligible collateral. *See* Release 10666, *supra* note 4; Release 13005, *supra* note 16.

[42] Rule 2a–7(a)(5)(iii); *see also supra* note 32.

[43] Securities of lower quality may be subject to greater price fluctuation. In the event of a steep drop in the market value of the collateral, it may be difficult for the counterparty to deliver additional securities sufficient to ensure that the repurchase agreement remains fully collateralized. If the counterparty does not deliver sufficient additional securities and thus defaults, the fund may be unable to realize the full value of the repurchase agreement upon liquidation of the collateral. In addition, high quality securities are generally more liquid than lower quality securities. A fund could more readily liquidate high quality securities in the event of a counterparty default.

[44] *See supra* note 28 and accompanying text.

under staff no-action positions, is designed to require the fund to determine whether the counterparty presents a serious risk of becoming involved in bankruptcy proceedings.[45] The Commission requests comment on the need for this evaluation of the counterparty's creditworthiness in light of the proposed requirement that repurchase agreements qualify for the preferred treatment now given to certain repurchase agreements under the Bankruptcy Code.[46]

B. Proposed Rule 5b–3(b): Treatment of Pre-Refunded Bonds

Proposed rule 5b–3 would codify for purposes of section 5(b)(1) the conditions specified in the staff's no-action position permitting a fund to treat an investment in a ''refunded security'' as an investment in the escrowed U.S. government securities for purposes of section 5(b)(1).[47] The rule, however, would not limit the amount of pre-refunded bonds of any one issuer that a fund could acquire.[48]

Under the proposed rule, a ''refunded security'' would be defined as a debt security the principal and interest payments of which are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and are pledged only to the payment of the debt security.[49] The escrowed securities must not be redeemable prior to their final maturity, and the escrow agreement must prohibit the substitution of the escrowed securities unless the substituted securities are also U.S. government securities.[50] Finally, an independent certified public accountant must have certified to the escrow agent that the escrowed securities will satisfy all scheduled payments of principal, interest and applicable premiums on the refunded securities.[51] This treatment corresponds to the treatment given to pre-refunded bonds in rule 2a–7.[52]

C. Availability of Rule 12d3–1 for Repurchase Agreements

The Commission also proposes to amend rule 12d3–1, which provides an exemption from the prohibition in section 12(d)(3) on acquiring an interest in a broker-dealer or a bank engaged in a securities-related business.[53] The amendment would affect only repurchase agreements that do not meet the conditions for looking through the agreements to the underlying collateral. As discussed above, if a fund enters into a repurchase agreement with a broker-dealer or other counterparty that is engaged in securities related activities, and the fund is unable to look through the agreement to the underlying collateral, the fund may be in violation of section 12(d)(3) of the Act.[54] Rule 12d3–1 provides an exemption from section 12(d)(3) under certain conditions, but a note appended to rule 12d3–1 currently makes the rule unavailable for repurchase agreements that fail to meet the requirements for look-through treatment set forth in Investment Company Act Release No. 13005 (''Release 13005'').[55] We are proposing to eliminate that note, and thus allow funds to rely on rule 12d3–1 even if the repurchase agreement does not meet the requirements of Release 13005. The Commission requests comment whether it is appropriate to permit funds to enter into repurchase agreements with broker-dealers when the transaction does not meet all of the requirements of proposed rule 5b–3, but does meet the requirements of rule 12d3–1.[56]

D. Conforming Amendments to Rule 2a–7

We are also proposing conforming amendments to rule 2a–7. These amendments would add to rule 2a–7 the requirement that a money market fund must evaluate the counterparty's creditworthiness in order to treat the acquisition of a repurchase agreement as an acquisition of the underlying securities.[57] In addition, the proposed amendments would replace the definitions of ''collateralized fully,'' ''event of insolvency,'' and ''refunded security,'' currently set forth in rule 2a–7 with cross references to the corresponding definitions set forth in proposed rule 5b–3.[58]

E. Request for Comments

Any interested persons wishing to submit written comments on the proposed rule and rule amendments that are the subject of this Release, to suggest additional provisions or changes to the rules, or to submit comments on other matters that might have an effect on the proposals contained in this Release, are requested to do so. The Commission specifically requests comment whether a fund should be allowed to look through any other types of investments to underlying securities for purposes of diversification, the prohibition of section 12(d)(3), or any other provision of the Investment Company Act. Commenters suggesting alternative approaches are encouraged to submit suggested rule text.

The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. We will consider these comments pursuant to our responsibilities under section 2(c) of the Investment Company Act.[59] The Commission encourages commenters to provide empirical data or other facts to support their views. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[60] the Commission also requests information regarding the potential impact of the proposed rule and rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. For the most part, the proposed rule would codify current staff positions. By codifying a number of staff no-action positions issued over a nearly twenty year period, the proposed rule should make it easier for funds to determine whether, and under what conditions,

[45] *See* Release 13005, *supra* note 16, at n.6.

[46] When we proposed amendments to rule 2a–7 in 1993, we requested comment on the need for a credit risk determination in light of the amendments to the Bankruptcy Code. 1996 Amendments Proposing Release, *supra* note 20, at n.173 and accompanying text. Most commenters urged that the determination be retained.

[47] Proposed rule 5b–3(b).

[48] *See* T. Rowe Price Tax-Free Funds, *supra* note 24.

[49] Proposed rule 5b–3(c)(4).

[50] Proposed rule 5b–3(c)(4)(i), (ii).

[51] Proposed rule 5b–3(c)(4)(iii). The proposed rule makes an exception to the certification requirement if the refunded security has received the highest rating from an NRSRO. *Id*.

[52] *See* rule 2a–7(a)(20), (c)(4)(ii)(B); *see also* 1996 Amendments Proposing Release, *supra* note 20, at section II.A.3.

[53] *See supra* note 5.

[54] *See supra* notes 5–7 and accompanying text.

[55] *See* Release 13005, *supra* note 16. Rule 12d3–1 provides an exemption for purchases of securities of any entity that derived fifteen percent or less of its gross revenues from securities related activities in its most recent fiscal year, unless the acquiring company would control the entity after the purchase. If the entity derived more than fifteen percent of its gross revenues from securities related activities, the rule provides a limited exemption based on the amount and value of the securities purchased. The note to the rule states: ''**Note**: It is not intended that this rule should supersede the requirements prescribed in Investment Company Act Release No. 13005 (Feb. 2, 1983) with respect to repurchase agreements with brokers or dealers.''

[56] A fund investing in a repurchase agreement that does not meet the requirements of the proposed rule would not be able to ''look through'' the agreement and must instead treat the counterparty to the agreement as the issuer.

[57] Proposed rule 2a–7(c)(4)(ii)(A). As noted above, this merely codifies a current staff requirement. *See supra* note 29.

[58] Proposed rule 2a–7(a)(5), (11) and (20) (cross-referencing proposed rule 5b–3(c)(1), (2), and (4)).

[59] 15 U.S.C. 80a–2(c).

[60] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

they are permitted to look through repurchase agreements or pre-refunded bonds to the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act. In addition, the proposed rule would use substantially the same standards currently specified in rule 2a–7 for the treatment of repurchase agreements and pre-refunded bonds by money market funds. With this uniform treatment, fund complexes that include money market funds may be more efficient in monitoring compliance with the requirements of the rules for all types of funds.

As discussed above, the proposed rule would be limited to repurchase agreements in which the underlying collateral consists of cash items, U.S. government securities, or other securities that meet certain quality standards. As proposed, the rule tracks the language of rule 2a–7, generally requiring any ''other securities'' to carry the highest rating of two national rating agencies (''NRSROs,'' as defined in the rule). This proposed requirement is intended to ensure that the market value of the collateral will remain fairly stable and that the fund will be able to liquidate the collateral quickly in the event of a default. This limitation on collateral is more restrictive than the staff's position with respect to the treatment of repurchase agreements for purposes of section 12(d)(3),[61] but it is less restrictive than the staff's position with respect to section 5(b)(1).[62] Since most repurchase agreements are collateralized by U.S. government securities, which clearly fall within the proposed rule's limitations, it appears that the limitation will not have any significant impact on funds.

The proposed rule is limited to repurchase agreements that qualify for an exclusion from any automatic stay under applicable insolvency law. Although this requirement is included in rule 2a–7, it was not a feature of the staff positions, which generally pre-dated the relevant changes in the Bankruptcy Code. Again, because most repurchase agreements qualify for an exclusion, this limitation should not have any significant impact on funds. The limitation will, however, provide important protections for investors by ensuring that a fund can liquidate the collateral quickly in the event of the counterparty's bankruptcy.

The proposed amendment to rule 12d3–1 would eliminate the ''Note'' to the rule that renders the rule unavailable to repurchase agreements. The Commission believes that funds should be allowed to rely on rule 12d3–1 in cases in which a repurchase agreement does not meet all of the conditions of proposed rule 5b–3. This amendment will provide additional flexibility for funds without impairing investor interests.

The Commission requests comment on the costs and benefits of the proposed rule and rule amendments. To the extent possible, please quantify any significant costs or benefits.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed rule 5b–3, and the conforming amendments to rules 2a–7 and 12d3–1. The IRFA indicates that the new rule would codify the staff's position that a fund may look through a fully collateralized repurchase agreement to the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act, and add the requirement of rule 2a–7 that the repurchase agreement qualify for an exclusion from any automatic stay of creditors' rights under applicable insolvency law. The IRFA indicates that proposed rule 5b–3 also would permit a fund to treat the acquisition of certain pre-refunded bonds as an acquisition of the escrowed securities for purposes of section 5(b)(1) of the Act. In addition, the IRFA explains that the proposed amendment to rule 12d3–1 would eliminate the ''Note'' appended to the rule in order to allow funds to rely on rule 12d3–1 even if the repurchase agreement is not collateralized fully. Finally, the IRFA states that the conforming amendments to rule 2a–7 are intended to simplify and update the provisions of that rule that address repurchase agreements and refunded securities.

The IRFA sets forth the statutory authority for the proposed rule and rule amendments. The IRFA also discusses the effect of the proposed rule and rule amendments on small entities. For purposes of the Investment Company Act and the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[63]

The IRFA states that proposed rule 5b–3 will affect (i) any fund that invests in a repurchase agreement with a broker, dealer, underwriter, or bank that is engaged in a securities-related business, when the investment may otherwise be prohibited by section 12(d)(3) of the Act, and (ii) any fund that holds itself out as a diversified investment company under section 5(b)(1) of the Act and that invests in repurchase agreements or pre-refunded bonds.

As of December 31, 1998, there were approximately 4,300 registered funds. Of this number, the Commission staff estimates that there are approximately 269 funds that are small entities. These funds could be affected by the proposed rule's treatment of investments in repurchase agreements for purposes of section 12(d)(3) of the Act. As of December 31, 1998, there were approximately 2,500 registered funds with one or more portfolios that hold themselves out to be diversified companies. Of this number, the Commission staff estimates that there are approximately 73 funds that are small entities. These funds could be affected by proposed rule's treatment of investments in repurchase agreements and pre-refunded bonds for purposes of section 5(b)(1) of the Act.

The IRFA explains that the proposed rule should not have a significant economic impact on these funds, including those that are small entities. It would not effect significant changes to the current treatment of repurchase agreements and pre-refunded bonds, but instead would codify and update a number of no-action positions that have been taken by the Commission staff.

The IRFA states that the proposed amendment to rule 2a–7 would affect money market funds. As of December 31, 1998, there were approximately 300 registered funds with one or more portfolios that are money market funds. Of this number, it is estimated that approximately 3 were small entities. The proposed amendment, however, would only update one aspect of rule 2a–7, and it appears that the updated provision would not require a change from current practice. The proposal thus should not have a significant economic impact on a substantial number of small entities.

The IRFA states that the proposed amendment to rule 12d3–1 will affect any fund that invests in a repurchase agreement with a broker, dealer, underwriter, or bank that is engaged in

[61] Release 13005, *supra* note 16, did not specify the type of collateral, merely noting that the ''securities most frequently used in connection with repurchase agreements are Treasury bills and other United States Government securities.''

[62] The staff's no-action position in MoneyMart Assets, *supra* note 10, was conditioned on the collateral consisting entirely of U.S. government securities.

[63] 17 CFR 270.0–10.

a securities-related business, when the investment may otherwise be prohibited by section 12(d)(3) of the Act. As stated above, there were approximately 4,300 registered funds as of December 31, 1998, of which approximately 269 funds were small entities. These funds would benefit from the proposed amendment to rule 12d3–1, which would allow funds to rely on that rule even if the repurchase agreement does not meet the requirements of the Commission staff positions.

The IRFA explains that the proposed rule and rule amendments would not impose any new reporting or recordkeeping requirements. The proposals do not involve major changes in compliance requirements because they mainly codify existing Commission staff positions. The IRFA states that the definition of ''collateralized fully'' in proposed rule 5b–3 supplements prior staff positions by requiring that the repurchase agreement qualify for an exclusion from any automatic stay of creditors' rights under applicable insolvency law. The definition also has been updated to reflect the 1994 revisions to the UCC. It appears, however, that this change generally would not require a change from current practice. There are no rules that duplicate, overlap or conflict with the proposed rule and rule amendments.

The IRFA discusses the various alternatives considered by the Commission that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule and rule amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities. The IRFA notes that the proposed rule and rule amendments are not intended to effect major substantive changes to the current treatment of repurchase agreements and pre-refunded bonds, but would essentially codify a number of no-action positions taken by the Commission staff. Because the proposed rule and rule amendments are designed to clarify the appropriate treatment of investments by funds in repurchase agreements and pre-refunded bonds for various purposes of the Act, and to provide investment flexibility for funds of all sizes, it would be inconsistent with the purposes of the Regulatory Flexibility Act to propose to exempt small entities from their coverage. Further clarification, consolidation, or simplification of the proposals, or specification of different compliance standards for small entities, would not be appropriate, because the proposals set forth the minimum standards consistent with investor protection. For the same reasons, the use of performance standards would be inappropriate. Overall, it appears that the proposed rule and rule amendments would not have an adverse effect on small entities.

The IRFA states that the Commission encourages the solicitation of comments with respect to any aspect of the IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed rule and rule amendments, and the likely impact of the proposals on small entities. A copy of the IRFA may be obtained by contacting Marilyn Mann, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

V. Statutory Authority

The Commission is proposing new rule 5b–3, and is proposing amendments to rule 2a–7 and to rule 12d3–1, pursuant to the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

2. Section 270.2a–7 is amended by revising paragraphs (a)(5), (a)(11), (a)(20) and (c)(4)(ii)(A) to read as follows:

§ 270.2a–7 Money market funds.

(a) *Definitions.* * * *

(5) *Collateralized Fully* means ''Collateralized Fully'' as defined in § 270.5b–3(c)(1).

* * * * *

(11) *Event of Insolvency* means ''Event of Insolvency'' as defined in § 270.5b–3(c)(2).

* * * * *

(20) *Refunded Security* means ''Refunded Security'' as defined in § 270.5b-3(c)(4).

* * * * *

(c) *Share Price Calculations.* * * *

(4) *Portfolio Diversification.* * * *

(ii) *Issuer Diversification Calculations.* * * *

(A) *Repurchase Agreements.* The Acquisition of a repurchase agreement may be deemed to be an Acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully and the fund's board of directors (or the person delegated by the board under paragraph (e) of this section) has evaluated the seller's creditworthiness.

* * * * *

3. Section 270.5b–3 is added to read as follows:

§ 270.5b-3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

(a) *Repurchase Agreements.* For purposes of sections 5 and 12(d)(3) of the Act (15 U.S.C. 80a–5, 80a–12(d)(3)), the acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the investment company is Collateralized Fully and the board of directors or its delegate has evaluated the seller's creditworthiness.

(b) *Refunded Securities.* For purposes of section 5 of the Act (15 U.S.C. 80a–5), the acquisition of a Refunded Security shall be deemed to be an acquisition of the escrowed Government Securities.

(c) *Definitions.* As used in this section:

(1) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the investment company reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price provided in the agreement;

(ii) The investment company has perfected its security interest in the collateral;

(iii) The collateral is maintained with the investment company's custodian or a third party that qualifies as a custodian under the Act;

(iv) The collateral consists entirely of cash items, Government Securities or other securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the Requisite NRSROs; and

(v) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(2) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(3) *Government Security* means any ''Government Security'' as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(4) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities (''deposited securities'') that have been irrevocably placed in an escrow account pursuant to an agreement between the issuer of the debt security and an escrow agent that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities shall not be redeemable prior to their final maturity;

(ii) The escrow agreement shall prohibit the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant shall have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; *provided, however,* an independent public accountant need not have provided the certification described in this paragraph (c)(4)(iii) if the security, as a Refunded Security, has received a rating from an NRSRO in the highest category for debt obligations (within which there may be sub-categories or gradations indicating relative standing).

(5) *NRSRO* means any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of § 240.15c3–1 of this chapter, that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security.

(6) *Requisite NRSROs* means:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the investment company acquires the security, that NRSRO.

(7) *Resale Price* means the acquisition price paid to the seller of the securities plus the accrued resale premium on such acquisition price. The accrued resale premium shall be the amount specified in the repurchase agreement or the daily amortization of the difference between the acquisition price and the resale price specified in the repurchase agreement.

4. Section 270.12d3–1 is amended by removing the appended Note.

By the Commission.

Dated: September 23, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–25253 Filed 9–28–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AA07

[Notice No. 882]

Diamond Mountain Viticultural Area (99R–223P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the Diamond Mountain viticultural area. This petition was submitted by Rudy von Strasser of Von Strasser Winery on behalf of the Diamond Mountain Appellation Committee, whose 15 growers and vintners represent 87 percent of the total vineyard holdings in the proposed area. The Diamond Mountain proposed viticultural area is located entirely within the Napa Valley viticultural area. The proposed viticultural area encompasses approximately 5,000 acres, of which approximately 450 acres are planted to vineyards.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 882). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226

FOR FURTHER INFORMATION CONTACT: Thomas B. Busey, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington DC 20226 (202) 927–8199.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On

October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing a new viticultural area to be called Diamond Mountain. The proposed viticultural area is located entirely in Napa County, California. The proposed area encompasses approximately 5,000 acres, of which approximately 450 acres are planted to vineyards.

Evidence That the Name of the Area is Locally or Nationally Known

According to the petitioner, Diamond Mountain has been home to vineyards and wineries since the 1860's. The petitioner presented evidence that a Mr. Joseph Schram planted his first vines as early as 1863 and had a hundred acres of vineyards by 1892.

According to the petitioner, the evolution of Diamond Mountain into a Napa Valley regional name began in the early decades of the 20th century, with Diamond Mountain School and Diamond Mountain Road being the first features in the region to bear the name. The naming of the school took place in 1909, with the major access road in the region designated as Diamond Mountain Road shortly thereafter.

The petitioner has also presented substantial evidence that the Diamond Mountain region began to gain national renown in the early 1970's, as expanding consumer interest in California wines resulted in new vineyards, new wineries and a greater awareness of regional wine character. As evidence for this national name the petitioner includes an excerpt from the second edition of *The Wines of America* by Leon Adams that states, ''Diamond Mountain, like Mt. Veeder and Spring Mountain also on the west side of Napa Valley, is regarded as a viticultural district separate from the rest of Napa Valley.''

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, precise boundaries for the region being proposed have never been delineated. The petitioner does, however, state that Diamond Mountain's viticultural history and identity are associated almost exclusively with the Napa Valley, in Napa County. For this reason, the boundaries of the proposed viticultural area are entirely within Napa County. According to the petitioner, the petition takes a conservative approach to establishing boundaries for Diamond Mountain. The petitioner states that special care has been taken to assure that the boundaries encompass only those lands that meet both the historic and geographic criteria for inclusion in the proposed viticultural area. Also, the boundaries have been drawn to respect neighboring regions with separate names, histories, geographic features and political boundaries.

The petitioner cites the Fourth Edition of ''The Connoisseurs' Handbook of the Wines of California and the Pacific Northwest'' for a description of the proposed area ''. . . a portion of the Napa Valley's western hills between St. Helena and Calistoga''. This citation is accompanied by a map which shows the rough limits of the region: Spring Mountain to the south, the 400 foot elevation that generally parallels Highway 29 to the east, Petrified Forest Road to the north and the Napa-Sonoma County line to the west.

The petitioner claims that the 400 foot contour line for the northeastern boundary accurately reflects the lowest elevation of vineyards historically associated with Diamond Mountain. The petitioner also claims that the southwestern boundary acknowledges the historic association of the proposed Diamond Mountain viticultural area with Napa County and Napa Valley, and also recognizes the differences in history and geography that distinguish Diamond Mountain from adjacent slopes of the Mayacama Mountains in Sonoma County.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

According to the petitioner, the geographical features in the proposed Diamond Mountain viticultural area clearly distinguish it from surrounding areas. The Diamond Mountain region is situated in the Napa Valley on the eastern slope of the Mayacamas Mountains. The region consists entirely of residual upland soils derived from volcanic parent material. According to the petitioner, these soils are very different from the alluvial soils on the floor of the Napa Valley to the east and northeast and are also significantly different from the sedimentary upland soils prevalent in the Spring Mountain viticultural area to the south. The petitioner also emphasizes that these soils are significantly different from the shallow, dry soils in Sonoma County to the west and southwest.

According to the petitioner, the proposed viticultural area's topography and aspect contribute to a special microclimate. Hillside topography and valley temperature inversions combine to give the region an unusually moderate temperate regime during a growing season, with lower maximum temperatures and higher minimum temperatures than nearby locations on the floor of the Napa Valley. The petitioner states that the microclimate of the Diamond Mountain region is clearly distinctive when compared to the surrounding areas. The region's microclimate is slightly warmer than that of the Spring Mountain District to the south, but somewhat similar due to comparable upland locations, northeastern (eastern, in Spring Mountain's case) aspects, and cooling influence of marine breezes from the Pacific Ocean. The microclimate is significantly cooler than the floor of the Napa Valley to its northeast and north, due to various tempering influences primarily associated with its upland location. So too is it cooler than adjacent land to the west in Sonoma County, due to its predominantly northeastern aspect which provides

oblique sun and shade in the afternoon, while the western aspect of the Mayacamas Mountains adjacent to the region in Sonoma County is clearly hotter and drier.

Proposed Boundaries

The proposed viticultural area is located in Napa County, California. The approved USGS maps for determining the boundary of the proposed Diamond Mountain viticultural area are, ''Mark West Springs, Calif.'', 7.5 minute series, edition of 1993, and the ''Calistoga, Calif.'', 7.5 minute series, edition of 1993.

The northeastern boundary follows the 400 foot contour line from Ritchey Creek northwest to the Petrified Forest Road and the northern boundary follows the Petrified Forest Road west from the 400 foot contour line to the Napa-Sonoma county line. The southwestern boundary follows the official boundary line between Napa and Sonoma counties southeast from Petrified Forest Road to the east-west boundary between Sections 18 and 19 in Township 8 North, Range 6 West, Mount Diablo Range and Meridian. The southern boundary follows the boundary between Sections 18 and l9, Sections 17 and 20 and Ritchey Creek east from the Napa-Sonoma county line to the 400 foot elevation line. It also corresponds with the Northern Boundary of the Spring Mountain District viticultural area.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½″ × 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information. The principal author of this document is Thomas B. Busey, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding Section 9.166 to read as follows

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.166 Diamond Mountain.

(a) *Name*. The name of the viticultural area described in this section is ''Diamond Mountain.''

(b) *Approved map*. The appropriate maps for determining the boundary of the Diamond Mountain viticultural area are two 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Mark West Springs, CA 1993

(2) Calistoga, CA 1993

(c) *Boundary*. The proposed viticultural area is located in Napa County, California. The beginning point is where the boundary between Napa and Sonoma counties intersects Petrified Forest Road in Section 3 of Township 8 North, Range 7 West, Mount Diablo Base and Meridian on the Mark West Springs map;

(1) Then north and east along Petrified Forest Road approximately 1.9 miles to the point where it intersects the 400 foot contour just east of Section 35 of Township 9 North, Range 7 West, Mount Diablo Base and Meridian, in the Mallacomes land grant;

(2) Then generally east southeast along the 400 foot contour approximately 6.5 miles to the point where it intersects Ritchey Creek in Section 3 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(3) Then west southwest along Ritchey Creek approximately 2.2 miles to the point where it intersects the boundary between Sections 17 and 20 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(4) Then due west in a straight line along the section boundary approximately 0.8 miles to the point where it intersects the boundary between Napa and Sonoma Counties between Sections 18 and 19 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(5) Then generally northwest along the boundary between Napa and

Sonoma Counties approximately 4.2 miles to the point where it intersects Petrified Forest Road, to the point of beginning.

Signed: September 21, 1999.

John W. Magaw,

Director.

[FR Doc. 99–25286 Filed 9–28–99; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–038–7165b; A–1–FRL–6445–3]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Stage II Comparability and Clean Fuel Fleets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve two State Implementation Plan (SIP) revisions that the New Hampshire Department of Environmental Services submitted to EPA: New Hampshire's Stage II comparability demonstration submitted on July 9, 1998 and Clean Fuel Fleets opt out submitted on June 7, 1994. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives 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. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 29, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State's submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and at the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047, for Stage II Comparability and Matthew B. Cairns, (617) 918–1667, for Clean Fuel Fleets.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 17, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–25157 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1893, MM Docket No. 99–289, RM–9668]

Digital Television Broadcast Service; Champaign, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Midwest Television, Inc., licensee of station WCIA(TV), NTSC 3, Champaign, Illinois, proposing the substitution of DTV Channel 5 for station WCIA(TV)'s assigned DTV Channel 48. DTV Channel 5 can be substituted and allotted to Champaign, Illinois, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 40–06–23 N. and 88–26–59 W. As requested, we also propose to modify WCIA(TV)'s authorization to specify operation on the alternate DTV Channel 5 at Champaign, Illinois, with a power of 4.5 (kW) and a height above average terrain (HAAT) of 287 meters.

DATES: Comments must be filed on or before November 9, 1999, and reply comments on or before November 24, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan D. Blake, Mary Newcomer Williams, Covington & Burling, 1201 Pennsylvania Avenue, NW, Post Office Box 7566, Washington, DC 20044–7566 (Counsel for Midwest Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–289, adopted September 17, 1999, and released September 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–25150 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1942, MM Docket No. 99–291, RM–9665]

Digital Television Broadcast Service; Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sarkes Tarzian, Inc., licensee of station KTVN(TV), NTSC 2, Reno, Nevada, proposing the substitution of DTV Channel 13 for station KTVN(TV)'s assigned DTV Channel 32. DTV Channel 13 can be substituted and allotted to Reno, Nevada, as proposed, in

compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 39–18–45 N. and 119–53–00 W. As requested, we propose to modify station KTVN(TV)'s construction permit to specify operation on DTV Channel 13 with a power of 12 (kW) and a height above average terrain (HAAT) of 906 meters.

DATES: Comments must be filed on or before November 15, 1999, and reply comments on or before November 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M. Madden, Esq., Leventhal, Senter & Lerman, Suite 600, 2000 K Street, NW, Washington, DC 20006–1809 (Counsel for Sarkes Tarzian, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–1942, adopted September 22, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–25149 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1883, MM Docket No. 99–286, RM–9713]

Radio Broadcasting Services; Albany, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Albany Broadcasting Company proposing the allotment of Channel 255A at Albany, Texas. The channel can be allotted to Albany in compliance with the Commission's spacing requirements at coordinates 32–43–36 NL and 99–17–42 WL.

DATES: Comments must be filed on or before November 8, 1999, and reply comments on or before November 23, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Audrey P. Rasmussen, O'Connor & Hannan, L.L.P., 1919 Pennsylvania, Avenue, NW, Suite 800, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–286, adopted September 8, 1999, and released September 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–25320 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1883, MM Docket No. 99–287, RM–9712]

Radio Broadcasting Services; Sulphur Bluff, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sulphur Bluff Radio Broadcasting Company proposing the allotment of Channel 259A at Sulphur Bluff, Texas. The channel can be allotted to Sulphur Bluff in compliance with the Commission's spacing requirements at coordinates 33–23–03 NL and 95–22–59 WL. There is a site restriction 2.7 kilometers (1.7 miles) northeast of the community.

DATES: Comments must be filed on or before November 8, 1999, and reply comments on or before November 23, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–287, adopted September 8, 1999, and released September 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th

Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–25321 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1870; MM Docket No. 99–77; RM–9489]

Radio Broadcasting Services; Frenchtown, MT

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document dismisses a petition for rule making filed by Idaho Broadcasting Consortium requesting the allotment of Channel 294C2 at Frenchtown, Montana. *See* 64 FR 14419, March 25, 1999. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–77, adopted September 8, 1999, and released September 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–25322 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1883, MM Docket No. 99–288, RM–9708]

Radio Broadcasting Services; Sister Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Michael J. Mesic proposing the allotment of Channel 286A at Sister Bay, Wisconsin. The channel can be allotted to Sister Bay in compliance with the Commission's spacing requirements at coordinates 45–11–18 NL and 87–07–18 WL. Canadian concurrence will be requested for the allotment of Channel 286A at Sister Bay.

DATES: Comments must be filed on or before November 8, 1999, and reply comments on or before November 23, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Michael J. Mesic, 12460 W. Duncan Lane, #206, New Berlin, Wisconsin 53151.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–288, adopted September 8, 1999, and released September 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–25323 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 188
Wednesday, September 29, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (committee).

DATES: The next meeting of the committee is scheduled for October 20 through 22, 1999, beginning at 9:00 a.m. and ending at 5:00 p.m. each day. An optional tour of the Paul Hall Maritime Center in Piney Point, Maryland, is scheduled for October 19, 1999.

ADDRESSES: The meeting will be held in the 3rd floor training room at 1331 F Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 19 (Voice); (202) 272–5449 (TTY). E-mail address: pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet site at http://www.access-board.gov/notices/pvaacmtg.htm.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The committee will meet on the dates and at the location announced in this notice. The meeting is open to the public. The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by October 12, 1999.

Optional Tour

In addition to the meeting, an optional tour is planned for the committee on October 19 to the Paul Hall Maritime Center (PHMC) in Piney Point, Maryland. The tour is open to the public. Individuals desiring to participate in the tour must contact Paul Beatty by October 5, 1999, to be added to the participant list. For further information on this tour, please contact Paul Beatty.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 99–25250 Filed 9–28–99; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Statement by Ultimate Consignee and Purchaser.

Agency Form Number: BXA–711.

OMB Approval Number: 0694–0021.

Type of Request: Extension of a currently approved collection of information.

Burden: 1,210 hours.

Average Time Per Response: 16 minutes per response.

Number of Respondents: 4,535 respondents.

Needs and Uses: The Form BXA–711 or letter puts the importer on notice of the special nature of the goods and receive a commitment against illegal disposition. In order to effectively control commodities, BXA must have sufficient information regarding the end-use and end-user of the U.S. origin commodities to be exported. The information will assist the licensing officer in making the proper decision on whether to approve or reject the application for the license.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 23, 1999.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–25364 Filed 9–28–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092299B]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Report of Whaling Operations.

Agency Form Number: None.

OMB Approval Number: 0648–0311.

Type of Request: Extension of an existing collection.

Burden: 49 hours.

Number of Respondents: 52.

Avg. Hours Per Response: Between 5 and 30 minutes depending on the requirement.

Needs and Uses: Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. The information is used by NMFS to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

Affected Public: Individuals, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer (202) 482–3272, Department of Commerce, Room 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 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: September 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–25238 Filed 9–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092499B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in October, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between October 4 and October 28, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Danvers, Saugus and Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, October 4, 1999, 10 a.m.—Social Sciences Advisory Committee Meeting

Location: New England Fishery Management Council Office, 5 Broadway (Route 1), Saugus, MA 01776; telephone: (781)–231–0422.

Review of Stock Assessment and Fishery Evaluation (SAFE) Report for the Atlantic Sea Scallop fishery; development of recommendations concerning social and economic impact analyses in fishery management plans; development of recommendations for peer review of social and economic impact analyses.

Tuesday, October 12, 1999, 9:30 a.m.—Experimental Fisheries and Research Steering Committee Meeting

Location: New England Fishery Management Council Office, 5 Broadway (Route 1), Saugus, MA 01776; telephone: (781)–231–0422.

Discussion of committee organization, purpose, tasks, process and information needs, followed by a report on the status of sea scallop total allowable catch research set-aside associated with the Closed Area II Georges Bank Exemption Program; committee discussion and development of recommendations on proposals submitted for funding through the scallop research set-aside and review of collaborative research opportunities available through the Disaster Assistance Program and other funding sources; briefing on the Massachusetts Recovery Commission's activities to develop research initiatives.

Thursday, October 21, 1999, 9:30 a.m.—Whiting Advisory Panel Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Review of alternatives proposed for Framework Adjustment 32 (whiting management measures) to the Northeast Multispecies Fishery Management Plan (FMP) and development of comments and recommendations for consideration by the Whiting Committee. Measures in Framework 32 include options for a mesh size/possession limit call-in enrollment system and options for the use of an outside net strengthener with 2.5–inch mesh. The Advisory Panel also will discuss possible alternatives for a limited access program to manage small mesh species. The program would be included in an amendment to the Multispecies FMP which would: (a) remove whiting, red hake, offshore hake, and ocean pout from the Multispecies FMP and (b) establish a separate Small Mesh Species FMP.

Thursday, October 28, 1999, 9:30 a.m.—Whiting Committee Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers MA 01923; telephone: (978) 777–2500.

The committee will review analyses forwarded by the Whiting Plan Development Team and recommendations from the Whiting Advisory Panel on the alternatives proposed for Framework Adjustment 32 (whiting management measures) to the Northeast Multispecies FMP. Measures in Framework 32 include options for a mesh size/possession limit call-in enrollment system and options for the use of an outside net strengthener with 2.5–inch mesh. The committee will develop preferred alternatives for recommendation to the Council. The committee also will continue development of limited access program alternatives to be included in the ''scoping'' process for an upcoming Multispecies FMP amendment. That action would remove whiting, red hake, offshore hake and ocean action would remove whiting, red hake, offshore hake and ocean pout from the Multispecies FMP and establish place them in a separate Small Mesh Species FMP.

Although non-emergency issues not contained in this notice 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 the meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are 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 dates.

Dated: September 23, 1999.

Richard W. Surdi,

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

[FR Doc. 99–25241 Filed 9–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990921259–9259–01]

Subject: National Weather Service (NWS) Modernization and Associated Restructuring

AGENCY: NWS, NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS publishes notice of proposed certifications for the consolidation, automation, and closure of the:

(1) Erie, Pennsylvania, Weather Service Office (WSO) which will be automated at Federal Aviation Administration (FAA) Weather Observation Service Level C and have its services consolidated into the Cleveland, Ohio, and the Pittsburgh and Central Pennsylvania Forecast Offices; and (2) Fairbanks, Alaska, WSO which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the Fairbanks forecast office.

DATES: comments are requested to be mailed by November 29, 1999.

ADDRESSES: Send all comments and requests for copies of proposed certification packages to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, Maryland 20910–3283.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 extension 136.

SUPPLEMENTARY INFORMATION: Pursuant to section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that consolidation, automation, and closure of an NWS field office will not result in a degradation of service to the affected area of responsibility and must propose such certifications in the FR for 60-days public comment. Having studied and evaluated the winter weather forecast capabilities and requirements to ensure no degradation of service to the Erie, Pennsylvania, service area, the NWS determined removal of the WSR–74C radar would cause a degradation of service for some lake-effect snow events. Accordingly, NWS will continue operating the WSR–74C radar at Erie during the winter season until a new FAA radar is installed at the Erie airport in 2001 and suitability of weather data from the FAA radar is validated by the NWS in consultation with users. The described actions to be undertaken by the NWS will prevent any degradation from occurring and, thus, notice is given of the proposed consolidation, automation, and closure of the Erie, Pennsylvania, WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the Cleveland, Ohio, and the Pittsburgh and Central Pennsylvania Forecast Offices.

The Fairbanks forecast office is now collocated with the University of Alaska at Fairbanks. Having transitioned all services to the Fairbanks forecast office and having verified no degradation of service, notice is given of the proposed consolidation, automation, and closure of the Fairbanks, Alaska, WSO which will be automated at FAA Weather Observation Service Level A and have the remainder of its services consolidated into the Fairbanks forecast office.

Documentation supporting each of these proposed certifications includes the following:

(1) A draft memorandum by the meteorologist in charge recommending the certifications, the final of which will be concurred with by the Regional Director and the Assistant Administrator of the NWS, if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of services provided within the service area to services to be provided after such action;

(4) A description of recent or expected modernization of NWS operations which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the Doppler weather surveillance radar network (WSR–88D);

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the preliminary conclusion that no degradation in service would result from such action, including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the Decommissioning Readiness Report, where appropriate;

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the preliminary conclusion that no degradation in service will result from such action, including the Automated Surface Observing System (ASOS) commissioning report;

(8) Three letters between NWS and FAA confirming weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning;

(9) Surface Aviation Observation Transition Checklist documenting transfer of augmentation and back-up responsibility from NWS to FAA;

(10) Demonstration of the successful resolution of any ASOS user confirmation of services complaints;

(11) Documentation of an in-place supplementary data program at the responsible forecast office;

(12) Where appropriate, warning and forecast verification statistics for pre-modernized and modernized services utilized in determining services have not been degraded;

(13) An Air Safety Appraisal for offices on an airport; and

(14) A letter appointing a liaison officer for the action.

Section 706 of Pub. L. 102–567 establishes the Modernization Transition Committee to advise the Secretary of Commerce on proposed modernization actions. The Committee has the option to submit a report to the Secretary in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. For the proposed certifications covered by this notice, there is no report of the Committee. In December 1995, the Committee decided to forego the

optional consultation on proposed certifications. Instead, the Committee decided to review certifications only after the public comment period closes so that its consultation includes the benefit of all public comments received. This notice does not publish the complete certification packages because they are too voluminous. Copies of the certification packages can be obtained from the contact listed above.

Once public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a final decision to certify an office is made, the Secretary of Commerce must publish final certifications in the FR and transmit them to the appropriate congressional committees prior to consolidating, automating, and closing the office.

Dated: September 23, 1999.

Irwin T. David,

Chief Financial Officer/Chief Administrative Officer National Weather Service.

[FR Doc. 99–25287 Filed 9–28–99; 8:45 am]

BILLING CODE 3510–KE–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removing a Company From List of Companies From Which Customs Shall Deny Entry to Textiles and Textile Products

September 24, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs not to apply the directive regarding denial of entry to shipments from a certain company.

EFFECTIVE DATE: September 29, 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.

In 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), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, including a recent on-site verification of this company's textile product production, CITA has determined that E. Tin Chong Ou, Fabrica de Fia. Vestuario, one of the listed companies, should not be subject to that directive. Effective on September 29, 1999, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by this company. CITA expects that Customs will conduct additional on-site verifications of this company's production when possible.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 24, 1999.

Commissioner of Customs
Department of Treasury, Washington, DC 20229

Dear Commissioner: In the letter to the Commissioner of Customs, dated July 27, 1999 (64 FR 41395), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, including a recent on-site verification of this company's textile product production, CITA has determined that E. Tin Chong Ou, Fabrica de Fia. Vestuario, one of the listed companies, should not be subject to that directive. Effective on September 29, 1999, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by this company. CITA expects that Customs will conduct additional on-site verifications of this company's production when possible.

CITA has determined that this action falls 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. 99–25317 Filed 9–24–99; 2:36 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Commercial Science and Technology will meet to review and assess European intermediate to long-term commercial Science and Technology investment strategy in areas related to Department of the Navy dependence upon commercial off-the-shelf products, in an effort to identify mutually beneficial opportunities for Department of the Navy Science and Technology collaboration with commercial industrial sectors. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Thursday, October 7, 1999, from 8:30 a.m. to 3:00 p.m.

ADDRESS: The meeting will be held at the Jorge Scientific Corporation, 1225 Jefferson Davis Highway, 6th Floor, Suite 600, Crystal Gateway Two, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

Dated: September 22, 1999.

J.L. Roth,

Lieutenant Commander, U.S. Navy, Office of the Judge Advocate General, Federal Register Liaison Officer.

[FR Doc. 99–25256 Filed 9–28–99; 8:45 am]

BILLING CODE 3810–FF–P

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting; Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., November 2, 1999.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m.—Meeting—Board of Regents

(1) Approval of Minutes—August 2, 1999

(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: September 24, 1999.

Linda Bynum,

OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 99–25399 Filed 9–27–99; 10:26 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 29, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues:

(1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 23, 1999.

John Tressler,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Reinstatement.

Title: Applicants Proposed Budget Information.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Burden: Responses: 17,248; Burden Hours: 301,840.

Abstract: This collection is necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED used for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budgets to be negotiated at the time of initial award (ED FORM 524).

Written comments or requests for copies of the proposed information collection request should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address OCIO—IMG—Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or by e-mail at jackie—montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–25272 Filed 9–28–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Advisory Committee on Appliance Energy Efficiency Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advisory Committee on Appliance Energy Efficiency Standards. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: October 21, 1999, 9 am–4:45 pm

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW, Room 1E–245, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–1851 or 586–7819; or Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945.

SUPPLEMENTARY INFORMATION: The Charter of the Advisory Committee has been renewed for two years to December 2000, and new members have been appointed to the Committee. This is the second meeting of the Committee since the charter was renewed. The Committee will review and deliberate on DOE's activities and provide comments and recommendations to the Department.

Purpose of the Meeting

- Update members on DOE rulemaking: schedule, priorities, and plans for fiscal year 2000.
- Discuss how changes to the rulemaking process are working.
- Update members on commercial equipment standards.
- Discuss consumer pricing and marketing anomalies, identify appliance

market trends and predictions, and make recommendations as to how DOE should perform pricing analyses.

• Discuss DOE's perspective on standards enforcement issues; recommend improvements.

• Establish subcommittees to advise DOE as rulemakings are published.

Preliminary Agenda

9 am–9:20 am Introductions, agenda review, and meeting ground rules
9:20 am–9:30 am Chairman's Opening Remarks
9:30 am–10 am Update members on status of DOE rulemaking
10 am–11:30 am Discuss how changes to the rulemaking process are working
11:30 am–11:45 am Break
11:45 am–12:30 pm Commercial equipment standards
12:30 pm–1:30 pm Lunch
1:30 pm–2:30 pm Discuss consumer pricing and marketing anomalies, market trends, and alternative approaches for DOE pricing analyses
2:30 pm–3:30 pm Present DOE standards enforcement issues
3:30 pm–3:45 pm Break
3:45 pm–4:15 pm Action Items and Next Meeting; organize subcommittees
4:15 pm–4:30 pm Public Comment
4:30 pm–4:45 pm Chairman's Closing Remarks
4:45 pm Adjourn

Please note that this draft agenda is preliminary. The times and agenda items listed are guidelines and are subject to change. A final agenda will be available at the meeting on Thursday, October 21, 1999.

Consumer Issues: The Department is interested in addressing consumer issues in its rulemakings. If you have any issues which you would like to be addressed by the Committee, please contact Linda Graves at the address and phone number listed above in the **FOR FURTHER INFORMATION CONTACT** section.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. Please provide ten copies of your statement to Brenda Edwards-Jones at the address listed above in the **FOR FURTHER INFORMATION CONTACT** section. If you would like to make oral statements regarding any of the items on the agenda, you should contact Brenda Edwards-Jones at 202–586–2945. You must make your request for an oral statement at least seven days before the meeting. Presentations will be limited to five minutes. We will try to include the statement in the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the DOE's Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 23, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–25283 Filed 9–28–99; 8:35 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–31–002]

Consumers Energy Company; Notice of Application

September 23, 1999.

Take notice that on September 16, 1999, Consumers Energy Company (Consumers) filed an amendment to the applications in Docket Nos. ES98–31–000 and ES98–31–001 under Section 204 of the Federal Power Act. The amendment requests a waiver of the competitive bidding or negotiated placement requirements of 18 CFR 34.2, with regard to the issuance of trust-originated Preferred Securities evidencing preferred undivided beneficial interests in the assets of a statutory business trust formed under the laws of the State of Delaware.

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 and protests should be filed on or before October 1, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–25271 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

September 23, 1999.

Take notice that on August 27, 1999, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1999:

Thirty-Fifth Revised Sheet No. 8A
Twenty-Sixth Revised Sheet No. 8A.01
Twenty-Seventh Revised Sheet No. 8A.02
Thirty-First Revised Sheet No. 8B
Twenty-Fourth Revised Sheet No. 8B.01

FGT states that Section 27 of the General Terms and Conditions (GTC) of its Tariff provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing to establish an FRCP of 2.75% to become effective October 1, 1999 based on the actual company fuel use, lost and unaccounted for volumes, and Market Area deliveries for the period from October 1, 1998 through March 31, 1999. FGT further states that it is filing to establish a Winter Period UFS of $0.0028 per MMBtu to become effective October 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–25290 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–1–506–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 23, 1999.

Take notice that on September 20, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing to be effective November 1, 1999.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to: (1) Update the General Terms and Conditions and the Form of Service Agreements for address and telephone number changes; (2) delete the prefix in the date area of the Form of Service Agreements to be Y2K complaint; (3) delete attest/witness from the signature page of the Form of Service Agreements to reflect the move toward electronic execution of contracts; (4) update the marketing affiliate information in the General Terms and Conditions Section 23 as necessitated by the acquisition of Panhandle by CMS Energy Corporation; (5) update the Preliminary Statement; and (6) make minor revisions to reduce the size of Exhibit A to the Capacity Release Service Agreement to enable Panhandle to autofax Exhibit A to the replacement shipper.

Panhandle states copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the 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. 99–25266 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–020]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate and Material Deviation Filing

September 23, 1999.

Take notice that on September 20, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing three firm service agreements and amendments thereto and a description of the essential conditions involved in agreeing to three (3) negotiated arrangements to be effective on November 1, 1999 and four (4) negotiated rate arrangements to be effective on November 2, 2000 (collectively, the Negotiated Rate Arrangements). Tennessee states that three of the amendments to the firm service agreements are being filed as non-conforming service agreements. Tennessee also filed Seventh Revised Sheet No. 413 Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1.

Tennessee states that the tariff sheet references the three amendments as non-conforming service agreements. Tennessee requests that the Commission approve the Negotiated Rate Arrangements by October 15, 1999 to be effective on November 1, 1999 and November 2, 2000, as applicable. Tennessee requests that the Commission approve the non-conforming service agreements and the tariff sheet by October 15, 1999 to be effective on November 1, 1999.

Tennessee states that the filed Negotiated Rate Arrangements reflect negotiated rates between Tennessee and the Berkshire Gas Company (Berkshire) for transportation and storage service, as applicable, under various firm transportation and storage service agreements for four (4) or five (5) year periods with each to be effective beginning November 1, 1999 or November 2, 2000.

In addition, Tennessee states that it is filing the three amendments as non-conforming service agreements pursuant to Section 154.1(d) of the Commission's Regulations because the three amendments contain provisions which may ''deviate in [a] material aspect'' from Tennessee's pro forma firm service agreements.

Tennessee states that copies of the filing have been mailed to all of Tennessee's customers and affected state regulatory commissions.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 30, 1999. Protests will be considered by the Commission to determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–25267 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–65–001]

Wyoming Interstate Company, Ltd.; Notice of Cancellation of Tariff

September 23, 1999.

Take notice that on September 10, 1999, Wyoming Interstate Company Ltd. (WIC) tendered for filing a supplement to the filing that was made on August

23, 1999 in the above referenced docket, by filing Second Revised Sheet No. 1 which is a Notice of Cancellation of Entire Tariff.

WIC moves to place this tariff sheet into effect on October 1, 1999 and respectfully requests any waivers that may be necessary for the Commission to allow the tariff sheet to become effective October 1, 1999.

Any person desiring this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–25270 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–232–000, et al.]

Coastal Itabo, Ltd., et al. Electric Rate and Corporate Regulation Filings

September 21, 1999.

Take notice that the following filings have been made with the Commission:

1. Coastal Itabo, Ltd.

Docket No. EG99–232–000

Take notice that on September 17, 1999, Coastal Itabo, Ltd. (Applicant), P.O. Box 1111, George Town, Grand Cayman, Cayman Islands, B.W.I. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a Cayman Islands Corporation intends to own, directly, or indirectly through one or more affiliates, certain power generating facilities in Dominican Republic.

Comment date: October 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Sunbury Generation, LLC

Docket No. EG99–233–000

Take notice that on September 17, 1999, Sunbury Generation, LLC, a Delaware limited liability company with its headquarters at 677 Baeten Road, Green Bay, Wisconsin, 54304, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sunbury Generation, LLC is a single member limited liability company wholly-owned by Sunbury Holdings, LLC, a single member limited liability company wholly-owned by WPS Power Development, Inc. (PDI). PDI, in turn, is a wholly-owned, indirect subsidiary of WPS Resources Corporation, headquartered in Green Bay, Wisconsin. WPS Resources Corporation is an exempt public utility holding company. Its subsidiaries include Wisconsin Public Service Corporation, an electric and natural gas public utility serving portions of northeastern Wisconsin and the upper peninsula of Michigan, and Upper Peninsula Power Company, an electric public utility serving portions of the Upper Peninsula of Michigan. Sunbury Generation, LLC will be taking title to and operating certain assets located in Pennsylvania being divested by PP&L Resources, Inc., PP&L, Inc., and Lady Jane Collieries, Inc. Among the assets is the Sunbury Steam Electric Station, which includes four coal-fired generating units, two combustion turbines and two diesel units with total nameplate capacity of 472.5 MW. The Pennsylvania Public Utilities Commission has determined that Sunbury Steam Electric Station is an ''eligible facility'' because its acquisition and operation of the units will benefit consumers, is in the public interest, and does not violate State law. See Order, Docket no. R–00973954, Pennsylvania Public Utility Commission, September 15, 1999.

Comment date: October 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. National Fuel Resources, Inc.; NFR Power, Inc. TransAlta Energy Marketing (U.S.) Inc.; and TransAlta Energy Marketing Corp.

[Docket Nos. ER95–1374–016; ER96–1122–013; ER98–3184–005; and ER96–1316–014]

Take notice that on September 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Zapco Power Marketers, Inc.

[Docket No. ER98–689–006]

Take notice that on September 16, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only.

5. 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 September 16, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Amendment No. 1 to Supplement No. 35 to complete filing requirements for one (1) new Customer of 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: October 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Sithe Pennsylvania Holdings, LLC; Sithe New Jersey Holdings, LLC; Sithe Maryland Holdings, LLC; York Haven Power Company

[Docket No. ER99–4245–000]

Take notice that on September 16, 1999, Sithe Pennsylvania Holdings, LLC (Sithe Pennsylvania), Sithe New Jersey Holdings (Sithe New Jersey), and Sithe Maryland Holdings (Sithe Maryland), and York Haven Power Company (York Haven) (collectively, the Applicants) submitted for acceptance Applicants' proposed Amended Rate Schedules No.

2. Applicants request certain authority to make sales of specified ancillary services at market based rates in the geographic region encompassed by the PJM Interconnection, L.L.C. (PJM), request certain blanket authorizations concerning the sale of additional ancillary services in PJM and ancillary services in other geographic markets, and request waiver of the Commission's Regulations consistent with those waivers granted to entities with market-based rate authority.

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER99–4456–000]

Take notice that on September 16, 1999, Cinergy Services, Inc. (Services) tendered for filing on behalf of its operating companies, PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated August 1, 1999, to the Interconnection Agreement, dated July 1, 1993, between The City of Logansport, Indiana (Logansport), PSI and Services.

Logansport and PSI have agreed to replace several sections to the current language being used and adding a new Service Schedule F—Peaking Capacity and Energy.

Copies of the filing were served on Logansport and the Indiana Utility Regulatory Commission.

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER99–4457–000]

Take notice that on September 16, 1999, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Commonwealth Edison Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of September 3, 1999 for the Agreements with Commonwealth Edison.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Rocky Road Power, LLC

[Docket No. ER99–4459–000]

Take notice that on September 16, 1999, Rocky Road Power, LLC filed its quarterly report for the quarter ending June 30, 1999.

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER99–4468–000]

Take notice that on September 16, 1999, Southwestern Electric Power Company (SWEPCO) filed a revised signature page to the Interconnection Agreement between SWEPCO and Tenaska Gateway Partners, Ltd. (Tenaska) filed in Docket No. ER99–3712–000 on July 23, 1999. SWEPCO requests an effective date of July 24, 1999 for the revised signature page to the Interconnection Agreement.

SWEPCO requests that the Commission accept the revised signature page to the Agreement to become effective as of July 24, 1999, the effective date of the Agreement.

SWEPCO states that a copy of the filing was served on Tenaska and the Public Utility Commission of Texas.

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER99–4469–000]

Take notice that Cinergy Services, Inc. (Services) on September 15, 1999, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively Cinergy Operating Companies) a Letter Agreement, dated August 9, 1999, as a supplement to the Service Agreement, dated March 17, 1997, as supplemented, between Edgar Electric Cooperative Association (Edgar) and the Cinergy Operating Companies.

Edgar and the Cinergy Operating Companies have agreed to procedures for the curtailment of some of Edgar's load.

Copies of the filing were served on Edgar and the State Regulatory Commissions of Illinois, Ohio, Kentucky and Indiana.

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ES99–31–000]

Take notice that on March 1, 1999, UtiliCorp United Inc. (UtiliCorp) filed an application seeking authorization to issue corporate guaranties in an amount not to exceed one billion dollars (U.S.) in support of long-term debt and related obligations to be issued by one or more UtiliCorp subsidiaries in connection with the acquisition of foreign gas and/or electric utility assets. On March 16, 1999, UtiliCorp filed a letter requesting the Commission defer consideration on their application until they submitted the required Board of Directors Resolutions for the application. On September 13, 1999, UtiliCorp filed the required Board of Directors Resolutions and requested that the Commission take action on their application.

Comment date: October 8, 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. 99–25288 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF99–4081–000, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

September 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Southwestern Power Administration

[Docket No. EF99–4081–000]

Take notice that on September 17, 1999, the Secretary, U.S. Department of Energy, submitted to the Federal Energy Regulatory Commission (Commission)

for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, an annual power rate of $337,932 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Robert Douglas Willis Hydropower Project (Robert D. Willis) to the Sam Rayburn Municipal Power Agency (SRMPA). The rate was confirmed and approved on an interim basis by the Secretary in Rate Order No. SWPA–41 for the period October 1, 1999, through September 30, 2003, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of $302,928, which the Commission approved on a final basis April 28, 1998, under Docket No. EF98–4081–000 for the period January 1, 1998, through September 30, 2001. The annual rate of $337,932 is based on the 1999 Revised Power Repayment Study for Robert D. Willis and represents an annual increase in revenue of $35,004, or 11.6 percent, to satisfy repayment criteria.

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. MIECO, Inc.

[Docket Nos. ER98–51–006 and ER98–51–007]

Take notice that on September 16, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-docketed proceeding for information only.

3. Western Energy Marketers, Inc.

[Docket No. ER98–537–000]

Take notice that on September 20, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-docketed proceeding for information only.

4. Capital Center Generating Company, L.L.C.

[Docket No. ER99–4458–000]

Take notice that on September 16, 1999, Capital Center Generating Company, L.L.C. (Capital Center) tendered for filing with the Federal Energy Regulatory Commission, under Rate Schedule 1, for informational purposes, a Contract for the Purchase and Sale of Electric Energy between Capital Center and CCEI, LLC and a Contract for the purchase and Sale of Energy between Capital Center and DownCity Energy Company LLC (collectively, the Agreements).

Comment date: October 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

[Docket No. ER98–4510–002]

Take notice that on September 20, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. and its jurisdictional subsidiaries (O&R), filed a letter requesting that the effective date of the revised tariff sheets, which were filed on August 9, 1999 amending the Consolidated Edison Operating Companies FERC Electric Tariff Original Volume No. 1 (Joint OATT), be deferred to November 1, 1999.

The proposed tariff sheets were filed in compliance with the requirement of the January 27, 1999 order in this proceeding (86 FERC ¶ 61,063) that Con Edison and O&R establish rates to apply under the Joint OATT in the event that the New York Independent System Operator (NY ISO) was not operational by the date of the Con Edison and O&R merger. Because the NY ISO is scheduled to commence operation on October 12, 1999, Con Edison and O&R propose to defer the effective date of the Joint OATT rates.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No. ER99–2285–001]

Take notice that on September 20, 1999, Duke Energy Corporation tendered for filing a compliance filing in the above-referenced docket.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER99–4471–000]

Take notice that on September 20, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing a request to modify its California Independent System Operator Corporation (ISO) Grid Management Charge (GMC) Tariff to incorporate changes that remove a telecommunications charge and add a mechanism for recovery of Western Systems Coordinating Council fines. The ISO on June 17, 1999, tendered for filing a Section 205 (Amendment No. 17) request for approval to modify its tariff including the GMC. The Commission on August 16, 1999, conditionally accepted the tariff revisions and other proposals filed by the ISO. This filing seeks to keep PG&E's Pass-Through rate and tariff in conformity with the ISO's GMC rate and tariff.

This filing is part of the comprehensive restructuring proposal for the California electric power industry that is before the Federal Energy Regulatory Commission. Copies of this filing have been served upon the California Public Utilities Commission and all other parties on the Service List to this proceeding.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER99–4472–000]

Take notice that on September 20, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APCo), filed an amendment to the Amended and Restated Agreement for Partial Requirements and Complimentary Services Between APCo and the Alabama Municipal Electric Authority (AMEA) (APCo. No. 168) (PR Agreement). The amendment is being made at AMEA's request, and its purposes is to revise the PR Agreement to provide that the fuel clause adjustment thereunder shall be made on an actual basis instead of based upon an estimated amount.

An effective date of October 1, 1999 is requested.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER99–4473–000]

Take notice that on September 20, 1999, Wisconsin Electric Power Company (Wisconsin Electric or the Company), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and Basin Electric Power Cooperative (Basin). The Transmission Service Agreement allow Basin to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on BEPCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–4474–000]

Take notice that on September 20, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing fully executed Netting Agreements between LG&E/KU and the following entities:

Avista Energy, Inc.
The Energy Authority (TEA)

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER99–4475–000]

Take notice that on September 20, 1999, Western Resources, Inc., tendered for filing an agreement between Western Resources, Inc., and the City of Winfield. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective August 31, 1999.

Copies of the filing were served upon the City of Winfied and the Kansas Corporation Commission.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Upper Peninsula Power Company

[Docket No. ER99–4476–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with Wisconsin Electric Power Company (WEPCO) dated as of September 21, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to WEPCO from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has proposed to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Upper Peninsula Power Company

[Docket No. ER99–4477–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted electric service agreement with IES Utilities, Inc., Interstate Power Company and Wisconsin Power & Light Company (collectively, the Alliant Companies) dated as of September 21, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to the Alliant Companies from the time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has proposed to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Upper Peninsula Power Company

[Docket No. ER99–4478–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with Commonwealth Edison Company (Commonwealth) dated as of April 14, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to Commonwealth from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has asked for waiver of the FERC's Regulations to the extent necessary to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Upper Peninsula Power Company

[Docket No. ER99–4479–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with Illinois Power Company (Illinois Power) dated as of September 21, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to Illinois Power from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has proposed to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Upper Peninsula Power Company

[Docket No. ER99–4480–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with NSP Energy Marketing (NSP) dated as of September 21, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to NSP from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has proposed to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Upper Peninsula Power Company

[Docket No. ER99–4481–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with Union Electric Company and Central Illinois Public Service Company (collectively, the Ameren Companies) dated as of July 23, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to the Ameren Companies from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has asked for waiver of the Commission's Regulations to the extent necessary to make the Agreement effective as of July 23, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Upper Peninsula Power Company

[Docket No. ER99–4482–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with MPEX, a division of Minnesota Power Company (MPEX) dated as of September 21, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to MPEX from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has proposed to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Upper Peninsula Power Company

[Docket No. ER99–4483–000]

Take notice that on September 20, 1999, Upper Peninsula Power Company (UPPCO), tendered for filing an unexecuted Electric Service Agreement with Madison Gas & Electric Company (MG&E) dated as of September 21, 1999 (the Agreement). UPPCO states that the Agreement establishes a framework under which UPPCO may provide capacity and energy to MG&E from time to time pursuant to service schedules appended to the Agreement for General Purpose Energy and Emergency Energy.

UPPCO has proposed to make the Agreement effective as of September 21, 1999.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Merchants, L.L.C.

[Docket No. ER99–4485–000]

Take notice that on September 20, 1999, Duke Energy Merchants, L.L.C. (DEM), tendered for filing FERC Electric Rate Schedule No. 2—Market-Based Rates Tariff, which amend its existing market-based rate schedule.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4486–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Cargill-Alliant, LLC. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4487–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and TransAlta Energy Marketing (U.S.), Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4488–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Strategic Energy. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4489–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Simpler Energy. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4490–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Merchant Energy Group of the Americas, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4491–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service

Agreement between CHG&E and Florida Power & Light Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Central Hudson Gas & Electric Corporation

[Docket No. ER99–4492–000]

Take notice that on September 20, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and DukeSolutions Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 8, 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. 99–25289 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Surrender Exemption and Soliciting Comments, Motions To Intervene, and Protests

September 23, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No:* 7918–003.

c. *Date Filed:* August 6, 1999.

d. *Applicant: Robert R. Conner.*

e. *Name of Project:* Walker Mill.

f. *Location:* On the West Prong of the Little Pigeon River, in Sevier County, Tennessee. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h *Applicant Contact:* Mr. Robert R. Conner Investments, L.L.C.—P.O. Box 6939, Sevierville, TN 378644, (423) 428–3233 and (423) 873–0959.

i, *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing comments and motions:* October 25, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E, Washington, DC 20426.

Please include the project number (7918–003) on any comments or motions filed.

k. *Description of Request:* The exemptee requests to surrender the Walker Mill Project because it is no longer economically feasible to maintain.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 1A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210. 211. 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–25268 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 5679–019.

c. *Date Filed:* July 6, 1999.

d. *Applicant:* Toutant Hydropower, Inc.

e. *Name of Project:* Toutant Water Power Project.

f. *Location:* On the Quinebaug River, Windham County, Connecticut.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Roland Toutant, Toutant Hydropower, Inc., 80 Bungay Hill Road, Woodstock, CT 06281, (860) 974–2099.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at mohamad.fayyad@ferc.fed.us or 202–219–2665.

j. *Deadline for filing comments and/or motions:* October 29, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (5679–019) on any comments or motions filed.

k. *Description of Filing:* By order issued March 10, 1998, the Commission authorized the licensee to increase the generating capacity of the project by adding another generating station with an installed capacity of 234 kW. The proposed station is an existing non-operational facility, which is located in the Powhattan Mill building across the river from the project's 400-kW powerhouse. In its filing on July 6, 1999, the licensee says that currently the addition of the 234 kW of generating capacity is not economically feasible. Therefore, the licensee requests an amendment to revert its license back to its condition prior to the March 10, 1998 order. The construction of the additional capacity has never begun.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm, (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item ''h'' above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those whole file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–25269 Filed 9–28–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6446–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, New Source Performance Standard (NSPS) for Surface Coating of Beverage Cans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standard (NSPS) for Surface Coating of Beverage Cans, 40 CFR part 60, subpart WW, OMB Number 2060–0001, expiration 1/31/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0663.07.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standard (NSPS) for Surface Coating of Beverage Cans, 40 CFR part 60, subpart WW, OMB Number 2060–0001, expiration 1/31/00. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Surface Coating of Beverage Cans were proposed on November 26, 1980, and promulgated on August 25, 1983. These standards apply to each beverage can surface coating operation in which organic coatings are applied (exterior base coat operations, over varnish coating operations, and inside spray coating operations) that commenced construction, modification or reconstruction after November 26, 1980. Approximately 18 sources are currently subject to the standard, and it is estimated that 2 sources per year will become subject to the standard while an equal number will go off-line during this time period. It is further assumed that there is an average of four affected facilities per plant. Volatile Organic Compounds (VOCs) are the pollutants

regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart WW.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $370,767 over the next three years (including labor hours, operating & maintenance costs, and start up costs; $123,589 × 3 years). All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 1, 1999: no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 29 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of the Beverage can Surface Coating Industry.

Estimated Number of Respondents: 24.

Frequency of Response: Initial, Quarterly, and Semiannual Reports.

Estimated Total Annual Hour Burden: 3,092 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $50,000

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0663.07, and OMB Control No. 2060–0001 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–25306 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6446–9]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chair. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits names to fill these five vacancies, with appointed terms ending on December 15, 2002.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face to face meetings each year, generally in the Spring and Fall. Additionally, members could be asked to serve on one of the Council's working groups that are formed to assist the EPA in major program issue development. Working group meetings are held approximately four times a year, with two of the meetings conducted by conference call.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street, SW., Washington, DC 20460, no later than October 22, 1999. The Agency will not formally acknowledge or respond to nominations. E–Mail your questions to *shaw.charlene@epamail.epa.gov* or call 202/260–2285.

Dated: September 23, 1999.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–25309 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6447–3]

Notice of EPA Policy Regarding Certain Grants to Intertribal Consortia

AGENCY: Environmental Protection Agency.

ACTION: Notice of EPA policy regarding certain grants to intertribal consortia.

SUMMARY: In the absence of clear Congressional intent to the contrary and in accordance with the definition and requirements set forth, EPA interprets its statutory authorities to award grants to Indian tribes to include the authority to award grants to intertribal consortia under the following EPA grant programs for Indian tribes: Pesticides Program Implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Pesticides Enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Superfund Cooperative Agreements (section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act); Leaking Underground Storage Tanks (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999); Underground Storage Tank Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999); and Hazardous Waste Management Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999.)

EFFECTIVE DATE: The effective date for this policy is September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Charlene Dunn, phone (202) 260–9466, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response (Mail Code 5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

SUPPLEMENTARY INFORMATION: For information regarding applicability of this policy to the following EPA grant programs for Indian tribes: Superfund Cooperative Agreements (section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act); Leaking Underground Storage Tanks (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Publc Law 105–276, 112 Stat. 2461, 2497–98 (1998)); Underground Storage Tank Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2499 (1998)); and Hazardous Waste Management Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2499 (1998)). Contact Caren Rothstein, phone (202) 260–0065, Office of Program Management Operations, Office of Prevention, Pesticides and Toxic Substances (Mail Code 7101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, for information regarding applicability of this policy to the Pesticides Program Implementation grant programs for Indian tribes: (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act). Contact Jack Neylan, phone (202) 564–2385, Enforcement Planning, Targeting and Data Division, Office of Compliance, Office of Enforcement and Compliance Assistance (Mail Code 2222A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, for information regarding applicability of this policy to the Pesticides Enforcement grant programs for Indian tribes: (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

With this notice, EPA announces its policy regarding the award of financial assistance to intertribal consortia under the following EPA grant programs for Indian tribes: Pesticides Program Implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Pesticides Enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Superfund Cooperative Agreements (section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act); Leaking Underground Storage Tanks (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2497–98 (1998)); Underground Storage Tank Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2499 (1998)); and Hazardous Waste Management Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law. 105–276, 112 Stat. 2461, 2499 (1998)). This policy is effective immediately for the listed grant programs.

In a recent proposed rulemaking governing the award of environmental program grants to tribes, EPA proposed awarding grants to intertribal consortia under the specific grant programs covered by that proposed rule, which will be promulgated as 40 CFR part 35, subpart B. 64 FR 40084 (July 23, 1999). This **Federal Register** notice sets forth EPA's policy regarding grants to intertribal consortia for four grant programs (Underground Storage Tank, Pesticides Program Implementation, and Pesticides Enforcement grant programs) that are covered by the proposed rule for 40 CFR part 35, Subpart B, prior to promulgation of that rule. The Agency is implementing this policy at this time because EPA has received applications for assistance from intertribal consortia under these grant programs and EPA believes that entering into assistance agreements with intertribal consortia under these grant programs will further the goal of environmental protection in Indian country. This notice also sets forth EPA's policy regarding grants to intertribal consortia for Leaking Underground Storage Tank grants and Superfund Cooperative Agreements under CERCLA section 104(d), which are not covered by the proposed rule. The policy set forth in this notice is consistent with the treatment of intertribal consortia in the proposed rule.

EPA may change this policy as a result of comments received in response to the proposed rule. When it is promulgated, the final rule for 40 CFR part 35, subpart B will govern grants to intertribal consortia for grant programs covered by that rule. This **Federal Register** notice will remain effective for the Leaking Underground Storage Tank program and the Superfund Cooperative Agreements program, which will not be covered by 40 CFR part 35, subpart B, unless a subsequent **Federal Register** notice is issued. However, if EPA changes its treatment of consortia in grant programs covered by that rule, EPA will likely issue a subsequent **Federal Register** notice on grants to consortia for grant programs not covered by 40 CFR part 35, subpart B so as to treat grants to intertribal consortia consistently in all of the grant programs covered by this notice.

In the absence of clear Congressional intent to the contrary and in accordance with the definition and requirements set forth below, EPA interprets its statutory authorities to award grants to Indian tribes to include the authority to award grants to intertribal consortia. If tribes are eligible for a particular grant, EPA will also treat a group of individually eligible tribes (an intertribal consortium) as eligible for the grant. EPA believes this approach is a practical, reasonable and prudent way to help interested tribes strengthen environmental protection when limited funding is available to support tribal environmental programs. Tribes that form an intertribal consortium may be able to use their limited resources more efficiently and address environmental

issues more effectively than they could if each tribe developed and maintained separate environmental programs. Moreover, EPA believes that making grants for tribes available to intertribal consortia is consistent with President Clinton's Executive Order 13084, which encourages agencies to adopt ''flexible policy approaches'' and to respect the principle of Indian self-government and sovereignty.

An organization that characterizes itself as an intertribal consortium that does not meet the definition of intertribal consortium or the eligibility requirements in this notice may be eligible for some EPA grant programs, but not as an intertribal consortium. This is because some of EPA's grant programs are available to a broad range of recipients, such as public or non-profit private agencies, institutions, organizations, and individuals. Thus, an intertribal organization that does not meet the definition of intertribal consortium or the requirements of this notice nonetheless may be eligible for a grant as another type of organization, such as a non-profit agency. This notice is not intended to affect the eligibility status of intertribal consortia for grants in their capacity as other types of eligible organizations.

II. Policy

The following definition and statement of eligibility requirements for awarding grants to intertribal consortia applies to the following EPA grant programs for tribes: Pesticides Program Implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Pesticides Enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Superfund Cooperative Agreements (section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act); Leaking Underground Storage Tanks (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2497–98 (1998)); Underground Storage Tank Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2499 (1998)); and Hazardous Waste Management Programs (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, 112 Stat. 2461, 2499 (1998)).

Definition: The term *intertribal consortium* means a partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under an EPA grant program. An intertribal consortium must have adequate documentation of the existence of the partnership and the authorization to apply for and receive assistance.

Eligibility Requirements for an Intertribal Consortium: An intertribal consortium is eligible to receive a grant from EPA under the statutes authorizing grants to Indian tribes listed in this notice only if the intertribal consortium demonstrates that all members of the consortium (1) meet the eligibility requirements for the grant and (2) authorize the consortium to apply for and receive assistance.

Dated: September 24, 1999.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–25421 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6447–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; in Re: Raymark Industries, Inc. Superfund Site; Stratford, CT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the purchaser who obtains title to the former Raymark Facility property located in Stratford, Connecticut through the judicial sale process and certain successors in interest for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Raymark Industries, Inc. Superfund Site in Stratford, Connecticut.

DATES: Comments must be provided on or before October 29, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214, and should refer to: Agreement and Covenant Not to Sue Re: Raymark Industries, Inc. Superfund Site, Stratford, Connecticut, U.S. EPA Docket No. CERCLA–1–99–0066.

FOR FURTHER INFORMATION CONTACT: Robin Ruhlin, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1784.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* notice is hereby given of a proposed prospective purchaser agreement concerning the Raymark Industries, Inc. Superfund Site in Stratford, Connecticut. The settlement was approved by EPA Region I, and the Department of Justice subject to review by the public pursuant to this Notice. Each of the qualified bidders who wish to participate in the judicial sale of the former Raymark Facility property will be required to execute signature pages committing them to participate in the settlement in the event that they take title to the former Raymark Facility property. Except that, if a bidder has already entered into a covenant not to sue agreement with the United States for the former Raymark Facility property, it may, but is not required to execute and submit a copy of this settlement to EPA in order for its bid to be considered at the judicial sale. Under the proposed settlement, the settling party will pay to the Raymark Industries, Inc. Superfund Site Special Account $10 million (ten million dollars) and will provide for the productive reuse of the property. In addition, all of the settling parties agree to abide by institutional controls and to provide access to the property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Constance Dewire, U.S.

Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode HBT, Boston, Massachusetts 02214, (617) 918–1346.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214 (U.S. EPA Docket No. CERCLA 1–99–0066).

Dated: September 22, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–25310 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1864]

GSA Approves Renewal of North American Numbering Council Charter Through October 4, 2001

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 13, 1999, the Commission released a public notice announcing the General Services Administration (GSA) approval of the amended charter for the Federal Communications Commission's federal advisory committee, the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the GSA authorization for the continuation of the NANC's activities through October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Diane Griffin Harmon, Designated Federal Officer (DFO) or Jared Carlson, Alternate DFO or Jeannie Grimes at (202) 418–2320. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484. Information regarding the NANC's activities are posted on the NANC web page located at www.fcc.gov/ccb/Nanc.

SUPPLEMENTARY INFORMATION: Released: September 13, 1999.

The North American Numbering Council (Council) charter has been renewed through October 4, 2001, by the General Services Administration (GSA) to allow the Council to continue advising the Federal Communications Commission on rapidly evolving and competitively significant numbering issues facing the telecommunications industry.

In October 1995, the Commission established the North American Numbering Council, a federal advisory committee created pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988), to advise the Commission and other North American Numbering Plan (NANP) member countries on issues related to NANP administration, and to advise the Commission on local number portability administration issues in the United States. The original charter of the Council was filed on October 5, 1995, establishing an initial two-year term. The first amended charter was filed on October 5, 1997, renewing the term of the Council for an additional two years.

Since its original charter was renewed, the Council has provided the Commission with critically important recommendations regarding numbering issues. During the term of the current amended charter, the Council issued recommendations which included: (1) The neutrality of toll free database administration by Database Service Management, Inc.; (2) wireline/wireless integration for local number portability; (3) the feasibility of additional abbreviated dialing code arrangements (N11 Ad Hoc report); (4) selection of a thousands block pooling administrator; (5) Lockheed Martin's request to transfer the NANPA functions to Warburg Pincus; (6) methods for optimizing the use of numbering resources; (7) the feasibility of local number portability for 500/900 numbers; and (8) a replacement tool for COCUS, used to collect forecast and utilization data. The Council also provided in April 1999 a detailed evaluation of the North American Numbering Plan Administrator's (NANPA) performance during its first year, and will continue to evaluate NANPA's performance annually.

The Council is currently considering and formulating recommendations on other important numbering-related issues that will require work beyond the term of the present charter. The term of the Council's second amended charter begins October 5, 1999, and runs through October 4, 2001. The second amended charter is attached hereto.

The value of this federal advisory committee to the telecommunications industry and to the American public cannot be overstated. Numbers are the means by which businesses and consumers gain access to, and reap the benefits of, the public switched network. The Council's recommendations to the Commission will facilitate fair and efficient numbering administration in North America, and will ensure that numbering resources are available to all telecommunications service providers, consistent with the requirements of the Telecommunications Act of 1996.

Amended Charter for the North American Numbering Council

A. The Committee's Official Designation

The official designation of the advisory committee will be the ''North American Numbering Council'' (NANC or Council).

B. The Committee's Objectives and Scope of its Activity

The purpose of the Council is to advise the Federal Communications Commission (FCC or Commission) and to make recommendations, reached through a consensus of its members, that foster efficient and impartial number administration. The Council will continue to develop recommendations on numbering policy issues, initially resolve disputes, provide oversight guidance to the North American Numbering Plan (NANP) Administrator and the Local Number Portability Administrator(s) (LNPAs) to ensure fair and equitable access to numbering resources, and facilitate number conservation including identification of technical solutions to numbering exhaust. The Council will further provide recommendations to the Commission on toll free database administration. The Council will prioritize its activities in accordance with the policies and objectives, and within the requested time frames, set forth by the Commission.

In carrying out its responsibilities, the Council shall assure that NANP administration supports the following policy objectives: (1) that NANP administration facilitates entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers; (2) that NANP administration does not unduly favor or disfavor any particular industry segment or group of consumers; (3) that NANP administration does not unduly favor one technology over another; (4) that NANP administration gives consumers easy access to the public switched telephone network; and (5) that NANP administration ensures that the interests of all NANP member countries are addressed fairly and efficiently, fostering continued integration of the NANP across NANP member countries.

C. Period of Time Necessary for the Committee to Carry Out its Purposes

The Commission will review the accomplishments and activities of the Council to determine whether, after two years, this charter should again be renewed and the Council should continue as a Federal Advisory Committee.

D. Agency or Official to Whom the Committee Reports

The Council will report to the Chief, Common Carrier Bureau, Federal Communications Commission.

E. Agency Responsible for Providing Necessary Support

The Commission will provide the necessary staff support for the Council. The Commission will provide facilities needed to conduct meetings, if the Commission has meeting facilities available. Otherwise, private sector members will provide facilities. Private sector members of the Council will serve without any government compensation, and will not be entitled to travel expenses or per diem subsistence allowances from the government.

F. Description of the Duties for Which the Committee is Responsible

The general duties of the Council are to gather and discuss information necessary to develop recommendations to the Commission related to the attainment of the objectives stated under (B). Under the direction of the Commission, the Council will provide oversight of all matters relating to numbering administration, including the development of industry guidelines. Specific duties will include developing and recommending a process for the selection of a thousands block pooling administrator, and an effective audit process for service providers and the NANP administrator. The Council will also prepare for the Commission periodic and final reports to aid the Commission in its oversight responsibilities.

G. Estimated Annual Operating Costs in Dollars and Staff Years

Estimated staff years that will be expended by the Council are 3 for the Commission's staff and 5 for private sector and other governmental representatives. The estimated annual cost to the Commission of operating the Committee is $205,000. The Commission will not pay for private sector staff.

H. Estimated Number and Frequency of Committee Meetings

We expect that there will be no more than 10 Council meetings per year.

I. Charter's Termination Date

This charter will terminate on October 4, 2001, prior to which the Commission may seek its renewal.

J. Date Original Charter Filed

October 5, 1995.

Federal Communications Commission.

Diane Griffin Harmon,

Assistant Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–25408 Filed 9–28–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of Certain Receiverships by the FDIC in the Fourth Quarter of 1999

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the FDIC, for itself or as successor in interest to the Resolution Trust Corporation, in its capacity as Receiver for the Institutions set forth below (the Receiver) intends to terminate these receiverships during the fourth calendar quarter of 1999.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships, Terminations Section, 1–800–568–9161.

SUPPLEMENTARY INFORMATION:

Financial institution number and name		City	State
1232	First Federal Savings & Loan Association	Pontiac	MI
1263	Far West Federal Savings Bank	Portland	OR
1296	Guardian Federal Savings Association	Huntington Beach	CA
2100	Victoria Savings Association, F.S.A.	San Antonio	TX
2170	First Federal Savings Association of Raleigh	Raleigh	NC
2177	Jefferson Federal Savings and Loan Association, F.A.	Birmingham	AL
2180	Progressive Savings Bank, FSB	Pasadena	CA
2197	County Bank, F.S.B.	Santa Barbara	CA
4308	Capitol Bank & Trust Company	Boston	MA
4360	Florida State Bank	Holiday	FL
4371	First Mutual Bank for Savings	Boston	MA
4460	First Security Bank of Anaconda	Anaconda	MT
4461	The Bank for Savings	Malden	MA
4521	First Constitution Bank	New Haven	CT
4545	Guaranty-First Trust Company	Waltham	MA
4549	First New York Bank for Business	New York	NY
4556	Meritor Savings Bank	Philadelphia	PA
6955	Skokie Federal Savings and Loan Association, F.A.	Skokie	IL
7009	Germantown Trust Savings Bank	Germantown	TN
7018	American Savings of Colorado, a Federal Savings and Loan Association	Colorado Springs	CO
7021	Horizon Financial, F.A.	Southhampton	PA
7111	Valley Federal Savings Association	McAllen	TX
7137	Great Plains Savings Association, F.A.	Weatherford	OK
7201	MeraBank Federal Savings Bank	Phoenix	AZ
7218	Brookside Federal Savings and Loan Association	Los Angeles	CA
7258	Mid-America Federal Savings & Loan Association	Columbus	OH
7274	Mid Kansas Federal Savings and Loan Association of Wichita	Wichita	KS
7373	Fulton Federal Savings Association	Atlanta	GA
7379	TexasBanc Federal Savings Bank	Conroe	TX
7411	State Federal Savings Association	Tulsa	OK
7435	United Home Federal	Toledo	OH

Financial institution number and name		City	State
7446	Home Federal Savings Bank, F.A.	Waukegan	IL
7561	Vernon Savings and Loan Association, FSA	Dallas	TX
7828	Guardian Savings and Loan Association	Huntington Beach	CA
7868	Jefferson Federal Savings and Loan Association of Birmingham	Birmingham	AL
8202	State Federal Savings and Loan Association	Tulsa	OK
8215	Fulton Federal Savings Bank	Atlanta	GA
8243	Far West Federal Bank, S.B.	Portland	OR
8296	Home Federal Bank for Savings	Waukegan	IL
8806	MeraBank, a Federal Savings Bank	Phoenix	AZ
8814	TexasBanc Savings, FSB	Conroe	TX

The liquidation of the assets of these receiverships is expected to be completed no later than December 31, 1999. To the extent permitted by available funds and in accordance with law, the Receiver for these institutions will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of such receiverships will serve no useful purpose. Consequently, notice is given that the receiverships will be terminated, as soon as practicable but no sooner than thirty (30) days after the date this Notice is published.

If any person wishes to comment concerning the termination of these receiverships, such comment must be made in writing and sent within thirty days of the date this Notice is published to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Terminations Department 1910 Pacific Avenue, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: September 24, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–25371 Filed 9–28–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–200251–002, –003.

Title: Seattle and Crowley Marine Services Lease Agreement.

Parties: Port of Seattle, Crowley Marine Services, Inc.

Synopsis: The parties have modified their basic lease to reduce the area of the premises covered by the lease, with an appropriate adjustment to monthly payments, and to extend the term of the lease by five years.

By order of Federal Maritime Commission.

Dated: September 24, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–25363 Filed 9–28–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

(CAL.) KTL International, Inc., 500 Carson Plaza Drive, Suite 222, Carson, CA 90746, Officer: Jay H. Oh, President, (Qualifying Individual)

Actway Express Inc., 8901 South La Cienega Blvd., Suite 109, Inglewood, CA 90301, Officer: Qiu Sheng Zhang (David), President, (Qualifying Individual)

Crown Shipping Line, Inc., 340 Stiles Street, Linden, NJ 07036, Officer: Rimma Kogan, General Manager, (Qualifying Individual)

Dated: September 24, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–25362 Filed 9–28–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, October 4, 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 matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 24, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–25394 Filed 9–24–99; 4:45 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Directly-Funded Community-Based Organization Program Summary Document; HIV Prevention

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comments.

SUMMARY: In Fiscal year (FY) 2000, CDC will provide approximately $17,612,000 million dollars to support community-based organizations (CBOs) to develop, implement, and evaluate effective community-based HIV prevention programs for populations at risk for HIV infection, especially racial and ethnic minority populations at risk.

The purpose of this announcement is to request comments on this proposed program. After consideration of comments submitted, CDC will publish a program announcement to solicit applications. A more complete description of the goals of this program, the target applicants, availability of funds, program requirements, and evaluation criteria follows.

DATES: The public is invited to submit comments by October 29, 1999.

ADDRESSES: Submit comments to: Technical Information and Communications Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E49, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: Technical Information and Communications Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E49, Atlanta, GA 30333, Fax (404) 639–2007, E-mail address: *HIVMAIL@CDC.GOV*, Telephone (404)639–2072.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to support community-based organizations (CBOs) to develop, implement, and evaluate effective community-based HIV prevention programs for populations at risk for HIV infection, especially racial and ethnic minority populations at risk.

1. Goals

A. Reduce the disproportionate impact of the HIV epidemic on racial and ethnic minority populations and other at risk populations in high and lower prevalence areas;

B. Support community-based HIV prevention programs that address priorities described in applicable State and local comprehensive HIV prevention plans (that is, the plans developed by the official HIV Prevention Community Planning Groups for the jurisdiction in which the CBO is located) or that adequately justify addressing other priorities, in order to improve and expand community-based HIV prevention services;

C. Enhance the use by CBOs of scientific theory and data and proven knowledge generated through program experience and evaluation as a foundation for designing, implementing and evaluating HIV prevention services;

D. Support collaboration and coordination of HIV prevention efforts among CBOs, community planning groups, and local and state health departments.

2. Eligible Applicants

A. CBOs may apply as either (1) minority CBOs intending to serve predominantly racial or ethnic minority populations at high risk of acquiring or transmitting HIV infection, or (2) other CBOs serving high-risk populations without regard to their racial or ethnic identity. A CBO may submit an application in only one of these categories.

B. To apply as a minority CBO, the applicant organization must meet the following criteria:

(1) Must have been granted tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter;

(2) Must have greater than 50% of positions on the board or governing body filled by persons of the racial or ethnic minority group(s) to be served;

(3) Must have greater than 50% of positions that work with the proposed program, including management, administrative, supervisory, and service provision positions (for example, executive director, program director, fiscal director, outreach worker, prevention case manager, counselor, group facilitator, or trainer) filled by persons who reflect the racial and ethnic demographics, and the characteristics of the population to be served; and

(4) Must have an established record of at least two years of service to the proposed target population.

C. To apply as an other CBO serving high-risk populations without regard to their racial or ethnic identity, the applicant organization must meet the following criteria:

(1) Must have been granted tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter; and

(2) Must have an established record of at least two years of service to the proposed target population.

D. In either category, two or more CBOs may apply as a collaborative partnership. In a collaborative contractual partnership, one CBO must be the legal applicant and will function as the lead organization. The lead organization must meet the criteria specified above, and a CBO can submit only one application under this announcement; that is, it may apply as an individual organization or as part of a collaboration, but not both.

E. CBOs funded under CDC Program Announcements 99091, 99092, and 99096 are eligible to apply if they meet the criteria specified above; however, the total combined award under any combination of these announcements will not exceed $300,000.

3. Available Funds

Funds are expected to be available for three (3) types of activities under this program announcement. All applicants must apply for Activity A. Activities B and C are optional. A CBO must be funded for Activity A in order to receive an award for Activities B or C.

Activity A

Approximately $17,120,000 is expected to be available to fund approximately 90 CBOs to develop, implement, and evaluate effective community-based HIV prevention programs. Of this total, approximately $11,299,200 (60 awards) will be awarded to minority CBOs and approximately $5,820,800 (30 awards) will be awarded to other CBOs. The average award will be approximately $190,000.

Activity B

Approximately $342,000 is expected to be available to fund up to four (4) CBOs to design and implement model peer-to-peer capacity-building assistance activities for neighboring CBOs.

Activity C

Approximately $150,000 is expected to be available to fund up to three (3) CBOs to work closely with academic researchers/experts and CDC to replicate or adapt innovative interventions and to develop methods for conducting enhanced evaluation, including outcome evaluation, of their prevention service delivery activities.

Funding Priorities

In making awards, priority for funding will be given to:

(1) Ensuring a geographic balance of funded CBOs (the number of funded CBOs may be adjusted in each eligible area based on the level of HIV/AIDS disease burden in that area);

(2) Ensuring a balance of funded CBOs in terms of targeted racial/ethnic minority group (the number of funded CBOs serving each racial/ethnic minority group may be adjusted based on the level of HIV/AIDS disease burden in that group; and

(3) Ensuring a balance of funded CBOs in terms of targeted risk behaviors (the number of funded CBOs serving each risk behavior group may be adjusted based on the level of HIV/AIDS disease burden in that group).

4. Program Requirements

Activity A

(1) Use epidemiologic data, needs assessments, prioritization of groups and interventions, behavioral and social science theory and data, and proven programmatic experiential knowledge to design program activities. Grantees are strongly encouraged to establish ongoing collaborations with health departments and academic and research institutions for this purpose;

(2) Develop program activities which are consistent with applicable State and local comprehensive HIV prevention plans or adequately justify addressing other priorities;

(3) Provide—or assist high risk clients in gaining access to—HIV counseling, testing, and referral for other needed services (*e.g.*, improve access to or provide alternative testing sites, managed and staffed by trained high-risk individuals such as IDUs in treatment, which will be more accessible to target populations than currently available sites; provide access to rapid-results testing technologies; and demonstrably improve utilization of post-test counseling, referrals, and follow-up);

(4) Conduct health education and risk reduction interventions for persons at high risk of becoming infected or transmitting HIV to others, especially small group and community-level interventions (*e.g.*, demonstrably reduce unsafe sex and drug practices among individuals newly released from correctional facilities and among injection and other drug users who are in the judicial system; demonstrably reduce behaviors that put young people at risk for HIV infection, focusing on youth who are not being served by existing HIV prevention programs and who are at risk for HIV infection);

(5) Assist HIV-positive persons in gaining access to appropriate HIV treatment and other early medical care, substance abuse prevention services, STD screening and treatment, reproductive and perinatal health services, partner counseling and referral services, psychosocial support, mental health services, TB prevention and treatment, primary HIV prevention such as health education and risk reduction services, and other supportive services. High-risk clients who test negative should be referred to appropriate health education and risk reduction services and other appropriate prevention and treatment services;

(6) Coordinate and collaborate with health departments, community planning groups, and other organizations and agencies involved in HIV prevention activities, especially those serving the target population;

(7) Participate in the HIV prevention community planning process. Participation may include involvement in workshops; attending meetings; if nominated and selected, serving as a member of the group; reporting on program activities; or reviewing and commenting on plans;

(8) Coordinate program activities with relevant national, regional, State, and local HIV prevention programs to prevent duplication of efforts;

(9) Monitor and conduct process evaluation of major program and intervention activities and services supported with CDC HIV prevention funds under this cooperative agreement. This should include assessing client satisfaction periodically via quantitative (*e.g.*, periodic surveys) and qualitative methods (*e.g.*, focus groups);

(10) Compile ''lessons learned'' from the project and facilitate the dissemination of ''lessons learned'' and successful prevention interventions and program models to other organizations and CDC through peer-to-peer interactions, meetings, workshops, conferences, Internet, communications with project officers, and other capacity-building and technology transfer mechanisms; and

(11) Work with CDC-funded capacity-building assistance programs to meet your and other organizations' capacity-building needs.

Activity B

(1) Conduct all activities listed under Activity A;

(2) Develop a collaborative relationship with academic researchers, technical assistance providers, or other experts in capacity-building;

(3) In collaboration with the expert(s) above, design, implement, and evaluate model peer-to-peer capacity-building assistance activities for neighboring CBOs; and

(4) Facilitate the dissemination of successful peer-to-peer capacity building models to other organizations and CDC through peer-to-peer interactions, publications, meetings, workshops, conferences, Internet, communications with project officers, and other capacity-building and technology transfer mechanisms.

Activity C

(1) Conduct all activities listed under Activity A;

(2) Develop a collaborative relationship with academic researchers, professional evaluators, or other experts in program evaluation; and

(3) Work closely with academic researchers/experts and CDC to identify innovative interventions appropriate for replication in or adaptation to the CBO's target population and to develop methods for conducting enhanced evaluation, including outcome evaluation, of these interventions.

5. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Applicant organization's experience and capacity;
2. Justification of need;
3. Program plan;
4. Program evaluation plan;
5. Communication and dissemination plan; and
6. Plan for acquiring additional resources.

Dated: September 23, 1999.

Thena M. Durham,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–25277 Filed 9–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 15, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: Discussinoof program policies and issues.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9104, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Charles L. Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25328 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, October 14, 1999, 8:30 a.m. to October 15, 1999, 5:00 p.m., Holiday Inn, Bethesda, MD, 20814 which was published in the **Federal Register** on August 18, 1999, 64 FR 44936.

The meeting will be held on November 1, 1999, 2:00 p.m. to 3:00 p.m., 6000 Executive Blvd., Rockville, MD 20852. The meeting is closed to the public.

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25324 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: October 15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273. Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25325 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel.

Date: September 28, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel.

Date: October 19–20, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Capitol Holiday Inn, 550 C Street, SW, Washington, DC 20024.

Contact Person: Gerald E. Calderone, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel.

Date: November 9, 1999.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Russell E. Martenson, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd.,

Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25327 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 21–22, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chase Room, Chevy Chase, MD 20815.

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25329 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Institutional National Research Service Applications (T32s).

Date: October 20, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chase Room, Chevy Chase, MD 20815.

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892 (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25330 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated wit the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library Review Committee.

Date: November 2–3, 1999.

Open: November 2, 1999, 8:30 am to 9:00 am.

Agenda: Administrative Reports and Program Developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: November 2, 1998, 9:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: November 2, 1999, 11:30 am to 2:00 pm.

Agenda: Administrative Reports and Program Developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: November 2, 1998, 2:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: November 3, 1999, 8:30 am to 8:45 am.

Agenda: Administrative Reports and Program Developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: November 3, 1998, 8:45 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Sharee Pepper, PhD., Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–25326 Filed 9–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–444–N–21]

Notice of Proposed Information Collection: Comment Request; Management Review Report for Unsubsidized Multifamily Programs, and Management Review Worksheet

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 29, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Review Report for Unsubsidized Multifamily Programs, and Management Review Worksheet.

OMB Control Number, if applicable: 2502–0259.

Description of the need for the information and proposed use: The Management Review Report for Unsubsidized Multifamily Housing Programs, and the Management Review Worksheet is used by unsubsidized lenders to collect and identify problems which must be corrected in order to make the project an acceptable risk and to devise corrective action necessary to stabilize the project and prevent default.

Agency Form Numbers, if applicable: Form HUD–9838.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 900, the frequency of respones is once, the estimated burden per response is 7 hours, and the estimated total annual burden hours are 6300.

Status of the proposed information collection: Revision with Change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 14, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–25261 Filed 9–28–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–22]

Notice of Proposed Information Collection: Comment Request; Appraisals of FHA-Insured Single Family Properties

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 29, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–2700 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Appraisals of FHA-Insured Single Family Properties Forms.

OMB Control Number, if applicable: 2502–0538.

Description of the need for the information and proposed use: The information collection is essential so that HUD can ensure that appraisals of HUD-insured single family properties are conducted by individuals who are qualified, trained and knowledgeable in the real estate appraisal field and that the appraisals of HUD-insured single family properties or prospective insured

properties are thorough and independent.

(1) Each individual seeking to become an FHA approved appraiser must submit Form HUD–92563 ''Roster Designation Application'' and a copy of the individual's state licensing and/or state certification documentation. HUD has recently established the requirement that each applicant must also pass a HUD/FHA Appraisal Examination.

THe HUD–92563 has been modified to reflect the examination requirement. The revised form also requests information on geographic areas of practice. In addition, applicants must certify that they will comply with HUD Handbook 4150.2, Valuation Analysis for Home Mortgage Insurance for Single Family One- to Four-Unit Dwellings, and other directives relating to appraisals and authorize HUD to inspect the appraiser's files. The revised form also sets forth several warnings of possible sanctions for presenting false or fraudulent statements.

(2) Each FHA approved appraiser will conduct an appraisal of FHA-insured, or prospective FHA-insured single family properties, using the Uniform Residential Appraisal Report (URAR), and HUD–92564, Valuation Condition Sheet (VC Sheet).

The appraiser will also prepare for the homebuyer HUD–92564–HS, Homebuyer Summary. This document is a summary of the appraiser's observations of the property visited, including problems rendering the property unacceptable for FHA mortgage insurance.

The lender must also ensure that the prospective homebuyer has received a HUD–92564–CN, a consumer notice explaining the importance of obtaining a home inspection. The name of the buyer has replaced that of the seller in the latest version of this form to avoid confusion.

The estimated number of respondents is approximately 15,000. The estimated number of appraisals per respondent is estimated to be 80 per year.

Agency Form Numbers, if applicable: Forms HUD–92563, HUD–92564–VC, HUD–92564–HS, and HUD–92564–CN.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 15,000 for the Valuation Condition Sheet, HUD–92564–VC (80 responses per respondent, .30 minutes per response), 15,000 for the Homebuyer Summary, HUD–92564–HS, (80 responses per respondent, .10 minutes per response), and 50,000 for the Application for Fee Personnel Designation, HUD–92563 (1 response per respondents, .50 minutes per response); the frequency of response is one-time for acceptance to the approval roster list. The total annual burden hours are estimated at 505,000.

Status of the proposed information collection: Revision of a currently approved submission.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 22, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–25262 Filed 9–28–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4443–N–8]

Notice of Proposed Information Collection for Public Comments for Public Housing—Contracting With Resident-Owned Businesses

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 29, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as ame4nded).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing, Contracting with Resident-Owned Businesses Application Requirements.

OMB Control Number: 2577–0161.

Description of the need for the information and proposed use: The information is necessary so that the applicants (resident-owned businesses) seeking to qualify for noncompetitive contracting with the Public Housing Agency (PHA) will be eligible to be solicited by the PHA as a contractor for a proposed contract.

Members of affected public: Individuals or households; State or local governments; nonprofit institutions; small businesses or organizations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 500 respondents, annually, 9 average hours per response, 10,000 hours for a total reporting burden.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 22, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–25263 Filed 9–28–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–48]

Submission for OMB Review: Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection requirement.

SUMMARY: The proposed information collection requirement described has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting comments on the subject proposal.

The information to be collected is indication to HUD that a mortgage has been paid in full or that a mortgagor and mortgagee have mutually agreed to terminate the contract of multifamily mortgage insurance.

DATES: Comments Due Date: October 29, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374 (This is not a toll-free number) or e-mail to Wayne__Eddins@HUD.gov. Copies of the available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION:

This notice contains the following information:

(1) The title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless collection displays a valid control number.

Title: Request for Termination of Multifamily Mortgage Insurance.

OMB Control Number: 2502–0416.

Type of submission: Reinstate without change.

Need and use of the information: The information to be collected is indication to HUD that a mortgage has been paid in full or that a mortgagor and mortgagee have mutually agreed to terminate the contract of multifamily mortgage insurance.

Form Number(s): HUD–9807.

Respondents: Lender/Mortgagees.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Total burden hours
500		1		0.125		63

Contact: Peter Giaquinto, HUD (202) 708–4162; Joseph Lackey, OMB, (202) 395–7316.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 22, 1999.

Wayne Eddins,

Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 99–25264 Filed 9–28–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–06]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program—HUD and the United States Department of Agriculture (USDA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the U.S. Department of Agriculture (USDA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with USDA's debtor files. In addition to HUD's data, the CAIVRS data base includes delinquent debt information from the Departments of Education, Veterans Affairs, Justice and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or USDA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the USDA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin 40 days after publication of this notice in the **Federal Register** (November 8, 1999), unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: October 29, 1999.

ADDRESSEES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and

copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P8202, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free telephone number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Reynaldo Gonzalez, Debt/Credit Management Coordinator, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250, telephone number (202) 720–1168. [This is not a toll-free number.]

Reporting of Matching Program

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this Notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program will be conducted pursuant to Public Law 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives To Be Met By The Matching Program

The matching program will allow USDA access to a system which permits prescreening of applicants for loans owed or guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to USDA debtor data for prescreening purposes.

Records To Be Matched

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/ Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default. The USDA will provide HUD with debtor files contained in its system of records entitled, Applicant/Borrower or Grantee File (USDA/FmHA–1). HUD is maintaining USDA's records only as a ministerial action on behalf of USDA, not as a part of HUD's HUD/DEPT–2 system of records. USDA's data contain information on individuals who have defaulted on their guaranteed loans. The USDA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for USDA's data.

Notice Procedures

HUD and the USDA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the USDA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match

Matching is expected to begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 40 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: September 22, 1999.

Gloria R. Parker,

Chief Information Officer.

[FR Doc. 99–25259 Filed 9–28–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Ten Thousand Islands National Wildlife Refuge in Collier County, FL, and Notice of Meeting To Seek Public Participation

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has made available for public review a Draft Comprehensive Conservation Plan and Environmental Assessment for Ten Thousand Islands National Wildlife Refuge in Collier County, Florida, and plans to hold a public meeting in the vicinity of the refuge to solicit public comments on the draft plan. The Service is furnishing this notice in compliance with Service comprehensive conservation planning policy, the National Environmental Act Policy, and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain comments on the proposed plan and the other alternatives considered in the planning process.

DATES: The Service will hold the public meeting on Saturday, October 23, 1999, 10 a.m. to 6 p.m. at the Fish and Wildlife Service office located in the Comfort Inn, 3860 Tollgate Boulevard, Naples, Florida 34114. In addition, written comments on the draft plan should be sent no later than November 8, 1999, to the address given below.

ADDRESSES: Comments and requests for copies of the draft plan should be addressed to Mr. Ed Loth, U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345, or by calling 404/679–7155.

SUPPLEMENTARY INFORMATION: Ten Thousand Islands National Wildlife Refuge consists of approximately 35,000 acres located approximately 20 miles southeast of Naples, Florida, and South of U.S. Highway 41. The refuge was established under the authority of the Florida/Arizona Land Exchange Act in order to develop, advance, manage, conserve and protest its unique estuarine ecosystem and fish and wildlife resources. The refuge represents a variety of coastal habitats including mangrove forests, freshwater marsh systems, interspersed freshwater ponds, and small islands or hammocks of upland habitat.

It is the desire of the Fish and Wildlife Service that Ten Thousand Islands National Wildlife Refuge become ''a model for natural systems management, featuring unique coastal marshes, islands, and subtropical estuarine mangrove ecosystems. The refuge will provide essential habitat for threatened and endangered species and be an area noted for its cultural resources.

Through effective management and partnering, the refuge will provide outstanding recreational opportunities for present and future generations.'' To accomplish this vision, the refuge seeks to achieve the following six goals: (1) Wildlife and Habitat Conservation—conserve, enhance, and protect fish and wildlife resources and other natural values supported within the refuge portion of this unique south Florida coastal ecosystem; (2) Public Use—Provide visitors with quality recreational opportunities, guided by the refuge's vision and mission, and compatible with its purpose; (3) Commercial Use—co-manage sustained-yield commercial harvesting, guiding, and other enterprises that are compatible with the purpose of the refuge; (3) Environmental Education—promote the interpretation, education, and appreciation of coastal natural resources for the Ten Thousand Islands area, and the importance of conserving them; (5) Cooperative Management—promote cooperation among agencies, private landowners, organizations, and other stakeholders in the management of natural and cultural resources within the Big Cypress Watershed; and (6) Archaeological Resources—protect refuge cultural resources, encourage archaeological investigations, and promote interpretation and appreciation of the area's history.

The draft plan evaluates three alternatives for managing the refuge over the next 15 years: Alternative A (no action) advocates that the refuge be managed with minimal monitoring and management direction; Alternative B (ecosystem approach) would allow recreational and commercial activities to continue coupled with extensive monitoring programs to assess the quality of the environment; and Alternative C (maximum public use) emphasizes fishing as well as many other recreational pursuits for the refuge. The Service believes that Alternative B (ecosystem approach) is the best alternative to guide the refuge's future direction. In essence, this alternative will:

- Best meet the primary purposes for which the refuge was established—protecting and enhancing the refuge's unique estuarine ecosystem;
- Recognize the importance of the refuge within the Big Cypress Watershed and define refuge actions to protect and enhance the natural features of this ecosystem;
- Continue to provide the public access to the refuge; visitation would be monitored for its impacts on flora and fauna; and
- Ensure that environmental education and partnership efforts increase.

Dated: September 14, 1999.

Sam D. Hamilton,

Regional Director.

[FR Doc. 99–25255 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Taylor W. Jones, Atlanta, GA, PRT–017657.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Randy Kalp, Pleasant Unity, PA, PRT–017657.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: University of Illinois/Chicago, Chicago, IL, PRT–017651.

The applicant requests a permit to import blood samples from three (3) captive-held Baird's Tapirs (*Tapirus bairdii*) maintained under the management program of the Belize Zoo, Belize City, Belize, for the purpose of enhancement of the survival of the species through genetic studies.

Applicant: Bowmanville Zoological Park Ltd, c/o Whitfield's Tigers and Lions, Suisun City, CA, PRT–017088 .

The applicant requests a permit to purchase and export one Bengal tiger (*Panthera tigris tigris*) to Bowmanville Zoological Park Ltd., Ontario, Canada for the purpose of enhancement of the survival of the species through propagation and conservation education.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

Applicant: Mike Popper, Sewickley, PA, PRT–017654

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted, taken prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada, for personal use.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S.

Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: September 24, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–25319 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Indian Affairs (BIA) is submitting two information collection requests for extension to the Office of Management and Budget. The two collections are: Electrical Service Application, 1076–0021, and Water Request, 1076–0141.

DATES: Comments must be received on or before October 29, 1999, to be assured of consideration.

ADDRESSES: Comments should be sent to: Attn: Desk Officer for Department of the Interior, Office of Information and Regulatory Affairs, OMB, 725 17th Street NW, Washington, DC 20503. Send a copy to Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, Mail Stop 4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ross Mooney at 202–208–5480, or facsimile number: 202–219–1255, or E-mail: Ross__Mooney@IOS.DOI.GOV.

SUPPLEMENTARY INFORMATION: A request for comments regarding the two information collection requests was published in the **Federal Register** on June 8, 1999 (64 FR 30533–30534). No comments were received during the comment period.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau'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.

OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted within 30 days are more assured of receiving maximum consideration. Please note that comments, names and addresses of commentors are available for public review during normal business hours. If you wish us to withhold any information you submit, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

Title: Water Request, 25 CFR 171.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 25,000.

Total Annual Responses: 51,500.

Total Annual Burden Hours: 4,292 hours.

Title: Electric Service Application, 25 CFR 175.

Frequency of Collection: On Occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 4,750.

Total Annual Responses: 4,750.

Total Annual Burden Hours: 1,188 hours.

Dated: September 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–25280 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–963–1020–04–WEED]

Certified Noxious Weed-Free Forage, ND

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of final supplementary rules to require the use of certified noxious weed-free forage on BLM-administered lands in North Dakota.

SUMMARY: The North Dakota Field Office of the BLM recently prepared an environmental assessment (EA) documenting the analysis of two alternatives for managing noxious weeds on public lands in North Dakota. The EA's proposed action consisted of a supplementary rule under 43 CFR 8365.1–6 to require the use of certified noxious weed-free forage on those public lands. Forage subject to this supplementary rule would include hay, straw, cubes, grains, and mulch. The Field Manager of the BLM's North Dakota Field Office has issued a decision record stating the EA's proposed action will not have any significant impact on the human environment and that an environmental impact statement is not required. Therefore, the Field Manager is requiring that public land users, including local, State, or Federal government agents conducting administrative activities, recreationists using pack and saddle stock, and contractors using straw or other mulch for reseeding purposes, use certified noxious weed-free forage products, or other approved products such as pelletized feed, while on the approximately 60,000 acres of BLM administered public lands in North Dakota. Copies of the EA, Finding of No Significant Impact, and Decision Record are available at the BLM North Dakota Field Office in Dickinson, ND.

There were no comments on the Notice of Proposed Supplementary Rules To Require the Use of Certified Noxious Weed-Free Forage on BLM Administered Lands in North Dakota, placed in the **Federal Register** dated June 17, 1999.

EFFECTIVE DATE: The Final Supplementary Rules will be effective October 29, 1999 and will remain in effect until modified or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: BLM—North Dakota Field Office, Don Rufledt, Natural Resource Specialist, 2933 3rd Ave. W., Dickinson, ND

58601–2619, or telephone (701) 225–9148.

SUPPLEMENTARY INFORMATION: Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west include 2,300 acres per day on BLM administered lands and 4,600 acres per day on all western public lands. Species such as leafy spurge, Canada thistle, spotted knapweed, Russian knapweed, musk thistle, and many others are alien to the United States and, at least initially, have no natural enemies to keep their populations in balance. Consequently, these weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and damage wildlife habitat. Widespread infestations can lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions reduce livestock and wildlife grazing capacity, occasionally affect the health of public land users by aggravating allergies and other ailments, and threaten federally protected or native plants and animals.

To curb the spread of noxious weeds, a growing number of western states have jointly developed noxious weed-free forage certification standards, and, in cooperation with various Federal, State, and county agencies, passed weed management laws. Because hay and other forage products containing noxious weed seeds are part of the infestation problem, North Dakota has developed a program to certify weed-free forage. The State encourages forage producers to grow noxious weed-free products and have them certified.

Region One of the United States Forest Service, Department of Agriculture, implemented a similar policy for the National Grasslands in North Dakota in 1998. This proposal will provide a standard supplementary regulation for all users of BLM-administered public lands in North Dakota and will provide for coordinated and consistent management with the National Forest Grasslands.

In cooperation with the State of North Dakota and the U.S. Forest Service, the BLM is implementing, for all BLM-administered lands within North Dakota, a ban on hay, straw, cubes, grains, or mulch that has not been certified. This proposal will ensure that: (1) this ban is well publicized and understood. The BLM will stress education and awareness in 1999 and 2000 and move to implement enforcement in 2001; and (2) BLM visitors and land users will know where they can purchase state-certified hay and other forage products.

The principal author of these supplementary rules is Don Rufledt, Natural Resource Specialist, of the North Dakota Field Office, BLM.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the North Dakota Field Manager, BLM, issues final supplementary rules to read: Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in North Dakota.

(1) To help prevent the spread of weeds on BLM-administered public lands in North Dakota, effective October 29, 1999, all such lands shall be closed to possessing, transporting or storing hay, straw, cubes, grains, or mulch that has not been certified as free of noxious weed seed. Pelletized feed does not require certification.

(2) Certification will comply with North Dakota's Pilot Weed-Free Forage Program. North Dakota's pilot program will certify forage as free of only those noxious weeds listed in North Dakota. Forage from other States should be free of all regionally listed noxious weeds.

(3) The following persons are exempt from this order: (a) anyone with a permit signed by BLM's authorized officer at the North Dakota Field Office specifically authorizing the prohibited act or omission on BLM-administered public lands within the state; (b) persons transporting forage products on Federal and State highways and county roads that are not BLM-developed roads or trails.

(4) Any person who knowingly and willfully violates the provisions of these supplementary rules may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code Section 1733(a).

Dated: September 15, 1999.

Douglas J. Burger,

Field Manager, Bureau of Land Management, North Dakota.

[FR Doc. 99–24875 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–5440–J072]

1983 Price River Management Framework Plan; Notice of Intent for Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent—proposal to amend Price River Management Framework Plan.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) proposes to amend the 1983 Price River Management Framework Plan (MFP), which includes public land in Carbon and Emery Counties, Utah. The purpose of the amendment is to identify certain lands, currently under lease to the City of Green River for airport purposes, as suitable for disposal through conveyance under authority of the Airport and Airway Improvement Act of September 3, 1982.

Publication of this notice in the **Federal Register** segregates the 510.0 acres of public land described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before October 29, 1999.

ADDRESSES: Comments should be addressed to: Richard L. Manus, Field Manager, BLM Price Field Office, 125 South 600 West, Price, Utah 84501. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Joan Hubert, Realty Specialist, BLM Price Field Office, 125 South 600 West, Price, Utah 84501, (435) 636–3630.

SUPPLEMENTARY INFORMATION: The existing plan does not identify these lands as suitable for disposal. However, because of resource values, public values, and objective involved, the public interest may be well served by disposal of these lands to a local government entity. An environmental assessment will be prepared to analyze the impacts of this proposal. The existing planning document is available at the above address. Issues anticipated in the plan amendment are livestock

grazing, rights of permittees and lessees, and the interests of adjoining land owners. The public land being considered for disposal, comprising 510.0 acres, is described as follows:

Salt Lake Meridian, Utah

T. 21 S., R. 15 E.,
Section 23, SE¼;
Section 24, SW¼SW¼SW¼;
Section 25,
NW¼,N½SW¼,SW¼NW¼SE¼;
Section 26, E½NE¼.

Sally Wisely,

State Director.

[FR Doc. 99–25236 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of the Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana.

DATES: The Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway will remain available for public review through November 15, 1999. Public meetings concerning the plan will be held in Livingston and West Yellowstone, Montana; Jackson and Cody, Wyoming; Idaho Falls, Idaho; and Denver, Colorado. Dates, times, and locations will be announced at a later date.

ADDRESSES: Comments on the Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway should be sent to Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228. Public reading copies of the plan are available on the Internet (nps.gov/planning/yell/winteruse) and will be available for review at the following locations:

Office of the Superintendent
Clifford Hawkes, National Park Service, Denver Service Center 12795 W. Alameda Parkway, Denver, CO 80225–0287, Telephone: (303) 969–2262
Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway analyzes 7 winter use management alternatives for the parks and the justification, anticipated impacts and relevant scientific research regarding each of the alternatives.

Under Alternative A-No Action, current use and management practices in the parks and Parkway would continue. Alternative B, the preferred alternative, provides a moderate range of affordable and appropriate winter visitor experiences. Air quality and oversnow motor vehicle sound would be addressed, and by the winter of 2008–2009, strict emission and sound requirements would be required by all oversnow vehicles entering the parks. The preferred alternative also emphasizes an adaptive approach to park resource management, which would allow the results of new and ongoing research and monitoring to be incorporated. Alternative C maximizes winter visitor opportunities for a range of park experiences, while preserving natural resources and addressing safety concerns. Alternative D stresses visitor access to unique winter features in the parks. This alternative emphasizes clean, quiet modes of travel, visitor activities focused near destination areas, and a minimization of conflicts between nonmotorized and motorized users. Under alternative E the protection of wildlife and natural resources is emphasized while allowing park visitors access to a range of winter recreation experiences. Alternative E uses an adaptive planning approach that allows new information to be incorporated. Alternative F stresses the protection of wildlife resources by focusing winter visitor activities in Yellowstone National Park outside important winter range for large ungulate species, and closing north and west roads to winter use. For Grand teton National Park and the Parkway, this alternative emphasizes the protection of all resources by focusing developments, oversnow motorized trails and zones, and nonmotorized trails and zones in certain areas, while still allowing park visitors opportunities for a range of winter recreational experiences. Alternative G places the highest priority on clean quiet oversnow access to the parks using present technologies.

The Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway in particular evaluates the environmental consequences of the proposed action and the other alternatives on wildlife, air quality, natural quiet, local economies, and visitor experience.

FOR FURTHER INFORMATION CONTACT: Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228.

Dated: September 20, 1999.

Michael D. Synder,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. 99–25278 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wild and Scenic River Suitability Study/Recommendation for the Escalante River Drainage, Glen Canyon National Recreation Area, Garfield County, UT

AGENCY: National Park Service, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the National Park Service, USDI, will prepare an environmental impact statement (EIS) which analyzes the suitability of sections of the Escalante River, Harris Wash, Coyote Gulch, Fortymile Gulch, Willow Gulch, Fiftymile Creek, Davis Gulch, Cow Canyon, Fence Canyon, Silver Falls Creek, Choprock Canyon, Neon Canyon, Moody Creek, East Moody Creek, Twentyfive Mile Wash (Glen Canyon NRA portion), Georgie's Canyon, Scorpion Gulch, Fools Canyon, Fold Canyon, Eastside Tributaries 1–4, Stevens Canyon, Big Hollow Wash, Hurricane Wash, Carcass Wash, Sooner Wash, Unnamed Wash of the Escalante River (3 miles upriver of Silver Falls Creek), North Fork of Silver Falls Creek, Middle Moody Creek, within Glen Canyon National Recreation Area boundary in Garfield County, Utah for inclusion into the National Wild and

Scenic River System. The National Park Service invites written comments and suggestions on the suitability of these river sections. The Draft Environmental Impact Statement (DEIS) will also include a General Management Plan amendment. The amendment will provide interim protection for those rivers recommended to Congress until Congress rules on a final recommendation.

Further, the agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis prior to final recommendation to Congress. Persons who comment on this process should note that the Department may make the names and addresses of commenters public. However, commenters may request that this information not be released and the Department of the Interior will then determine whether the information may be withheld under the Freedom of Information Act.

DATES: Written comments to be considered in the preparation of the DEIS should be submitted on or before October 29, 1999.

ADDRESSES: Submit written comments to: Superintendent, Glen Canyon National Recreation Area, P.O. Box 1507, Page, AZ 86040.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS should be directed to Norm Henderson, Wild and Scenic River EIS Team Leader, Glen Canyon National Recreation Area, P.O. Box 1507, Page, AZ 86040; telephone 520–608–6272.

SUPPLEMENTARY INFORMATION: This suitability analysis is being initiated in response to the Management Plan currently being prepared by the Bureau of Land Management (BLM) for the Grand Staircase-Escalante National Monument (GSENM). A portion of this Plan includes an assessment of streams and rivers within the boundary of the GSENM for inclusion into the National Wild and Scenic Rivers System. Recognizing the need for consistency across jurisdictional boundaries, Glen Canyon National Recreation Area (NRA), Bryce Canyon National Park, and the Dixie National Forest have worked together with the GSENM during the eligibility phase of their wild and scenic rivers analysis. This increased the Monument's study area to include portions of rivers that extended onto other Federally managed areas and allowed the planning team to look at entire watersheds.

Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 (Public Law 90–542, 82 Stat. 906, as amended; 16 U.S.C. 1271–1287) allows for the study of new potential wild and scenic rivers not designated under Section 3(a) or designated for study under Section 5(a) of the Act. Section 5(d)(1) states ''In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic, and recreational river areas. The analysis will also include lands within ¼ mile from each stream bank. Preliminary alternatives include recommending a wild, scenic, or recreation designation for each segment and an alternative that recommends none of the segments for designation. Other appropriate alternatives may be considered.

Joseph Alston, Superintendent, Glen Canyon NRA, is the responsible official for preparing the suitability study and DEIS. The Secretary of the Interior, U.S. Department of the Interior, Washington DC 20250 is the responsible official for recommendations for wild and scenic designation. Public input is now requested and will be used in preparation of the DEIS that is expected to be filed with the Environmental Protection Agency (EPA) and available for the public. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the EPA's notice of availability appears in the **Federal Register**.

After the comment period ends on the DEIS, comments will be analyzed and considered by the National Park Service in preparing the final EIS (FEIS). In the FEIS, the National Park Service will respond to comments received. The Secretary of the Interior will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a recommendation to the President regarding suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: September 21, 1999.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 99–25248 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, September 30, 1999. This meeting was originally scheduled for September 16, 1999, and was postponed due to severe weather warnings. The meeting will convene at 4:00 PM at the New England Aquarium Conference Center Central Wharf, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; and Native American interests. The purpose of the council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Introductions and remarks from Robert Durand, Chair, Boston Harbor Islands Partnership.

2. Discussion of the status of the general management plan.

3. Briefing on the economic development plan for the park.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made to: Superintendent Boston Harbor Islands National Recreation Area, 408 Atlantic Avenue, Suite 228, Boston, Massachusetts, 02110, telephone (617) 223–8667.

Dated: September 21, 1999.

Bruce Jacobson,

Assistant Superintendent, Boston Harbor Islands NRA.

[FR Doc. 99–25247 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Review Committee will be held on November 18, 19, and 20, 1999 in Salt Lake City, Utah.

The Committee will meet at the Hilton Salt Lake City; telephone: (800) 421-7602 or inside Utah (901) 532-3344, fax: (801) 531-0705, located at 150 West 500 South, Salt Lake City, Utah. Meetings will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

The agenda for this meeting will include: disposition of culturally unidentifiable human remains; and discussions of the dispute between the Hopi Tribe and Chaco Culture National Historical Park, NM.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Persons wishing to make a presentation to the committee should submit a request to do so by October 22, 1999. Please clearly state what you would like to discuss, how much time you estimate that you will need, and your contact information. Any member of the public may also file a written statement for consideration by the committee by November 2, 1999. Both written requests and statements should be addressed to the committee in care of the Departmental Consulting Archeologist.

A block of lodging rooms has been set aside at the Hilton Salt Lake City, at a significantly reduced rate. Reservations must be booked with the hotel by October 25, 1999 to guarantee the reduced rate. Please reference the National Park Service and mention that you are attending the NAGPRA Review Committee Meeting.

Individuals seeking further information concerning this meeting may contact Dr. C. Timothy McKeown, Ms. Jean Kelley, or Ms. Laura Mahoney, Archeology and Ethnography Program, National Park Service, 1849 C St. NW, NC340/MS 2275, Washington, DC 20240; telephone: (202) 343-4101. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Departmental Consulting Archeologist, 800 North Capitol St., NW, Suite 340, Washington, DC.

Dated: September 23, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–25370 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Naval Air Station, Whidbey Island, United States Navy, Oak Harbor, WA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Naval Air Station, Whidbey Island, United States Navy, Oak Harbor, WA.

A detailed assessment of the human remains was made by U.S. Navy and U.S. Army Corps of Engineers professional staff in consultation with representatives of the Swinomish Indians of the Swinomish Reservation.

During 1983-1985, human remains representing a minimum of 15 individuals were recovered from Maylor Point, Whidbey Island, WA by Dr. Astrida R. Blukis Onat following their exposure from natural erosion. No known individuals were identified. The ten associated funerary objects include two metal disks and eight pieces of copper.

Based on the condition of the human remains, associated funerary objects, and condition of the human remains, these human remains have been identified as Native American dating prior to European contact. Based on anthropological literature, field notes, and excavation records, there is a shared group identity between these human remains and the Swinomish Indians of the Swinomish Reservation.

Based on the above mentioned information, officials of the United States Navy have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 15 individuals of Native American ancestry. Officials of the United States Navy have also determined that, pursuant to 43 CFR 10.2 (d)(2), the ten objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Navy have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Swinomish Indians of the Swinomish Reservation.

This notice has been sent to officials of the Swinomish Indians of the Swinomish Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Steve Pennix, Naval Air Station, Whidbey Island, Environmental Affairs Department, 1100 W. Lexington Street, Oak Harbor, WA 98278; telephone: (360) 257-1009, before October 29, 1999. Repatriation of the human remains and associated funerary objects to the Swinomish Indians of the Swinomish Reservation may begin after that date if no additional claimants come forward.

Dated: September 23, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–25365 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Outagamie County Historical Society, Inc., Appleton, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Outagamie County Historical Society, Inc., Appleton, WI.

A detailed assessment of the human remains was made by University of Wisconsin- Fox Valley Center and Outagamie County Historical Society, Inc. professional staff in consultation with representatives of the Menominee Indian Tribe of Wisconsin.

In 1951, human remains representing three individuals were recovered from a burial mound across the canal from the Gringnon Home in Kaukauna, WI by William Wolfe, archeologist and curator of the Grignon Home and were accessioned into the collections of the Outagamie County Historical Society, Inc. No known individuals were identified. The approximately 2,880 associated funerary objects include silver jewelry and crosses, Spanish coins, beads, brass bells and buttons, projectile points, brass tinklers, fabric pieces, gun parts, and iron ax fragments.

Based on the associated funerary objects, these individuals have been identified as Native American. Based on the dates of manufacture of the silver trade jewelry and crosses, these burial have been dated to c. 1773-1809 A.D. Although many tribes moved through the Kaukauna, WI area during the late 18th and early 19th centuries, historic records indicate that only the Menominee were present in this area throughout the 1773-1809 A.D. period. Comparison of the associated funerary objects with those recovered in known Menominee burials at Butte des Morts and Green Bay from the 1773–1809 period indicate consistent characteristics of Menominee dress, ornamentation, and manner of interment.

Based on the above mentioned information, officials of the Outagamie County Historical Society, Inc. have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Outagamie County Historical Society, Inc. have also determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 2,880 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Outagamie County Historical Society, Inc. have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Menominee Indian Tribe of Wisconsin.

This notice has been sent to officials of the Menominee Indian Tribe of Wisconsin. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Matthew Carpenter, Curator of Collections, Outagamie County Historical Society, Inc., 330 East College Ave., Appleton, WI 54911; telephone: (920) 735-9370, ext. 113, before October 29, 1999. Repatriation of the human remains and associated funerary objects to the Menominee Indian Tribe of Wisconsin may begin after that date if no additional claimants come forward.

Dated: September 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–25366 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center professional staff in consultation with representatives of the Few Tails family, the Oglala Sioux Tribe of the Pine Ridge Reservation, the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, and the Rosebud Sioux Tribe of the Rosebud Indian Reservation.

Between 1891 and 1932, human remains representing one individual were removed from an unknown location by person(s) unknown. In 1932, the Deadwood Pioneer-Times reported that John T. Milek, a lawyer and publisher from Sturgis, SD had donated these human remains to the Adams Memorial Hall Museum, Deadwood, SD. In that article, these human remains were identified as Few Tails, an Oglala Lakota man slain by Anglo horse thieves near the Belle Fourche River in Meade County, SD in 1891. No associated funerary objects are present.

In 1994, these human remains were transferred from the Adams Memorial Hall Museum to the South Dakota State Archaeological Research Center for NAGPRA inventory and repatriation. Based on osteological analysis, these remains have been identified as Native American man between the ages of 40–49, most likely of Oglala descent. Trauma present on the skull and mandible are consistent with a violent death. Oral tradition of the Few Tails family and historical records indicate that the wife of Few Tails, who was present at the incident, survived and returned to Wounded Knee on the Pine Ridge Reservation. Oral tradition also states the family was unable to retrieve the body of Few Tails following the incident. The human remains in the possession of the South Dakota State Archaeological Society show no evidence of inhumation. No evidence contradicts the identification of these human remains as Few Trails.

Sophia Few Tails Lone Hill, great- or great-great-granddaughter of Few Tails, on behalf of herself and her brothers Leonard Few Tails and Louis Few Tails, and her daughter, Donette Lone Hill, has claimed Few Tails' remains as a lineal descendant.

Based on the above mentioned information, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the South Dakota State Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2(b)(1), Ms. Sophia Few Tails Lone Hill can trace her ancestry directly and without interruption by means of the traditional kinship system of the Oglala Sioux Tribe of the Pine Ridge Reservation to Few Tails.

This notice has been sent to Ms. Sophia Few Tails Lone Hill, and officials of the Oglala Sioux Tribe of the Pine Ridge Reservation, the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, and the Rosebud Sioux Tribe of the Rosebud Indian Reservation. Any other person who believes they are a lineal descendant of Few Tails should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, PO Box

1257, Rapid City, SD 57709–1257; telephone; (605) 394–1936, before October 29, 1999. Repatriation of the human remains to Sophia Few Tails Lone Hill, on behalf of herself and her brothers Loneard Few Tails and Louis Few Tails, and her daughter, Donette Lone Hill may begin after that date if no additional claimants come forward.

Dated: September 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–25369 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Sydney L. Wright Museum, Jamestown, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Sydney L. Wright Museum, Jamestown, RI.

A detailed assessment of the human remains was made by Sydney L. Wright Museum professional staff in consultation with representatives of the Narragansett Indian Tribe.

During 1966-1967, human remains representing 36 individuals were excavated from the West Ferry site by Dr. William Simmons. No known individuals were identified. The 173 associated funerary objects include ceramics, glass beads, tools, cooking utensils, jewelry, thimbles, iron trade artifacts, brass plates, projectile points, powder horns, cloth fragments, and matting fragments.

Based on the associated funerary objects, these individuals have been identified as Native American. Based on manner of interment and types of associated funerary objects, the West Ferry site has been identified as a historic Narragansett burial site and ancestral Narragansett burial site. The presence of red ochre and bowls in both the historic and Archaic burials indicate continuities of tradition through time.

Based on the above mentioned information, officials of the Sydney L. Wright Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 36 individuals of Native American ancestry. Officials of the Sydney L. Wright Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 173 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Sydney L. Wright Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Narragensett Indian Tribe.

This notice has been sent to officials of the Narragansett Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Stephen C. Baker, Sydney L. Wright Museum, Jamestown Philomerian Library, 26 North Road, Jamestown, RI 02835-1438; telephone: (401) 423-7281, before October 29, 1999. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe may begin after that date if no additional claimants come forward.

Dated: September 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–25368 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Sarpy County, NE in the Possession of the Human Osteology Repository, Department of Anthropology, University of Wyoming, Laramie, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Sarpy County, NE in the possession of the Human Osteology Repository, Department of Anthropology, University of Wyoming, Laramie, WY.

A detailed assessment of the human remains was made by Human Osteology Repository professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma.

In 1908, human remains representing two individuals were reportedly recovered from Wallace Mound (25SY67), Sarpy County, NE by person(s) unknown. In 1955, these human remains were donated to the Wyoming State Museum by Mrs. J. Hughes Eddington. In 1986, these human remains were transferred to the Human Osteology Repository. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology and reported site location, these individuals have been identified as Native American. Based on published literature relating to the Wallace Mound site (25SY67), these individuals are most likely from the Central Plains Tradition, Nebraska Phase, c. 950-1250 A.D. Continuities of material culture and locations strongly suggest the Nebraska Phase of the Central Plains Tradition is ancestral to the present-day Pawnee Tribe of Oklahoma.

Based on the above mentioned information, officials of the University of Wyoming Department of Anthropology Human Osteology Repository have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Wyoming Department of Anthropology Human Osteology Repository have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rick L. Weathermon, NAGPRA Contact, University of Wyoming Department of Anthropology Human Osteology Repository, University of Wyoming, P.O. Box 3431, Laramie, WY 82071-3431; telephone: (307) 766-5136, before October 29, 1999. Repatriation of the human remains to the Pawnee Indian Tribe of Oklahoma may begin after that

date if no additional claimants come forward.

Dated: September 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–25367 Filed 9–28–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–417]

Certain Code Hopping Remote Control Systems, Including Components and Integrated Circuits Used Therein; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3152. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 30, 1998, based on a complaint by Microchip Technology Incorporated (''Microchip'') alleging that respondents Chamberlain Group, Inc. (''Chamberlain'') and Sears, Roebuck and Co. (''Sears'') violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing, selling for importation, or selling within the United States after importation certain code hopping remote control systems, including components and integrated circuits used therein, that infringe claims of Microchip's U.S. Letters Patent 5,517,187 ('187 patent). Microchip alleged that Sears sells the accused devices manufactured abroad by Chamberlain.

On August 1, 1999, Microchip and Chamberlain entered into a settlement agreement, which grants to Chamberlain a nonexclusive license for the '187 patent at issue, and provides for the settlement of this investigation and a companion action pending before the U.S. District Court for the Northern District of Illinois. On August 4, 1999, Microchip and respondents Chamberlain and Sears filed the joint motion to terminate the investigation. The Commission investigative attorney (''IA'') supported the joint motion.

On August 25,1999, the ALJ issued an ID (Order No. 10) granting the motion to terminate the investigation. The ALJ noted that the parties, in accordance with Commission rules, had stated that there were no other agreements concerning the subject matter of this investigation. The ALJ further noted that all of the parties, including the IA, had argued that termination of the investigation would pose no threat to the public interest, which would in fact be advanced by private resolution of this dispute. No party petitioned for review of the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 19 CFR 210.42. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: September 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–25345 Filed 9–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–857–858 (Preliminary)]

Certain Paintbrushes From China and Indonesia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930,[3] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of synthetic filament paintbrushes from China,[4] and imports of natural bristle and synthetic filament paintbrushes from Indonesia,[5] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 2, 1999, a petition was filed with the Commission and the Department of Commerce by the Paintbrush Trade Action Coalition (PATAC) whose member firms include EZ Paintr Corp., St. Francis, WI; Bestt Liebco, Philadelphia, PA; The Wooster Brush Co., Wooster, OH; Purdy Corp., Portland, OR; and TruServ Manufacturing, Cary, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of synthetic filament

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford voting in the affirmative with respect to imports of the subject merchandise from China.

[3] 19 U.S.C. 1673b(a).

[4] The products covered by the investigation concerning China include all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, other than natural bristle paintbrushes and paintbrush heads that are classifiable under statistical reporting number 9603.40.4040 of the Harmonized Tariff Schedule of the United States (HTS). The scope includes paintbrushes and paintbrush heads with a blend of natural bristle and synthetic filaments, provided that synthetic filaments comprise over 50 percent of the total filler material in the finished paintbrush or paintbrush head. The merchandise subject to this investigation is classifiable under statistical reporting number 9603.40.4060 of the HTS. Excluded from the scope are artists' brushes classified under statistical reporting numbers 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTS, or other non-paintbrush products classified under statistical reporting number 9603.40.4060 of the HTS such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.

[5] The products covered by the investigation concerning Indonesia include all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, including natural bristle paintbrushes and paintbrush heads, synthetic filament paintbrushes and paintbrush heads, and paintbrushes and paintbrush heads made with a blend of natural bristle and synthetic filament. The merchandise subject to this investigation is classifiable under statistical reporting numbers 9603.40.4040 and 9603.40.4060 of the HTS. Excluded from the scope are artists' brushes classified under statistical reporting numbers 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTS, or other non-paintbrush products classified under statistical reporting number 9603.40.4060 of the HTS such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.

paintbrushes from China and imports of natural bristle and synthetic filament paintbrushes from Indonesia. Accordingly, effective August 2, 1999, the Commission instituted antidumping investigations Nos. 731–TA–857–858 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 11, 1999.[6] The conference was held in Washington, DC, on August 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 23, 1999. The views of the Commission are contained in USITC Publication 3237 (September 1999), entitled Certain Paintbrushes from China and Indonesia: Investigations Nos. 731–TA–857–858 (Preliminary).

By order of the Commission.

Issued: September 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–25346 Filed 9–28–99; 8:45 am]

BILLING CODE 7020–02–P

[6] 64 FR 43715.

DEPARTMENT OF LABOR

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed partial consent decree in the consolidated cases captioned *United States* v. *Cantrell, et al.*, Civil Action No. C–1–97–981 (S.D. Ohio) and *United States* v. *Ohio Power Co., et al.*, Civil Action No. C–1–98–247 (S.D. Ohio) was lodged with the United States District Court for the Southern District of Ohio, Western Division, on September 15, 1999, pertaining to the Automatic Containers Superfund Site (the ''Site''), located near Ironton, in Lawrence County, Ohio. The proposed consent decree would resolve certain civil claims of the United States for recovery of more than $1.3 million in unreimbursed past response costs under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607, against two third-party defendants in the consolidated cases. The proposed consent decree, captioned ''Partial Consent Decree with Third-Party Settling Defendants Brooks Beverage Management, Inc. and Woodrow W. Mays & Associates, Inc.,'' would provide for payment of $8667.00 in reimbursement of past CERCLA response costs the United States incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cantrell, et al.*, Civil Action No. C–1–97–981 (S.D. Ohio) and *United States* v. *Ohio Power Co., et al.*, Civil Action No. C–1–98–247 (S.D. Ohio), and DOJ Reference Nos. 90–11–3–1756 and 90–11–3–1756/1.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Southern District of Ohio, 220 U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202 (contact Gerald Kaminski (513–684–3711)); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Mony Chabria (312–886–6842)). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting copies, please refer to the referenced cases and DOJ Reference Numbers, and enclose a check for the amount described below, made payable to the Consent Decree Library. The cost for a copy of the consent decree and all appendices is $6.50 (26 pages at 25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25341 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *CBS Corporation, et al.*, Civil Action No. 1:CV 99–1608 (M.D. Pa.) was lodged with the court on September 3, 1999.

The proposed decree resolves claims of the United States against 4 defendants under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, for response costs and actions at the Hunterstown Road Superfund Site in Adams County, PA. The decree requires the defendants to perform the EPA-selected remedial action to address hazardous substance contamination at the site. That remedial action includes, *inter alia*, excavation and offsite disposal of contaminated soils, capping specified areas of the site and pumping and treating groundwater. The decree also requires the defendants to reimburse $375,898 in past costs to the United States. It allows the defendants to make claims for reimbursement from the Superfund for 29% of the costs they incur in carrying out the remedial action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CBS Corporation, et al.*, Civil Action No. 1:CV 99–1608 (M.D. Pa.), DOJ Ref. #90–11–3–1156. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined and copied at the Office of the United States Attorney, Room 1162, Federal Building, 228 Walnut Street, Harrisburg, PA 17108; or at the Region III Office of the Environmental Protection Agency, c/o Daniel Isales, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box No. 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $26.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the exhibits to the

decree may be obtained from the same source for an additional charge.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25342 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Chemclene, et al.*, No. 99–CV–3715 (E.D. Pa.), was lodged on September 8, 1999, with the United States District Court for the Eastern District of Pennsylvania.

The consent resolves the claims of the United States and the Commonwealth of Pennsylvania pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607(a), and pursuant to the Pennsylvania Hazardous Sites Cleanup Act (''HSCA''), 35 P.S. sections 6020.101 *et seq.*, arising from costs incurred by the United States and the Commonwealth for response actions at the Malvern TCE Superfund Site (''Site'') in East Whiteland Township, Chester County, Pennsylvania.

The Settling Defendants are generators or transporters of hazardous substances that were sent to the Site. The consent decree provides that Settling Defendants will perform remedial action, in exchange for a covenant not to sue, contribution protection, and a share of funds collected from *de minimis* parties, to be applied to remedial costs. The consent decree also provides for settlement of claims against a Federal Agency in connection with the Site. The United States will pay the Settling Defendants $571,372.50 for the Settling Federal Agency's allocable share of past and future remedial costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to DJ # 90–11–3–1731. Comments may also be addressed to the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106, c/o Assistant United States Attorney Nuriye C. Huygur.

The consent decree may be examined and copied at the Office of the Clerk, U.S. District Court for the Eastern District of Pennsylvania; or at the Region III Office of the Environmental Protection Agency, c/o Joan A. Johnson, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $114.00 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section.

[FR Doc. 99–25343 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on September 8, 1999, a consent decree was lodged in *United States* v. *Colorado Refining Company, Inc. and TPI Petroleum, Inc.*, Civil Action No. 99–N–1759, with the United States District Court for the District of Colorado.

This consent decree resolves claims against Colorado Refining Company, Inc. and TPI Petroleum, Inc., brought in connection with the CFC petroleum refinery in Commerce City, Colorado pursuant to section 113(b) of the Clear Air Act, as amended, (''CAA''), 42 U.S.C. 7413(b), and Sections 3008(a), (g) and (h) of the Resource Conservation and Recovery Act, as amended, (''RCRA''), 42 U.S.C. 6928(a), (g) and (h). The consent decree resolves alleged violations of monitoring, sampling, and reporting requirements of a 1989 RCRA Administrative Consent Order and alleged violations of emission control requirements and monitoring, testing and reporting requirements of the CAA. The consent decree requires CRC and TPI to pay a civil penalty of $1.1 million and to perform comprehensive injunctive relief, including the installation of new emissions control technology, additional emissions monitoring and reporting, and additional soil and sediment testing and reporting.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Colorado Refining Company, Inc. and TPI Petroleum, Inc.*, DOJ Ref. No. 90–7–1–894. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Colorado, 1961 Stout Street, Suite 1200, Denver, Colorado or the offices of the Environmental Protection Agency, Region VIII, 999 Eighteen Street, Suite 500, Denver, Colorado. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC. 20044. When requesting a copy by mail, please enclose a check in the amount of $9.25 (twenty-five cents per page reproduction costs), payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25336 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree in the case captioned *United States* v. *Commonwealth Edison Company*, Civil Action No. 99 C 5628 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on September 15, 1999. The proposed consent decree relates to the Standard Scrap Metal/Chicago International Exporting Site located at 4004–4020 South Wentworth and 4000–4027 South Wells Streets in Chicago, Illinois. The proposed consent decree would resolve civil claims of the United States for recovery of past response costs under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9607, against the Commonwealth Edison Company. The proposed consent decree would require

the Commonwealth Edison Company to pay the United States a total of $600,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commonwealth Edison Company*, Civil Action No. 99 C 5628 (N.D. Ill.), and DOJ Reference No. 90–11–3–1414/6.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn St., Chicago, Illinois 60604 (contact Samuel Brooks (312–353–5342)); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Michael Anastasio (312–886–7951). Copies of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting copies, please refer to the referenced case and DOJ Reference Number and enclose a check for $4.25 (17 pages at 25 cents per page reproduction cost), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25335 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 30 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on September 13, 1999, a proposed Consent Decree in *United States of America* v. *Glen Cove Development Company and Village Green Realty at Garvies Point, Inc.*, Civil Action No. CV–99–5600, was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency (''EPA''), against defendants glen Cove Development Company and Village Green Realty at Garvies Point, Inc. (the ''Settling Defendants''), with respect to the Li Tungsten Superfund Site located in Glen Cove, Nassau County, New York. The Complaint alleges that the Settling Defendants are liable as current owners within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). The proposed Consent Decree also will resolve any liability with respect to the Li Tungsten Superfund Site of certain entities related to the Settling Defendants, namely Old Court Holding Company, Old Court Joint Ventures, Inc., and Old Court Savings and Loan, Inc., (In Receivership). Pursuant to the Consent Decree, the Settling Defendants, and Old Court Holding Company, Old Court Joint Ventures, Inc. and Old Court Savings and Loan, Inc. (In Receivership) jointly will pay to the United States $325,000.00 in reimbursement of response costs incurred or to be incurred by EPA or the Department of Justice at or in connection with the Li Tungsten Superfund Site.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Glen Cove Development Company and Village Green Realty at Garvies Point, Inc.*, Civil Action No. CV–99–5600, D.J. Ref. 90–11–3–06561/1.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201 and at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $10.25 payable to the Consent Decree Library. If a copy of the Consent Decree without the attachments is sufficient, please specify that fact and enclose a check in the amount of $9.50.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25339 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 9, 1999, a proposed Consent Decree (''Decree'') in *United States and State of Hawaii* v. *County of Maui,* Civil No. 98–00622 SOM, was lodged with the United States District Court for the District of Hawaii. The United States filed this action pursuant to the Clean Water Act for unauthorized spills of sewage.

Pursuant to the proposed Consent Decree, the County will pay a civil penalty of $300,000, implement injunctive relief designed to prevent future spills of sewage, and perform a supplemental environmental project to increase the availability of reclaimed water for use by a specific area of Maui.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States and State of Hawaii* v. *County of Maui,* City No. CV 98–00622 SOM, and D.J. Ref. # 90–5–1–1–1270A.

The Decree may be examined at the office of the U.S. Attorney for the District of Hawaii, PJKK Federal Building, 300 Ala Moana Boulevard, Suite 6100, Honolulu, Hawaii; and at U.S. EPA Region IX, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. A copy of the Decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $14.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25344 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Nassau Metals Corp., et al.*, C.A. No. 3:96–CV–562 (M.D. Pa.), was lodged on September 8, 1999, with the United States District Court for the Middle District of Pennsylvania. The consent decree resolves the United States' claims against defendant Myron Brenner with respect to past costs, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, in connection with the cleanup of the C&D Recycling, Inc., Site, located in Luzerne County, Pennsylvania. Under the consent decree, defendant Myron Brenner, based upon an ability-to-pay settlement, will pay the United States $87,500 in reimbursement past response costs within thirty days after entry of the consent decree by the Court. Defendant Myron Brenner has also agreed, if the Site property is sold, to pay the United States the proceeds from said sale as provided under the terms of the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nassau Metals Corp., et al.*, DOJ Reference No. 90–11–3–1057–A.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 309, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania 18501; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25337 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Resource Conservation and Recovery Act

Notice is hereby given that on September 8, 1999, a proposed Consent Decree (''Decree'') in *United States* v. *Parish Chemical Company*, Civil No. 2:97CV 0593B (D. Utah), was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the sections 112(r) and 113 of the Clean Air Act (''CAA''), for civil penalties and injunctive relief. The United States is also settling related claims for civil penalties for violations of the Resource Conservation and Recovery Act (''RCRA'').

The proposed Consent Decree resolves claims against Parish Chemical Company (''PCC'') under sections 112(r) and 113 of the CAA and section 3008 of RCRA, 42 U.S.C. 6928, with respect to the Parish Chemical Company facility in Vineyard, Utah. Under the terms of the Decree PCC will meet the requirements of a compliance plan addressing general chemical storage practices at PCC's facility and pay a civil penalty to the United States in the amount of $100,000 for past violations.

The Department of the Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Parish Chemical Company*, Civil No. 2:97CV 0593B (D. Utah), and D.J. Ref. # 90–11–2–1215.

The Decree may be examined at the office of the U.S. Attorney for the District of Utah, 185 South State Street, Suite 400, Salt Lake City, UT 84111, and at the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, CO 80202. A copy of the Decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $9.50 for the Decree (25 Cents per page reproduction cost) payable to the Consent Decree Library.

Walter K. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25338 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 3, 1999, a proposed Partial Consent Decree (''Consent Decree'') in *United States* v. *Johnnie Williams, et al.*, Civil Action No. 98–2704–MI–BRE was lodged with the United States District Court for the Western District of Tennessee.

In this action, the United States sought reimbursement of past response costs under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607(a). The costs were incurred with respect to the W & R Drum Site located at 1492 Grimes Place, Memphis, Shelby County, Tennessee (the ''Site''). W & R Drum used the Site to recondition drums that originally contained printing inks, paints, solvents, and other hazardous substances. W & R Drum's operations left behind contaminated soil and approximately 27,000 drums. Under the proposed settlement, defendant Lilly Industries, Inc. has agreed to pay a total of $560,000 in reimbursement of the United States' past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Johnnie Williams, et al.*, Civil Action No. 98–2704–MI–BRE, D.J. Ref. 90–11–2–1351.

The Consent Decree may be examined at the Office of the United States Attorney, 167 North Main Street, Suite 800, Memphis, Tennessee 38103, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, Georgia 30303. A copy of the Consent Decree also may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611,

Washington, DC 20044. In requesting a copy , please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–25340 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Registration

By Notice dated June 10, 1999, and published in the **Federal Register** on June 29, 1999, (64 FR 34825), Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Ibogaine (7260)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (except HC1) (9056)	I
Heroin (9200)	I
Pholcodine (9414)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9210)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Dextropropoxphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Radian International LLC to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Radian International LLC on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 14, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–25234 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 26, 1999, and published in the **Federal Register** on July 7, 1999, (64 FR 30359), Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Etylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betcetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydromorphinol (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

Drug	Schedule
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocoyclohexanecarbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecogonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Radian International LLC to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Radian International LLC on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–25359 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–77]

RX Returns, Inc.—Continuation of Stay of Revocation

On August 15, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to RX Returns, Inc. (Respondent) of Palm, Pennsylvania, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, RR0166113, and deny any pending applications for renewal of its registration as a distributor (disposer), pursuant to 21 U.S.C. 823(e), for reason that Respondent's continued registration would be inconsistent with the public interest.

Respondent timely filed a request for a hearing, and following prehearing procedures, a hearing was held on June 13, 14, 15, and August 19 and 20, 1995, before Administrative Law Judge Paul A. Tenney. On November 14, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommendations, recommending that Respondent's registration be continued and no action be taken against it.

On July 5, 1996, the then-Deputy Administrator issued a final order finding that it was in the public interest to revoke Respondent's registration, but to stay the revocation for one year, giving Respondent the opportunity to demonstrate that its recent changes to procedures, ''may, in operation, finally create an accountability system adequate for the Respondent to demonstrate the requisite degree of precision in handling controlled substances necessary to continue in operation as a disposer.'' RX Returns, Inc., 61 FR 37081 (July 16, 1996). The then-Deputy Administrator further stated that during this one-year period DEA would conduct inspections and audits of Respondent and specifically stated that:

> * * * [I]f the DEA's inspections or audits reveal either new or repeated violations, the Deputy Administrator will remove the stay and the DEA Certificate of Registration will be revoked immediately, and all pending applications for renewal will be summarily denied. If, however, at the end of the one-year period, the Respondent successfully demonstrates its compliance with the DEA's regulatory requirements, then the Deputy Administrator will withdraw this order and will permit the Respondent to retain its registration, and to renew it, if necessary, at that time.

Id. at 37,090.

On May 1, 1997, the Government filed a Motion to the Deputy Administrator for Removal of Order to Stay Revocation, alleging that a DEA inspection of Respondent's facility conducted between September 10, and October 3, 1996, revealed various regulatory violations. By letter dated June 20, 1997, Respondent filed its response to the Government's motion.

By letter dated July 3, 1997, the then-Acting Deputy Administrator advised Administrative Law Judge Mary Ellen Bittner that it appeared that there was a factual dispute as to whether there had been any violation of DEA regulations. Accordingly, the then-Acting Deputy Administrator remanded the matter to the Administrative Law Judge ''to conduct a hearing and make recommendations as to whether a violation has occurred since the effective date of the final order, and if so, whether such violation warrants the removal of the stay.''

Following prehearing procedures, a hearing was held before Administrative Law Judge Mary Ellen Bittner on September 3 through 5, 1997, in Arlington, Virginia. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument.

On May 26, 1999, Judge Bittner issued her Supplemental Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that the Deputy Administrator withdraw the earlier final order, permit Respondent to retain its registration, and grant any pending applications for renewal of its registration. On June 15, 1999, the Government filed exceptions to Judge Bittner's opinion and recommendation, and on July 8, 1999, Respondent filed its response to the Government's exceptions. On July 9, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy

Administrator adopts, with noted exceptions, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and his adopted is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the findings of fact and conclusions of law which led to the revocation of Respondent's DEA Certificate of Registration and the stay of the revocation are set forth in great detail in the final order of the then-Deputy Administrator found at 61 FR 37081 (July 16, 1996). They will not be repeated in this final order, but are incorporated herein and will be referred to as necessary in rendering a decision in this matter. The issue now is whether any violations of the law and regulations have occurred since the previous final order and, if so, whether such violations warrant the removal of the stay and revocation of Respondent's registration.

As background, the Deputy Administrator finds that Respondents is a disposer of products, including controlled substances, for customers such as health care facilities, retailers and wholesalers. Respondent either destroys the products or distributes them back to the original manufacturer for credit. Jeffrey Dershem owns approximately 55 percent of the shares of the firm and is the president and chief executive officer of Respondent. His wife, Deborah Dershem, (who was known in the previous proceeding as Deborah Smith), owns the other 45 percent of the shares and is Respondent's executive vice president and general manager. Ms. Dershem is responsible for Respondent's daily operations.

Pursuant to the Controlled Substances Act DEA register manufacturers, distributors, and dispensers of controlled substances. Respondent's business does not fit within any of these registrant categories, yet DEA nonetheless issued Respondent a registration as distributor in 1991. Subsequently, in March 1992, DEA and Respondent entered into a Memorandum of Understanding which indicated that due to environmental concerns it has become difficult to dispose of controlled substances. As a result, ''* * * DEA has initiated steps to amend the [Controlled Substances Act] or regulations, permitting a new category of registrant. This new type of registrant would have controlled substance disposal as its primary function. Because of the need for this type of activity, this Memorandum of Understanding (MOU) will serve as an interims step in addressing this particular disposal problem.'' Pursuant to the Memorandum of Understanding, Respondent basically agreed to comply with security, recordkeeping and destruction regulations, and DEA agreed to issue Respondent a registration once its physical security was approved and to work with Respondent to establish appropriate recordkeeping procedures.

On August 23, 1995, DEA published proposed regulations applicable to disposers of controlled substances. See 60 FR 43732 (1995). However, as of the date of the hearing in this matter, these regulations have not been finalized. Therefore, there are still no regulations in effect relating specifically to disposers of controlled substances.

The Deputy Administrator finds that Respondent's business is quite different from other registered distributors of controlled substances. Regular ''forward'' distributors order and receive full containers of controlled substance from their suppliers and, in turn, distribute full containers to customers who order them. According to Mr. Dershem, Respondent, on the other hand, receives ''packages that are open, broken, no longer in shelf packs, bags of pill, boxes of pills, pills that have been repackaged, pills that have been taken out of the original containers and put into hospital containers, things of that sort.''

Ms. Dershem testified at the hearing before Judge Bittner that Respondent prepared a form for its customers to use to list all controlled substances in each box shipped to Respondent, and that a copy of the form was to be placed in the box. This form will hereinafter be referred to as receipt document. According to Ms. Dershem, as of September 1996, Respondent's standard operating procedure when a package containing controlled substances arrived at the facility was that the Respondent's employees opened the box, checked for the document listing the contents of the box, and removed any non-controlled substances or Schedule II controlled substances from the box. Respondent's personnel then counted every dosage unit of each controlled substance received in a box, corrected the inventory listed on the receipt document if necessary, and signed the receipt document as verified. The information is then entered into Respondent's computer and the receipt document filed. If no receipt document is received from a customer, Respondent's computer-generated report becomes the primary document of receipt. Then depending on whether the controlled substances are to be shipped to the manufacturer or be destroyed. Respondent would generate a shipping document or a DEA destruction form.

Following the issuance of earlier final order in this matter, Respondent requested a meeting with DEA representatives. The meeting occurred on August 2, 1996, during which it was discussed, among other things, how Respondent should handle unsolicited shipments, shipments that are not accompanied by the appropriate documents, and shipments that were larger than anticipated. In a letter memorializing her understanding of the results of the meeting, Mr. Dershem stated that ''DEA recognizes that [Respondent] is unique with regard to DEA licensing classification * * *. DEA will work with [Respondent] in understanding our specific business and necessary accommodations.''

Ms. Dershem testified that Respondent was concerned that the receipt document sent by a customer who shipped a controlled substance to Respondent would be considered Respondent's record of receipt, because Respondent would be held accountable for any errors or omissions the customer made in preparing the form. Respondent wanted DEA to consider the document Respondent generated after it inventoried the product as its record of receipt. However, DEA representatives took the position that the proper receiving document is either an invoice or a packing slip that accompanies the controlled substances. But, it is undisputed that the DEA representatives assured Respondent that it would not be held accountable for errors made by customers, and that it would be acceptable for Respondent to attach its computer generated record to the receipt document from the customer.

Regarding large shipments, Respondent emphasized at the meeting that it had a limited number of employees who had undergone background checks and therefore were certified to work in the controlled substance cage, and that it takes a long time to accurately process such a shipment. According to Ms. Dershem, the DEA supervisor present at the meeting indicated that she understood the problem and ''we were given a variance,'' but that Respondent was not told what DEA considered the most important steps in handling large shipments. According to DEA representatives who were present at the meeting and who testified at the hearing, they explained to Respondent that DEA understood that sometimes Respondent could not immediately reconcile what was actually in the

shipment with the documents accompanying it, but that Respondent should at lest open the boxes immediately and determine whether they contained the receipt document from the customer.

On September 10, 1996, DEA began an inspection and accountability audit of Respondent. Prior to the inspection, DEA investigators had decided to audit six different controlled substance products. When the DEA investigators arrived at Respondent they found approximately 1,400 to 1,500 boxes in the controlled substance cage. It was determined that the vast majority of these boxes were part of a shipment that contained products from Kmart, and that only approximately 40 boxes were not part of the Kmart shipment.

It appears that all Kmart pharmacies were going to conduct a physical inventory on July 31, 1996. In preparation for that inventory, the pharmacies were directed to remove various products, including controlled substances, from their shelves that had expired or were about to expire. Kmart had entered into an agreement with Cardinal Health (Cardinal), a DEA-registered distributor, that Cardinal would pick up these products from Kmart stores, however Cardinal was unable to handle certain aspects of the Kmart returns. Cardinal was along-time customer of Respondent and made arrangements for Respondent to handle the Kmart returns of partially full containers. Ms. Dershem testified that neither Cardinal nor Kmart could predict how much material Respondent could expect.

When the investigators arrived on September 10, 1996, most of the Kmart boxes were on pallets. The boxes had labels identifying them as from Kmart, but the pallets had pieces of paper on them indicating the name of a city and a date. The investigators were told that the city names indicated locations of Cardinal facilities, and the date reflected the date that Respondent received the shipment.

According to Ms. Dershem, the Kmart facilities had been instructed to place a label on each box that identified whether it contained controlled substances. If the boxes indicated that they contained controlled substances, they were immediately taken to Respondent's controlled substance cage. The boxes were then processed in three stages. ''Stage 1'' consisted of breaking down the pallet, opening up each box, ascertaining which Kmart store was responsible for each box, and checking for a receipt document. If there was no receipt document, the Kmart store would be contacted to obtain the document. Also any Schedule II controlled substances or non-controlled substances were removed during this stage. The boxes were then resealed until ''stage 2'' processing. ''Stage 2'' processing consisted of counting the actual dosage units in the boxes and verifying that what Respondent actually received was what the receipt document listed as the contents of the box. The receipt document was then signed. During ''stage 3'' the information was entered into Respondent's computer. As the number of Kmart boxes received at Respondent increased, Respondent was unable to complete all three stages of processing upon receipt. Therefore, when the DEA investigators arrived to conduct their inspection, the Kmart boxes were in various stages of processing. The receipt documents were maintained inside the boxes during processing.

As a result, in order to conduct their accountability audit, the DEA investigators began opening each of the Kmart boxes to look at the receipt documents to ascertain whether the boxes contained any of the controlled substances being audited. In so doing, the investigators discovered that some receipt documents were missing and that others were inadequate, incomplete, incorrect, or illegible.

By the end of the first day of the inspection, the investigators had inventoried the controlled substances to be audited in all of the non-Kmart boxes. At the end of the second day, the DEA investigators still had a large number of Kmart boxes to inventory. The investigators asked Ms. Dershem to have the receipt documents pulled from the boxes and that they would not return to Respondent the next day in order to give Respondent's personnel an opportunity to pull together the documents. Ms. Dershem had the documents available for the investigators the next day. Nonetheless the DEA investigators decided to stop inventorying the Kmart boxes believing that based upon the state of the documents, it would be impossible to audit the contents of the boxes.

Consequently, DEA did not include the Kmart shipments in conducting its audit. As the initial inventory for the audit, DEA used Respondent's December 1995 biennial inventory, which consisted of a 42 page computer printout plus six handwritten pages of information not yet entered into the computer. Upon review, it was discovered that there were approximately 47 entries in the inventory for substances that were the subject of the audit.

DEA investigators noted several entries in the biennial inventory which caused them concern. First, the size of the containers was not listed on the handwritten portion of the inventory. Second, regarding Valium 10 mg./2 ml. ampules, the entry in the physical count column was a ''6,'' when in fact Respondent had 3 ampules. According to Ms. Dershem, the number of ampules (3) was multiplied by the package size (2 ml.). However, a DEA investigator testified that DEA considers an ampule a dosage unit so the entry should have been ''3'' instead of ''6.'' Third, there were errors in three entries on the handwritten pages for propoxyphene napsylate. It is undisputed that these entries referred to propoxyphene napsylate with acetaminophen, a different product. Finally, another problem regarding these propoxyphene napsylate entries is that Respondent's inventory listed the number of containers, but did not indicate the size of the containers. Therefore, there was no way to know the total quantity of the drug on hand. For purposes of the audit computations, the DEA investigators listed that each container held 100 dosage units based upon the representation of the cage supervisor.

DEA's audit revealed a shortage of 400 propoxyphene napsylate and 3 ampules of Valium injectable, however these shortages resulted from Respondent's inaccurate entries on the December 1995 inventory. There were also relatively minor discrepancies regarding four other audited substances, and the remaining four audited substances balanced. The lead DEA investigator testified at the hearing in this matter that ''[i]f I had gone in the firm and the only problem I had was these minor audit discrepancies, we would not be sitting here.'' A former DEA investigator who now works as a consultant conducted an on-site evaluation of Respondent's controlled substance handling in June 1997. The consultant conducted an audit of the same substances that DEA audited covering the same time period as DEA's audit. He testified that he found no discrepancies with respect to any of the audited substances. However, the consultant acknowledged that he did not know whether DEA was provided with the same records that he used. Also, the consultant conducted an additional accountability audit of the substances for September 1996 to June 1997, and there were no discrepancies.

As part of its September 1996 inspection, DEA reviewed Respondent's recordkeeping procedures regarding the Kmart shipments, and had concerns regarding the maintenance of the receipt

documents. The lead DEA investigator testified that these documents were not readily retrievable. The receipt documents were still in the Kmart boxes and there no copies of these documents in any receiving file. Further, not all of the boxes even contained any receipt documents and some of the documents were either incomplete or inaccurate.

It was also the investigator's opinion that these documents were not current. Ms. Dershem told the investigator that prior to the Kmart shipments receiving information was generally entered into the computer within 48 hours of receipt of a shipment. However, there were boxes that were part of the Kmart shipments that were received by Respondent in July 1996, but had not been completely processed by the September 1996 inspection. The investigator testified that because of this delay, DEA was unable to determine whether any noted discrepancies between the subsequent actual inventories of the contents of the boxes and the receipt documents generated by the shipper were due to in-transit loss or on-site diversion.

As a result of these problems, the investigator testified that DEA was unable to conduct an accountability audit that included the Kmart shipments. This concerned the investigator since the Kmart shipments amounted to the vast majority of the controlled substances for which Respondent was accountable.

However Ms. Dershem disagreed, testifying that the receiving documents were readily retrievable because they could easily have been pulled out of the boxes, as demonstrated by Respondent being able to make copies of the documents available for the investigator overnight. Also, both Mr. and Ms. Dershem stated that Respondent had always maintained the receiving documents in boxes it received from customers and had never before been told that this practice was improper or violated any regulations, nor that it needed to put copies of the documents in a receiving file.

Another concern of the DEA investigators regarding the Kmart shipments is that Respondent did not obtain any receipt documents from Cardinal. According to the DEA witnesses who testified, Cardinal was the true shipper of the controlled substances to Respondent, not Kmart. The lead investigator testified that DEA considers the supplier to be whoever shipped the controlled substances to the receiving registrant. She further testified that as far as DEA was concerned, Respondent's supplier for the Kmart shipments was Cardinal, and as a result, Cardinal should have opened the Kmart boxes upon receipt, inventoried the contents, and created an inventory document to accompany the boxes to Respondent. Another DEA investigator testified that transactions between Kmart and Cardinal and between Cardinal and Respondent were distributions, and therefore the recordkeeping requirements in 21 CFR part 1304 applied to these separate transactions.

Ms. Dershem testified that Respondent believed that Cardinal was merely acting as the freight forwarder of the boxes from Kmart to Respondent and therefore no records were needed from Cardinal. An internal Cardinal memorandum instructed Cardinal managers that ''[t]hese boxes are absolutely not to be opened or counted at our DC's, or else they will not longer meet the DEA's criteria for cross-dock shipments.'' Ms. Dershem testified that it was her understanding that Cardinal would have the responsibility of maintaining the audit trail showing how many boxes it sent to Respondent. According to Ms. Dershem, Cardinal told her that it would take care of shipping and she testified that she had no reason to question Cardinal because Cardinal is a large wholesaler with staff who specialize in regulatory compliance.

However, DEA witnesses testified that the arrangement between Kmart, Cardinal and Respondent did not qualify as freight forwarding. An investigator and former chief of the Liaison Unit in the Liaison and Policy Section of DEA's Office of Diversion Control testified that both freight forwarding and cross-dock shipping refer to a DEA-registered distributor's use of a separate unregistered warehouse, operated and controlled by the distributor, as an interim warehouse to which controlled substances are conveyed by a long-haul trucker and at which the drugs are placed in smaller, local trucks for conveyance to another registrant who is the consignee for the order. But other DEA witnesses offered slightly different definitions of the terms.

Yet, it is undisputed that at the time of the Kmart shipments, there were no regulations, nor did DEA have a formal written policy, regarding freight forwarding or cross-dock shipping. In fact, proposed regulations regarding freight forwarding were published in December 1996, and they have yet to be finalized. Nonetheless, DEA has permitted freight forwarding facilities to operate in some instances despite the lack of regulations or formal policy.

The consultant who conducted the on-site evaluation of Respondent in June 1997, not only conducted an audit of the same substances that DEA audited in September 1996, but also reviewed Respondent's recordkeeping system to determine whether it was able to prevent or detect diversion. In his opinion, Respondent's records were very orderly and met the requirements of the Controlled Substances Act and its regulations. He further testified that he did not detect any diversion occurring at Respondent.

Another consultant testified that he visited Respondent in August 1997 and found that Respondent's personnel were able to produce records promptly, that the records were very organized, easy to read, and in good order, and that he believed that Respondent's records exceeded DEA's requirements.

Ms. Dershem testified that after the September 1996 inspection, Respondent changed its procedure for handling receipt documents: ''we actually take the document, we verify the products, correct it, make a photocopy of the document, put it in a pending file, mark the box with a number, mark the packing slip with a number.'' According to Ms. Dershem, the procedure in effect at the time of the hearing before Judge Bittner included writing the number of the box on the receipt document in a pending file so that DEA investigators could ascertain whether information from the document had been entered into the computer and could match the receipt document to the appropriate box.

The Deputy Administrator must first determine whether any violations of the law and regulations have occurred since the effective date of the previous final order. The Government contends that Respondent violated 21 CFR 1304.11(a)[1], 1304.15(c) and (d), and 1304.16. These provisions essentially require that a registrant's inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and that such inventory shall include, among other things, the name of the substance, the number of dosage units in each commercial container, and the number of commercial containers.

The Deputy Administrator agrees with Judge Bittner that Respondent violated these provisions because its December 1995 biennial inventory failed to correctly identify propoxyphene napsylate with acetaminophen, failed to indicate the number of dosage units in

[1] References to the Code of Federal Regulations are to provisions in effect at the time of the September 1996 inspection.

each commercial container of propoxyphene napsylate with acetaminophen, and failed to correctly indicate the total quantity of Valium ampules. Also there were no container sizes listed on the handwritten portion of the inventory.

The Government also contends that Respondent violated 21 U.S.C. 827 and 21 CFR 1304.04(f)(2), by failing to maintain its receipt records for the Kmart shipments either separately from all other records or in such form that the information required is readily retrievable from the ordinary business records of the registrant. The Deputy Administrator agrees with Judge Bittner's rejection of Respondent's contention that its maintenance of receipt records in boxes meets the requirement of maintaining the records separate from all other records. As Judge Bittner noted, ''adopting Respondent's interpretation would mean that a registrant could scatter controlled substance records around its establishment in no particular order, a result I do not believe the regulations intended to achieve.''

The question then becomes whether Respondent's records of receipt regarding the Kmart shipments were readily retrievable. The record establishes that DEA investigators advised Respondent that the receipt documents from Respondent's customers were the primary records and that the 1993 Memorandum of Understanding entered into between DEA and Respondent required that Respondent obtain these documents from its customers. It is undisputed that to the extent that Respondent's customers provided these documents, Respondent was able to make them available to DEA investigators within a day of being asked to produce the documents. Therefore, it appears that the receipt documents from Respondent's customers were readily retrievable.

However, the Deputy Administrator finds that 21 U.S.C. 827 and 21 CFR 1304.21, require that a registrant maintain a record of its receipt of controlled substances. The Deputy Administrator agrees with Judge Bittner that the receipt documents in the Kmart boxes created by Respondent's customers are not what needed to be readily retrievable, but rather Respondent's record of what it received. Even if the receipt documents from the customers had been out of the boxes, DEA could not have conducted an accurate accountability audit because they did not reflect what controlled substances were actually received by Respondent. The Deputy Administrator agrees with Judge Bittner that, ''[t]he only meaningful document is that which shows what the customer claimed to send versus what Respondent claims to have received, and that document does not exist until Respondent's personnel inventory the contents of the boxes.'' The Deputy Administrator recognizes that DEA registrants may use invoices from their suppliers as their records of receipt, however they are not obligated to do so. As is the case with Respondent, DEA registrants may wish to verify what they receive and then create their own record of receipt. All that is required by the statute and regulations is that a registrant maintain a record of the controlled substances that it receives.

Jude Bittner concluded that Respondent's records of what it claims to have actually received were maintained and filed in chronological order and were therefore readily retrievable. As a result, Judge Bittner concluded that Respondent did not violate this provision.

The Deputy Administrator agrees with Judge Bittner that as to those records where the contents of the Kmart boxes had been inventoried and verified against the customers' receipt documents, these documents were readily retrievable. However, as to the majority of the Kmart boxes, where the contents had yet to be verified against the customers' receipt documents at the time of the September 1996 inspection, Respondent had no record of what it actually received. Consequently, the Deputy Administrator finds that all of Respondent's records of receipt were not readily retrievable, because some did not exist at the time of the September 1996 inspection.

Next, the Government contends that Respondent violated 21 U.S.C. 827 and 21 CFR 1304.21(a), by failing to maintain on a current basis a complete and accurate record of its receipt of controlled substances. Again, Judge Bittner noted that the relevant document is what Respondent indicates it actually received. ''Current'' is not defined in DEA's regulations so Judge Bittner found that ''the real question is whether Respondent processed the material and generated the verification documents sufficiently quickly.''

Judge Bittner noted that some of the Kmart boxes had been at Respondent's facility as of July 22, 1996, and had not been verified by the time of DEA's inspection in September. But, Judge Bittner found it relevant that Respondent could not predict the quantity of controlled substances it would receive or when the large shipment would be received and thus could not prepare for the shipments by hiring additional employees who would require pre-employment background checks. As a result, Judge Bittner concluded ''that the record is inadequate for a determination as to whether Respondent's records pertaining to the Kmart shipments were or were not 'current.' I therefore conclude that the Government has not met its burden of proof showing that Respondent violated this regulatory requirement.''

However, the Deputy Administrator disagrees with Judge Bittner. Respondent cannot have it both ways. Respondent does not want to be held responsible for what the customer says is in the boxes and wants the opportunity to verify the contents of the boxes and create its own record of receipt. But on the other hand, Respondent cannot get to verifying the contents of the boxes upon their receipt. The delay in verifying the contents of the boxes increases the potential for diversion, the very reason that records of receipt must be maintained on a current basis.

The Deputy Administrator recognizes that with large shipments, Respondent may have a more difficult time maintaining its records of receipt on a current basis. But, that is Respondent's responsibility in light of existing regulations. In order to comply with the regulations, Respondent might have to require that its customers give it more advance notice of large shipments and an estimate as to the size of the shipments in order for Respondent to adequately prepare to handle these shipments and meet its regulatory responsibilities. Nonetheless, the Deputy Administrator finds that Respondent failed to maintain all of its records of receipt of the Kmart shipments on a current basis.

Finally, the Government contends that Respondent violated 21 CFR 1304.23(c), which requires that a distributor keep a record of what controlled substances it receives that includes, among other things, the name of the person from whom the containers were received. The Government asserts that Respondent received the Kmart shipments from Cardinal, and that consequently, Cardinal was required to inventory the product at its premises and Respondent was required to obtain documentation of that inventory from Cardinal. Respondent contends that Cardinal was acting as a freight forwarder for the shipments and therefore no records were required from Cardinal.

Judge Bittner concluded that ''[i]t is undisputed that the Kmart boxes were handled at Cardinal facilities, that

Cardinal did not inventory the contents of the boxes, and that Respondent did not obtain inventories of the contents from Cardinal. Thus, according to a literal reading of section 1304.23(c), Respondent violated that section.

The Deputy Administrator disagrees with Judge Bittner to the extent that Respondent's violation of the regulation is not Respondent's failure to obtain inventories from Cardinal. Instead, Respondent violated this provision by failing to list Cardinal as the shipper of the controlled substances on its records of receipt. In light of existing regulations, Cardinal should have opened the boxes and created a record of what it shipped to Respondent, but any violations by Cardinal are not at issue in these proceedings. Respondent then should have created a record of what it received listing Cardinal as the shipper of the controlled substances. Therefore, the Deputy Administrator finds that Respondent violated 21 CFR 1304.23(c) by failing to list Cardinal as the shipper of the controlled substances on its records of receipt.

The Deputy Administrator concludes that Respondent did violate some provisions of the law and regulations relating to controlled substances since the effective date of the previous final order in this matter. The next question is whether such violations warrant revocation.

As a preliminary matter, the Government argued in its exceptions to Judge Bittner's opinion that in light of the wording of the then-Deputy Administrator's final order dated July 5, 1996, *any* violation since the effective date of the final order should cause the stay to be lifted and Respondent's registration revoked. However, the Deputy Administrator agrees with the then—Acting Deputy Administrator's remand of this matter when he directed Judge Bittner to make a recommendation as to whether a violation warrants the removal of the stay. Revocation is a harsh sanction and should not be taken lightly. The nature of a violation and the circumstances surrounding such a violation should be considered in determining whether revocation is warranted.

Pursuant to 21 U.S.C. 823(e) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the continued registration would be inconsistent with the public interest. In determining the public interest, the Deputy Administrator must consider the following factors set forth in 21 U.S.C. 823(e):

(1) Maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) Compliance with applicable State and local law;

(3) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) Past experience in the distribution of controlled substances; and

(5) Such other factors as may be relevant to and consistent with the public health and safety.

It is well established that these factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See Centrum Medical Enterprises, Inc., 58 FR 51,383 (1993).

Regarding factor one, Judge Bittner concluded that Respondent has established a number of controls to prevent the diversion of controlled substances, however as of the September 1996 inspection, Respondent was unable to generate an accurate report of what was in the cage. But, Judge Bittner also found it significant that ''Respondent operates under a variety of exogenous constraints, including lack of information as to when controlled substances will arrive at its facility and in what quantity and the requirement that it perform background checks on potential employees who would have access to controlled substances.'' Therefore, Judge Bittner concluded that, ''[i]n these circumstances, and given the unusual nature of the Kmart shipments and Respondent's care in ensuring that controlled substances are secured, * * * Respondent maintains effective controls against diversion and * * * this factor weighs in favor of Respondent's continued registration.''

The Deputy Administrator agrees with Judge Bittner to some extent. Respondent has instituted a number of procedures to help minimize the risk of diversion, however the violations discovered during the September 1996 inspection must be considered in determining whether Respondent has maintained effective controls against the diversion of controlled substances.

First, the Deputy Administrator has concluded that Respondent had several inaccurate entries on its December 1995 biennial inventory causing discrepancies in an accountability audit. In order to conduct an accountability audit, DEA must rely on the accuracy of a registrant's records, including its inventories. While ideally there should be no discrepancies in an audit, given the volume of Respondent's business and the explanations provided for the inaccurate entries, the Deputy Administrator finds that the violations relating to Respondent's biennial inventory are relatively minor. Even the lead DEA investigator characterized the problems as ''minor audit discrepancies.'' The Deputy Administrator therefore concludes that the violations relating to Respondent's inventory do not warrant revocation of Respondent's registration.

Next, the Deputy Administrator finds it significant that other than the Kmart shipments, Respondent's records of receipt appear to be in compliance with the regulations. But, the Deputy Administrator finds as discussed above, that Respondent's records relating to the Kmart shipments were not all readily retrievable or current. This is of serious concern to the Deputy Administrator since these requirements are in place to prevent the diversion of controlled substances. By not having readily retrievable records of receipt for several months after the controlled substances are received at Respondent's facility, the chances of diversion increase.

The Deputy Administrator recognizes Respondent's dilemma that it might take Respondent a long time to process large shipments, but it must nonetheless comply with the existing regulations which require that records of receipt be maintained on a current basis and be readily retrievable.

The disposer business is different from other DEA registered distributors, and regulations are needed to specifically address this type of DEA registrant. DEA's failure to finalize regulations that were proposed in August 1995 seems to support a conclusion that even DEA recognizes that this is a complex and evolving business, not like other distributors where receipt of controlled substances is easily verifiable.

Therefore, the Deputy Administrator does not find it appropriate to lift the stay of revocation at this time. However, until regulations are promulgated, Respondent must establish procedures to deal with large shipments of controlled substances and still comply with the existing regulations. As previously discussed, Respondent may need to require that its customers provide Respondent with more advance notice of large shipments and an estimate as to the size of the shipments so that Respondent can better prepare to meet its regulatory responsibilities.

Finally, the Government contends that Respondent's failure to obtain receipt documents from Cardinal

threatened the closed system of distribution and therefore increased the risk of diversion. Judge Bittner concluded that Respondent violated 21 CFR 1304.23(c) by failing to obtain records from Cardinal showing what Cardinal sent to Respondent as part of the Kmart shipments. Judge Bittner further concluded however that, ''imposing such a requirement in this type of transaction quite simply makes no sense.'' Judge Bittner contended that to require Cardinal to open boxes, inventory contents and create a record would increase the chance of diversion.

But, as noted above, the Deputy Administrator concludes that Respondent's violation of the regulations was not that it did not obtain documents from Cardinal, but rather that Respondent did not list Cardinal as the shipper of the controlled substances on its own records of receipt. While it may seem to increase the chances of diversion, the regulations currently in effect nonetheless require that Cardinal should have opened the Kmart boxes, counted the contents and created a record of what it was shipping to Respondent. But, the violations by Cardinal are not at issue in this proceeding. The Deputy Administrator finds however that Respondent should have created a record of receipt indicating that it obtained the controlled substances from Cardinal, not Kmart.

However, the record supports a finding that both Respondent and Cardinal thought that Cardinal was merely acting as a freight forwarder of the controlled substances from Kmart to Respondent and as a result, no records relating to Cardinal's involvement were required. This interpretation is not supported by the existing regulations. Under the current regulations, the shipments from Kmart to Cardinal and from Cardinal to Respondent are considered separate distributions, each requiring records of the transactions.

While Respondent's interpretation is not supported by the regulations, it is not unreasonable. DEA published proposed regulations regarding freight forwarding in December 1996 which have yet to be finalized. Despite this lack of regulations, DEA has nonetheless permitted some forms of freight forwarding to occur, thereby contributing to the industry's confusion as to what is or is not permitted as it relates to freight forwarding. Therefore, Respondent's failure to list Cardinal as the shipper of the controlled substances on its records of receipt does not warrant revocation at this time.

As to factor two, there is not evidence in the record to indicate that Respondent does not comply with applicable state and local law. Likewise, there is no evidence relating to factor three that Respondent or any of its officers or agents have ever been convicted under any Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

Regarding factor four, Respondent's past experience in the distribution of controlled substances appears to be good. Respondent appears to have a good system in place for tracking what controlled substances leave its facility and where they go.

Pursuant to factor five, the Deputy Administrator agrees with Judge Bittner that ''[b]oth Dershems credibly expressed their willingness to comply with DEA requirements, and * * * that Respondent has implemented and will continue to implement measures to minimize the risk of diversion of controlled substances.''

Judge Bittner concluded that even though some regulatory violations occurred, ''Respondent's management remains willing to implement additional measures as necessary to prevent diversion.'' Judge Bittner therefore recommended that the Deputy Administrator conclude that Respondent's continued registration would not be inconsistent with the public interest, and that the Deputy Administrator withdraw the final order published on July 16, 1996, revoking Respondent's registration, permit Respondent to retain its registration, and grant any pending applications for renewal of its registration.

In its exceptions to Judge Bittner's opinion, the Government argued that due to the problems with Respondent's records in the past, the parties agreed that Respondent would obtain records from shippers, and that the DEA investigators made it clear to Respondent that the records from the customers would be considered Respondent's records of receipt. However as noted above, the records from Respondent's customers would not be useful in conducting an audit because they would not necessarily reflect what controlled substances Respondent actually received. But the Deputy Administrator agrees with the Government that DEA continues to be unable to perform audits without current records of receipt. Therefore as previously discussed, Respondent needs to develop procedures to deal with large shipments and the creation of its records of receipt in a prompt manner. The Government's remaining exceptions, and the Respondent's reply to those exceptions, have already been addressed in this final order, and require no further discussion here.

The Deputy Administrator concludes that other than the minor problems with Respondent's December 1995 inventory, Respondent's regulatory violations center around the Kmart/Cardinal shipments. Respondent's non-Kmart recordkeeping practices seem to be in compliance with the regulations. Respondent's problems appear to be in dealing with large shipments of the type received by Respondent from Kmart with partial bottles and random pills in each box.

Regulations exist to protect the public health and safety and they apply to Respondent as a registered distributor of controlled substances. Even though the current regulations were not promulgated with Respondent's type of business activity in mind, Respondent must comply with the existing regulations when handling these large shipments.

However, the Deputy Administrator recognizes that Respondent continues to appear willing to do whatever it takes to comply with its regulatory responsibilities. The Deputy Administrator also acknowledges the need for regulations that address the unique aspects of the disposer industry and freight forwarding. Therefore, the Deputy Administrator concludes that it is not in the public interest to lift the stay and revoke Respondent's registration at this time.

But unlike Judge Bittner, the Deputy Administrator concludes that further monitoring of Respondent is still necessary. Respondent's failure to create records of receipt for large shipments in a prompt manner threatens the closed system of distribution of controlled substances and increases the likelihood of diversion.

Therefore, the Deputy Administrator concludes that is in the public interest to continue the stay of revocation for one year from the effective date of this final order. The Deputy Administrator orders that within one month of the effective date of this final order, Respondent shall present evidence to the DEA office in Philadelphia that it has developed procedures to deal with large shipments of controlled substances and to maintain its records of receipt on a current basis and in a readily retrievable manner. Thereafter, during the one year probationary period, DEA will conduct inspections and audits in compliance with 21 U.S.C. 880 to determine if Respondent's records of receipt are now maintained in a readily retrievable manner and on a current basis.

If DEA's inspections or audits reveal that Respondent still does not maintain its records of receipt in a readily retrievable and current manner, the Deputy Administrator will remove the stay and revoke Respondent's DEA Certificate of Registration. However, if the inspections reveal that Respondent is now maintaining its records of receipt in compliance with DEA regulations, then the Deputy Administrator will withdraw this final order and the final order published on July 16, 1996, will permit Respondent to retain its registration, and will renew the registration.

Also to avoid further confusion within the controlled substance industry and to address the concerns set forth in this final order, the Deputy Administrator directs that DEA's Office of Diversion Control finalize the regulations relating to disposers of controlled substances and relating to the freight forwarding of controlled substances.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the stay of revocation of DEA Certificate of Registration RR0166113, issued to RX Returns, Inc., that is set forth in the final order dated July 5, 1996 and found at 61 FR 37,801 (July 16, 1996), be, and it hereby is, continued for one year from the effective date of this final order, subject to the above described conditions. This final order is effective October 29, 1999.

Dated September 20, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–25357 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 23, 1999, and published in the **Federal Register** on March 5, 1999 (64 FR 10725), Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Miliius, 1–3 Strathmore Road, Natick, Massachusetts 01760 made application to the Drug Enforcement Administration (DEA) by letter to be registered as a bulk manufacturer of fentanyl (9801).

A registered bulk manufacturer of fentanyl filed written comments and an objection in response to the notice of application. Review of the APA's definitions of license and licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. *See, e.g. Gateway Transp. Co.* v. *United States*, 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior*, 1994 U.S. Dist. LEXIS 2262 (1994). Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

The objector argues that Sigma Aldrich Research Biochemicals, Inc. cannot prove its registration as a bulk manufacturer of fentanyl is in the public interest, that Sigma Aldrich Research Biochemicals, Inc.'s registration is not required to produce an adequate and uninterrupted supply of fentanyl, that there is sufficient competition with the present bulk manufacturers.

The arguments of the objector were considered, however, DEA has reviewed the firm's safeguards to prevent that theft and diversion of fentanyl and found that the firm has met the regulatory requirements and public interest factors of the Controlled Substances Act.

Sigma Aldrich Research Biochemicals, Inc. has been and is currently registered with DEA as a manufacturer of other Schedule II controlled substances. Sigma Aldrich Research Biochemicals, Inc.'s application is based on the firm's request to add fentanyl to its existing registration as a bulk manufacturer. The firm has been investigated by DEA on a regular basis to determine if the firm maintains effective controls against diversion and if its continued registration is consistent with the public interest. These investigations have included, in part, inspection and testing of the firm's physical security, audits of the firm's records, verification of compliance with state and local law and a review of the firm's background and history. These investigations have found Sigma Aldrich Research Biochemicals, Inc. to be in compliance with the Controlled Substances Act (C.S.A.) and its implementing regulations in recent years.

Under Title 21, Code of Federal Regulations, § 1301.43(b), DEA is not required to limit the number of manufacturers solely because a smaller number is capable of producing an adequate supply provided effective controls against diversion are maintained. DEA has determined that effective controls against diversion will be maintained by Sigma Aldrich Research Biochemicals, Inc.

After reviewing all the evidence, DEA has determined, pursuant to 21 U.S.C. 823(a), that it is consistent with the public interest to grant Sigma Aldrich Research Biochemicals, Inc.'s application to manufacture fentanyl at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–25358 Filed 9–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August and September, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increased of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sale or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3)

has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,929; United Foundry, Inc., Youngstown, OH
TA–W–25,970; Glenoit Corp., Jacksboro, TN
TA–W–36,076; Hardinge, Inc., Elmira, NY
TA–W–36,471; Fort James Corp. Packaging Div., Portland, OR
TA–W–36,307; The Little Tikes Co, Shippensburg, PA
TA–W–36,363, ABB Daimler-Benz Transportation, Elmira Manufacturing Operations, Elmira Heights, NY
TA–W–36,476; Macha International, Inc., Houston, TX
TA–W–36,318; Rocky Mountain Steel Mills, Seamless Mill, Pueblo,CO
TA–W–36,378; Eckel Manufacturing Co., Inc., Odessa, TX
TA–W–36,247; Softspun Knitting Mills, Inc., Henderson, NC
TA–W–36,037; National Oilwell, Odessa, TX
TA–WA–36,108; Sherman Lumber Co., Sherman Station, ME
TA–W–36,114; Edward Vogt Value Co., Jeffersonville, IN
TA–W–36,418; Empro Systems, Inc., Channelview, TX
TA–W–35,989; Letourneau, Inc., Longview, TX
TA–W–36,542; Williamette Industries, Inc., Engineered Wood Products Div., Woodburn, OR
TA–W–36,446; Smurfit Stone Container Corp., Fulton, NY
TA–W–35,912; Yamamoto Manufacturing USA, Inc., Beaverton, OR
TA–W–36,065; Funk Manufacturing, Inc., Coffeyville, KS
TA–W–36,537; Ocean Beauty Seafood, Chinook, WA
TA–W–36,194; Barko Hydraulics LLC, Superior, WI
TA–W–36,127; Tri-Pro Cedar Products, Spokane, WA

In the following cases, the investigator revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–36,558; J. Ray McDermott Engineering, LLC, Houston, TX
TA–W–26,339; National Tank Co., Corpus Christi, TX
TA–W–35,993; Duet Textiles, Inc., New York, NY
TA–W–36,582 & A; Portland General Electric Co (PGE), PGE Nuclear Div. Personnel, Rainier, OR & PGE Corporate Support Personnel, Portland, OR
TA–W–36,567; Rust Tractor Co., Silver City, NM
TA–W–36,550; Brintons Carpets (USA) Limited, Paramus, NJ
TA–W–36,479; Diamond Products International, Corpus Christi, TX and Various Locations in TX
TA–W–36,656; Scurlock Permain LLC, Kilgor, TX
TA–W–36,484; Syntron, Inc., Field Support, Product Support & Engineering Dept., Houston, TX
TA–W–36,555; Deloit Corp., d/b/a Rader Companies, Portland, OR
TA–W–36,496; Core Laboratories, Inc., Casper, WY
TA–W–35,362; AMP, INc., Product Information Center, Customer Services, Middletown, PA
TA–W–36,317; Tubby's Auto Service, Inc., Auto Salvage Div., Houston, TX
TA–W–36,532; McClatchy Bros., Inc., Midland, TX
TA–W–36,36,545; Bombardier Motor Corp. of America, Recreational Products Div., Wausau, WI
TA–W–36,498; Trace Ventures Explorations, Inc., Midland, TX
TA–W–36,620; Corcon, El Paso, TX
TA–W–36,600; Copper Range Co., White Pine, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–36,566; EFTC Corp., Roucky Mountain Operation (RMO). Greeley, CO
TA–W–36,556; Hydralift, Inc., Houston, TX
TA–W–36,060; Thomas C. Wilson, Inc., Odessa, TX
TA–W–36,118; Trinity Industries, Inc., Plant #102, Greenville, PA
TA–W–36,520; Carrier Corp., Commercial Systems & Service Div., TR–1 Facility, Syracuse, NY
TA–W–36,425; B.P. Chemical/Amoco, Port Lavaca, TX
TA–W–36,506; Fellows Manufacturing Co., Boone, NC
TA–W–36,392; Devro-Teepak, Inc., Danville, IL
TA–W–36,611; Parker Aerospace, Abex NWL Div., Kalamazoo, MI
TA–W–36,350; Hewlett Packard Co., Personal Information Products Manufacturing & Distribution Div., Roseville, CA Including Voit Services Group, Caliber Logistics, Ryder International
TA–W–36,465; ABC–NACO, Inc., Anderson, IN
TA–W–36,583; Texas Jean Co., El Paso, TX
TA–W–36,906; Ribbon Narrow Fabrics, Secaucus, NJ
TA–W–36,541; Phelps Dodge Magnet Wire Co., Hopkinsville, KY
TA–W–36,579; Continental Natural Gas, Inc., Continental Spearman Gas Processing LLC, Spearman, TX
TA–W–36,436; Lockhead Martin Corp., Tactical Aircraft Systems, Fort Worth, TX
TA–W–36,415; Zenith Electronics Corp., Microcircuits Div., Chicago, IL
TA–W–36,552; Dixon Ticonderoga Co., Deer Lake, PA
TA–W–36,589; Kvaerner Process, A Div. of Kvaerner US, Inc., Houston, TX
TA–W–36,357; Golden Sunlight Mines, Inc., Whitehall, MT
TA–W–36,666; Lambda Electronics, Inc., McAllen, TX
TA–W–36,635; AMP, Inc., Carlisle Pike Plant, Carlisle, PA
TA–W–36,338; The Pillsbury Co., Blackwood, NJ
TA–W–36,489; Kirkpatrick Energy Associates, Inc., Denver, CO
TA–W–36,026 & A,B,C; Conoco, Inc. Refining and Marketing North America, Lake Charles, LA, Ponca City, OK, Englewood, CO & Crude Oil Supply and Trading North America, Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,369; Wyman Gordon, Albany Div., Albany, OR

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–36,500; The Inspector's Corp., Williston, ND
TA–W–36,268; Briggs Manufacturing, Div. Of C.I.S.A., Robinson, IL
TA–W–36,237; Actown Electrocoil, Inc., Spring Grove, IL
TA–W–36,633H, I, J, K, L, M, N & O; Levi Strauss & Co., Kastrin Plant, El Paso, TX, Brownsville Plant, Brownsville, TX, San Benito Plant, San Benito, TX, San Antonio Sewing Plant, San Antonio, TX, San Antonio Finishing Plant, San Antonio, TX, Powell Plant, Powell, TX, Valencia Sewing Facility, San Francisco, CA, Blue Ridge Plant, Blue Ridge, GA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–36,305; Grand Haven Brass Foundry, Grand Haven, MI

TA–W–36,481; Wyman-Gordon Forgings, Houston, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–36,433; Meadow River Coal Co., Lookout, WV

Aggregate US imports of coal are negligible.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,588; Lorraine Wardy Enterprises, El Paso, TX: June 30, 1998

TA–W–36,456; Dart Energy Corp., d/b/a Indrillers, Inc., Mt. Pleasant, MI: June 1, 1998

TA–W–36,563 & A; Walls Industries, Inc., Merkel Walls Industries, Merkel, TX and Big Spring Walls Industries, Big Spring, TX: July 6, 1998.

TA–W–36,546; Shape Global Technology, Inc., Southern Div., Dadeville, AL: June 23, 1998.

TA–W–36,137; Latex Fashion, Inc., Jersey City, NJ: April 21, 1998.

TA–W–36,383; Locke Insulators, Inc., Baltimore, MD: May 14, 1998.

TA–W–36,372; Shadowline, Inc., Mars Hill, NC: May 28, 1999.

TA–W–36,272; 3M Co., Medical and Surgical Div., Hinsdale, IL: May 11, 1998.

TA–W–36,285; Pilling Weck Surgical, Fort Washington, PA: April 12, 1998.

TA–W–36,368; General Cigar Co., (Currently Known as Swedish Match, NA), Dorthan, AL: May 12, 1998.

TA–W–36,441; Acme United Corp., Goldsboro, NC and Fremont, NC: June 11, 1998.

TA–W–36,298; Beltex Corp., Sportswear Div. And Dye/Finish Div., Belmont, NC: May 18, 1998.

TA–W–36,531, A, B; BHP Copper North America, Including Leased Workers of Western Staffing, Temp Connection, Geotemps, Jalin Enterprises, San Manuel, AZ, Ely, NV and Tucson, AZ: June 30, 1998.

TA–W–36,573; Gerber Childrenwear, Inc., Lumberton, NC: June 7, 1998.

TA–W–36,517; Bandera Pipeline Service Corp., Odessa, TX: June 23, 1998.

TA–W–36,373; Morganton Manufacturing Co., Inc., Morganton, GA: May 26, 1998.

TA–W–36,557; Echo Bay Minerals Co. McCoy/Cove Mine, Battle Mountain, NV: June 30, 1998.

TA–W–36,605; Allergro Operating, Inc., Abilene, TX: July 12, 1998.

TA–W–36,510; Fairfield Apparel Corp., Div. of Maid Bess Corp., Fairfield, VA: June 14, 1998.

TA–W–36,543; Bon Worth, Inc., Victoria, VA: June 28, 1998.

TA–W–36,592; Guidant Intermedics, Angleton, TX.

All workers engaged in employment related to the production of pacemakers and deflbrillators separated from employment on or after July 13, 1998.

All workers producing leads, hybrid circuits and PC's are denied.

TA–W–36,333; Alcoa Technical Center, Alcoa Automatoive Structures, Alcoa Center, PA: May 15, 1998.

TA–W–36,533; Eastham Forege Inc., Beaumont, TX: June 15, 1998.

TA–W–36,538 & A; The Texas Oil Co., Houston, TX and Daisetta, TX: May 13, 1998.

TA–W–36,457; Bohner Oil Co., Wichita Falls, TX: June 9, 1998.

TA–W–36,112; Daugherty Manufacturing Co., Knoxville, TN: April 26, 1998.

TA–W–36,203; Apollo Tanning LTD, Camden, ME: April 30, 1998.

TA–W–36,445; Perfect Jacket Manufacturing Co., Trevose, PA: June 10, 1998.

TA–W–36,956; Pennsylvania Steel Technologies, Inc., A subsidiary of Bethlehem Steel Corp., Steelton, PA: March 11, 1998.

TA–W–36,396; Horn Textile, Inc., Titusville, PA: June 2, 1998.

TA–W–36,356; Chippenhook Corp., Stamping Dept., McAllen, TX: May 20, 1998.

TA–W–36,035; Wyoming Casing, Inc., Dickinson, ND: May 11, 1998.

TA–W–36,301; Westchester Lace and Textiles, Inc., North Bergen, NJ: April 30, 1998.

TA–W–36,224; Starke Uniform Manufacturing Co., Starke, FL: April 21, 1998.

TA–W–36,525; Ponder Industries, Inc., Ponder Fishing Tools, Healdton, OK: June 25, 1998.

TA–W–36,523; Bosch Automotive Hendersonville, TN: June 24, 1998.

TA–W–36,499; ARCO Alaska, Inc., Headquartered in Anchorage, AK and Operating at Various Locations in AK: June 17, 1998.

TA–W–36,229; The Neomet Corp., Edinburg, PA: April 7, 1999.

TA–W–36,017; Precision Twist Drill Co (Formerly Triumph Twist Drill), Rhinelander, WI: March 29, 1998.

TA–W–36,512; L.W. Packard & Co., Inc., Ashland, NH: June 28, 1998.

TA–W–36,330; Allied Signal, Metropolis, IL: May 11, 1998.

TA–W–36,570; The Bachman Co., Phoenixville Plant, Phoenixville, PA: July 8, 1998.

TA–W–36,371; Gesco International Manufacturing, San Antonio, TX: June 3, 1998.

TA–W–36,528; ASM America, Inc., Phoenix, AZ: June 30, 1998.

TA–W–36,971; Barry Callebaut USA, Inc., Pennsauken, NJ: March 19, 1998.

TA–W–36,391; DOC, Tucson, AZ: June 2, 1998.

TA–W–36,056; Cyprus Tohono Corp., Casa Grande, AZ: April 1, 1998.

TA–W–36,526; Pennzenergy Exploration and Production LLC, Formerly Known as Pennzoil Exploration and Production Co., Houston, TX: June 22, 1998.

TA–W–36,329; Picker X-Ray, Solon, OH: May 13, 1998.

TA–W–36,420 & A, B, & C; The Miller Group, Schuylkill Haven PA, H.L. Miller & Son, Schuylkill Haven, PA, Miller Fabrics, Schuylkill Haven, PA and Pottsville Bleach & Dye, Port Carbon, PA: July 10, 1999.

TA–W–36,367; Moen, Inc., Hoov-R-Line, Providence, KY: June 1, 1998.

TA–W–36,578; Carpentas Oilfield Construction, Inc., Denver City, TX: June 25, 1998.

TA–W–36,191; Greene Metal Products, Sturtevant, WI: April 16, 1998.

TA–W–36,643; Walker McDonald Manufacturing Co., a/k/a National Oilwell LP, Greenville, TX: July 21, 1998.

TA–W–36,360; Super Steel Schenectady, Inc., Glenville, NY and Including Temporary Workers from the Following Agencies: JJ Young, Albany, NY, Snelling Personnel Services, Albany, NY, Best Temp Temporary Services, Albany, NY, Adecco, Tad Technical, Albany, NY, Manpower, Schenectady, NY, Fusco Personnel, Inc., Albany, NY: May 10, 1998.

TA–W–36,121; Raider Apparel, Inc., Alma, GA: April 14, 1998.

TA–W–36,926; Packwood Lumber, A Div. Of Pacific Lumber and Shipping Co., Packwood, WA: March 9, 1998.

TA–W–36,151; Adflex Solutions, Inc., Chandler, AZ: April 20, 1998.

TA–W–36,014; Bengle Manufacturing, Stuart, VA: March 30, 1998.

TA–W–36,370 & A; L.V. Myles, Inc., New York, NY, and Rich Square, NC: June 1, 1998.
TA–W–36,633 & A, B, & C; Levi Strauss & Co., Wichita Falls Plant, Wichita Falls, TX, Harlingen Plant, Harlingen, TX, Cypress Plant, El Paso, TX and McAllen Plant, McAllen, TX: August 8, 1998.
TA–W–36,633D, E, F, & G: Levi Strauss & Co., Johnson City Plant, Johnson City, TN, Mountain City Plant, Mountain City, TN, Warsaw Plant, Warsaw, VA, Valdosta Plant, Valdosta, GA: August 8, 1998.
TA–W–36,602; Tinsley Drilling & Co., Odessa, TX: July 14, 1998.
TA–W–36,275; The Russell Corp., Marianna, FL: May 7, 1998.
TA–W–36,271; Oneita Industries, Inc., Cullman, AL and Andrews, SC: May 10, 1998.
TA–W–36,491; Pittencrieff America, Inc., Abilene, TX: June 18, 1998.
TA–W–36,208; QDS Components, Inc., Winchester, TN: April 23, 1998.
TA–W–36,384; John Hester Textiles, Orwigsburg, PA: May 24, 1998.
TA–W–36,468; DHV International, Inc., Midland, TX: June 8, 1998.
TA–W–36,282; Banner Elk Glove Co (d/b/a Southern Glove Manufacturing Co., Inc.), Banner Elk, NC: May 11, 1998.
TA–W–36,596; Ashmore Sportswear, Inc., Leola Plant, Leola, PA: July 7, 1998.
TA–W–36,514; Sensus Technologies, Inc., Uniontown, PA: June 14, 1998.
TA–W–36,304; Salco Knitting Mills, Brooklyn, NY: May 10, 1998.
TA–W–36,302; The Leather Co., Philadelphia, PA: May 17, 1998.
TA–W–36,381; Technaflow, Inc., Vancover, WA: May 27, 1998.
TA–W–36,263; The Imation Corp., Vadnais Heights, MN: April 28, 1998.
TA–W–36,624; AMI/DDC, Inc., Rivet Dept., Cedar Knolls, NJ: July 20, 1998.
TA–W–36,619; Hillin-Simon Oil Co., Midland, TX: July 1, 1998.
TA–W–36,622; Dawson Geophysical Co., Midland, TX: July 19, 1998.
TA–W–36,427; Brady T-Shirt, Inc., East Brady, PA: June 2, 1998.
TA–W–36,603; Snyder Area Contractors, Inc., Snyder, TX: July 12, 1998.
TA–W–36,571; Mallard JV, Inc., McPherson, KS: July 9, 1998.
TA–W–36,324; Sunset Time, Pacoima, CA: May 11, 1998.
TA–W–36,559 & A; Allison Mfg. Co., Brownsville, TX and Allison Mfg Co., McAllen, TX: July 1, 1998.
TA–W–36,102; Lear Corp., Midland, TX: April 7, 1998.
TA–W–36,314; Desmon Mills, Inc., Woonsocket, RI: May 13, 1998.
TA–W–36,432; Cross Creek Apparel, Inc., Wytheville Sewing Plant, Wytheville, VA: June 7, 1998.
TA–W–36,444; Nazareth/Centry Mills, Inc., d/b/a Quitman Knitting Mills, Quitman, MS: August 29, 1998.
TA–W–36,473 A.H.B. International, Inc., New York NY: June 8, 1998.
TA–W–36,953; Siemens Fossils Power Corp., West Allis, WI: March 16, 1998.
TA–W–36,412; Style Sportswear, Paterson, NJ: May 26, 1998.

All workers engaged in employment related to the cutting of coats separated on or after May 26, 1998.

All workers engaged in activities related to shipping, receiving, warehousing and administrative support are denied.

TA–W–36,961, A, B, C, & D; Dupont Corp., Cooper River Plant, Charleston, SC, Kingston Plant, Kinston, NC, Cape Fear Plant, Wilmington, NC, Sales & Marketing Offices, Charlotte, NC and Administrative Office, Wilmington DE: March 11, 1998.
TA–W–36,507; Alcatel USA, Alcatel Data Network, Mt Laurel, NJ: June 21, 1998.
TA–W–36,199 & A; Key Tronic Southwest, El Paso, TX and Las Cruces, NM: April 26, 1998.
TA–W–36,177; Lansdale Manufacturing, Inc., Montgomeryville, PA: April 14, 1998.
TA–W–36,100; Sharp Microelectronics Technology, Inc., Carnas, WA: April 2, 1998.
TA–W–36,486; Roxobel Curtain, Pinebluff Manufacturing Corp., Roxobel, NC: June 17, 1998.
TA–W–36,342; Kern Manufacturing, Inc., Albion, IL: May 7, 1998.
TA–W–36,502; Stuart Entertainment, McAllen, TX: June 18, 1998.
TA–W–36,336; Collins & Aikman, Homer, MI: May 13, 1998.
TA–W–36,591; Marietta Cutting LLC, Marietta, OK: July 6, 1998
TA–W–36,585; Jackie Evans Fashions, Inc., Passaic, NJ: July 9, 1998
TA–W–36,617; Lee Textiles Corp., Ewing, VA: July 15, 1998
TA–W–36,148; Oxford Industries, Inc., Columbia, SC: April 15, 1998.
TA–W–36,613; Lincoln Industrial, St. Louis, MO: July 20, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August and September, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03193; Oxy USA, Inc., Permian Assest Group, Midland, TX
NAFTA–TAA–03155; B.J. Service Co., USA Div. Houston, TX
NAFTA–TAA–03122; Barko Hydraulics, LLC, Superior, WI
NAFTA–TAA–03332; Lincoln Industrial, St. Louis, MO
NAFTA–TAA–03101; Vans, Inc., Santa Fe Springs, CA
NAFTA–TAA–03307; Chief Supply Corp., American Resources Div., Eugene, OR
NAFTA–TAA–03263; Smurfit-Stone Container Corp., Fulton, NY
NAFTA–TAA–02998; Siemens Fossil Power Corp., West Allis, WI
NAFT–TAA–03105; Equitable Bag Co., Inc., Orange, TX
NAFTA–TAA–03284; Carrier Corp., Commercial Systems & Service Div., TR–1 Facility, Syracuse, NY

NAFTA–TAA–03282; Hewlett-Packard Co., Personal Information Products Manufacturing and Distribution Div., Roseville, CA Including Temporary Workers of Voit Services Group, Caliber Logistics, Ryder International
NAFTA–TAA–03143; Briggs Manufacturing, A Div. Of C.I.S.A., Robinson, IL
NAFTA–TAA–03265; Georgia-Pacific Corp., Chlorine Plant, Bellingham, WA
NAFTA–TAA–03311; Locke Insulators, Inc., Baltimore, MD
NAFTA–TAA–03289; Triple S. Plastics, Tucson, AZ
NAFTA–TAA–03257; Skinner Engine Co., Erie, PA
NAFTA–TAA–03275; Acme United Corp., Goldsboro, NC
NAFTA–TAA–03234; Morgantown Manufacturing Co., Inc., Morgantown, GA
NAFTA–TAA–03316; Contract Apparel, Inc., El Paso, TX
NAFTA–TAA–03293; Continental Natural Gas, Inc., Continental Spearman Gas Processing, LLC, Spearman, TX
NAFTA–TAA–03299; Texas Jeans Co., Inc., El Paso, TX
NAFTA–TAA–03210; ABB Daimler-Benz Transportation, Elmira Maufacturing Operations, Elmora Heights, NY
NAFTA–TAA–03296; Intermedics, Inc., Angleton, TX
NAFTA–TAA–03205; Wyman Gordon, Titanium Castings Div., Albany, OR
NAFTA–TAA–03084; Fort James Corp., Packaging Div. Portland, OR
NAFTA–TAA–03096; The Little Tikes Co., Shippensburg, PA
NAFTA–TAA–03104; Sherman Lumber Co., Sherman Station, ME
NAFTA–TAA–03176; Actown Electrocoil, Inc., Spring Grove, IL
NAFTA–TAA–03178; Banner Elk Glove Co., d/b/a Southern Glove Manufacturing Co., Inc., Banner Elk, NC
NAFTA–TAA–03092; Goodyear Tire and Rubber Co., Logan, OH
NAFTA–TAA–03248; Brady T-Shirt, Inc., East Brady, PA.
NAFTA–TAA–02892; Burlington Industries, Inc., Statesville Plant, Statesville, NC.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–0323; Cominco American, Inc., Spokane, WA.
NAFTA–TAA–03290; First Reserve Oil and Gas Co., Midland, TX.
NAFTA–TAA–03378; Xerox Corp., North American Customer Service, La Palma CA.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–03325H, I, J, K, L, M, N, O; Levi Strauss & Co., Kastrin Plant, El Paso, TX, Brownsville Plant, Brownsville, TX, San Benito Plant, San Benito, TX, San Antonio Sewing Plant, San Antonio, TX, San Antonio Finishing Plant, San Antonio, TX, Powell Plant, Powell, TN, Valencia Sewing Facility, San Francisco, CA and Blue Ridge Plant, Blue Ridge, GA.

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03196; Sunset Time, Racoima, CA: May 17, 1998.
NAFTA–TAA–03324; Modine Aftermarket Holdings, Inc., Merced, CA: July 19, 1998.
NAFTA–TAA–03367; Jennings Mfg Co., Inc., Jennings, LA: August 10, 1998.
NAFTA–TAA–03305; Stuart Entertainment, Inc., McAllen, TX: July 13, 1998.
NAFTA–TAA–03295; Dixon Ticonderoga Co., Deer Lake, PA: June 30, 1998.
NAFTA–TAA–03326; Alcatel USA, Alcatel Data Networks, Mt. Laurel, NY: July 16, 1998.
NAFTA–TAA–03268; Roxobel Curtain Co., Pinebluff Manufacturing Corp., Roxobel, NC: June 17, 1998.
NAFTA–TAA–03003; Packwood Lumber, A Div. Of Pacific Lumber and Shipping Co., Packwood, WA: March 5, 1998.
NAFTA–TAA–03072; Bengle Manufacturing, Stuart, VA: March 31, 1998.
NAFTA–TAA–03323; Supreme Tooling, Inc., Fremont, IN: July 23, 1998.
NAFTA–TAA–03117; Adflex Solutions, Inc., Chandler, AZ: April 20, 1998.
NAFTA–TAA–03044; Vanity Fair Intimates, Milton, FL: March 24, 1998.
NAFTA–TAA–03328; Walker McDonald Mfg Co., a/k/a National Oilwell LP, Greenville, TX: July 21, 1998.
NAFTA–TAA–03070 & A; Oneita Industries, Inc., Cullman, AL and Andrews, SC: April 2, 1998.
NAFTA–TAA–03292; Phelps Dodge Magnet Wire Co., Hopkinsville, KY: July 1, 1998.
NAFTA–TAA–03272; Sensus Technologies, Inc., Uniontown, PA: June 14, 1998.
NAFTA–TAA–03319 &A; Justin Boot Co., Cassville, MO and Carthage, MO: July 22, 1998.
NAFTA–TAA–03230; GESCO International Manufacturing, San Antonio, TX: June 3, 1998.
NAFTA–TAA–03240; DOC, Tucson, AZ: June 2, 1998.
NAFTA–TAA–03271; Ashmore Sportwear, Inc., Leola Plant, Leola, PA: June 11, 1998.
NAFTA–TAA–03278; Albany International, Inc., Appleton Wire Div., Weaverville, NC: June 22, 1998.
NAFTA–TAA–03304; Gerger Childrenswear, Lumberton, NC: June 30, 1998.
NAFTA–TAA–03236; Shadowline, Inc., Mars Hill, NC: May 28, 1998.
NAFTA–TAA–03285; Fairfield Apparel Corp., Div. of Maid Bess Corp., Fairfield, VA: June 29, 1998.
NAFTA–TAA–03276; Bon Worth, Inc., Victoria, VA: June 28, 1998.
NAFTA–TAA–03267; Thomson Precision all Co., LLC, Unionville, CT: June 16, 1998.
NAFTA–TAA–03220; Moen, Inc., Hoov-R-Line, Providence, KY: June 1, 1998.
NAFTA–TAA–03062; Safariland, Inc., Ontario, CA: March 22, 1998.
NAFTA–TAA–03327; AMI/DDC, Inc., Rivet Department, Cedar Knolls, NJ: July 20, 1998.
NAFTA–TAA–03103; Raider Apparel, Inc., Alma, GA: April 14, 1998.
NAFTA–TAA–03097; Repap Technologies, Inc., Valley Forge, PA: April 8, 1998.
NAFTA–TAA–03209; Super Steel Schenectady, Inc., Glenville, NY & Including Temporary Workers from the Following Agencies: JJ Young, Albany, NY, Snelling Personnel Services, Slabany, NY, Best Temp Temporary Services, Albany, NY, Adecco, Tad Technical, Albany, NY, Manpower, Schenectady, NY and Fusco Personnel, Inc., Albany, NY: May 10, 1998.
NAFTA–TAA–03277; Cajun Bag & Supply, Intertape Polymer Group, Evans, GA: July 2, 1998.
NAFTA–TAA–02892A, B, C, D, E, F, G, H, I, J, K, L, M; Burlington Industries, Inc.., Mooresville Plant, Mooresville, NC, J.C. Cowan Plant, Forest City, NC, Raeford Plant, Raeford, NC, Raeford Dying Plant Raeford, NC Oxford Plant, Oxford, NC, Burlington Tailored Fashions Div. Offices, Greensboro, NC, Klopman Fabrics Div. Office Greensboro, NC, Bishopville Plant,

Bishopville, SC, Johnson City Plant, Johnson City, TN, Hillsville Plant, Hillsville, VA, Burlington Tailored Fashions, Clarksville, VA, Stonewall Cutting Plant, Stonewall, MS and Burlington Tailored Fashions, NY, NY: January 29, 1998.

NAFTA–TAA–03261; The Miller Group, Schuylkill Haven, PA, H.L. Miller & Son, Schuylkill Haven, PA, Miller Fabrics, Schuylkill Haven, PA and Pottsville Bleach & Dye, Port Carbon, PA: July 10, 1999.

NAFTA–TAA–03190; Beltex Corp., Sportswear Div. And Dye/Finish Div., Belmont, NC: May 18, 1998.

NAFTA–TAA–3185; 3M Company, Medical and Surgical Div., Hinsdale, IL: May 20, 1998.

NAFTA–TAA–03340; Lambda Electronics, Inc., McAllen, TX: December 19, 1998.

NAFTA–TAA–03325 & A, B, C, D, E, F, G; Levi Strauss & Co., Whichita Falls Plant, Wichita Falls, TX, Harlingen Plant, Harlingen, TX, Press Plant, El Paso, TX, McAllen Plant, McAllen TX, Johnson City Plant, Johnson City, TN, Mountain City Plant, Mountain City, TN, Warsaw Plant, Warsaw, VA and Valdosta Plant, Valdosta, GA: August 8, 1998.

I hereby certify that the aforementioned determinations were issued during the months of August and September, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 22, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25291 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,992]

Bayer Corporation; Baytown, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Bayer Corporation, Baytown, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,992; Bayer Corporation, Baytown, Texas (September 13, 1999).

Signed at Washington, D.C. this 22nd day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistant.

[FR Doc. 99–25295 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,718; TA–W–35,718A; TA–W–35,718B; TA–W–35,718C; TA–W–35,718D; TA–W–35,718E]

H.B. & R., Inc.; Dickinson, North Dakota; Bowman, North Dakota; Williston, North Dakota; Sidney, Montana; Rock Springs, Wyoming; Prudhoe Bay, Alaska; Notice of Negative Determination on Reconsideration

By letter of June 29, 1999, the company requested administrative reconsideration of the Department's denial of Trade Adjustment Assistance (TAA) for workers and former workers of H.B. & R., Inc., Dickinson, North Dakota. The notice of negative determination was signed on June 7, 1999 and published in the **Federal Register** on June 30, 1999 (64 FR 35183).

The Department initially denied TAA to workers of H.B. & R., Inc., Dickinson, North Dakota, who were engaged in the rental of equipment and the performance of tank farm services. It was determined that these workers provided a service and did not produce an article as required in Section 222(3) of the Group Eligibility Requirements of the Trade Act of 1974, as amended.

The company official pointed out that the petition was filed on behalf of several locations, but they were not included in the final determination. Furthermore, the determination did not correctly describe the work performed by the employees.

The Department acknowledges that in the June 7, 1999 decision document it inadvertently excluded reference to the H.B. & R., Inc. locations in Bowman and Williston, North Dakota, Sidney, Montana, Rock Springs, Wyoming and Prudhoe Bay, Alaska, although these locations were included in the petition investigation.

The information provided by the company official requesting reconsideration cited that the workers are engaged in oilfield service work for unaffiliated natural gas and crude oil producers. On reconsideration, the Department obtained additional information regarding work performed by workers of the subject firm. It was reported that the workers employment in Dickinson, Bowman and Williston, North Dakota, Sidney, Montana, Rock Springs, Wyoming and Prudhoe Bay, Alaska includes, but is not limited to hot oil and heating service work, pipeline pressure testing and hauling water.

The 1988 Omnibus Trade and Competitiveness Act amendments to the Trade Act of 1974 expanded coverage to service workers engaged in employment related to exploration and drilling for crude oil and natural gas. These service workers are considered to be ''producing'' crude oil or natural gas. The same consideration cannot be given to workers providing oilfield services.

Conclusion

After determination, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of H.B. & R., Inc., Dickinson, North Dakota, Bowman and Williston, North Dakota, Sidney, Montana, Rock Springs, Wyoming and Prudhoe Bay, Alaska.

Signed at Washington, D.C., this 7th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25297 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,592]

North American Refractories Company, Womelsdorf, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the North American Refractories Company, Womelsdorf, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's

determination. Therefore, dismissal of the application was issued.

TA–W–35,592; North American Refractories, Womelsdorf, Pennsylvania (September 20, 1999).

Signed at Washington, D.C. this 22nd day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25294 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,901]

Oregon Woodworking Company Including Temporary Workers of Mid-Oregon Labor Contractors and Express Personnel Services, Bend, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 21, 1997, applicable to workers of Oregon Woodworking Company located in Bend, Oregon. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of Oregon Woodworking Company were temporary workers of Mid-Oregon Labor Contractors and Express Personnel Services employed to produce interior flat door jambs at the Bend, Oregon facility.

Based on these findings, the Department is amending the certification to include temporary workers of Mid-Oregon Labor Contractors and Express Personnel Services who were engaged in the production of interior flat door jambs at Oregon Woodworking Company, Bend, Oregon.

The intent of the Department's certification is to include all workers of Oregon Woodworking Company adversely affected by imports.

The amended notice applicable to TA–W–33,901 is hereby issued as follows:

All workers of Oregon Woodworking Company, Bend, Oregon and temporary workers of Mid-Oregon Labor Contractors and Express Personnel Services, Bend, Oregon engaged in employment related to the production of interior flat door jambs for Oregon Woodworking Company, Bend, Oregon who became totally or partially separated from employment on or after October 3, 1996 through December 21, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25299 Filed 9–28–99; 8:45 am]

BILLING CODE 4570–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,643]

Peak Oilfield Service Company, Anchorage, AK; Notice of Revised Determination on Reopening

On August 30, 1999, the Department, on its own motion, reopened its investigation for workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 13, 1999, because the workers provided a service and did not produce an article within the meaning of Section 222(3) of the Trade Act of 1974, as amended. The workers were engaged predominately in service and support activities indirectly related to the production of crude oil. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25371).

New information provided by the company and a customer of the subject firm revealed that the workers are engaged in activities directly related to production of crude oil.

The investigation also disclosed that the subject firm performed oil field operations for major crude oil and natural gas customers who marketed their oil and gas through the normal distribution channels. The subject firm has been impacted by the high penetration of imports in this market.

The investigation further revealed that U.S. imports of crude oil increased absolutely in the twelve month period ended May 1999 compared to the corresponding twelve month period ended May 1998. The ratio of imports to domestic shipments for crude oil was approximately 139% during the twelve month period ended May 1999.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with crude oil produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Peak Oil Service Company, Anchorage, Alaska who became totally or partially separated from employment on or after January 27, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25292 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,156D; TA–W–35, 156E]

Pluma, Inc., Rocky Mount, VA; Vesta (Meadows of Dan, Virginia; Amended Notice of Revised Determination on Reopening

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reopening on February 9, 1999, applicable to workers of Pluma, Inc., Rocky Mount, Virginia. The notice was published in the **Federal Register** on February 18, 1999 (64 FR 8129).

At the request of the company, the Department reviewed the determination for workers of the subject firm. New information provided by the company shows that worker separations will occur at Pluma's Vesta (Meadows of Dan), Virginia facility when it closes in October, 1999. The workers are engaged in employment related to the production of knitted activewear for ladies', men and children. Accordingly, the Department is amending the determination to cover workers of Pluma, Inc., Vesta (Meadows of Dan), Virginia.

The intent of the Department's certification is to include all workers of Pluma, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–35,156D is hereby issued as follows:

All workers of Pluma, Inc., Rocky Mount, Virginia (TA–W–35,156D) and Vesta (Meadows of Dan), Virginia (TA–W–35,156E)

who became totally or partially separated from employment on or after October 15, 1997 through February 9, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 22nd day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25301 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,497]

Power Exploration, Incorporated, Tyler, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 3, 1999, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 26, 1999, and published in the **Federal Register** on August 11, 1999 (64 FR 43723).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers of Power Exploration, Incorporated, Tyler, Texas, engaged in geological studies was denied because the workers provided a service and did not produce an article as required in Section 222(3) of the Trade Act of 1974, as amended.

The petitioners assert that the worker group provided a number of different articles and products and provided oil and gas exploration expertise to a number of different companies and clients in the oil and gas industry.

Workers at the subject firm, however, are engaged in employment related to the acquisition, processing and marketing of seismic data.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C. this 17th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25296 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,062; TA–W–36,062B]

Stonecutter Textiles, Inc.; Spindale, North Carolina; Mill Spring, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistant on June 17, 1999, applicable to workers of Stonecutter Textiles, Inc., located in Spindale, North Carolina. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43723).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Mill Spring, North Carolina location of Stonecutter Textiles, Inc. when it closed in July, 1999. The workers were engaged in the production of yarn used to produce greige goods at Stonecutters' Spindale, North Carolina facilities.

The intent of the Department's certification is to include all workers of Stonecutter Textiles, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Stonecutter Textiles, Mill Spring, North Carolina.

The amended notice applicable to TA–W–36,062 is hereby issued as follows:

All workers of Stonecutter Textiles, Inc., Spindale, North Carolina (TA–W–36,062) and Mill Spring, North Carolina (TA–W–36,062B) who became totally or partially separated from employment on or after March 29, 1998 through June 17, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25298 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,935]

Suckle Corporation, Scranton, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 8, 1998, the International Union of Electrical Workers, Local 127, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on June 10, 1999 and published in the **Federal Register** on June 30, 1999 (64 FR 35183).

The petitioner presents evidence that the Department's customer survey was incomplete.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 17th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25293 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02844; NAFTA–02844F]

Pluma, Inc., Rocky Mount, Virginia; Vesta (Meadows of Dan), Virginia; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the

Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 22, 1999, applicable to workers of Pluma, Inc. located in Rocky Mount, Virginia. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25373).

At the request of the company, the Department reviewed the determination for workers of the subject firm. New information received from the company shows that worker separations will occur at Plum's Vesta (Meadows of Dan), Virginia facility when it closes in October, 1999. The workers are engaged in the production of knitted activewear for ladies, men and children.

The intent of the Department's certification is to include all workers of Pluma, Inc. who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the determination to cover the workers of Pluma, Inc., Vesta (Meadows of Dan), Virginia.

The amended notice applicable to NAFTA–02844 is hereby issued as follows:

All workers of Pluma, Inc., Rocky Mount, Virginia (NAFTA–2844) and Vesta (Meadows of Dan), Virginia (NAFTA–2844F) who became totally or partially separated from employment on or after January 8, 1998 through April 22, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–25300 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–36; Exemption Application No. D–10504, et al.]

Grant of Individual Exemptions; Aetna Inc. (Aetna)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Aetna Inc. (Aetna), Located In Hartford, Connecticut

[Prohibited Transaction Exemption 99–36; Application No. D–10504]

Exemption

I. Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions, if the conditions set forth in Section II and Section III, below, are satisfied: [1]

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from Aetna in connection with the purchase, with plan assets, of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by Aetna, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the Aetna Fund or Aetna Funds), as defined in Section IV(c) below;

(c) The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from Aetna.

II. General Conditions

(a) The transactions are effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent: (1) For the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, is not in excess of ''reasonable compensation'' within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of ''reasonable compensation'' the ''amount involved'' for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of ''reasonable compensation.''

III. Specific Conditions

(a) Aetna or the Sales Agent is not—

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code);

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or

(4) An employer any of whose employees are covered by the plan.

(b) (1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, Aetna or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) The nature of the affiliation or relationship between Aetna and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and Aetna places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by Aetna to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before the execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by an Aetna Fund, or the receipt of sales commissions by Aetna in connection with such purchases, Aetna provides to an Independent Plan Fiduciary prior to the execution of the transaction the following information concerning the Aetna Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) The investment objectives and policies of the Aetna Fund, (ii) the principal investment strategies that the Aetna Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the Aetna Fund, (iv) historical investment return information for the Aetna Fund, (v) fees and expenses of the Aetna Fund, including annual operating expenses (*e.g.*, management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (*e.g.*, sales charges and redemption fees), (vi) the identity of the Aetna Fund adviser, and (vii) the procedures for purchases of securities issued by the Aetna Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) The expenses of the recommended Aetna Fund, including investment management, investment advisory, or similar services, any fees for secondary services (*e.g.*, for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended Aetna Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the Aetna Fund;

(C) An explanation of (i) the nature of the affiliation or relationship between Aetna and the Aetna Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between Aetna and the Aetna Fund places on Aetna's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as either (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) a percentage of the average daily net assets under investment in securities issued by the Aetna Fund, or (iii) both if applicable, together with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the Aetna Fund securities.

The disclosures required under Section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of an Aetna Fund, the type of each fee or expense (*e.g.*, management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees)) and the rate or amount charged for a specified period (*e.g.*, annually) is provided in a written document separate from the prospectus of such Aetna Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after Aetna has

delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be Aetna. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.*, through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Aetna Fund securities, Aetna:

(A) Provides reasonable advance notice of any material change with respect to the Aetna Fund securities being purchased or the commission with respect thereto, and

(B) Repeats the written disclosure required under Section III(c)(1)(A), (C), (D) and (E) once every three years.

(d)(1) Aetna shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Sections III(b), and (c);

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) Written acknowledgments, as described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of Aetna, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

IV. Definitions

For purposes of this exemption—

(a) Aeltus means the Aeltus Trust Company, or any other financial institution supervised under state or federal laws and affiliated with Aetna.

(b) Aetna means the Aetna Life Insurance Company, the Aetna Life Insurance and Annuity Company, and any of their affiliates, including but not limited to Aeltus;

(c) Aetna Fund means any investment company registered under the Investment Company Act of 1940 for which Aetna serves as investment adviser and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(29)).

(d) *An affiliate* of a person means (1) any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) Any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an ''employee'' includes (A) any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

(e) The term, *control*, means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) *Independent Plan Fiduciary* means a fiduciary with respect to a plan, which fiduciary has no relationship to, or interest in, Aetna that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) *Investment Trust* means (1) any collective investment fund or group trust qualifying for tax-exempt status under the provisions of the Internal Revenue Code of 1986 and regulations and rulings thereunder, of which Aeltus, as defined in Section IV(a) above, or its successor or affiliate serves as trustee, or (2) any single-customer trust account for which Aeltus serves as trustee, provided that Aeltus has no discretionary authority or responsibility with respect to the management or administration of, and does not provide any investment advice with respect to, any plan assets not invested in such single-customer trust account or another Investment Trust.

(h) *Insurance Contract or Insurance Contracts* means an insurance or annuity contract issued by Aetna.[2]

(i) *A nondiscretionary trustee* of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) the provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code.

(j) *Nondiscretionary trust services* means custodial services and services ancillary to custodial services, none of which services are discretionary.

(k) *A relative* means a *relative* as that term is defined in section 3(15) of the Act (or a *member of the family* as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister;

(l) *Sales Agent* means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna.

(m) *Principal underwriter* is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a–2(a)(29)).

Effective Date: This exemption will be effective as of August 28, 1997, the date of the filing of the application for exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on May 13, 1999. All comments and requests for a hearing were due by June 28, 1999.

During the comment period, the Department received no requests for a hearing. However, the Department did receive two (2) comment letters from Aetna, the applicant, dated June 28, and August 10, 1999, respectively. In the comment letters, the applicant requested certain modifications and clarifications to the language of the exemption, as proposed, and informed the Department of certain changes, as described in the Summary of Facts and Representations (the SFR) in the Notice. Specifically, the issues raised in the applicant's comment letters fall into seven (7) categories: (1) *Clarification* regarding the transactions exempted by

[2] The Department expresses no opinion as to whether any so-called ''synthetic guaranteed insurance contracts'' offered by Aetna constitutes an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

Section I(c) and Section I(d); (2) an issue relating to reliance on other applicable exemptions; (3) an alternative method of disclosing sales commissions; (4) clarification of the scope of the exemption; (5) interpretation of the definition of Sales Agent, as set forth in Section IV(l); (6) certain corrections to the facts, as set forth in the SFR in the Notice, and (7) a modification of the language of the definition of Aeltus, as set forth in Section IV(a). A discussion of each of the applicant's comments and the Department's responses, thereto, are set forth in the numbered paragraphs below.

1. The applicant seeks clarification from the Department of the transactions exempted by Section I(c) and Section I(d), as published in the Notice (64 FR at 25917, column 1, lines 26–34). In this regard, Section I(c) provides relief for:

> The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract.

Further, Section I(d) provides relief for, ''The purchase, with plan assets, of an Insurance Contract from Aetna.''

Specifically, Aetna requests that the Department confirm that Section I(c) and Section I(d) would be available for the effecting by Aetna of a transaction for the purchase of an Insurance Contract, as defined in Section IV(h), where the sale is effected through an employee of Aetna or through one of Aetna's affiliates. The concern is that Aetna itself would require relief if either: (a) A plan's purchase of an Insurance Contract from Aetna is deemed to be a prohibited sale between a plan and a party in interest; or (b) Aetna is deemed to be a fiduciary because its employee/agent provided investment advice and, as a result, Aetna is deemed to have committed a prohibited transaction by effecting the sale of an Insurance Contract.

Aetna believes that, as an affiliate of a Sales Agent, as defined in Section IV(d), it should be able to rely on the relief provided by Section I(c), because the definition of Sales Agent, as set forth in Section IV(l), includes any ''affiliate'' of such Sales Agent. In addition, Aetna believes that the purchase from Aetna of an Insurance Contract should be exempted under Section I(d), even if Aetna may be a fiduciary as a result of investment advice provided by an Aetna employee/agent. The Department concurs.

2. The applicant seeks clarification from the Department of the interpretation of Section III(a)(1), as published in the Notice (64 FR at 25917, column 1, lines 66–67 and column 2, lines 1–10). In this regard, Section III(a)(1) provides that Aetna or a Sales Agent may not rely on the exemption, if Aetna or the Sales Agent is:

> A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, *which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this proposed exemption) (emphasis added).*

Specifically, Aetna seeks confirmation that the phrase underlined in the quotation above does not preclude its reliance on other exemptions. In this regard, Aetna represents that while it will not rely on the subject exemption for a purchase of Aetna Funds or an Insurance Contract by an Investment Trust, such a transaction might be covered by an applicable class exemption.

It is not the intention of the Department to preclude Aetna from taking advantage of any other available exemption, proved that Aetna has met the conditions for relief, as set forth in such exemption. Accordingly, the Department has decided to retain the language of Section III(a)(1), as set forth in the Notice, except that the word, ''proposed,'' before the word, ''exemption,'' has been deleted.

3. Section III(c)(1)(D), as set forth in the Notice (64 FR at 25918, column 1, lines 26–34), requires the disclosure to an Independent Plan Fiduciary prior to execution of the transaction of:

> The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as a percentage of the dollar amount of the plan's gross payments and the amount actually invested, together with a description of any factors that may affect the commission.

In footnote 4 of the Notice (64 FR at 25919), the Department noted that the relief provided by the subject exemption does not preclude the receipt by Aetna or its affiliates of 12b-1 Fees to the extent that the payment of such 12b-1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase with plan assets, of securities issued by an Aetna Fund. In this regard, Aetna notes that such 12b-1 Fees are calculated as a percentage of assets under management in Aetna Fund securities and that disclosure of 12b-1 Fees could not be easily expressed as, ''a percentage of the dollar amount of the plan's gross payments and the amount actually invested,'' as required by Section III(c)(1)(D). Further, Aetna is not aware that 12b-1 Fees are disclosed in such a format by any mutual fund provider or broker. Accordingly, Aetna has proposed an additional method for the disclosure of 12b-1 Fees, or both methods, if applicable, pursuant to this exemption. In this regard, Aetna requests that the Department substitute the following text for the language of Section III(c)(1)(D), as it appeared in the Notice:

> The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as either (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) a percentage of assets invested in securities issued by the Aetna Fund, or (iii) both if applicable, together with a description of any factors that may affect the commission.

If the Department does not accept the proposed substitution, Aetna has suggested a second alternative. In this regard, Aetna notes that asset-based 12b-1 Fees are required to be disclosed under Sections III(c)(1)(A) and (B) of the exemption. Accordingly, in the alternative, Aetna requests the Department confirm that to the extent 12b-1 Fees are paid from the assets of an Aetna Fund, all of the disclosure conditions under the exemption would be satisfied by disclosure of 12b-1 Fees under Sections III(c)(1)(A) and (B), and additional disclosure regarding 12b-1 Fees would not be required under Section III(c)(1)(D).

The Department has decided not to accept Aetna's second alternative, which is described in the paragraph above. Instead, with certain revisions to the language of sub-paragraph (ii), the Department has decided to adopt the substitute language for Section III(c)(1)(D) suggested by Aetna. In this regard, as amended, Section III(c)(1)(D) of the exemption reads as follows:

> The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as either (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) a percentage of the average daily net assets under investment in securities issued by the Aetna Fund, or (iii) both if applicable, together with a description of any factors that may affect the commission.

4. Aetna requests that footnote 2, as it appeared in the Notice (64 FR at 25918), should be amended to read, as follows:

> The Department expresses no opinion as to whether any so-called ''synthetic guaranteed insurance contracts'' offered by Aetna

constitutes an Insurance Contract within the meaning of this proposed exemption. The Department further notes that this proposed exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts and Aetna Funds to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this proposal for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

The Department has decided to delete the contents of footnote 2, as it appeared in the Notice, and, with certain revisions, has adopted the language suggested by Aetna as the text for footnote 2 in the exemption. With regard to revisions of the language suggested by Aetna, the Department has:

(a) Deleted the word, ''proposed,'' before the word, ''exemption,'' in the first and second sentences of the quotation above;

(b) Deleted the phrase, ''and Aetna Funds'' after the words, ''Insurance Contracts,'' in the second sentence of the quotation above; and

(c) Substituted the word, ''exemption,'' for the word, ''proposal,'' in the fourth sentence of the quotation above. Accordingly, the revised language of footnote 2 into this exemption reads as follows:

The Department expresses no opinion as to whether any so-called ''synthetic guaranteed insurance contracts'' offered by Aetna constitutes an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

In addition, Aetna has requested that the Department confirm that the last sentence of the quotation above does not refer to routine transactions such as asset valuation and rate setting, but only to extraneous transactions such as asset transfer and loan advances. Although the Department is unable to provide the requested confirmation regarding the application of the footnote to routine transactions, it is our view that transactions, such as asset transfers and loan advances made to parties in interest in connection with the operation of the Insurance Contract, would be beyond the scope of this exemption.

5. Aetna requests that the Department amend the definition of Sales Agent, as set forth in Section IV(l). In this regard, Section IV(l), as it appeared in the Notice (64 FR at 25919, column 1, lines 20–24), provides that:

''Sales Agent'' means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna *either through ownership or by contractual arrangement (emphasis added).*

Aetna is concerned that the phrase underlined in the quotation of Section IV(l) above imposes a limitation on the definition of Sales Agent. Specifically, Aetna believes that such language may exclude Aetna from being considered an affiliate of a Sales Agent where an individual who is a broker or pension consultant is affiliated with Aetna by being Aetna's employee, rather than through a contractual or ownership arrangement. In addition, Aetna is concerned that the language of Section IV(1) does not make it clear that the term, ''Sales Agent'' would include *any* affiliate of a Sales Agent. Accordingly, Aetna requests that the Department clarify the definition of Sales Agent. Further, Aetna suggests that the Department substitute for the text of Section IV(1), as it appeared in the Notice, the following language:

''Sales Agent'' means any insurance agent, broker, or pension consultant that is an employee of Aetna or is affiliated with Aetna either through ownership or by contractual arrangement, or any affiliate thereof.

The Department has decided not to adopt the language in the quotation above which was suggested by Aetna. Instead, the Department has decided to modify the definition of a Sales Agent to clarify the term. Accordingly, as amended, Section IV(l) of the exemption reads as follows:

''Sales Agent'' means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna.

Further, it is the view of the Department that Aetna would not be excluded from being considered an affiliate of a Sales Agent where an individual who is a broker or pension consultant is affiliated with Aetna by being Aetna's employee. In this regard, the Department notes that for purposes of the definition of affiliate, as set forth in Section IV(d) of the exemption, an ''employee'' includes:

Any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

In this regard, the Department notes that the general and specific conditions, as set forth in the exemption, however, must be satisfied. Specifically, Section II(a) provides that the transactions must be:

Effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

Accordingly, the Department notes that in order for Aetna, a Sales Agent, or a principal underunderwriter to rely upon relief for the transactions described in the exemption, each such person must satisfy Section II(a), among other conditions set forth in the exemption.

6. Aetna has informed the Department of certain changes in the services arrangements among Aetna and its affiliates. Because these changes occurred after Aetna filed its application for exemption with the Department, some of the facts and representations that appeared in the SFR are no longer completely accurate. For this reason, Aetna has suggested certain deletions and additions to the language, as published in the Notice and requests that the Department substitute the text which is quoted below for the language that appeared in the SFR. Aetna represents that none of the changes involve a material change in any facts or representations made by Aetna in its application for exemption. The Department concurs and has made the requested deletions and additions in the language of the SFR. Aetna's deletions to the language that appeared in the SFR are noted below by the words in brackets, and Aetna's additions have been underlined in the text below.

The text of paragraph 6, as published in the Notice (64 FR at 25919, column 2, lines 59–68 and column 3, lines 1–2), should have read as follows:

Aetna Investment Services, Inc. (AISI), Aetna Financial Services, Inc. (AFSI), Aeltus Capital, Inc. (Aeltus Capital), and Financial Network Investment Corporation (FNIC) are each registered broker-dealers with the SEC and are [wholly-owned] affiliates of ALIC and ALIAC. [ALIC] ALIAC, AISI, [AFSI] Aeltus Capital, and FNIC and their successors (*together with ALIC,* the Aetna Companies) have provided and will provide a variety of services to the Aetna Funds *or in connection with the distribution of Aetna Funds.*

The text of paragraph 7, as published in the Notice (64 FR at 25919, column 3, lines 3–36), should have read as follows:

[In this regard] [A]s disclosed in the prospectus materials for each of the Aetna Funds, ALIAC is the investment adviser to [all of the Aetna Funds] *Aetna's Portfolio Partners Funds and Aeltus Investment Management, Inc. (AIM) is the investment adviser to the Aetna Series Funds and the Aetna Variable Funds.* In addition, *both* ALIAC *and AIM* provide other services (the Secondary Services) to Aetna Funds *for which they are the investment adviser,* including accounting, shareholder administration, [sub-accounting,] and other administrative services. *ALIAC also provides sub-accounting services in connection with Aetna Funds offered through its variable annuity contract.* Further ALIAC is the principal underwriter to the Aetna Variable Funds and Portfolio Partners, Inc., and [AISI] *Aeltus Capital* is the principal underwriter to the Aetna Series Funds. In this regard, it is represented that as principal underwriters, ALIAC and [AISI] *Aeltus Capital* distribute Aetna Fund shares on an agency basis. It is further represented that ALIAC *and AIM* may engage affiliated or unaffiliated sub-advisers to the Aetna Funds from time to time.

Under the terms of services agreements between ALIAC *or AIM* and an Aetna Fund, ALIAC *or AIM* may receive management fees and fees for Secondary Services. In addition, ALIAC or [AISI] *Aeltus Capital* may receive sales commissions and distribution fees, including for some classes of shares issued by certain Aetna Funds 12b-1 Fees. It is represented that the prospectus materials *including the Statement of Additional Information,* for each of the Aetna Funds disclose whether such fees are paid and the basis under which such fees are paid.

7. Aetna informed the Department that it has applied for and is in the process of obtaining authority to establish and operate a federally chartered savings bank (the Savings Bank). If approved, the Savings Bank may establish and operate certain collective investment funds or group trusts or single customer trust accounts on behalf of plans covered by the Act. Aetna would like to ensure that relief provided by the exemption will extend to plans that invest in a trust maintained by the Savings Bank on the same terms and conditions that would apply, if the plan had invested in a trust maintained by Aeltus. Accordingly, Aetna proposes that the Department revise Section IV(a), as published in the Notice (64 FR 25918, column 2, line 55–56), to read as follows:

Aeltus means the Aeltus Trust Company, or any other financial institution supervised under state or federal laws and affiliated with Aetna.

The Department concurs and has incorporated the requested language into Section IV(a) of the exemption.

After giving full consideration to the entire record, including the written comments from the applicant, the Department has decided to grant the exemption, as described, amended, and concurred in above. In this regard, the comment letters submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U. S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 13, 1999, at 64 FR 25916.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Modern Woodmen of America Employees' Savings Plan (the Plan), Located in Rock Island, Illinois

[Prohibited Transaction Exemption 99–37; Exemption Application No. D–10518]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale, on March 23, 1998, by the Plan of certain commercial mortgages and bonds (the Securities) to Modern Woodmen of America (the Employer), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) The sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) for each Security, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the par value, (b) the book value, or (c) the fair market value of the Security, as determined by a qualified, independent appraiser; and (4) the Plan received the accrued but unpaid interest that was due on each Security at the time of the transaction.

Effective Date: The exemption is effective as of March 23, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 11, 1999 at 64 FR 43740.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of September, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare BenefitsAdministration, Department of Labor.

[FR Doc. 99–24939 Filed 9–28–99; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Intent To Award—Grants Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2000

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2000 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award grants and contracts to provide

economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2000.

DATES: All comments and recommendations must be received on or before the close of business on October 29, 1999.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street NE, 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on April 16, 1999 (64 FR 18941) and Grant Renewal applications due on September 1, 1999, LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Service area	Applicant name	Anticipated FY 2000 award
AL–1	Legal Services Corporation of Alabama, Inc	$4,527,314
AL–2	Legal Services of North-Central Alabama, Inc	515,039
AL–3	Legal Services of Metro Birmingham, Inc	915,553
MAL	Legal Services Corporation of Alabama, Inc	27,827
AK–1	Alaska Legal Services Corporation	550,568
NAK–1	Alaska Legal Services Corporation	456,588
AZ–2	DNA-People's Legal Services, Inc	515,205
AZ–3	Pinal & Gila Counties Legal Aid Society	2,488,448
AZ–3	Community Legal Services, Inc	2,488,448
AZ–5	Pinal & Gila Counties Legal Aid Society	1,539,179
AZ–5	Southern Arizona Legal Aid, Inc	1,539,179
MAZ	Pinal & Gila Counties Legal Aid Society	125,569
MAZ	Community Legal Services, Inc	125,569
NAZ–5	DNA-People's Legal Services, Inc	2,203,060
NAZ–6	Pinal & Gila Counties Legal Aid Society	500,533
NAZ–6	Southern Arizona Legal Aid, Inc	500,533
AR–1	Ozark Legal Services	485,922
AR–2	Legal Services of Northeast Arkansas, Inc	414,253
AR–3	Western Arkansas Legal Services	341,104
AR–4	East Arkansas Legal Services	532,791
AR–5	Center for Arkansas Legal Services	1,623,115
MAR	Texas Rural Legal Aid, Inc	59,319
CA–1	California Indian Legal Services, Inc	25,230
CA–2	Greater Bakersfield Legal Assistance, Inc	558,335
CA–4	Legal Aid Foundation of Long Beach	860,528
CA–5	Legal Aid Foundation of Los Angeles	5,057,019
CA–7	Channel Counties Legal Services Association	552,586
CA–8	San Fernando Valley Neighborhood Legal Services, Inc	1,528,045
CA–9	Legal Services Program for Pasadena and San Gabriel	1,467,552
CA–12	Inland Counties Legal Services, Inc	2,346,096
CA–14	Legal Aid Society of San Diego, Inc	2,077,909
CA–15	California Rural Legal Assistance, Inc	2,375,420
CA–19	Legal Aid Society of Orange County, Inc	2,641,447
CA–25	Legal Aid of the Central Coast	330,599
CA–25	Legal Services Foundation of the Monterey Bay Area	330,599
CA–26	Central California Legal Services	2,039,494
CA–27	Legal Services of Northern California, Inc	2,529,097
CA–28	San Francisco Neighborhood Legal Assistance Foundation	3,385,373
MCA	California Rural Legal Assistance, Inc	2,232,645
NCA–1	California Indian Legal Services, Inc	745,893
CT–1	Statewide Legal Services of Connecticut, Inc	1,783,807
MCT	Statewide Legal Services of Connecticut, Inc	14,087
NCT–1	Pine Tree Legal Assistance, Inc	13,218
DE–1	Legal Services Corporation of Delaware, Inc	444,082
MDE	Legal Aid Bureau, Inc	20,994
DC–1	Neighborhood Lgl. Svcs. Prog. of the Dist. of Columbia	796,411
FL–1	Central Florida Legal Services, Inc	965,185
FL–2	Legal Aid Service of Broward County, Inc	985,038
FL–3	Florida Rural Legal Services, Inc	1,950,702
FL–4	Jacksonville Area Legal Aid, Inc	771,438
FL–5	Legal Services of Greater Miami, Inc	2,725,284
FL–6	Legal Services of North Florida, Inc	827,340
FL–7	Greater Orlando Area Legal Services, Inc	780,322
FL–8	Bay Area Legal Services, Inc	1,097,702
FL–9	Withlacoochee Area Legal Services, Inc	438,532
FL–10	Three Rivers Legal Services, Inc	615,230
FL–11	Northwest Florida Legal Services, Inc	424,122
FL–12	Gulfcoast Legal Services, Inc	929,351
MFL	Florida Rural Legal Services, Inc	759,576
GA–1	Atlanta Legal Aid Society, Inc	1,762,150
GA–2	Georgia Legal Services Program	5,542,015
MGA	Georgia Legal Services Program	331,591

Service area	Applicant name	Anticipated FY 2000 award
GU–1	Guam Legal Services Corporation	156,812
HI–1	Legal Aid Society of Hawaii	839,525
MHI	Legal Aid Society of Hawaii	58,285
NHI–1	Native Hawaiian Legal Corporation	107,869
ID–1	Idaho Legal Aid Services, Inc	922,137
MID	Idaho Legal Aid Services, Inc	158,086
NID–1	Idaho Legal Aid Services, Inc	54,850
IL–1	Cook County Legal Assistance Foundation, Inc	981,307
IL–2	Legal Assistance Foundation of Chicago	4,805,228
IL–3	Land of Lincoln Legal Assistance Foundation, Inc	2,595,248
IL–4	Prairie State Legal Services, Inc	2,195,694
IL–5	West Central Illinois Legal Assistance	186,112
MIL	Legal Assistance Foundation of Chicago	211,126
IN–1	Legal Services of Maumee Valley, Inc	290,149
IN–2	Legal Services of Northwest Indiana, Inc	587,618
IN–3	Legal Services Organization of Indiana, Inc	2,836,451
IN–4	Legal Services Program of Northern Indiana, Inc	934,703
MIN	Legal Services Organization of Indiana, Inc	96,162
IA–1	Legal Services Corporation of Iowa	2,271,217
IA–2	Legal Aid Society of Polk County	239,847
MIA	Legal Services Corporation of Iowa	31,913
KS–1	Kansas Legal Services, Inc	2,261,630
MKS	Kansas Legal Services, Inc	10,051
KY–2	Legal Aid Society	1,153,695
KY–3	Central Kentucky Legal Services, Inc	476,765
KY–5	Appalachian Research and Defense Fund of Kentucky	2,023,479
KY–6	Cumberland Trace Legal Services, Inc	391,960
KY–7	Western Kentucky Legal Services, Inc	808,149
KY–8	Northern Kentucky Legal Aid Society, Inc	750,030
MKY	Appalachian Research and Defense Fund of Kentucky	35,991
LA–1	Capital Area Legal Services Corporation	1,398,480
LA–2	Southwest Louisiana Legal Services Society, Inc	424,072
LA–3	North Louisiana Legal Assistance Corporation	786,410
LA–4	New Orleans Legal Assistance Corporation	1,952,464
LA–5	Northwest Louisiana Legal Services, Inc	762,000
LA–6	Acadiana Legal Service Corporation	1,644,059
LA–7	Kisatchie Legal Services Corporation	412,847
LA–8	Southeast Louisiana Legal Services Corporation	595,418
MLA	Acadiana Legal Service Corporation	23,286
ME–1	Pine Tree Legal Assistance, Inc	1,001,962
MME	Pine Tree Legal Assistance, Inc	60,708
NME–1	Pine Tree Legal Assistance, Inc	54,416
MD–1	Legal Aid Bureau, Inc	3,110,271
MMD	Legal Aid Bureau, Inc	76,897
MA–1	Volunteer Lawyers Project of the Boston Bar Association	1,482,482
MA–2	South Middlesex Legal Services, Inc	160,336
MA–3	Legal Services for Cape Cod and Islands, Inc	195,790
MA–4	Merrimack Valley Legal Services, Inc	717,687
MA–5	New Center for Legal Advocacy, Inc	523,320
MA–10	Massachusetts Justice Project	1,202,285
MMA	Massachusetts Justice Project	14,071
MI–1	Legal Services of Southeastern Michigan, Inc	542,767
MI–2	Legal Services Org. of South central Michigan, Inc	233,973
MI–3	Legal Aid and Defender Association of Detroit	3,281,071
MI–4	Legal Services of Eastern Michigan	1,294,278
MI–5	Legal Aid of Central Michigan	509,232
MI–6	Lakeshore Legal Aid	552,429
MI–7	Oakland Livingston Legal Aid	544,670
MI–8	Berrien County Legal Services Bureau, Inc	182,629
MI–9	Legal Services of Northern Michigan, Inc	783,780
MI–10	Legal Aid of Western Michigan	1,010,772
MI–11	Legal Aid Bureau of Southwestern Michigan, Inc	404,757
MMI	Legal Services of Southeastern Michigan, Inc	509,092
NMI–1	Michigan Indian Legal Services, Inc	121,203
MP–1	Micronesian Legal Services, Inc	1,388,231
MN–1	Legal Aid Service of Northeastern Minnesota	464,076
MN–2	Judicare of Anoka County, Inc	101,026
MN–3	Central Minnesota Legal Services, Inc	1,217,481
MN–4	Legal Services of Northwest Minnesota Corporation	454,894
MN–5	Southern Minnesota Regional Legal Services, Inc	1,194,369
MMN	Southern Minnesota Regional Legal Services, Inc	169,212
NMN–1	Anishinabe Legal Services, Inc	201,762
MS–1	Central Mississippi Legal Services	922,270

Service area	Applicant name	Anticipated FY 2000 award
MS–2	North Mississippi Rural Legal Services, Inc	2,210,915
MS–3	South Mississippi Legal Services Corporation	576,608
MS–4	Southeast Mississippi Legal Services Corporation	454,505
MS–5	Southeast Mississippi Legal Services Corporation	538,474
MS–6	Southwest Mississippi Legal Services Corporation	468,832
MMS	Central Mississippi Legal Services	48,267
NMS–1	Southeast Mississippi Legal Services Corporation	70,179
MO–1	Southeast Missouri Legal Services, Inc	548,789
MO–2	Meramec Area Legal Aid Corporation	325,511
MO–3	Legal Aid of Western Missouri	1,679,679
MO–4	Legal Services of Eastern Missouri, Inc	1,765,203
MO–5	Mid-Missouri Legal Services Corporation	344,487
MO–6	Legal Aid of Southwest Missouri	752,388
MMO	Legal Aid of Western Missouri	68,897
MT–1	Montana Legal Services Association	986,618
MMT	Montana Legal Services Association	46,166
NMT–1	Montana Legal Services Association	112,606
NE–4	Legal Aid Society, Inc	1,375,575
MNE	Legal Aid Society, Inc	35,760
NNE–1	Legal Aid Society, Inc	27,907
NV–1	Nevada Legal Services, Inc	987,701
MNV	Nevada Legal Services, Inc	2,126
NNV–1	Nevada Legal Services, Inc	112,265
NH–1	Legal Advice & Referral Center, Inc	563,215
MNH	Pine Tree Legal Assistance, Inc	8,413
NJ–1	Cape-Atlantic Legal Services, Inc	227,712
NJ–2	Warren County Legal Services, Inc	39,763
NJ–3	Camden Regional Legal Services, Inc	845,605
NJ–4	Union County Legal Services Corporation	285,070
NJ–5	Hunterdon County Legal Service Corporation	22,392
NJ–6	Bergen County Legal Services	258,450
NJ–7	Hudson County Legal Services Corporation	656,995
NJ–8	Essex-Newark Legal Services Project, Inc	881,754
NJ–9	Middlesex County Legal Services Corporation	268,468
NJ–10	Passaic County Legal Aid Society	360,634
NJ–11	Somerset-Sussex Legal Services Corporation	85,028
NJ–12	Ocean-Monmouth Legal Services, Inc	427,604
NJ–13	Legal Aid Society of Mercer County	186,840
NJ–14	Legal Aid Society of Morris County	92,746
MNJ	Camden Regional Legal Services, Inc	102,052
NM–1	DNA-People's Legal Services, Inc	206,486
NM–2	Legal Aid Society of Albuquerque, Inc	552,743
NM–3	Southern New Mexico Legal Services, Inc	921,376
NM–4	Northern New Mexico Legal Services, Inc	776,211
MNM	Southern New Mexico Legal Services Inc	73,869
NNM–1	Southern New Mexico Legal Services, Inc	12,839
NNM–2	DNA-People's Legal Services, Inc	11,237
NNM–3	Indian Pueblo Legal Services, Inc	367,339
NY–1	Legal Aid Society of Northeastern New York, Inc	686,278
NY–3	Legal Aid for Broome and Chenango	224,428
NY–4	Neighborhood Legal Services, Inc	944,464
NY–5	Chautauqua County Legal Services, Inc	153,727
NY–6	Chemung County Neighborhood Legal Services, Inc	267,822
NY–7	Nassau/Suffolk Law Services Committee, Inc	887,023
NY–8	Legal Aid Society of Rockland County, Inc	541,286
NY–9	Legal Services for New York City	11,314,289
NY–10	Niagara County Legal Aid Society, Inc	190,148
NY–13	Legal Services of Central New York, Inc	703,120
NY–14	Legal Aid Society of Mid-New York, Inc	619,573
NY–15	Westchester/Putnam Legal Services, Inc	606,197
NY–16	North Country Legal Services, Inc	324,932
NY–17	Southern Tier Legal Services	254,935
NY–18	Monroe County Legal Assistance Corporation	885,459
MNY	Legal Aid Society of Mid-New York, Inc	234,106
NC–1	Legal Services of North Carolina, Inc	4,978,592
NC–2	Legal Services of Southern Piedmont, Inc	669,130
NC–3	North Central Legal Assistance Program, Inc	360,204
NC–4	Legal Aid Society of Northwest North Carolina, Inc	403,367
MNC	Legal Services of North Carolina, Inc	453,289
NNC–1	Legal Services of North Carolina, Inc	117,559
ND–1	Legal Assistance of North Dakota, Inc	623,899
ND–2	North Dakota Legal Services, Inc	8,289
MND	Southern Minnesota Regional Legal Services, Inc	98,031

Service area	Applicant name	Anticipated FY 2000 award
NND–1	Legal Assistance of North Dakota, Inc	44,488
NND–2	North Dakota Legal Services, Inc	120,012
OH–5	The Legal Aid Society of Columbus	1,154,829
OH–17	Ohio State Legal Services	1,837,260
OH–18	Legal Aid Society of Greater Cincinnati	1,368,734
OH–19	Allen County Blackhoof Area Legal Services Association	1,406,454
OH–20	Stark County Legal Aid Society	1,952,017
OH–21	The Legal Aid Society of Cleveland	2,066,146
OH–22	Legal Services of Northwest Ohio, Inc	1,074,772
MOH	Legal Services of Northwest Ohio, Inc	106,535
OK–1	Legal Aid of Western Oklahoma, Inc	2,315,357
OK–2	Legal Services of Eastern Oklahoma, Inc	1,849,230
MOK	Legal Aid of Western Oklahoma, Inc	52,924
NOK–1	Oklahoma Indian Legal Services, Inc	306,336
OR–2	Lane County Legal Aid Service, Inc	275,118
OR–4	Marion-Polk Legal Aid Service, Inc	242,494
OR–5	Legal Aid Services of Oregon	1,864,020
MOR	Legal Aid Services of Oregon	471,107
NOR–1	Legal Aid Services of Oregon	155,851
PA–1	Philadelphia Legal Assistance Center	2,558,008
PA–2	Legal Services, Inc	215,039
PA–3	Delaware County Legal Assistance Association Inc	303,417
PA–4	Bucks County Legal Aid Society	172,041
PA–5	Laurel Legal Services, Inc	629,515
PA–8	Neighborhood Legal Services Association	1,648,733
PA–9	Northern Pennsylvania Legal Services, Inc	358,996
PA–11	Southwestern Pennsylvania Legal Aid Society, Inc	519,366
PA–12	Legal Aid of Chester County, Inc	140,078
PA–13	Legal Services of Northeastern Pennsylvania, Inc	405,419
PA–14	Susquehanna Legal Services	408,124
PA–17	Lehigh Valley Legal Services, Inc	309,861
PA–18	Montgomery County Legal Aid Service	194,102
PA–20	Southern Alleghenys Legal Aid, Inc	468,766
PA–21	Central Pennsylvania Legal Services	1,067,129
PA–22	Keystone Legal Services, Inc	1,079,405
MPA	Philadelphia Legal Assistance Center	140,177
PR–1	Puerto Rico Legal Services, Inc	16,460,943
PR–2	Community Law Office, Inc	311,780
MPR	Puerto Rico Legal Services, Inc	245,893
RI–1	Rhode Island Legal Services, Inc	765,069
MRI	Rhode Island Legal Services, Inc	1,497
SC–1	Neighborhood Legal Assistance Program, Inc	1,207,530
SC–2	Palmetto Legal Services	1,063,779
SC–3	Carolina Regional Legal Services Corporation	243,710
SC–4	Legal Services Agency of Western Carolina, Inc	665,896
SC–7	Piedmont Legal Services, Inc	934,976
MSC	Neighborhood Legal Assistance Program, Inc	167,293
SD–1	Black Hills Legal Services, Inc	159,277
SD–2	East River Legal Services	428,663
SD–3	Dakota Plains Legal Services, Inc	288,056
MSD	Black Hills Legal Services, Inc	3,358
NSD–1	Dakota Plains Legal Services, Inc	788,287
TN–1	Southeast Tennessee Legal Services, Inc	623,891
TN–2	Legal Services of Upper East Tennessee, Inc	744,670
TN–3	Knoxville Legal Aid Society, Inc	548,144
TN–4	Memphis Area Legal Services, Inc	1,356,078
TN–5	Legal Aid Society of Middle Tennessee	1,047,301
TN–6	Rural Legal Services of Tennessee, Inc	680,570
TN–7	West Tennessee Legal Services, Inc	644,943
TN–8	Legal Services of South Central Tennessee, Inc	462,909
MTN	Legal Services of Upper East Tennessee, Inc	53,644
TX–1	Legal Aid of Central Texas	1,498,373
TX–3	Legal Services of North Texas	2,313,148
TX–4	El Paso Legal Assistance Society	1,223,817
TX–5	West Texas Legal Services, Inc	3,949,399
TX–6	Gulf Coast Legal Foundation	4,788,692
TX–8	Bexar County Legal Aid Association, Inc	1,810,682
TX–9	Heart of Texas Legal Services Corporation	490,612
TX–10	Texas Rural Legal Aid, Inc	3,647,305
TX–11	East Texas Legal Services, Inc	2,731,331
TX–12	Coastal Bend Legal Services	1,343,670
MTX	Texas Rural Legal Aid, Inc	1,182,317
NTX–1	Texas Rural Legal Aid, Inc	26,423

Service area	Applicant name	Anticipated FY 2000 award
UT–1	Utah Legal Services, Inc	1,534,290
MUT	Utah Legal Services, Inc	57,366
NUT–1	Utah Legal Services, Inc	37,705
VT–1	Legal Services Law Line of Vermont, Inc	434,619
MVT	Legal Services Law Line of Vermont, Inc	6,849
VI–1	Legal Services of the Virgin Islands, Inc	278,700
VA–1	Legal Services of Northern Virginia, Inc	485,302
VA–3	Rappahannock Legal Services, Inc	221,135
VA–4	Southwest Virginia Legal Aid Society, Inc	224,940
VA–5	Peninsula Legal Aid Center, Inc	457,499
VA–6	Central Virginia Legal Aid Society, Inc	529,019
VA–7	Legal Aid Society of New River Valley, Inc	214,716
VA–9	Tidewater Legal Aid Society	785,252
VA–10	Virginia Legal Aid Society, Inc	759,642
VA–11	Southside Virginia Legal Services, Inc	135,818
VA–12	Blue Ridge Legal Services, Inc	260,709
VA–13	Client Centered Legal Services of Southwest Virginia, Inc	383,457
VA–14	Piedmont Legal Services, Inc	468,361
MVA	Piedmont Legal Services, Inc	133,394
WA–1	Northwest Justice Project	3,667,009
MWA	Northwest Justice Project	617,331
NWA–1	Northwest Justice Project	203,903
WV–1	Appalachian Research and Defense Fund, Inc	736,108
WV–2	Legal Aid Society of Charleston	387,808
WV–3	West Virginia Legal Services Plan, Inc	1,699,771
MWV	West Virginia Legal Services Plan, Inc	30,921
WI–1	Legal Action of Wisconsin, Inc	2,112,825
WI–2	Wisconsin Judicare, Inc	999,034
WI–3	Legal Services of Northeastern Wisconsin, Inc	615,263
WI–4	Western Wisconsin Legal Services, Inc	402,557
MWI	Legal Action of Wisconsin, Inc	77,004
NWI–1	Wisconsin Judicare, Inc	115,659
WY–4	Wyoming Legal Services, Inc	423,369
MWY	Wyoming Legal Services, Inc	10,522
NWY–1	Wyoming Legal Services, Inc	145,891

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area indicated is served by one of the organizations listed above, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2000.

Dated: September 24, 1999.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 99–25351 Filed 9–28–99; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–120]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 29, 1999.

FOR FURTHER INFORMATON CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

NASA Case No. DRC–096–074: An Alumina Encapsulated Strain Gage not Mechanically Attached to the Substrate Used to Temperature Compensate an Active High Temperature Gage in a Half-Bridge Configuration;

NASA Case No. NPO–20148–1: Protective Fullerene (C–60) Packaging for Microelectromechanical Systems Applications;

NASA Case No. NPO–20101–1: Static and Dynamic Three Dimensional Display of 3D Holograms in Free Space Virtual Reality;

NASA Case No. NPO–20146–1: A Microeletromechanical Sensor Using a Magnetoresistive Element in a Magnetic Field Gradient;

NASA Case No. NPO–19484–1: Optical Fiber Vertical Illuminator for Microscopy and Observational Application;

NASA Case No. NPO–20535–1: Evolutionary Technique for Automated Synthesis of Electronic Circuits;

NASA Case No. NPO–19742–1: Preventing SST Engine Unstart Using a Microwave Radiometer.

Dated: September 4, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–25242 Filed 9–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–121]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee.

DATES: Wednesday, October 20, 1999, 8:00 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code UP, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Roles and Responsibilities regarding Commercialization.
—Director, Space Utilization and Product Development's appointment, responsibilities, priorities, and his view of the CAS role.
—Assistant to the Administrator for Commercialization's role and responsibilities.
—Performance Targets and the CAS responsibility to evaluate them.
—Report on the Ad Hoc Committee to review the proposed Environmental Systems Commercial Space Technology Center. Develop criteria for evaluating business plans.
—Joint meeting with the Life Sciences Advisory Committee on Wednesday morning, October 20 to discuss what the 30% reserve for commercial utilization of the ISS actually means, and what plans and opportunities there are to avoid redundancies and leverage resources of both commercial and ''scientific'' payloads and experiments.
—Environmental Commercial Space Centers.
—Leveraging and identifying opportunities for joint research with Scientific Communities.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 23, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–25243 Filed 9–28–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wolf Creek Nuclear Operating Corporation (the licensee) to withdraw its June 30, 1999, application for proposed amendment to Facility Operating License No. NPF–42 for the Wolf Creek Nuclear Generating Station, Unit 1, located in Coffey County, Kansas.

The proposed amendment would have revised Technical Specification 3.7.5 regarding the allowed value of the ultimate heat sink temperature. The Commission issued Amendment No. 125 on July 8, 1999, that revised the maximum allowed value of the ultimate heat sink temperature to 94°F. In the June 30, 1999, letter, the licensee proposed a maximum plant inlet water temperature of 95°F; however Amendment No. 125 only approved a maximum value of 94°F to allow the amendment to be within the scope of the no significant hazards considerations published in the **Federal Register** on February 24, 1999 (64 FR 9203) and to be issued before the hot weather period of July and August 1999 in and around the Wolf Creek Generating Station. The Commission issued a Notice of Consideration of Issuance of Amendment for the June 30, 1999, request that was published in the **Federal Register** on July 15, 1999 (64 FR 38221). However, by conference call of September 8, 1999, the licensee withdrew the proposed change because the hot weather period of 1999 had past.

For further details with respect to this action, see the application for amendment dated June 30, 1999. The above document 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 rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 22nd day of September 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Section 2, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–25348 Filed 9–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 27

There are no meetings scheduled for the Week of September 27.

Week of October 4—Tentative

There are no meetings scheduled for the Week of October 4.

Week of October 11—Tentative

Thursday, October 14

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of October 18—Tentative

Wednesday, October 20

9:25 a.m. Affirmation Session (Public Meeting) (if needed)
9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

Thursday, October 21

9:30 a.m. Briefing on Part 35—Rule on Medical Use of Byproduct Material (Public Meeting) 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''

* 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 24, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 99–25443 Filed 9–27–99; 8:45 am]

BILLING CODE 7950–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval (with modifications).

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend its approval (with modifications) of a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 29, 1999.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC is requesting that OMB extend its approval (with modifications) of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with the PBGC. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments.

The existing collection of information was approved under control number 1212–0055 (expires June 30, 2000). The PBGC has revised the existing forms to simplify language and incorporate regulatory changes.

The PBGC estimates that 72,250 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 30,625 hours (an average of slightly less than 30 minutes per individual) and $23,512.50. The PBGC further estimates that 5,500 individuals annually will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,500 hours (an average of about 15 minutes per individual) and $990. Thus, the total estimated annual burden associated with this collection of information is 32,125 hours and $24,502.50.

Issued in Washington, D.C., this 23rd day of September, 1999.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–25303 Filed 9–28–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27077]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 24, 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 applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declarations(s) and any amendment is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by October 14, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or decalarant(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 issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 14, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Louisiana, Inc. (70–7580)

Entergy Louisiana, Inc. (''Entergy Louisiana''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a utility subsidiary of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application under sections 9(a) and 10 of the Act and rule 54 under the Act.

As described in orders dated February 2, 1989, January 24, 1991, and January 24, 1996 (HCAR Nos. 24810, 25246, and 26460, respectively) (''Orders''), Entergy Louisiana (formerly Louisiana Power & Light Company) leases nuclear fuel required for use at its Waterford 3 nuclear generating unit (''Waterford 3'') under a Fuel Lease, dated as of January 31, 1989 (''Lease), with River Fuel Company #2, Inc. (''River Fuel''). Under the Lease, River Fuel makes payments to suppliers, processors, and manufacturers necessary to provide

nuclear fuel for Waterford 3, or Entergy Louisiana makes these payments and receives reimbursement from River Fuel.

In accordance with the terms of the Orders, Entergy Louisiana consented to allow River Fuel to finance the acquisition of nuclear fuel through (i) borrowings by River Fuel under a Credit Agreement, dated as of January 31, 1989, with The Bank of New York (''Credit Agreement'') and (ii) the issuance by River Fuel of secured notes under secured note agreements with certain institutional lenders.

The Credit Agreement permits River Fuel to issue and sell its commercial paper through an agent under a depositary agreement supported by an irrevocable direct-pay letter of credit issued under the Credit Agreement. Alternatively, River Fuel may make revolving credit borrowings evidenced by River Fuel's promissory notes.

The Credit Agreement requires River Fuel to pay a letter of credit fee of ⅝ of 1% per annum on the average aggregate face amount of commercial paper outstanding during each quarter that Entergy Louisiana's senior debt is investment grade, and 1⅛% per annum on the average aggregate face amount of commercial paper outstanding during each quarter that Entergy Louisiana's senior debt is not investment grade. It is now proposed that these fees be increased to a maximum of 1% and 1⅞%, respectively.

In addition, each revolving credit borrowing under the original Credit Agreement bears interest: (a) In the case of base rate borrowings, at the prime rate in effect on the date of the borrowing (''Base Rate''), and (b) in the case of the London Interbank Offered Rate (''LIBOR'') borrowings, at ¾ of 1% per annum in excess of LIBOR, provided that if the LIBOR option is unavailable because Entergy Louisiana's senior debtor rating falls below investment grade, borrowings would bear interest at the Base Rate plus 1%. It is now proposed that (a) Base Rate borrowings bear interest at a maximum rate equal to the higher of (i) the prime rate in effect on the date of the borrowing, and (ii) the sum of 1% per annum and the Federal Funds Rate in effect on the date of the borrowing, and (b) LIBOR borrowings bear interest at a maximum rate of 2% per annum above LIBOR.

The Lease prohibits River Fuel from amending the Credit Agreement or entering into any successor credit agreement without Entergy Louisiana's consent. Entergy Louisiana requests authority to consent to the execution by River Fuel of an amendment to the original Credit Agreement or a successor credit agreement incorporating the revisions described above.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–25388 Filed 9–27–99; 9:50 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41892; File No. SR–Amex–99–20]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1, 2, 3 and 4 Relating to the Listing and Trading of Trust Issued Receipts

September 21, 1999.

1. Introduction

On May 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish listing standards for trust issued receipts, and to trade Internet Holding Company Depositary Receipts (''Internet HOLDRs''), a type of trust issued receipt.

The proposed rule change was published for comment in the **Federal Register** on July 9, 1999.[3] No comments were received on the proposal. The proposal was amended on September 3, 13, 17 and 21, 1999.[4] In this notice and order, the Commission is seeking comment from interested persons on the amendments, and is approving the proposed rule change, as amended, including accelerated approval of the amendments.

II. Description of the Proposal

The Amex proposes: (1) To add new Rules 1200 *et seq.* to accommodate the trading of trust issued receipts that are intended to provide investors with a flexible, cost-effective way of purchasing, holding and transferring the securities of one or more specified companies, generally; and (2) to list particular trust issued receipts representing a selection of companies in the Internet industry, that are issued by the Internet HOLDRs Trust. The language of the proposal, as amended, follows. New text is *italicized*.

* * * * *

TRUST ISSUED RECEIPTS

Rule 1200

(a) Applicability. The Rules in this Chapter (Trading of Trust Issued Receipts) are applicable only to Trust Issued Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Trust Issued Receipts are included within the definition of ''security'' or ''securities'' as such terms are used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

Trust Issued Receipts. The term ''Trust Issued Receipt'' means a security (a) that is issued by a trust (''Trust'') which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

Commentary

.01 The Exchange requires that members and member organizations provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

.02 Transactions in Trust Issued Receipts may be effected until 4:00 pm each business day.

Designation

Rule 1201

The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41593 (July 1, 1999), 64 FR 37178.

[4] *See* letters from Scott G. Van Hatten, Counsel, Derivative Securities, Amex to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated September 2, 10, 16 and 21, 1999 (''Amendment Nos. 1, 2, 3 and 4,'' respectively). In Amendment No. 1, Amex revised the proposal to describe the listing and continued listing criteria in greater detail. The Amex also supplemented the Exchange listing suspension and removal criteria. In Amendment No. 2, Amex identified the companies comprising the Internet HOLDRs. In Amendment No. 3, Amex amended proposed Amex Rule 1201 to more accurately reflect the proposal. In Amendment No. 4, Amex clarified certain prospectus delivery requirements related to trust issued receipts.

shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

Initial and Continued Listing

Rule 1202

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and outstanding is less than $1,000,000; or

(iv) if such other event shall occur or condition exists in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provision of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The requirements of paragraph (a) of Section #811 of the Exchange Company Guide apply.

(e) Voting—Voting rights shall be as set forth in the Trust prospectus.

Specialist Transactions with Public Customers

Rule 190

(a)–(e) No change.

Commentary

.01–.04 No change.

Nothing in paragraph (a) of this rule should be construed to restrict a specialist registered in a security issued by a trust, listed pursuant to Rules 1200 et seq., from purchasing and canceling the listed security or securities included in the portfolio held by the trust that can be deposited with the trust in connection with the issuance of the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

A. Description

Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold securities investments from a variety of companies throughout a particular industry in a single, exchange-listed and trade instrument that represents their beneficial ownership in the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. Holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts, will receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders, and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

Trust issued receipts are not leveraged instruments, and therefore do not possess any of the attributes of stock index options. The Exchange believes that the level of risk involved in the purchase and sale of trust issued receipts is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt. Although the Exchange anticipates listing trust issued receipts on one or more groups of securities other than those described herein, it notes that it will be required to submit a proposal, pursuant to Section 19(b) of the Act, before either listing trust issued receipts on a new group of securities or listing options on the trust issued receipts described in this proposal.

B. Creation of the Trust

Trust issued receipts will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts.

The Internet HOLDRs will be issued by the Internet HOLDRs Trust, which was created pursuant to a depositary trust agreement dated September 2, 1999, among The Bank of New York, as trustee, Merrill Lynch Pierce Fenner & Smith Incorporated, other depositors and the owners of the Internet HOLDRs. The Exchange anticipates that 150,000 trust issued receipts will be issued in connection with the initial distribution of the Internet HOLDRs.

The deposited securities underlying the Internet HOLDRs are:

Name of company	Symbol	Share amounts	Initial weighting (percent)	Primary trading market
America Online	AOL	21	19.60	NYSE.
Yahoo Inc.	YHOO	13	19.60	NASDAQ.
Amazon.com Inc.	AMZN	18	11.44	NASDAQ.
EBay Inc.	EBAY	6	7.70	NASDAQ.
At Home Corp.	ATHM	17	6.97	NASDAQ.
Priceline.Com.Inc	PCLN	7	4.87	NASDAQ.
CMGI Inc.	CMGI	5	4.29	NASDAQ.
Inktomi Corporation	INKT	3	3.48	NASDAQ.
RealNetworks, Inc.	RNWK	4	3.34	NASDAQ.
Exodus Corporation, Inc.	EXDS	4	3.29	NASDAQ.
E*TRADE Group Inc.	EGRP	12	3.07	NASDAQ.
Double Click Inc.	DCLK	2	2.04	NASDAQ.

Name of company	Symbol	Share amounts	Initial weighting (percent)	Primary trading market
Ameritrade Holding Corp.	AMTD	9	1.87	NASDAQ.
Lycos Inc.	LCOS	4	1.66	NASDAQ.
CNET, Inc.	CNET	4	1.54	NASDAQ.
PSINet Inc.	PSIX	3	1.47	NASDAQ.
Network Associates, Inc.	NETA	7	1.21	NASDAQ.
Earthlink Network, Inc.	ELNK	2	1.00	NASDAQ.
MindSpring Enterprises, Inc.	MSPG	3	0.90	NASDAQ.
Go2Net, Inc.	GNET	1	0.66	NASDAQ.

C. The Trust Issued Receipts Portfolio

The companies represented by the securities in the portfolio underlying the trust issued receipts must meet the following minimum criteria:

(1) The companies' common stock must be registered under Section 12 of the Exchange Act.

(2) The minimum public float of each company included in the portfolio must be at least $150 million.

(3) Each security must either be listed on a national securities exchange or be traded through the facilities of Nasdaq and be a reported national market system security.

(4) The average daily trading volume for each security must be at least 100,000 shares during the preceding sixty-day trading period.

(5) The average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least $1 million.

The initial weighting of each security in the portfolio will be based on its market capitalization, however, if on the date such weighting is determined, a security would represent more than 20% of the overall value of the receipt, then the amount of such security will be reduced to no more than 20% of the receipt value. Once initially set, the securities represented by a receipt will not change, except in accordance with the reconstitution events described below.

Each of the companies whose common stock is included in the portfolio of the Internet HOLDRs Trust also meet the following criteria:

(1) The market capitalization for each company is equal to or greater than $1 billion.

(2) The average daily trading volume for each security was at least 1.2 million shares during the sixty-day trading period prior to August 31, 1999.

(3) The average daily dollar value of the shares traded during the sixty-day trading period prior to August 31, 1999 was at least $60 million.

(4) Each company was traded on a national securities exchange or Nasdaq/NM for at least ninety days prior to August 31, 1999.

D. Trading of Trust Issued Receipts

A round-lot of 100 trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of deposited securities for each round-lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Trust issued receipts may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot will be rejected, while orders for greater than a round-lot, but not a round-lot multiple will be executed to the extent of the largest round lot multiple, rejecting the remaining odd-lot (*e.g.*, an order for 50 trust issued receipts will be rejected, while for an order for 1050 trust issued receipts, 1000 will be executed and 50 will be rejected). The initial offering price for a trust issued receipt will be established on the date the receipts are priced for sale to the public.

Trust issued receipts will be deemed ''Eligible Securities,'' as defined in Amex rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236 which require that Amex members avoid initiating trade-throughs for ITS securities. Further, specialist transactions with the trust issued receipts' trust made in connection with the creation and redemption of trust issued receipts will not be subject to the prohibitions of Amex rule 190, which prohibits, among other things, any business transaction between a specialist and the company in which stock the specialists is registered. Finally, application for an exemption from the short sale rule, Rule 10a–1 under the Act,[5] has been made for trust issued receipts and is currently pending with the Commission.

Trust issued receipts will trade in minimum fractional increments pursuant to Amex rule 127. Application of Amex rule 127 will result in a minimum fractional change of 1/16th of $1.00 for those trust issued receipts selling at or above $0.25 and 1/32nd of $1.00 for those selling below $0.25.

The Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The exchange represents that the arbitrage process—which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.*, the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the trust issued receipt at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

E. Maintenance of the Trust Issued Receipts Portfolio

Except when a reconstitution event occurs, as described below, the securities represented by a trust issued receipt will not change. Notwithstanding, the static nature of the portfolio, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities or when a reconstitution event occurs. In addition, the relative weightings among the deposited securities will change based

[5] 17 CFR 240.10a–1.

on the current market price of the deposited securities and upon the reconstitution events discussed below. Under no circumstances will a new security be added to the list of securities after a particular receipt program is established, nor will weightings of component securities be adjusted after they are initially set. If the portfolio of securities underlying the trust issued receipts drops to fewer than nine, Amex will consult with the Commission to confirm the appropriateness of continued listing of such trust issued receipts.

F. Reconstitution Events

The trust agreement provides for the automatic distribution of specified deposited securities in the trust's portfolio to the beneficial owner of such receipts in the circumstances referred to in the prospectus as ''reconstitution events.'' The reconstitution events occur under the following circumstances:

(1) If the deposited securities of a company evidenced by a trust issued receipt no longer has a class of common stock registered under Section 12 of the Act, then those securities will no longer be considered deposited securities and the trustee will distribute the securities of that company to the owners of the trust receipts;

(2) If the Commission finds that a company with deposited securities evidenced by the trust issued receipts is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the securities of that company of the owners of the trust issued receipts.

(3) If the deposited securities of a company evidenced by a trust issued receipt are no longer outstanding because the securities were acquired by another company, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of trust issued receipts, unless the consideration is additional deposited securities (*i.e.,* the acquiring company's securities are already included in the trust issued receipt as deposited securities), in which case such additional securities will be deposited into the trust; and

(4) If an underlying issuer's deposited securities are delisted from trading on their primary exchange or market and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.[6]

If the trustee removes a deposited security from the trust due to the occurrence of one of the reconstitution events described above, the trustee, in accordance with the depositary trust agreement, will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

G. Issuance and Cancellation of Trust Issued Receipts

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, receipts only in a round-lot of 100 trust issued receipts and round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis.[7] The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

A holder may obtain trust issued receipts by either purchasing them on the Exchange or by delivering to the trust during its normal business hours the requisite securities evidencing a round-lot of trust issued receipts. The trustee will charge an issuance fee of up to $10.00 per 100 trust issued receipts. If a holder wants to cancel trust issued receipts and withdraw the deposited securities the holder may do so by surrendering the receipts to the trust during normal business hours. The trustee will charge a cancellation fee of up to $10.00 per 100 trust issued receipts. Lower charges may be assigned for bulk issuances and cancellations. The holder will receive the deposited securities no later than the business day after the trustee receives the request.

H. Termination of the Trust

The trust shall terminate upon the earlier of: (i) The removal of the receipts from Amex listing if they are not listed for trading on another national securities exchange or through the facilities of Nasdaq within five business days from the date the receipts are delisted; (ii) the trustee resigns and no successor trustee is appointed within sixty days from the date the trustee provides notice to the initial depositor of its intent to resign; (iii) seventy-five percent of beneficial owners of outstanding trust issued receipts vote to dissolve and liquidate the trust; or (iv) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

I. Criteria for Initial and Continued Listing

Because of the continuous issuance and cancellation of trust issued receipts, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific trust. In connection with initial listing, the Exchange will establish a minimum number of receipts that must be outstanding at commencement of Exchange trading, and such minimum number will be included in any required submission under Rule 19b–4. The Exchange anticipates requiring a minimum of 150,000 outstanding receipts before trading can commence.

In connection with continued listing, and because the number of holders can be subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on trust issued receipt holders if the Exchange considers suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, the Exchange will consider suspending or delisting a trust from trading when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the trust has more than sixty days remaining until termination and there have been fewer than fifty record and/or beneficial holders of the trust issued receipts for the previous thirty or more consecutive trading days;

(b) If the aggregate number of trust issued receipts outstanding is less than 50,000;[8]

(c) If the aggregate market value of trust issued receipts publicly held is less than $1 million;[9] or

(d) If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

[6] This provision is designed for the purpose of permitting a deposited security to move its listing between, *e.g.,* the Amex and Nasdaq without requiring the automatic distribution of the deposited security to beneficial owners of the receipts. Should deposited securities be moved to a market other than a national securities exchange or Nasdaq, (*e.g.,* the OTC Bulletin Board) such securities will be automatically distributed to the beneficial owners of the receipts.

[7] The per receipt amount will be disseminated by the Amex every 15 seconds over the Consolidated Tape Association's Network B.

[8] *See supra* note 4.

[9] *Id.*

The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one year after the initial listing of such trust issued receipts for trading on the Exchange. In addition, if the number of companies represented by the deposited securities drops to less than nine, and such time thereafter the number of companies is reduced, the Exchange will consult with the Commission to confirm the appropriateness of continued listing of the trust issued receipts.

J. Exchange Rules Applicable to Trading of Trust Issued Receipts

Trust issued receipts will be deemed equity securities subject to all Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability (Amex Rule 411) and the election, with the prior approval of a floor official, of a stop or limit order by a quotation (Amex Rule 154, Commentary .04(c)). Equity margin requirements of fifty percent and the regular equity trading hours of 9:30 a.m. to 4:00 p.m. will apply to transactions in trust issued receipts. However, trading rules pertaining to the availability of odd-lot trading in Amex equities will not apply to the trading of trust issued receipts, since they can only be traded in round-lots. Application for exemption from the short sale rule, Rule 10a–1 under the Act, has been made and is currently pending with the Commission. If granted, the Exchange will issue a notice to its members detailing the terms of the exemption. Amex's surveillance procedures for trust issued receipts will be similar to those used for portfolio depositary receipts and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

K. Disclosure

With respect to investor disclosure, the Exchange notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Amex members purchasing trust issued receipts from the trust for resale to customers will deliver a prospectus to such customers.

Prior to the commencement of trading in trust issued receipts, the Exchange will issue a circular to members highlighting the characteristics of purchases in trust issued receipts including that trust issued receipts are not individually redeemable. In addition, the circular will inform members of Exchange policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

III. Discussion

A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[10] Specifically, the Commission finds that the proposal to list and trade trust issued receipts will provide investors with a convenient and less expensive way of participating in the securities markets. The Exchange's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[11]

The Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust issued receipts will allows investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[12] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues that must be addressed.

B. Lasting and Trading of Trust Issued Receipts

The Commission finds that the Amex's proposal contains adequate rules and procedures to govern the trading of turest issued receipts. Trust issued receipts are equity securities that will be subject to the full panoply of Amex rules governing the trading of equity securities on the Amex, including, among others, rules governing the priority, parity and procedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit oder.[13]

In addition, the Amex has developed specific listing and delisting criteria for trust issued receipts that will help to ensure that a minimum level of liquidity will exist for trust issued receipts to allow for the maintenance of fair and orderly markets. The delisting criteria

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] The Commission has concerns about continued listing of the trust issued receipts if the number of component securities falls to a level below nine securities, because the receipts may no longer adequately reflect a cross section of the selected industry. Accordingly, the Amex has agreed to consult the Commission, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[13] Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

also allows the Amex to consider the suspension of trading and the delisting of a trust issued receipt if an event occurred that made further dealings in such securities inadvisable. This will give the Amex flexibility to delist trust issued receipts if circumstances warrant such action. Amex's proposal also provides procedures to halt trading in trust issued receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's belief that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade trust issued receipts in minimum fractional increments of 1/16th of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the Amex has developed surveillance procedures for trust issued precepts that incorporate and rely upon existing Amex surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading trust issued receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of a particular trust issued receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Amex member firms who purchase trust issued receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in trust issued receipts. The circular also will inform members of Exchange policies regarding trading halts in trust issued receipts.

D. Scope of the Commission's Order

The Commission is approving in general the Amex's proposed listing standards for trust issued receipts, and, specifically, the listing of the Internet HOLDRs described herein. The Commission specifically notes that, notwithstanding approval of the listing standards for trust issued receipts, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed prior to contacting Division staff. In addition, the Amex may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

E. Accelerated Approval

The Commission finds good cause for approving proposed Amendment Nos. 1, 2, 3 and 4 prior to the thirtieth day after the day after the date of publication of notice of filing in the **Federal Register**. Specifically, the amendments strengthen the proposed rule change by clarifying and expanding the explanations regarding the nature and composition of the trust issued receipts, the trading halt procedures, the applicable equity trading rules, the minimum fractional change, the potential for arbitrage opportunities, the disclosure requirements, the reconstitution events, the termination events and the continued listing criteria. Moreover, the Commission notes that the proposed rule change was noticed for the full statutory period and no comment letters were received. Finally, Amendment Nos. 1, 2, 3 and 4 do not raise any new regulatory issues. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment Nos. 1, 2, 3 and 4 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments Nos. 1, 2, 3 and 4, including whether these amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 Exchange. All submissions should refer to File No. SR–AMEX–99–20 and should be submitted by October 20, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–99–20), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–25281 Filed 9–28–99; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41886; File No. SR–NYSE–99–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Eliminate the Series 7B Qualification Examination and Adopt a New Interpretation to Rule 345 (''Employees—Registration, Approval, Records'')

September 20, 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 31, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items 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 NYSE proposes to amend the interpretation of its Rule 345.15 (''Employees—Registration, Approval, Records'')[3] by eliminating the Series 7B Qualification Examination and establishing the Series 7A Examination as the appropriate qualification examination for Exchange Floor clerks who wish to conduct a limited public business with professional customers. The proposed amendment would establish the Trading Assistant Examination (''Series 25'') as a prerequisite for the Series 7A Examination. The text of the proposed rule change is available at the NYSE, 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 NYSE 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 NYSE 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

Currently, Floor clerks who want to conduct a limited public business with professional customers (*e.g.*, banks, insurance companies, and other persons included in the definition of ''professional customer'' found in the written interpretation to Exchange Rule 345.15) must first pass the Series 7B Examination or the General Securities Representative (''Series 7'') Examination. Floor members who want to conduct a securities business with professional customers must first pass the Series 7A Examination or the Series 7 Examination.

The Series 7A and Series 7B qualification examinations were implemented in 1993[4] and 1994[5] respectively to serve as alternative qualification exams to the Series 7 Examination because the level of knowledge required to conduct a professional public business limited to transactions in listed securities on the Exchange Floor is narrower than that needed to conduct a general public business with retail customers.

The Series 7A and Series 7B Examinations are identical except for an additional 25 questions on the Series 7B which address Exchange Floor rules and policies. The additional 25 questions were added to ensure that Floor clerks have a basic understanding of Exchange trading rules and the underlying principles of the auction market. However, the recently implemented NYSE Trading Assistant Examination (''Series 25'')[6] now serves this purpose, and serves it more effectively because of its broader topic coverage and greater length.

Given that Floor clerks are currently required to take and pass the Series 25, candidates are tested twice on certain topics. Therefore, it is proposed that the Series 7B Examination be eliminated. In addition, it is proposed that the written interpretation to Rule 345.15 be amended to establish the Series 7A Examination as the appropriate qualification examination for both Floor members and Floor clerks who wish to conduct a limited public business with professional customers.

Further, it is proposed that the interpretation be amended to establish the Series 25 Examination as a prerequisite for Floor clerks seeking to take the Series 7A Examination. The Series 15 Examination remains a prerequisite to the Series 7A Examination for Floor members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[7] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

In addition, under Section 6(c)(3)(B) of the Act,[8] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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.

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[1] 15 U.S.C. 78s(b)(1),

[2] 17 CFR 240.19b–4.

[3] The interpretation to Rule 345.15 is contained in the NYSE *Interpretation Handbook*.

[4] *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993).

[5] *See* Securities Exchange Act Release No. 34334 (July 8, 1994), 59 FR 35964 (July 14, 1994).

[6] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999).

[7] 15 U.S.C. 78f(c)(3)(B).

[8] *Id.*

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, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–36 and should be submitted by October 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–25282 Filed 9–28–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 29, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Competency.

Form No: 1531.

Frequency: On Occasion.

Description of Respondents: Prime Government Contractor's.

Annual Responses: 300.

Annual Burden: 2,400.

Dated: September 22, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–25347 Filed 9–28–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Connecticut, entered August 27, 1999, the United States Small Business Administration hereby revokes the license of All State Venture Capital Corporation, a Connecticut corporation, to function as a small business investment company under the Small Business Investment Company License No. 01/02–0215 issued to All State Venture Capital Corporation on November 2, 1962 and said license is hereby declared null and void as of September 20, 1999.

Dated: September 20, 1999.

Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–25245 Filed 9–28–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Veterans Affairs, Compensation and Pension Service) Match 1008

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138, or writing to the Associate Commissioner for Program Support, 4400 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235.

All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving records of Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the match agreements by the Data Integrity Boards of the participating Federal Agencies.

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: September 13, 1999.

Susan M. Daniels Ph.D.,

Deputy Commissioner Disability and Income Security Programs.

Notice of Computer Matching Program, Department of Veterans Affairs (VA) With Social Security Administration (SSA)

A. Participating Agencies

SSA and VA.

B. Purpose of the Matching Program

To identify Supplemental Security Income (SSI) recipients who receive VA benefits and to update their SSI records to reflect the presence of such income. The SSI program provides payment to aged, blind and disabled recipients with income and resources below levels established by law and regulations.

C. Authority for Conducting the Matching Programs

Section 1631(e)(1)(B) and 1631(f) of the Social Security Act, 42 U.S.C. 1383 (e)(1)(B) and 1383(f).

D. Categories of Records and Individuals Covered by the Matching Program

The VA will provide SSA with electronic files containing compensation and pension data from its system of records entitled Compensation and Pension, Education and Rehabilitation Records—VA (58VA21/22). SSA will then match VA's data with SSI payment information maintained in the SSR SSA/OSR 09–60–0103.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after notice of this matching program is sent to Congress and OMB or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–25251 Filed 9–28–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Tariff Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 4–7, 1999, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, Terminal En Route Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held October 4 through October 7, 1999, in the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 1, 1999. The next quarterly meeting of the FAA ATPAC is planned to be held from January 10–13, 2000, in Pensacola, Florida.

Any members of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 20, 1999.

David Young,

Staff Specialist, Air Traffic Procedures Advisory Committee.

[FR Doc. 99–25356 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on October 21, 1999, at 9 a.m. Arrange for oral presentations by October 6, 1999.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC 20005–2485.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Transportation Industry Analyst, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7653, fax: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 21, 1999, at 9 a.m. at the General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC 20005–2485.

The agenda for this meeting will include:

(1) Approval of the ARAC draft meeting minutes of July 22, 1999.

(2) A status report on the Parts and Production Certification Working Group tasking;

(3) A status report on the FAA submitted rulemaking projects for ''Type Certification Procedures for Changed Products'', ''Establishment of Organization Designation Authorization (ODA) Procedures'', and ''Production Certification and Parts Manufacturing''; and

(4) A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 6, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTRACT.**

Issued in Washington, DC, on September 23, 1999.

Bruce A. Kaplan,

Acting Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–25354 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53; Air Traffic Services Safety and Interoperability Requirements

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee (SC)—189/EUROCAE Working Group (WG)–53 meeting to be held October 18–22, 1999, starting at 9:00 a.m. on October 18. The meeting will be held at RTCA Inc., 1140 Connecticut Ave, NW, Suite 1020, Washington, DC 20036.

The agenda will be as follows: Monday, October 18: Opening Plenary Session Convenes at 9:00 a.m.: (1) Introductory Remarks; (2) Review and Approve Agenda; (3) Review and Approve Summary of the Previous Meeting; (4) Sub-Group and Related Reports; (5) Position Papers Planned for Plenary Agreement; (6) SC–189/WG–53 Co-chair Progress Report. Tuesday, October 19 through Thursday, October 21: (7) Sub-group Meetings. Friday, October 22: Closing Plenary Session: (8) Introductory Remarks; (9) Review and Approval of Agenda; (10) Review of Preliminary Meeting Minutes; (11) Sub-group and Related Reports; (12) Position Papers Planned for Plenary Agreement; (13) SC–189/WG–53 Co-chair Progress Report and (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, by phone at (202) 833–9339, by fax at (202) 833–9434, or by e-mail at hmoses@rtca.org. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 22, 1999.

Janice L. Peters,

Designated Officer.

[FR Doc. 99–25226 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application Number 99–03–C–00–JHW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chautaugua County/Jamestown Airport, Jamestown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: To FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth B. Brentley, Director of Public Facilities of the County of Chautauqua at the following address: PO Box 51, Falconer, New York 14733–0051.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Chautauqua under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: John Moretto, Airport Engineer, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530, (516) 227–3806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 27, 1999, the FAA determine that the application to impose and use the revenue from a PFC submitted by the County of Cautauqua was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 16, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–03–C–00–JHW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Proposed charge expiration date: April 1, 2001.

Total estimated PFC revenue: $141,272.

Brief description of proposed project(s):

—Deer Fencing
—Overlay Taxiway D
—Overlay Runway 13.31

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi and charter carriers filing DOT Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgeral Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Chautauqua.

Issued in Garden City, New York on September 2, 1999.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 99–25355 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–5012]

Nationwide Differential Global Positioning System; Programmatic Environmental Assessment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of a final programmatic environmental assessment (PEA).

SUMMARY: The Secretary of Transportation (Secretary) has been authorized by Congress, pursuant to section 346 of the U.S. Department of Transportation (DOT) and Related Agencies Appropriations Act, 1998, to establish, operate, and manage a nationwide system to be known as the Nationwide Differential Global Positioning System (NDGPS) as soon as practicable, to integrate the NDGPS stations into the Continuously Operating Reference Station (CORS) system of the National Geodetic Survey of the Department of Commerce, and to investigate the use of the NDGPS reference stations for the Global Positioning System Integrated Precipitable Water Vapor System of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. A final PEA for the NDGPS program has been prepared to support this program. The FHWA envisions at this time that the NDGPS program will require the construction of at least 67 transmitter sites and maybe as many as 100, but no new sites will result in significant impacts to the environment.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Arnold, Office of Operations Research and Development, HRDO, (202) 493–3265, Federal Highway Administration, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, VA 22101–2296, or for legal issues: Mr. Robert J. Black, Office of the Chief Counsel, HCC–31, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of the PEA for the NDGPS program is available at *http://www.navcen.uscg.mil/*.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

The Secretary has delegated his authority under section 346 of the DOT Appropriations Act for FY 1998, Public Law 105–66, October 27, 1997, 111 Stat. 1425, at 1449, to the Commandant of the United States Coast Guard (USCG), the Federal Railroad Administration (FRA), and the FHWA. The FHWA is the lead agency and the USCG and the FRA are cooperating agencies for the implementation of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) and 23 CFR part 771. In accordance with NEPA, the FHWA has prepared a final PEA for the NDGPS program.

The NDGPS service would augment existing satellite-based Global Positioning System range information with a differential correction broadcast from ground-based reference stations transmitting from known positions, thereby providing users with more precise radio navigation and positioning information for public safety, transportation, scientific, and environmental applications. Federal agencies implementing the proposed NDGPS service are the DOT's Office of the Secretary of Transportation (OST), the FHWA, the FRA, the NOAA, the U.S. Air Force (USAF), the U.S. Army Corps of Engineers (USACE), and the USCG.

The NDGPS involves the expansion of an existing network of USCG local area Differential Global Positioning System (DGPS) reference stations currently covering United States coastal areas and major inland waterways. To expand this existing DGPS service nationwide, the installation of additional reference stations with low-frequency transmit antennas is required on suitable 11-acre land parcels located principally in the interior portions of the continental Unites States and Alaska. Sites will typically be on level ground and away from tall structures. Three deployment alternatives for the additional NDGPS reference stations were considered in the draft PEA.

Alternative A consists of conversion of 32 decommissioned USAF Ground Wave Emergency Network (GWEN) sites for use as NDGPS reference stations and the transfer of GWEN equipment from remaining GWEN sites to 28 new NDGPS site locations. Seven additional sites would receive similar new equipment, for a total of 67 NDGPS reference stations. The GWEN transmit antennas to be used are typically 299 feet tall guyed towers and will be operated at an effective radiated power (ERP) of no more than 500 Watts.

Alternative B consists of the installation of new equipment at 32 existing GWEN relay node sites, as well as at 35 new sites. The resulting NDGPS reference stations would be physically similar to the reference stations of Alternative A.

Alternative C is to identify 80 to 100 new sites and install equipment similar to USCG local area DGPS stations. These reference stations would utilize either 90 feet or 120 feet tall towers and operate at an ERP of no more than 170 Watts. The NDGPS is expected to be fully operational in the United States by the year 2002. During the selection of sites for the NDGPS reference stations, the FHWA and cooperating agencies will consult with key regulatory agencies and apply environmental site-selection criteria to avoid potentially significant impacts. If a potentially significant environmental impact is unavoidable during the selection of sites for the NDGPS reference stations, specific mitigation measures will be implemented to decrease the impact to a less than significant level. Provided that environmental site-selection criteria and specific mitigation measures identified in the draft PEA are implemented for the NDGPS, no significant environmental impacts are anticipated to occur under any of the proposed action alternatives. If planned mitigation measures for potentially significant impacts cannot be implemented at a specific site, or a site-specific impact is encountered that was not anticipated and addressed in the draft PEA, then additional appropriate NEPA analysis and documentation will be prepared by the FHWA for that specific reference station. In addition, if any sites would be used as a publicly-owned park, recreation area, wildlife and waterfowl refuge, or significant

historic site, a section 4(f) analysis [1] will be conducted. Impacts to historic properties would likewise require consultation with the Advisory Council on Historic Preservation.

Discussion of Comments

Interested persons were invited to comment on the NDGPS draft PEA, FHWA Docket No. FHWA–99–5012 by April 2, 1999 (64 FR 10336, March 3, 1999). There were 11 commenters to this docket; four were Federal agencies, four were State agencies, two were from Indian tribes, and one was a private citizen. The major comments relative to the final PEA are discussed below.

State Historic Preservation Offices and Indian tribes were primarily concerned about the impact these sites may have if the location of new sites were in areas where they operate. There are no plans to locate sites on Indian reservations. If a site were planned to be located on a historic property that an Indian tribe attached religious and cultural significance to, section 106 consultation would be conducted. In the case of State Historic Preservation Offices, the FHWA will consult with them to identify any potential impact. Before each site is installed or, in the case of the GWEN sites, modified, each organization that has jurisdiction will be contacted for individual site review.

Federal agencies that responded were generally satisfied with the analysis and mitigation measures presented in the draft PEA concerning:

—Potential environmental impacts on geology and soil,
—Water quality,
—Ecologically sensitive areas,
—Air quality,
—Noise,
—Land use,
—Plant and wildlife,
—Cultural resources,
—Hazardous materials,
—Environmental justice concerns,
—Recreation,
—Radio frequency environment, and
—Impacts on human health.

Federal agencies that noted certain exceptions to the draft PEA include the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (the Service), each of which raises particular concerns that are addressed below.

The NMFS expressed concerns over impacts to anadromous salmonids and other flora and fauna in the Pacific Northwest and other areas of the country. No sites are planned near or in wetlands of any sort. As the system is deployed and more precise locations are identified for new sites, careful consideration of siting will be used to ensure NDGPS reference stations will not be located in wetlands unless no other practicable alternative exists. This is unlikely given the flexibility of selecting sites. If, in the unlikely instance where no other practicable alternative exists, we will follow the procedures outlined by the NMFS and work with them to ensure minimal impact on marine species.

Additionally, the FHWA expects the NDGPS service to have a positive impact on anadromous salmonids and other threatened or endangered species. A prototype site in Appleton, Washington, has been operating for approximately two years and has been used for many environmental related projects. One project in particular demonstrates the impact of the NDGPS service on the chinook salmon (Oncorhynchus tshawytscha). This project, highlighted in the January 1999 issue of ''GPS World,'' involved mapping the gravel nests (called redds) of the chinook salmon. Using the NDGPS service from Appleton, the mapping was performed much quicker and with greater accuracy than other available techniques. While the benefits of the study were not described in the article, an increase in the knowledge of the spawning habitats of the chinook will allow for greater understanding of the impacts of human actions on their ecosystem. This same technique can be used to map other endangered or threatened species, increasing our understanding and ability to mitigate any potential negative effects.

The Service is concerned about the NDGPS projects' potential impacts on threatened and endangered species with specific emphasis on the potential for migratory bird strikes on the towers. Additional concerns involving threatened and endangered species arise from the effects of ground disturbance and copper leaching from the ground plane of existing sites and new sites.

In an effort to minimize impacts to threatened and endangered species, site selection criteria will be used to identify sites away from these species whenever possible. In the event that a site must be located near threatened or endangered species and a ''may affect'' determination is made, a section 7 consultation with the Service will occur as provided in section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536).

It is important to note that the PEA is intended to be a framework that could be used to select locations that offer zero impact in a number of areas, including threatened and endangered species. Toward this end, the potential effects on threatened or endangered species has been included in the document as one of the criteria that will be addressed at the site-specific level.

Bird strikes at towers is an issue that is larger then the NDGPS project. It is important to note that projections of telecommunications and High Definition Television (HDTV) over the next ten years may produce as many as 5,000 additional towers per year. The Service identifies the towers, lights, and guy wires as known to pose potential hazards to migratory birds flying at low altitudes, particularly night-time neotropical migrating songbirds. The available literature highlights this as a problem, but does not offer mitigation techniques that have been proven to work everywhere. In fact, the literature indicates that this is not a problem everywhere, but is a site-specific problem. This indicates that site selection can be used as the first mitigation technique. This process includes, but is not limited to selecting sites away from known migratory paths, reducing or eliminating visual cues that could funnel birds toward the sites, locating sites in valleys, and not locating sites between nesting and foraging areas.

It is also important to note that additional techniques are available to reduce the impact of the sites even further. These include bird deterrent devices, alternative lighting techniques, and visual cues on the facility itself. Logically, these techniques should have the effect of reducing the likelihood of avian collisions. Unfortunately, for many of the techniques, there is little evidence or studies supporting this conclusion. The literature also indicates that telecommunication towers are not the only threat to migrating birds. Bird strikes also occur at tall buildings and other similar structures. In fact, any tall structure seems to pose a risk of bird strikes.

The Service recommends that the NDGPS project implement a pilot project to incorporate state-of-the-art mitigation techniques to reduce bird strikes along with a five-year monitoring program. Given the current interest in telecommunications facilities, especially telecommunication towers, a study, as recommended, could provide

[1] Section 4(f) of the U.S. DOT Act of 1966 (49 U.S. Code 303) states that a DOT action requiring the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance or land from a historic site of national, state, or local significance will be analyzed for its impact and approval granted only if there is no feasible and prudent alternative to the use of such land, and the action includes all possible planning to minimize harm resulting from the use.

data sufficient to meet needs of many organizations. In an effort to address this issue, we have opened discussions with the Service and are currently examining technologies for implementation on the NDGPS facilities. It is unclear at this point how best to address all the issues, but discussions will continue until solutions are found.

The Service also recommends limiting tower height to 200 feet, preferably no higher than 120 feet. Based on the site-specific nature of this issue, it would be unwise to limit all new facilities to 120 feet. However, there are likely to be locations where this is warranted and, where conditions dictate, shorter towers will be used. Again, this will be based on site-specific criteria and the agency would consider tradeoffs between coverage, potential impact, and system costs.

Additional concerns were raised about the effects of ground disturbance. An example is provided for the desert tortoise. To the maximum extent possible, we are using existing sites where ground disturbance has already occurred. Additionally, one of the main criteria for site selection is not to enter critical habitats of endangered or threatened species, as discussed above. In the unlikely event this proves necessary, we will consult with the Service, as well as local organizations, to determine what is the best way to proceed in order to minimize or eliminate any potential disturbance of these species. Again, it is not expected that the agency will enter the habitat of any threatened or endangered species.

As for the desert tortoise, the only site where there is any possibility of impact is at the Fenner, California, GWEN facility. We have already requested informal consultation at this site in order to minimize or eliminate any impact.

The Service also raises concerns over the effects of copper leaching from the ground plane of the antenna into ground water. In order to determine the potential impact of this situation, several existing GWEN sites have been tested for copper levels in the ground water. No migration of copper off the sites has been found. These sites presented the potential for copper leaching from the ground plane into nearby ground water supplies and then into waterways due to high water tables and the acidity of the ground water. These sites have been installed for approximately 10 years. Based on the length of time these sites have been in place and no leaching of copper into the ground water near the site has occurred to date, we do not expect copper leaching to be a problem. To ensure this is the case, we will continue to examine sites that pose a potential impact, based on the specific site criteria of temperature, pH, salinity, and ground water level. We will first attempt to avoid such areas and when this is not possible or where GWEN sites are located in these areas we will monitor the ground water copper levels and apply appropriate mitigation techniques, ensuring copper from the ground plane does not affect the flora and fauna.

Finally, comments were received from a private citizen that had two main focuses. These issues concerned the FRA and its roles as program sponsor and as regulatory organization for the rail industry, as well as several issues related to the draft PEA. Since the roles of the FRA as program sponsor and as regulatory organization are not pertinent to the docket, they are not addressed here. These issues have been forwarded to the FRA its their consideration. The private citizen's comments that are pertinent to the PEA are addressed in this notice. These are discussed in the following paragraphs and include the coverage area of the system, the potential for ''child shocks,'' remote monitoring of the facility for safety of air traffic, and information telephone numbers.

The private citizen is concerned with the coverage area of the NDGPS service. Once the system is established, coverage verification will be performed to ensure adequate coverage of the U.S. If inadequate coverage is observed, there is the potential for additional sites to be installed. In an effort to eliminate this potential, several studies have been performed to determine the coverage area for each beacon. These include measuring coverage of existing broadcast facilities operated by the U. S. Coast Guard and the Federal Aviation Administration (''Field Strength Measurements of DGPS and FAA Beacons in the 285–325 kHz Band'' [2] and ''Site Selection Plan and Installation Guidelines for a Nationwide Differential GPS Service'' [3] available at: http://www.tfhrc.gov/) and validation of the propagation model using the measured coverage data collected.

It is important to note that the coverage of each beacon is primarily a function of ground conductivity. Ground conductivity was measured under a program sponsored by the Federal Communications Commission when AM broadcast stations were being installed to ensure that there would not be any co-channel interference. This data, as well as actual field data from aviation beacons and existing USCG/DGPS beacons, were combined to form the most accurate propagation and interference model currently available. This model, while still conservative in estimating coverage, is also conservative in estimating interference. In other words, there is greater potential for better coverage and less interference than the model would indicate. This reduces the potential to require additional sites and have a greater impact on the environment.

The private citizen is also concerned about the potential for ''child shocks'' when a child comes into contact with the tower, either directly or by tossing a conducting material onto the tower. The commenter is correct in that the tower is in fact the antenna and is emitting Radio Frequency (RF) energy. This does present a potential danger, but this danger has been mitigated by an eight-foot chain-link fence that is topped with barbed wire and signs are posted on the fence to indicate the potential for injury. Additionally, the tower is eight to ten feet inside the fence. The description in the draft PEA did not provide this additional detail and will be added to the final version. Based on the number of injuries (none to date) to anyone coming in contact with the tower, no injuries are expected in the future. Additionally, most sites are also located in relatively remote areas, reducing any possibility of injury even further.

The private citizen also questions how the tower light is monitored. The tower light and other critical elements at each installation, are monitored remotely 24 hours a day, 365 days a year by the USCG. Additionally, in the event of a failure, there are two separate lights located at the top of each tower that are hardened to resist failure from lighting and other phenomenon that the tower is exposed to. This creates a redundant system. Finally, current operating procedures require a 24-hour response time from service technicians to correct any problem at the site.

Finally, the private citizen stated that the telephone number for the ''GPS Status Recording (24 hour)'' is inaccurate. The phone number published in the DOT telephone directory is incorrect. The correct number is (703) 313–5907. Action has been taken to place the correct number in the next edition of the DOT telephone

[2] Prepared for the FHWA by the U.S. Dept. of Commerce, National Telecommunications and Information Administration, Boulder, CO 80303, November 1, 1996.

[3] Prepared for the FHWA by the U.S. Dept. of Commerce, National Telecommunications and Information Administration, Boulder, CO 80303, August 5, 1997.

directory. Additionally, to speak directly to someone about NDGPS, a more appropriate number to call is (703) 313–5900. This is the ''Navigation Information Service (24 Hour Watch).'' This number is answered by trained USCG personnel who will answer questions concerning all navigation systems in which the Coast Guard has a role. Additionally, the ''24 Hour Watch'' would have provided specific answers to U.S. Coast Guard monitored DGPS systems, including both the Maritime and Nationwide DGPS services. All these numbers, located on the same page, can be found in the DOT telephone directory.

Conclusion

Changes have been made to the NDGPS PEA addressing each of the above comments. The FHWA looked at the three separate deployment alternatives for deployment of the NDGPS service in this PEA. Based on the comments received and further investigation, no single alternative alone would successfully fulfill the objectives of the system. The FHWA therefore proposes to employ a combination of the three alternatives. We believe that at least 67 sites and perhaps as many as 100 will be constructed for the NDGPS service, and, as discussed above, none of these sites would have a significant environmental impact. Each site will be considered against the programmatic data and if the potential for impact is imminent, the appropriate mitigation measures and environmental documentation will be developed and made available for review and comment. If there is a question as to whether a proposed site could have a significant impact, the FHWA will be responsible for the appropriate NEPA documentation.

Based on the comments received and available mitigation techniques, a finding of no significant impact at the programmatic level is assessed for the NDGPS.

Authority: 23 U.S.C. 315, sec. 346, Pub. L. 105–66, 111 Stat. 1425, 1449 (1997); and 49 CFR 1.48.

Issued on: September 22, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–25353 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Transportation Equity Act for the 21st Century; The National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Public workshops.

SUMMARY: The FHWA invites metropolitan planning organizations (MPO), Federal and State government agencies, and the public to attend one or any of five public workshops on the National Corridor Planning and Development Program (NCPD) and the Coordinated Border Infrastructure Program (CBI) and their application process. The NCPD and the CBI programs are funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Mexico and Canada and high priority corridors throughout the United States. States and MPOs are, under the NCPD program, eligible for discretionary grants for: Corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Border States and MPO are, under the CBI program, eligible for discretionary grants for: Transportation and safety infrastructure improvements, operation and regulatory improvements, and coordination and safety inspection improvements in a border region.

At each of the workshops, we will provide: An overview of the NCPD/CBI programs; details on the types of information DOT/FHWA is requesting; facts about how we will use this information; technical information for submitting data; advice on how to complete the application, should you choose to apply; and we will be requesting information about ways to improve and evaluate the programs in the future.

DATES: The workshops will be conducted between 8:30 a.m. and 4:30 p.m. on the first day and between 8:30 a.m. and 3:30 p.m. (local time) on the second day of the meetings at the following locations and dates:

1. October 12 and 13, 1999, Hunt Valley, MD, Embassy Suites Hotel, 213 International Circle, Hunt Valley, MD 21030.
2. October 19–20, 1999, Chicago, IL, Ambassador West Hotel, 1300 N. State Parkway, Chicago, IL.
3. October 25–26, Atlanta, GA; Renaissance Atlanta Hotel Downtown, 590 West Peachtree Street, Atlanta, GA 30308.
4. November 15–16, 1999, Seattle, WA (Tentative), Cavanaughs on Fifth Avenue, 1415 Fifth Avenue, Seattle, WA 98101.
5. November 18–19, 1999, Phoenix, AZ (Tentative), Wyndham Metro Center, 10220 N. Metro Parkway East, Phoenix, AZ 85051.

A registration fee of $75 is payable to Harrington-Hughes & Associates, Inc., 733 15th Street, NW., Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Specifics on registration and hotel accommodation information are available by calling Barbara Murdock of Harrington-Hughes & Associates, Inc., at (202) 289–7285. For workshop issues: Lisa Williams, Office of Intermodal and Statewide Programs, HEPS, (202) 366–6798; or for program issues: Martin Weiss, Office of Intermodal and Statewide Programs, HEPS, (202) 366–5010; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer with a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

Internet users may access a number of documents and links concerning the NCPD and CBI programs through the home page of the Corridor/Border Programs: *http://www.fhwa.dot.gov/hep10/corbor/corbor.html.*

Background

On August 30, 1999, at 64 FR 47222, the FHWA published implementation guidance for the national corridor planning and development program and the coordinated border infrastructure program.

Sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107, at 161, establish the NCPD and CBI programs, respectively. These programs respond to substantial interest dating from, as early as, 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA), Public Law 102–240, 105 Stat. 1914, designated a number of high priority corridors. Subsequent legislation

modified the corridor descriptions and designated additional corridors. Citizen and civic groups promoted many of these corridors as, for example, a means to accommodate international trade. Similarly, since 1991, a number of studies identified infrastructure and operation deficiencies near the U.S. borders with Mexico and Canada. Also various groups, some international and/or intergovernmental, studied opportunities to improve infrastructure and operations.

In 1997, the DOT's Strategic Plan for 1997–2002 was established. The strategic goals in this plan are: Safety, mobility, economic growth and trade, human and natural environment, and national security. In 1998, the FHWA's National Strategic Plan was established. The strategic goals in this plan are: Mobility, safety, productivity, human and natural environment and national security. Both sets of goals are consistent with the language of TEA–21, including sections 1118 and 1119.

The NCPD and CBI programs are funded by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 to Fiscal Year 2003 (a total of $700 million). However, obligations are limited each year by the requirements of section 1102 (Obligation Ceiling) of the TEA–21.

Under the NCPD program, funds are available to States and MPOs for coordinated planning, design, and construction of corridors of national significance, economic growth, and international or interregional trade. Under the CBI program, funds are available to border States and MPOs for projects to improve the safe movement of people and goods at, or across, the border between the United States and Canada, and the border between the United States and Mexico. In addition, the Secretary of Transportation (Secretary) may transfer up to a total of $10 million of combined program funds, over the life of the TEA–21, to the Administrator of GSA Services Administration (GSA) for the construction of transportation infrastructure necessary for law enforcement in border States. Such transfer(s) will be made, based on funding requested and supporting information furnished by the Administrator of GSA. Finally, the Secretary will implement any provisions in legislation that directs that FY 2000 NCPD/CBI funds be used for specific projects. Based on the factors noted above (*i.e.*, obligation limitations, transfer of funds to GSA and legislation), the FHWA anticipates that between $95 million and $130 million will be available for allocation for projects submitted in response to this notice.

The Federal share for these funds is set by 23 U.S.C. 120 (generally 80 percent plus the sliding scale adjustment in States with substantial public lands). The period of availability for obligation is the fiscal year for which the funds are authorized and the three years following. States which receive an allocation of funds under these programs will, at the same time, receive an increase in obligation authority equal to the allocation. Under section 1102 of TEA–21, obligation authority for discretionary programs that is provided during a fiscal year is extinguished at the end of the fiscal year. Funds allocated to projects which, under the NCPD/CBI programs, receive an obligation authority increase for FY 2000, must therefore be obligated during FY 2000 or be withdrawn for redistribution.

FHWA strongly urges all MPO's, State and local governments, as well as the public to participate and provide feedback. With MPO's State and local governments all contributing, we can be successful. Please attend one of five public workshops to learn how you can participate.

Authority: 23 U.S.C. 315; secs. 1118 and 1119, Pub. L. 105–178, 112 stat. 107, at 161 (1998); and 49 CFR 1.48.

Issued on September 24, 1999.

Jill L. Hochman,

Director, Intermodal and Statewide Programs.

[FR Doc. 99–25373 Filed 9–27–99; 10:08 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143; Notice No. 99–9]

Hazardous Materials: Advisory Guidance; Transportation of Flammable Gas Torches

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory Guidance.

SUMMARY: This advisory guidance is to remind all persons who travel or ship materials by aircraft that flammable gas torches are prohibited in passenger-checked or carry-on baggage and regulatory restrictions apply when flammable gas torches are offered as cargo for air transport. Recent incidents in which flammable gas torches ignited during transportation suggest that many persons are not aware of the requirements and prohibitions applicable to flammable gases and flame-producing devices.

FOR FURTHER INFORMATION CONTACT: Eric Nelson, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553, or William Wilkening, Dangerous Goods and Cargo Security Program, FAA, Department of Transportation, 800 Independence Avenue, SW, Washington, DC 20591 Telephone (202) 267–7530.

SUPPLEMENTARY INFORMATION: Recent incidents involving micro-torches and larger torches in the air transport system highlight an urgent need to warn airline passengers not to pack flammable gas torches in their checked or carry-on baggage. In addition, persons offering these torches as cargo for transportation are subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and must comply with all applicable requirements.

I. Background

The Federal Aviation Administration (FAA) has made RSPA aware of several recent incidents where flammable gas torches ignited during transportation that highlight the need to assure torches are transported in accordance with the requirements in the HMR, because of the risks posed by passengers carrying torches in their checked or carry-on baggage.

On April 22, 1999, at Seattle Tacoma Airport, checked baggage was being transferred between connecting flights. Ramp personnel heard a popping sound coming from a soft-sided duffel bag, and then noted a burning smell and heat emanating from the bag. When the bag was opened, air carrier personnel discovered a compressed gas cylinder fitted with a self-igniting torch assembly, with the switch in the ''on'' position. The bag also contained a butane barbeque lighter, a one-quart can of flammable paint, and an eight-ounce can of flammable adhesive, which are all regulated materials.

On April 1, 1999, at a cargo air carrier's sort facility in New York City, a box containing a cylinder charged with a flammable compressed gas caught fire. The electronic igniter on the torch head, which was attached to the gas cylinder, was discovered with its switch in the ''on'' position. Apparently, the package contents, which were loosely arranged, shifted enough to activate the trigger of the torch head, which ignited the gas, causing a flame that ignited the package.

On February 21, 1999, at the Detroit Metropolitan Wayne County Airport,

while a checked toolbox was being loaded into an aircraft, it exploded and injured two airline employees. One of the items in the toolbox was a butane torch equipped with a refillable gas canister. The passenger who checked the toolbox as baggage claimed that he completely emptied the canister by setting the lever to the open position for approximately four hours.

On August 23, 1998, at Houston International Airport, a toolbox checked as baggage gave off a flame as it was being loaded aboard an aircraft. A micro-torch with a refillable gas canister was found inside the toolbox. The micro-torch lacked safety devices to prevent accidental ignition.

On March 3, 1997, at Dulles International Airport, a small metal suitcase exploded while it was being loaded onto a conveyor belt. A ramp agent was struck in the head by fragments from the exploding suitcase and sustained minor injuries. The explosion appeared to have been caused by a charged butane micro-torch used for heating wax that is applied to skis.

Based on these incidents, RSPA and the FAA are concerned that many people may not be fully aware of the provisions of the HMR pertaining to the transportation of torches and similar devices. Ignition of a torch and the subsequent risk of fire aboard an aircraft constitute a grave threat to transportation safety.

II. Requirements for the Transportation of Flammable Gas Torches

Flammable gas torches may be designed in various configurations and differ in their intended use. However, all are forbidden to be carried aboard passenger-carrying aircraft as either checked or carry-on baggage. Butane, propane, and other flammable gases must be offered for transportation and transported in full compliance with the HMR.

Micro-Torches

Cigarette lighters or similar devices (such as mini-or micro-torches) equipped with an ignition element and containing gaseous fuel are regulated under the HMR as Lighters or Lighter refills and subject to the provisions of §§ 173.21 and 173.308. Section 173.21 forbids the transportation of packages containing a cigarette lighter or similar device equipped with an ignition element and containing fuel, except that a cigarette lighter or a similar device may be shipped if the design of the device and its inner packaging has been examined by an approved laboratory, and specifically approved by the Associate Administrator for Hazardous Materials Safety. Transportation regulations which apply to these devices include fuel capacity and filling limits, pressure capability of the device, and packaging restrictions. Devices containing a flammable gas must conform to the quantity limits and packaging requirements specified in § 173.308.

Larger Torches

A flammable gas torch that includes as one of its components a cylinder charged with liquified butane or propane gas is regulated under the HMR as Liquified petroleum gas, UN 1075, and subject to the packaging requirements of § 173.304. Flammable gases are forbidden on passenger-carrying aircraft. Flammable gases may be transported on cargo aircraft only if they are packaged, marked, and labeled, and otherwise conform to the requirements of the HMR. A torch head, many of which are self-igniting, may not be attached to the cylinder. In the above-described incidents, the owners of the torches did not remove the torch heads before packing them, which greatly increases the probability that the torch will activate and start a fire.

III. Reminder to Passengers, Cargo Offerors and Transporters

Anyone who offers for transportation or transports torches is encouraged to carefully review the requirements in the HMR, to examine all shipping procedures, and, where necessary, take measures to prevent potential incidents in transportation. Passengers, shippers, and carriers are reminded that the offering for transportation or carriage aboard aircraft of any forbidden material in violation of the HMR may subject them to enforcement action, including the assessment of criminal or civil penalties.

Additional information on the requirements for shipping torches may also be obtained by calling the RSPA Hazardous Materials Information Center at (800) HMR49–22 (467–4922) between 9:00 a.m. and 5:00 p.m. Eastern time, Monday through Friday, except Federal holidays, or the FAA Dangerous Goods and Cargo Security Program at (202) 267–7530. Information is also available at the following Internet sites: http://hazmat.dot.gov/ and http://cas.faa.gov/cas/dgp.htm.

Issued in Washington, DC, on September 24, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–25318 Filed 9–28–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33780]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Gateway Western Railway Company and Gateway Eastern Railway Company

Gateway Western Railway Company and Gateway Eastern Railway Company (collectively, Gateway) have agreed to grant local and overhead trackage rights to The Kansas City Southern Railway Company (KCS) [1] over track structures, including sidings, related yard facilities and industry tracks, extending: (1) between Kansas City, MO, and East St. Louis, IL; and (2) between Roodhouse, IL, and Springfield, IL, for a total distance of approximately 478 miles.[2] The purpose of the trackage rights is to allow KCS to market ''seamless'' rail service over the KCS system and Gateway's, avoiding interchange costs and delays and allowing enhanced train scheduling and equipment utilization. The transaction was initially scheduled to be consummated on or after July 21, 1999, the effective date of the exemption (7 days after the exemption was filed).[3]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in

[1] KCS and Gateway are commonly controlled and affiliated railroad companies. *See Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company—Control—Gateway Western Railway Company and Gateway Eastern Railway Company,* STB Finance Docket No. 33311 (STB served May 1, 1997).

[2] A redacted version of the trackage rights agreement between Gateway and KCS was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order, which was granted in a decision served July 23, 1999.

[3] On July 19, 1999, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board filed a petition requesting the Board to stay operation of the exemption pending the filing and disposition of a petition to reject or to revoke it. By decision served July 20, 1999, the Board granted a 60-day stay of the effective date of the exemption, until September 19, 1999, to permit the Board to examine the issues in this proceeding in greater detail, thus delaying publication of the notice and the effectiveness of the exemption. On August 9, 1999, Mr. Szabo and W. Larry Foster, on behalf of the United Transportation Union-Missouri Legislative Board, filed a petition, to reject and/or to revoke the notice of exemption or to impose added labor protection. By decision served September 16, 1999, the Board denied the petition, subject to the Board's reservation of jurisdiction to consider other issues in future proceedings, as discussed in that decision. As a result, this exemption became effective on September 19, 1999.

Mendocino Coast Ry., Inc.—Lease & Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33780, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert K. Dreiling, Esq., The Kansas City Southern Railway Company, 114 West Eleventh St., Kansas City, MO 64105.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 22, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–25315 Filed 9–28–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the ''Commission'') shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The third meeting of the Advisory Commission will be held on October 19, 1999, beginning at 9:00 a.m. and tentatively ending at 3:00 p.m. in Room HC7 in the U.S. Capitol, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone Number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda will focus on the World Bank and tentatively includes discussion of the following:

- Role of the Bank and the Tasks of its agencies
- The Bank—History and Facts
- Reforming the Bank

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the first meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than October 12, 1999.

Dated: September 22, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–25258 Filed 9–28–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Monthly Report—Tobacco Products Importer.

DATES: Written comments should be received on or before November 29, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Monthly Report—Tobacco Products Importer.

Form Number: ATF F 5220.6.

Abstract: Reports of the lawful importation and disposition of tobacco products dealers are necessary to determine whether those issued the permits required by 26 U.S.C. Section 5713 should be allowed to renew their operations or renew their permits.

Current Actions: This is a newly proposed collection of information. The monthly summary report provides the least burdensome method to determine whether any activity authorized by the permit is taking place.

Type of Review: New.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 48 minutes.

Estimated Total Annual Burden Hours: 14,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 17, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–25285 Filed 9–28–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Great River Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35877 to reflect this addition:

Company Name: Great River Insurance Company. *Business Address*: P.O. Box 5028, Meridian, MS 39302. *Phone:* (601) 482–6816. *Underwriting Limitation b/:* $1,155,000. *Surety Licenses c/:* Al, AR, GA, KY, LA, MS, SC, TN. *Incorporated In:* Mississippi.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: September 15, 1999.

Doris B. Hyman,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–25350 Filed 9–28–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Old Dominion Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35884 to reflect this addition:

Company Name: Old Dominion Insurance Company. *Business Address:* 55 West Street, Keene, NH, 03431. *Phone:* (904) 739–0873. *Underwriting Limitation b/:* $901,000. *Surety Licenses c/:* DE, FL, GA, MD, SC, VA. *Incorporated in:* Florida. Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.htm. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: September 15, 1999.

Doris B. Hyman,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–25349 Filed 9–28–99; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 64, No. 188

Wednesday, September 29, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DE037-1015a; FRL-6439-2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Municipal Solid Waste Landfills

Correction

In rule document 99–24041 beginning on page 50453 in the issue of Friday, September 17, 1999, make the following correction:

On page 50455, in the third column, in the seventh paragraph, in the third line, ''temperature less than 550°C'' should read, ''temperature less than 55°C''.

[FR Doc. C9–24041 Filed 9–28–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Wednesday
September 29, 1999

Part II

Office of Management and Budget

5 CFR Part 1315
Prompt Payment; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1315

RIN 0348–AB47

Prompt Payment

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final rule on, and codification of, Prompt Payment Act regulations.

SUMMARY: OMB is issuing final revisions to its rules on the Prompt Payment Act, which have been found in Circular A–125. The revisions address the increased use of electronic commercial financial systems; promote the use of government credit cards and accelerated payment methods; reflect new requirements of the Debt Collection Improvement Act of 1996 and the recent repeal of the annual agency Prompt Payment reporting requirement; clarify and simplify language; and announce a toll-free number and internet website for Prompt Payment Act information. Finally, in addition to revising the Prompt Payment rules, OMB is also adopting them as codified regulations in the Code of Federal Regulations. OMB's issuance of codified regulations has the effect of superceding and rescinding Circular A–125 (''Prompt Payment'').

DATES: *Effective Date:* The regulations are effective October 29, 1999.

ADDRESSES: Copies of the regulation and other information are available from the Prompt Payment web site at http://www.fms.treas.gov/prompt/index.html. Copies are also available from the Financial Management Service, Cash Management Policy and Planning Division, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist on (202) 874–7106; Matthew Helfrich, Financial Program Specialist, (202) 874–6749; Martha Thomas-Mitchell, Financial Program Specialist on (202) 874–6757; or Cynthia Johnson, Director, Cash Management Policy and Planning Division on (202) 874–6590.

SUPPLEMENTARY INFORMATION:

I. Background

In 1982, Congress enacted the Prompt Payment Act (''Act''; Pub. L. 97–177) to require Federal agencies to pay their bills on a timely basis, to pay interest penalties when payments are made late, and to take discounts only when payments are made by the discount date. The Act, as amended, is found at 31 U.S.C. Chapter 39.

To implement the Act, and pursuant to 31 U.S.C. 3903(a), OMB issued Circular A–125 (''Prompt Payment'') in August 1982 (47 FR 37321, August 25, 1982). In response to changes to the Act that Congress made in the Prompt Payment Act Amendments of 1988 (Pub. L. 100–496), OMB revised Circular A–125 in December 1989 (54 FR 52700, December 21, 1989).

On June 17, 1998, OMB requested public comment on proposed revisions to Circular A–125 (63 FR 33000). As the preamble to that document explained (at 33000), the Circular is being updated to reflect the increased use of electronic commerce in the Federal government and in the private sector, including electronic financial systems and electronic funds transfer. The value of electronic commerce as a means of streamlining government and saving taxpayer dollars was emphasized by President Clinton in his memorandum to agencies of October 26, 1993, and by the National Performance Review, headed by Vice President Al Gore, in its call for an ''all electronic Treasury.'' In addition, the document explained (at 33001) that revisions to the Circular were being proposed to reflect the Debt Collection Improvement Act of 1996 (''DCIA''; Pub. L. 104–134). Finally, the document indicated (at 33003) that, upon the issuance of final revisions, the Circular's provisions would be codified in the Code of Federal Regulations.

The current rule responds to the comments that were received on the proposed revisions, issues final revisions to OMB's Prompt Payment regulations, and codifies these regulations at a new part 1315 of title 5 of the Code of Federal Regulations. With the incorporation of the Prompt Payment rules into 5 CFR part 1315, OMB is rescinding Circular A–125.

As the next part of this preamble explains, OMB has made a number of changes to the Prompt Payment rules in response to public and agency comments on the proposal. In addition, one change has been made in response to subsequent legislative action—the elimination of the requirement for agencies to report annually on their Prompt Payment activities. This requirement (found in Section 14 of the Circular) had implemented the statutory reporting requirement in Section 3906 of the Prompt Payment Act, but Congress repealed Section 3906 last fall, in Section 1301(c) of the Federal Reports Elimination Act of 1998 (Pub. L. 105–362). As a result, agencies are no longer required to submit any Prompt Payment statistics to the Financial Management Service.

Finally, in an effort to further reduce any delays relating to payment, the Department of Treasury is establishing an interagency group, including the Department of Defense and other agencies, to examine any ongoing problems. The group will explore causes of any identified delay and develop options for corrective action as necessary.

As codified at Part 1315, the Prompt Payment rules generally follow the organization of the proposal. However, the section on ''Definitions'' has been moved from near the end of the proposal (Section 18) to near the beginning of the final rule (Section 1315.2). Also, as noted above, the ''Reporting Requirements'' section (Section 16 of the proposal) has been deleted.

II. Comments on, and Changes to, the Proposed Rule

Comments were received from 21 entities: 15 Federal agencies, 5 vendors and organizations representing vendors, and one university. Most of the comments addressed particular provisions in the proposed Prompt Payment rules. These are discussed below on a section-by-section basis, along with the changes that have been made to the proposed rule. Other, more general, comments on the proposal are discussed at the end of this part of the preamble.

A. Section 1315.1—Application (Proposed Section 1)

The Commodity Credit Corporation (CCC) commented that CCC payments made to farm producers are not considered to be procurement payments and as such CCC payments should not be covered in proposed Section 1.a., ''Application.'' A separate paragraph at final § 1315.1(d) has been added to indicate the scope of the coverage of the Prompt Payment Act with respect to CCC payments (CCC payments are also addressed in § 1315.13).

In proposed Section 1.c, ''Utility payments,'' an agency commented that the section should be revised to clarify that the referenced ''tariffs,'' which may override the Prompt Payment interest, are utility tariffs only. This was the intent of the proposed section, as with Section 2.b of the Circular, because the section addresses only utility services. The section has been revised to make this point clearer.

One agency, with worldwide operations, recommended that proposed Section 1.c (''Utility payments'') should be amended to provide that, when late payment rates for utility services are established by foreign governments,

such rates (in addition to the late payment rates established by state or local governments) will take precedence over the rates that would otherwise apply under this part. OMB agrees that foreign late payment rates for utility services should be treated comparably to state or local rates. In both situations, the Federal government should pay the local rate that is generally charged to utility customers, rather than the Prompt Payment Act rate. Final § 1315.1(c) has been revised accordingly.

Finally, the paragraph at final § 1315.1(b)(2) has been amended to include the word ''contingency'' when describing payments made during military operations. This parallels the language in the referenced provision at 10 U.S.C. 101(a)(13).

B. Section 1315.2—Definitions (Proposed Section 18)

An agency suggested that the definition of ''Acceptance'' be revised to clarify that only an authorized government official may accept goods or services. OMB agrees and has made the change at § 1315.2(b).

The definition of ''Applicable interest rate,'' at § 1315.2(d) has been revised to reflect the change in the ''Utility Payments'' in § 1315.1(c), which clarifies that utility tariffs take precedence over the Prompt Payment interest rate when governmental authorities (including foreign governments) regulate late payment rates.

Based on a comment from an agency, OMB has made a clarifying revision to the definition of ''Banking information'' at § 1315.2(f), so that it refers to ''vendor financial institution's'' rather than ''their bank's'' in connection with the routing number of the vendor's financial institution.

Several comments were received from agencies and from organizations representing Federal vendors regarding the definition of ''Contract financing payments,'' which in the final rule is found at § 1315.2(h). One commenter expressed the view that OMB should revise the rules to expand the application of Prompt Payment Act interest penalties to include contract financing payments. Contract financing payments were not subject to interest penalties under the Circular and the final rule retains this position. Under Circular A–125, the obligation to pay interest penalties for late payments has been conditioned upon the agency's acceptance of the supplies or services. Contract financing payments, by contrast, are the ''authorized disbursement of monies prior to acceptance of supplies or services.'' Circular A–125, section 1.f (54 FR 52707); *see* 54 FR 52701 (discussion of contract financing payments). As part of its activities to examine potential ongoing problems with payment delays, the Treasury Department's interagency workgroup (discussed above) will assess the agencies' practices with respect to contract financing payments.

The definition of ''Designated Agency Office'' at § 1315.2(m) has been revised, based on a comment, to make clear that the office first designated to ''receive'' an invoice must also ''review'' it to determine if it is proper.

An agency suggested that the definition of ''Electronic Funds Transfer'' (EFT) include electronic transmission of payment data. In light of the DCIA and requirement that federal payments be made electronically, the definition of EFT at § 1315.2(s) has been modified to more closely reflect the definition found at 31 CFR part 208, Managing Federal Agency Disbursements. An agency responsible for cleaning hazardous waste sites commented that the definition for ''Emergency Payment'' should be modified to include the release or threatened release of hazardous substances as defined in Section 106 of the Comprehensive Environmental Response Compensation and Liability Act of 1980. OMB has made this change at § 1315.2(t).

OMB has changed the FAR subpart reference in the definition of ''Fast Payment'' at § 1315.2(v) to reflect new FAR numbering.

The term ''Government Credit Card'' has been changed to ''Governmentwide Commercial Purchase Cards,'' and the definition at § 1315.2(x) have been revised to reflect changes (that are discussed below) to § 1315.12, ''Payments to Governmentwide Commercial Purchase Card Issuers.'' The definition was also revised to remove the reference to the current simplified acquisition threshold of $100,000 (because the threshold may change periodically), and to describe the types of payments for which the card may be used.

Several agencies requested definitions for ''rebate'' and ''settlement date.'' Definitions for these terms have been added, at § 1315.2(aa), (ee).

An agency suggested that the phrase ''contractual or noncontractual'' in the definition of ''Utilities and Telephones'' be removed since the Prompt Payment Act only applies to payments made as the result of a contract. OMB agrees, and the phrase has been removed from the definition at § 1315.2(gg).

C. Section 1315.3—Responsibilities (Proposed Section 2)

The discussion on ''Internal control systems'' (§ 1315.3(b)) has been modified to clarify that an agency's Quality Control program must include Quality Control validation at least once annually.

D. Section 1315.4—Prompt Payment Standards and Required Notices to Vendors (Proposed Section 3)

We received several comments concerning the use of non-paper documentation. An agency requested that OMB revise the ''Required documentation'' subsection to state that documentation stored in an imaged format is an example of the electronic documentation that is required. In the same vein, an agency commented that facsimiles should be included among the ''computer-related media'' that, under the ''Receipt of invoice'' subsection, may be used in lieu of ''written'' or ''original'' paper documents. Finally, an agency, which said it has experienced problems with non-paper media, recommended that OMB delete the provision that allows computer-related media to be used.

OMB agrees that an imaged format would be acceptable for electronic documentation purposes. Similarly, facsimiles are one example of an acceptable substitute for paper documents. OMB, though, does not believe that it is necessary (or advisable, given the evolving nature of electronic technology) for the rule to offer specific examples of acceptable formats for electronic documentation. Any legible electronic format may be used in lieu of paper documentation (to clarify this point, the reference to ''computer-related media'' in the proposal has been changed to ''any media'' in the final rule). OMB does not agree with the recommendation to delete the provision on computer-related media. In order to prevent delays in payment and subsequent late payment interest penalties, this provision strongly encourages agencies to use non-paper documentation with adequate internal controls to prevent duplicate payments. Agencies not having internal controls which are adequate for preventing duplication of payments are strongly encouraged to adopt such controls and to use non-paper documentation once those controls are in place.

Several agencies were critical of the proposed subsections on ''Receipt of invoice'' and ''Starting the payment period,'' which were significantly revised versions of the Circular's provisions on those subjects (Sections

1.n and 4.d of the Circular). The agencies stated that the proposed revisions did not provide useful clarification to the discussion of when an invoice is received for purposes of starting the payment period in accordance with the Prompt Payment Act (31 U.S.C. 3901(a)(4)). Based on these comments, the final rule makes only minor revisions to the Circular's provisions on ''Receipt of invoice'' and ''Starting the payment period''; the final rule's provisions are found at § 1315.4(b), (f). In response to an agency comment, the final rule clarifies that an electronically-received invoice is deemed to be received on the date the invoice is received unless it is received after normal working hours, in which case the invoice is deemed to be received the next business day.

OMB received a number of comments on the proposed subsection on ''Review of invoice.'' With respect to the requirement in Section 3.c(1) of the proposal for the agency to review the invoice to determine if it is improper, an agency commented that the phrase ''appropriate office'' did not correctly capture the intention of the 1988 amendments to the Act that the office first designated to receive an invoice must review it to determine if it is proper. In the final rule, at § 1315.4(c)(1), OMB has replaced the term ''appropriate office'' with the term ''designated agency office'' and (as discussed above) has revised the definition of that term in § 1315.2(m) to reflect the fact that this office is expected to review invoices.

A trade organization commented that the maximum time allowed an agency to review an invoice and return an invoice as improper should be reduced from seven days to three days. The seven-day period is established by the Prompt Payment Act, which provides that (except in the case of certain specified types of contracts, for which a different maximum period is set) ''each invoice be reviewed as soon as practicable after receipt'' and ''any invoice determined not to be such a proper invoice suitable for payment shall be returned as soon as practicable, but not later than 7 days, after receipt, specifying the reasons that the invoice is not a proper invoice.'' 31 U.S.C. 3903(a)(7)(A), (B). The Circular has reiterated the Act's requirement, by stating in Section 4.b(2), (3) that an invoice ''will be reviewed as soon as practicable after receipt'' and, if determined to be improper, ''shall be returned as soon as practicable, but not later than seven days'' after receipt. The proposed rule at Section 3.c(1), (2) also stated that the invoice shall be reviewed and, if determined to be improper, be returned within seven days after receipt. However, as another trade organization noted, the proposal failed to specify that the invoice shall be reviewed and (if determined to be improper) returned ''as soon as practicable'' after receipt.

In accordance with the Act, and the pre-existing Circular, the final rule states in § 1315.4(c)(1), (2) that an agency shall review the invoice ''as soon as practicable after receipt'' and shall return an improper invoice ''as soon as practicable after receipt, but no later than 7 days after receipt.'' In addition, as did the proposal, the final rule provides that the agency ''will identify all defects that prevent payment and specify all reasons why the invoice is not proper and why is it being returned.'' As a result, if it is ''practicable'' for an agency to review and return an improper invoice in three days, then—under the Act and the final rule—the agency is required to return the invoice in three days. However, if it is not ''practicable'' for an agency to review and return an improper invoice in three days, then the Act and the final rule provide that the agency has additional time (up to seven days) in which to do so. Given the statutory standard, we do not believe it would be appropriate for the final rule to require an agency to return an improper invoice in less than seven days where it would not be ''practicable'' for the agency to do so.

An agency commented that the proposed provision at Section 3.c(2), regarding the notification requirement when returning an improper invoice, should be consistent with proposed Section 13.a.(3) which stated that, for construction contracts, an agency need not return an improper invoice if the agency notifies the vendor electronically that the invoice is improper. Another agency, however, noted that the Prompt Payment Act, at 31 U.S.C. 3903(a)(7)(B), provides that improper invoices ''shall be returned.'' In the final rule, at § 1315.14(a)(3), OMB has dropped the language concerning electronic notification of improper invoices for construction contracts. As a result, that provision is consistent with the invoice-return requirement at § 1315.4(c)(2).

A trade organization commented that additional language should be added which says that the number of days available to an agency to make the payment is reduced by the number of days by which an agency exceeds the time period during which it is required to return the improper invoice. OMB does not believe that additional language is necessary. The Circular in Section 4.b(4) has already provided for such a reduction in the payment period. That language was in the proposed rule at Section 3.g(3), and is found in the final rule at § 1315.4(g)(4).

Two agencies commented on the provision on ''Acceptance'' in Section 3.e of the proposal. As has the Circular (at Section 4.c), the proposal required agencies to ensure that acceptance is ''executed as promptly as possible,'' and that commercial items and services ''should not be subject to extended acceptance periods.'' One agency commented that a specific time period should be established (e.g., seven days) within which acceptance is required to occur, unless a longer acceptance period is agreed upon. OMB does not believe that a specific time period should be set for acceptance, but rather that acceptance should occur ''as promptly as possible.'' Therefore, the final rule at § 1315.4(e) retains the language from the Circular and the proposal on this point. Another agency commented that the language in the proposal that acceptance reports should be forwarded to the designated agency office ''by the fifth working day after delivery'' should be amended to say the fifth working day ''after acceptance'' (which would parallel the language in the Circular at Section 4.c). OMB agrees with the comment and has made the change.

With respect to the ''Payment date'' provision at Section 3.h of the proposal, an agency commented that there would be no instance where a payment would fall due ''after normal working hours.'' OMB agrees, and the phrase has been deleted in § 1315.4(h). Finally, the text of the provision has been revised for clarity.

E. Section 1315.5—Accelerated Payment Methods (Proposed Section 4)

Two agencies questioned whether the Prompt Payment Act provides the statutory latitude to permit payment by accelerated methods after the matching of documents is completed. OMB believes that accelerated payment methods are consistent with the Prompt Payment Act, and that they further substantial policy interests. The Act, at 31 U.S.C. 3903(a)(8), provides that OMB shall prescribe regulations that ''permit an agency to make payment up to 7 days prior to the required payment, or earlier as determined by the agency to be necessary on a case-by-case basis.'' OMB believes that, as the government moves steadily into the electronic commerce mainstream, agencies are increasingly likely to realize efficiencies and cost savings if agencies are allowed to pay early when it benefits the government to do so. Therefore, agencies may use the accelerated payment methods when they determine that such earlier

payments are necessary (as final § 1315.4(j) provides). When making these decisions, agencies should consider the cost of funds to the government of paying early. Prompt Payment late payment interest penalties apply if the payment is not made by the payment due date.

An agency questioned whether the matching requirements for the accelerated payment methods would apply to payments made by agencies which do not use a 100 percent prepayment examination process but instead rely on statistical sampling in accordance with 31 U.S.C. 3521. This agency was concerned that only those payments chosen for the sample would be eligible for accelerated payments methods. OMB does not intend for the accelerated payment methods to be available only for those payments where 100 percent prepayment examinations are conducted, but may also be used by agencies that rely on statistical sampling, if such sampling reveals no unacceptable levels of problems encountered.

An agency recommended that the proposed provision on ''A single invoice under $2,500'' clarify that payments of credit card invoices under $2,500 may be made without verification that goods have been received (see Treasury Financial Manual 4–4500, Government Purchase Cards). OMB agrees and has made this change.

An agency commented that accelerated payments to small businesses, under the proposed provision on ''Small Disadvantaged Business Concern,'' should be mandated rather than simply authorized. However, under 31 U.S.C. 3903(a)(8), an agency needs to determine that such earlier payments are necessary. Thus, OMB does not agree that the rule should mandate the use of the accelerated payment methods. Another agency commented that accelerated payments should be made to all small businesses rather than (as under the proposal) only to small disadvantaged business concerns ''as defined in the FAR Part 19.001.'' OMB agrees that accelerated payments may be made to any small business (as defined in FAR Part 19.001) if the agency determines that such early payments are necessary. The final rule at Section 1315.b has been revised accordingly.

F. Section 1315.6—Payment Without Evidence That Supplies Have Been Received (Fast Payment) (Proposed Section 5)

Several agencies commented on proposed Section 5, ''Fast Payment'' (the title of this section has been changed in the final rule). Several agencies commented that the FAR citation at Part 13 was no longer subpart 13.3, but is now subpart 13.4. This change has been made. An agency commented that proposed sections 5.b and 5.d (on ''FAR clause 52.213.1'' and ''Obligation documents'') were not within the scope of this regulation and should be deleted. Based on the comments, OMB has decided to retain much of the language from Section 12 of the existing Circular (54 FR 52712). The conditions under which a fast payment procedure is warranted and the requirements of a fast pay contract remain unchanged.

G. Section 1315.7—Discounts (Proposed Section 6)

With respect to proposed Section 6.a (''Economically justified discounts''), an agency commented that its first two sentences should be combined for clarity. In addition, another agency commented that agencies should be encouraged to include discount terms in the contract at the time of award. This would provide agencies the opportunity to include discount terms in their accounting systems, which could then be automatically evaluated to determine if they are economically justified and will give agencies enough time to evaluate and take the discount, when indicated. This agency also commented that the term ''deadline'' in proposed 6.b (''Discounts taken after the deadline'') should be replaced by the term ''discount date'' to more accurately reflect the date by which agencies may take a discount. OMB agrees with these comments and has revised the section accordingly.

H. Section 1315.8—Rebates (Proposed Section 7)

An agency commented that a rebate formula would be useful to agencies in implementing this section. OMB agrees and has included a rebate formulate in the final rule, at § 1315.17 (''Formulas''). The ''Rebates'' section has been revised to clarify that the payment due date may be calculated using the rebate formula provided, unless the payment due date has been determined in the contract.

I. Section 1315.9—Required Documentation (Proposed Section 8)

An agency making payments overseas to foreign landlords said that late payment interest penalties should not be required when routine lease contract renewal payments cannot be made because a foreign landlord no longer lives in the area where the leased property is located. OMB agrees that Prompt Payment interest penalties are not required to be paid if the vendor does not submit a corrected remittance address as required by final § 1315.9(a)(6).

The language in § 1315.9(a)(8), regarding banking information required by the Debt Collection Improvement Act, has been reworded to parallel the language in § 1315.9(a)(7), regarding interest penalties under the Prompt Payment Act. The requirements of these subsections are unchanged.

Two agencies commented that proposed Section 8.a(8), requiring that banking information be submitted no later than the first request for payment, is inconsistent with the proposed Federal Acquisition Regulation (FAR Case 91–118) which required the submission of banking information no later than 15 days before the submission of the first request for payment. One of the agencies commented that coordination on this point was required to ensure consistency. This issue has been resolved by the publication of the final FAR rule on March 4, 1999 (64 FR 10530, 10538). Unlike the proposed FAR rule, the final FAR rule does not require receipt of EFT information 15 days prior to the invoice.

An agency requested clarification on whether purchase orders used as invoices would be in compliance with proposed Section 8.b(4) if an invoice number was not provided on the purchase order. An agency commenting on proposed Section 8.b(6) stated that the rule should not require payment and shipping terms on an invoice, but rather these terms should be specified either by agency policy or on individual orders or contracts. The requirements of this section are intended to allow an agency to require the information it needs to make a timely payment. The final rule at § 1315.9(b)(4), (6) provides agencies with discretion as to whether to require this information; as these provisions state, the contract may specify which information is required.

Several comments were received concerning the proposed rule's treatment in Section 8.b(7)–(8) of the collection of banking information and Taxpayer Identifying Numbers (TINs). Subsequent to the issuance of the proposal, the Treasury Department issued regulations on the Debt Collection Improvement Act of 1996 (DCIA) that are found in 31 CFR Part 208 (63 FR 51490, September 25, 1998). The DCIA regulations require the collection of banking information in order to make an electronic funds transfer (EFT) payment as required by the DCIA unless the payment is waived under 31 CFR Part 208. The regulations also require the collection of the TIN,

which the DCIA requires for debt collection and under the Internal Revenue Code for vendor income reporting. *See* 31 U.S.C. 7701(c); 26 U.S.C. 6109. The Treasury Department requires each agency to prepare a TIN implementation plan to document agency strategies for achieving compliance with the TIN provisions of the DCIA, and to identify barriers to collecting and providing TINs. *See* Treasury Financial Manual, TFM Bulletin 99–02.

The proposed rule in Section 8.b(7)–(8) required the collection of banking information and TINs on the invoice unless previously collected by the agency. Several agencies interpreted these provisions to mean that an agency could not require that this information be on the invoice if the information had already been provided. These agencies commented that they would need to require the information on the invoice even if it had been previously provided. One agency commented that payment offices are not always notified in a timely manner when financial institutions merge and when vendors change financial institutions. Another agency commented that it requires the flexibility to require TINs on every invoice because many companies have multiple branches or subsidiaries, which often have their own individual TINs. According to the agency, if the vendor is not required to provide the TIN on each invoice, then the agency is forced to make a determination as to which TIN is associated with the invoice. OMB recognizes that some agencies need the flexibility to require banking information and TINs on invoices in addition to collecting the information sooner in the payment process. The final rule has been revised at § 1315.9(b)(7)–(8) to state that banking information and TINs are required on the invoice unless agency procedures provide otherwise.

An agency requested clarification that payments to vendors may be withheld pending submission of a proper invoice that includes banking information. The agency requested the clarification because a June 25, 1998 press release issued by Treasury stated that no payments would be withheld as a result of the DCIA EFT requirement. OMB has been informed by Treasury that the payments referred to in the press release are payments to individuals (such as recipients of Federal salary, wage, benefit or retirement payments), not payments to vendors. The final rule at § 1315.9(b)(8) requires a vendor to provide banking information, as part of a proper invoice, so that an electronic payment can be made. The invoice is not deemed proper unless the banking information is provided to the agency by the time the invoice is submitted. The payment period does not begin, and thus agencies are not required to pay late payment interest penalties, until after the banking information has been received.

Two agencies that make payments overseas commented that proposed Section 8.b(7) should be amended to specifically exclude the requirement that TINs be provided for overseas payments, in the case of overseas vendors who do not have a TIN. The DCIA does not provide agencies the authority to waive the requirements to collect the TIN for purposes of offsetting Federal payments to collect debt owed the government. However, the Treasury Department acknowledges that there are some situations where it may not be possible to collect a TIN. Treasury has proposed a TIN implementation report from each agency to identify those situations where the TIN cannot be collected. (*See* Treasury Financial Manual, TFM Bulletin 99–02.)

One agency suggested that the regulation emphasize that the collection of TINs is required for 1099 tax reporting purposes and that agencies must have systems which can distinguish between payments for services and payment for products because only payments for services are required to be reported to the Internal Revenue Service (IRS). OMB believes this discussion is beyond the scope of the regulation and defers such discussion to IRS regulations.

An agency commented that proposed Sections 8.c.(3), (5), and (6) should include references to services, since receiving reports can apply to services as well as goods. OMB agrees and has made the change at § 1315.9(c)(3), (5), and (6) of the final rule. The same agency commented that proposed language at 8.c.(8) incorrectly referenced Section 8.c(1)–(7) rather than Section 8.b. OMB agrees, and has corrected the reference in § 1315.9(c)(8) so that it refers to § 1315.9(b). Also, this provision has been revised so that the additional information required for a delivery ticket (when it is used as an invoice) will be set forth in agency procedures, which may (but are not required to) include the information in § 1315.9(b).

J. Section 1315.10—Late Payment Interest Penalties (Proposed Section 9)

A trade organization commented that language should be included in this section, which would state that the number of days available to an agency to make a payment is reduced by the number of days that the notification of an improper invoice is late. As explained above, this language is already found in § 1315.4(g)(4) (''Notification of Improper Invoice''), which discusses how to calculate the payment due dates when a notification of an improper invoice is late.

The language in final § 1315.10(a)(1) has been revised to clarify that the time period during which interest will accrue begins on the day after the payment due date and ends on the payment date, and interest will accrue at the rate in effect on the day after the payment due date.

An agency commented that proposed Section 9.a.(3) should be amended to say that interest will accrue on the ''unpaid amount'' instead of ''the unpaid principle and accrued interest'' because the latter language assumes that the principal amount has not been paid and such is not necessarily the case. The agency also commented that this paragraph be placed after proposed 9.a.(4). Two agencies commented that the word ''capitalized'' in proposed 9.a.(4) should be replaced with ''compounded'' because compounded is a more easily understood term and reflects the same meaning. OMB agrees with these comments and the changes are made in § 1315.10(a).

Several agencies requested clarification on proposed Section 9.a(6) regarding the date through which interest accrues on discounts improperly taken. The final rule at § 1315.10(a)(6) has been revised to clarify that interest is calculated beginning on the date after the discount date through the date of payment of the discount erroneously taken.

An agency commented that the one dollar threshold in proposed 9.a.(7) should be increased. The one dollar threshold is specified in the Prompt Payment Act, 31 U.S.C. 3902(c)(1), and is therefore retained in the final rule at § 1315.10(a)(7).

Proposed 9.a(8) addressed when interest penalties would begin to accrue when a vendor has supplied the agency with incorrect banking information. Several agencies expressed the concern that an agency would not know that the vendor had supplied incorrect banking information until the agency's payment is rejected. As a result, it would be very difficult and in some cases impossible for the agency to return the invoice as improper (due to the incorrect banking information) within the seven days that is allowed for returning an improper invoice. In response to these comments, the final rule at § 1315.10(a)(8) provides that, if the vendor has supplied incorrect banking information, interest will not accrue until seven days after the agency receives correct information.

This is intended to give agencies adequate time to prepare and initiate a payment using the correct information, and is similar to the provision at Section 7.a(10) of the Circular.

An agency commented that interest should be calculated based on a 365-day year, rather than the 360-day year in proposed Section 9.a(9). The 360-day year, which has been used in Section 7.a(11) of the Circular, is a standard business practice, and it is used in other calculations such as the calculation for the rebate formula and the discount formula used to determine when to take discounts. Accordingly, the final rule at § 1315.10(a)(9) retains the 360-day year.

Two agencies commented that the phrase ''except when title of the goods passes to the government'' in proposed Section 9.b(1) should be deleted because its purpose was unclear. The exception was intended to address the situation where, under the Fast Payment procedure, the passing of title substitutes for acceptance for purposes of determining whether late payment interest penalties may be paid. Language has been added in final § 1315.10(b)(1) to clarify that, in these circumstances, interest may be paid only after the government receives title for goods.

An agency requested clarification on whether the delay of the passage of an appropriations bill is an example of ''the temporary unavailability of funds'' under proposed Section 9.b(4). That is indeed the situation addressed by this provision, which has been found in Section 7.b(3) of the Circular. The provision is taken from the Prompt Payment Act, at 31 U.S.C. 3902(d). Under the Act, the fact that an appropriation has not yet been enacted from which payments to vendors can be made does not relieve the agency of the obligation to pay interest for late payments.

K. Section 1315.11—Additional Penalties (Proposed Section 10)

An agency commented that proposed Section 10.a should be amended to say that a vendor shall be entitled to interest ''of $1.00 or more,'' so as to clarify that interest under $1.00 need not be paid. The agency commented that proposed Section 10.c should be similarly amended by adding that no additional penalty is owed if the amount of the interest penalty is less than $1.00. An agency recommended that proposed Section 10.a(3)B be amended to include the situation where a postmark is illegible (in addition to where there is no postmark), while another agency commented that the proposed language on confirmation of postmark should be moved to the beginning of Section 10.a(3). This agency commented that proposed Section 10.a(3)B should clarify that the ''date of receipt'' refers to receipt of the principal amount. The agency also commented that the proposed Section 10.d was confusing and would be clarified by replacing ''if paid separately'' with language that states that penalty determinations are made separately for each invoice when payments are consolidated. OMB agrees with these comments, and the changes are made in § 1315.11.

L. Section 1315.12—Payments to Governmentwide Commercial Purchase Card Issuers (Proposed Section 11)

Two agencies commented that the requirements of proposed Section 11 (''Payments Under Government Credit Card.'') were inconsistent with the requirements of proposed Section 7 (''Rebates''). OMB agrees that the requirements for determining credit card invoice payment dates in these proposed sections were not consistent. In the final rule, § 1315.12 has been revised to instruct agencies to determine payment due dates in accordance with § 1315.8.

Two agencies commented that this section should reference the rebate formula and should replace the reference to the discount formula. A reference to the rebate formula has been added to this section. Several agencies commented that the terms used in the regulation for the credit card program should be the same as those used in the FAR. OMB has changed the reference to Governmentwide Commercial Purchase Card which is the term used in the FAR and has changed the title of the section to ''Payments to Governmentwide Commercial Purchase Card Issuers'' to reflect the new term and to reflect the new program's use of multiple card issuers.

Two agencies requested clarification on whether the accelerated payment due dates for purchase card invoices under $2500 applied to individual invoices or to consolidated invoices. One of the agencies also requested clarification on whether purchase card invoices referred to invoices from vendors which would be paid by purchase card or invoices from purchase card issuers. A purchase card invoice means a single invoice submitted by a purchase card issuer for reimbursement of funds already paid to the vendor by the card issuer. Any single invoice under $2500 may be paid in accordance with this section, however a consolidated invoice may only be paid in accordance with this section and § 1315.5, ''Accelerated Payment Methods'' if the total amount of the consolidated invoice is under $2500.

Two agencies sought clarification on whether matching documents was required for purchase card invoice payments under $2500. OMB has added language to clarify that matching documentation under this payment method is not required to be performed before payment.

M. Section 1315.13—Commodity Credit Corporation Payments (Proposed Section 12)

Based on comments from the Commodity Credit Corporation (CCC), proposed Section 12 (''Payments to Farm Producers'') has been modified to clarify payment standards and to include language which insures that the CCC may still exercise or implement, under authorities applicable directly to the Corporation, whatever discretion or obligation it may possess to deal with lawful claims, including, if appropriate, payment of interest penalties beyond the time provided elsewhere in the regulation. The title of the section has been modified to more accurately reflect the scope of CCC payments covered by the Prompt Payment Act.

N. Section 1315.14—Payments Under Construction Contracts (Proposed Section 13)

As discussed above, OMB agrees with the agency comment that the language in proposed Section 13.a.(3), which stated that it is not necessary for an agency to return an improper invoice when it notifies the vendor electronically that the invoice is improper, was inconsistent with the return requirement in proposed Section 3.c(2) and in the Prompt Payment Act at 31 U.S.C. 3903(a)(7)(B). The language has therefore been deleted.

O. Section 1315.15—Grant Recipients (Proposed Section 14)

No comments were received on this section. The final rule contains the proposed text.

P. Section 1315.16—Relationship to Other Laws (Proposed Section 15)

An agency commented that proposed Section 15.a.(2) ''Relationship to Other Laws'' should include language which clarifies that once a claim is filed under the Contract Disputes Act, Prompt Payment interest penalties will never accrue on the disputed amount after the date the claim was filed. OMB agrees and has added clarifying language.

Q. Proposed Section 16—Reporting Requirements

As explained above, Congress in Section 1301(c) of the Federal Reports Elimination Act of 1998 repealed the Prompt Payment Act's reporting requirements at 31 U.S.C. 3906. Accordingly, the final rule does not adopt the reporting requirements in proposed Section 16.

R. Section 1315.17—Formulas

As explained above, an agency suggested that a formula be provided for calculating rebates, and one is provided in this section. An agency also commented that the Prompt Payment internet website should include formulas for computing interest penalties. Formulas for computing monthly compounded interest and daily simple interest have been added to this section and to the website. In addition, the website now includes a spreadsheet which can be used to determine when to pay a purchase card invoice. This section also includes a formula for manually calculating when to pay a credit card invoice so as to either maximize savings or minimize costs.

S. Section 1315.18—Inquiries (Proposed Section 17)

A trade association representing construction subcontractors commented that the Prompt Payment website should include a link to the Prompt Payment Act of 1988 and to the Federal Acquisition Regulation Prompt Payment clause. The Financial Management Service has added both links to the Prompt Payment website. The address for the website is www.fms.treas.gov/prompt/index.html.

T. Section 1315.19—Regulatory References to OMB Circular A–125 (New Section)

This section was added to make clear that regulatory references to OMB Circular A–125 shall be construed as referring to the Part until revised to reflect this codification. This would include references to A–125 contained in the FAR. (During the coming months, additional technical conforming changes will be made to FAR provisions and clauses as necessary.)

U. Interagency Payments

At the end of Part II of the Supplementary Information section of the proposed rule's preamble, OMB sought comment on how the Federal government should address the problem of Federal agencies making late payments to other Federal agencies. Six agencies commented that Treasury's Online Payments and Collections system (OPAC) or Treasury's Electronic Data Interchange Payments and Collections system (EDIPAC) should be required to be used by all Federal agencies for interagency payments. One agency commented that the availability of interagency payment mechanisms such as OPAC/EDIPAC, credit cards and other programs would assist agencies in improving interagency payment efficiency. Another agency commented that Interagency Agreements could include terms which provide for billing in advance. This agency commented further that agencies should have a limit of one year to bill, because some agencies have taken much longer than a year to bill. Two agencies commented that Prompt Payment late payment interest penalties should be applied to interagency payments. Three agencies commented that there should be no application of Prompt Payment penalties for interagency payments. One agency commented that Prompt Payment was not the appropriate context for discussing interagency payments.

The Prompt Payment Act does not provide for the application to interagency payments of the Prompt Payment rules, in particular the interest penalties. However, in light of the electronic fund transfer (EFT) requirements of the Debt Collection Improvement Act and the costs that agencies incur to collect overdue amounts from other agencies, OMB strongly encourages agencies to choose an electronic payment method for making interagency payments. OMB also strongly encourages agencies to include advance billing and other payment terms in Interagency Agreements to facilitate timely payments. Agencies wishing to know more about available electronic payment methods for interagency payments should contact the Department of Treasury, Financial Management Service, Card Technology Division, (202) 874–6550.

III. Regulatory Flexibility Act, Unfunded Mandates Reform Act, Congressional Review Act, and Executive Orders 12866 and 12875

This final rule will not have a significant economic effect on a substantial number of small entities; the regulations implement the Prompt Payment Act, which requires Federal agencies to pay their bills on a timely basis, to pay interest penalties when payments are made late, and to take discounts only when payments are made by the discount date. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Orders 12866 and 12875, the final rule will not significantly or uniquely affect small governments, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Finally, the final rule is not a ''major rule'' under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

IV. Paperwork Reduction Act

The collections of information necessary for carrying out the Prompt Pay Act have previously been reviewed and approved by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) as follows: The collection of banking information required to make payments electronically has been approved by OMB under Control Number 1510–0066. The collection of Taxpayer Identification Numbers (TINs) for contracts governed by the Federal Acquisition Regulation for commercial and non-commercial contracts has been approved by OMB under Control Numbers 9000–0097 and 9000–0136, respectively. Collections covered under these three control numbers are part of the implementation of the Debt Collection Improvement Act of 1996 (the DCIA). The DCIA requires that all Federal payments be made electronically after January 1, 1999 and that TINs be collected for the purposes of collecting debt owed the Federal government. Collections in this rule relating to the submission and payment of invoices are approved under OMB Control Numbers 9000–0070 and 0102, which govern the submission of adequate documentation to support contractor requests for payment.

List of Subjects in 5 CFR Part 1315

Administrative practice and procedure, Government contracts, Penalties, Reporting and recordkeeping requirements.

Dated: September 15, 1999.

Jacob J. Lew,

Director.

Authority and Issuance

For reasons set out in the preamble, OMB adds part 1315 to 5 CFR chapter III to read as follows:

PART 1315—PROMPT PAYMENT

Sec.
1315.1 Application.
1315.2 Definitions.
1315.3 Responsibilities.
1315.4 Prompt payment standards and required notices to vendors.
1315.5 Accelerated payment methods.

1315.6 Payment without evidence that supplies have been received (Fast Payment).
1315.7 Discounts.
1315.8 Rebates.
1315.9 Required documentation.
1315.10 Late payment interest penalties.
1315.11 Additional penalties.
1315.12 Payments to governmentwide commercial purchase card issuers.
1315.13 Commodity Credit Corporation payments.
1315.14 Payments under construction contracts.
1315.15 Grant recipients.
1315.16 Relationship to other laws.
1315.17 Formulas.
1315.18 Inquiries.
1315.19 Regulatory references to OMB Circular A–125.

Authority: 31 U.S.C. chapter 39.

§ 1315.1 Application.

(a) *Procurement contracts.* This part applies to contracts for the procurement of goods or services awarded by:

(1) All Executive branch agencies except:

(i) The Tennessee Valley Authority, which is subject to the Prompt Payment Act (31 U.S.C. chapter 39), but is not covered by this part; and

(ii) Agencies specifically exempted under 5 U.S.C. 551(1); and

(2) The United States Postal Service. The Postmaster General is responsible for issuing implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service.

(b) *Vendor payments.* All Executive branch vendor payments and payments to those defined as contractors or vendors (see § 1315.2(hh)) are subject to the Prompt Payment Act with the following exceptions:

(1) Contract Financing Payments, as defined in § 1315.2(h); and

(2) Payments related to emergencies (as defined in the Disaster Relief Act of 1974, Public Law 93–288, as amended (42 U.S.C. 5121 *et seq.*)); military contingency operations (as defined in 10 U.S.C. 101 (a)(13)); and the release or threatened release of hazardous substances (as defined in 4 U.S.C. 9606, Section 106).

(c) *Utility payments.* All utility payments, including payments for telephone service, are subject to the Act except those under paragraph (b)(2) of this section. Where state, local or foreign authorities impose generally-applicable late payment rates for utility payments, those rates shall take precedence. In the absence of such rates, this part will apply.

(d) *Commodity Credit Corporation payments.* Payments made pursuant to Section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)) (''CCC Charter Act'') relating to the procurement of property and services, and payments to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) are subject to this part.

§ 1315.2 Definitions.

(a) *Accelerated Payment* means a payment made prior to the due date (see discussion in § 1315.5).

(b) *Acceptance* means an acknowledgment by an authorized Government official that goods received and services rendered conform with the contract requirements. Acceptance also applies to partial deliveries.

(c) *Agency* includes, as defined in 5 U.S.C. 551(1), each authority of the United States Government, whether or not it is within or subject to review by another agency, excluding the Congress, the United States courts, governments of territories or possessions, the District of Columbia government, courts martial, military commissions, and military authority exercised in the field in time of war or in occupied territory. *Agency* also includes any entity that is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and that is so identified for this purpose by the head of such agency. The term *agency* includes military post and base exchanges and commissaries.

(d) *Applicable interest rate* means the interest rate established by the Secretary of the Treasury for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) which is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., utility tariffs). The rate established under the Contract Disputes Act is referred to as the ''Renegotiation Board Interest Rate,'' the ''Contract Disputes Act Interest Rate,'' and the ''Prompt Payment Act Interest Rate,'' and is published semiannually by the Fiscal Service, Department of Treasury, in the **Federal Register** on or about January 1 and July 1.

(e) *Automated Clearing House (ACH)* means a network that performs interbank clearing of electronic debit and credit entries for participating financial institutions.

(f) *Banking Information* means information necessary to facilitate an EFT payment, including the vendor's bank account number, and the vendor financial institution's routing number.

(g) *Contract* means any enforceable agreement, including rental and lease agreements, purchase orders, delivery orders (including obligations under Federal Supply Schedule contracts), requirements-type (open-ended) service contracts, and blanket purchases agreements between an agency and a vendor for the acquisition of goods or services and agreements entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*). Contracts must meet the requirements of § 1315.9(a).

(h) *Contract Financing Payments* means an authorized disbursement of monies prior to acceptance of goods or services including advance payments, progress payments based on cost, progress payments (other than under construction contracts) based on a percentage or stage of completion, payments on performance-based contracts and interim payments on cost-type contracts. Contract financing payments do not include invoice payments, payments for partial deliveries, or lease and rental payments.

(i) *Contracting Office* means any entity issuing a contract or purchase order or issuing a contract modification or termination.

(j) *Contractor* (see *Vendor*).

(k) *Day* means a calendar day including weekend and holiday, unless otherwise indicated.

(l) *Delivery Ticket* means a vendor document supplied at the time of delivery which indicates the items delivered, can serve as a proper invoice based on contractual agreement.

(m) *Designated Agency Office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment.

(n) *Discount* means an invoice payment reduction offered by the vendor for early payment.

(o) *Discount date* means the date by which a specified invoice payment reduction, or a discount, can be taken.

(p) *Due date* means the date on which Federal payment should be made. Determination of such dates is discussed in § 1315.4(g).

(q) *Electronic Commerce* means the end to end electronic exchange of business information using electronic data interchange, electronic mail, electronic bulletin boards, electronic funds transfer (EFT) and similar technologies.

(r) *Electronic Data Interchange* means the computer to computer exchange of routine business information in a standard format. The standard formats are developed and maintained by the Accredited Standards Committee of the American National Standards Institute,

11 West 42d Street, New York, NY 10036.

(s) *Electronic Funds Transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Automated Clearing House and Fedwire transfers.

(t) *Emergency Payment* means a payment made under an emergency defined as a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mud slide, snowstorm, drought, fire, explosion, or other catastrophe which requires Federal emergency assistance to supplement State and local efforts to save lives and property, and ensure public health and safety; and the release or threatened release of hazardous substances.

(u) *Evaluated Receipts* means contractually designated use of the acceptance document and the contract as the basis for payment without requiring a separate invoice.

(v) *Fast Payment* means a payment procedure under the Federal Acquisition Regulation at Part 13.4 which allows payment under limited conditions to a vendor prior to the Government's verification that supplies have been received and accepted.

(w) *Federal Acquisition Regulation (FAR)* means the regulation (48 CFR chapter 1) that governs most Federal acquisition and related payment issues. Agencies may also have supplements prescribing unique agency policies.

(x) *Governmentwide Commercial Purchase Cards* means internationally-accepted purchase cards available to all Federal agencies under a General Services Administration contract for the purpose of making simplified acquisitions of up to the threshold set by the Federal Acquisition Regulation or for travel expenses or payment, for purchases of fuel, or other purposes as authorized by the contract.

(y) *Invoice* means a bill, written document or electronic transmission, provided by a vendor requesting payment for property received or services rendered. A proper invoice must meet the requirements of § 1315.9(b). The term invoice can include receiving reports and delivery tickets when contractually designated as invoices.

(z) *Payment Date* means the date on which a check for payment is dated or the date of an electronic fund transfer (EFT) payment (settlement date).

(aa) *Rebate* means a monetary incentive offered to the Government by Governmentwide commercial purchase card issuers to pay purchase card invoices early.

(bb) *Receiving Office* means the entity which physically receives the goods or services, and may be separate from the accepting entity.

(cc) *Receiving Report* means written or electronic evidence of receipt of goods or services by a Government official. Receiving reports must meet the requirements of § 1315.9(c).

(dd) *Recurring Payments* means payments for services of a recurring nature, such as rents, building maintenance, transportation services, parking, leases, and maintenance for equipment, pagers and cellular phones, etc., which are performed under agency-vendor agreements providing for payments of definite amounts at fixed periodic intervals.

(ee) *Settlement Date* means the date on which an EFT payment is credited to the vendor's financial institution.

(ff) *Taxpayer Identifying Number (TIN)* means the nine digit Employer Identifying Number or Social Security Number as defined in Section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

(gg) *Utilities and Telephones* means electricity, water, sewage services, telephone services, and natural gas. Utilities can be regulated, unregulated, or under contract.

(hh) *Vendor* means any person, organization, or business concern engaged in a profession, trade, or business and any not-for-profit entity operating as a vendor (including State and local governments and foreign entities and foreign governments, but excluding Federal entities).

§ 1315.3 Responsibilities.

Each agency head is responsible for the following:

(a) *Issuing internal procedures.* Ensuring that internal procedures will include provisions for monitoring the causes of late payments and any interest penalties incurred, taking necessary corrective action, and handling inquiries.

(b) *Internal control systems.* Ensuring that effective internal control systems are established and maintained as required by OMB Circular A–123, ''Management Accountability and Control.'' [1] Administrative activities required for payments to vendors under this part are subject to periodic quality control validation to be conducted no less frequently than once annually. Quality control processes will be used to confirm that controls are effective and that processes are efficient. Each agency head is responsible for establishing a quality control program in order to quantify payment performance and qualify corrective actions, aid cash management decision making, and estimate payment performance if actual data is unavailable.

(c) *Financial management systems.* Ensuring that financial management systems comply with OMB Circular A–127, ''Financial Management Systems.'' [2] Agency financial systems shall provide standardized information and electronic data exchange to the central management agency. Systems shall provide complete, timely, reliable, useful and consistent financial management information. Payment capabilities should provide accurate and useful management reports on payments.

(d) *Reviews.* Ensuring that Inspectors General and internal auditors review payments performance and systems accuracy, consistent with the Chief Financial Officers (CFO) Act requirements.

(e) *Timely payments and interest penalties.* Ensuring timely payments and payment of interest penalties where required.

§ 1315.4 Prompt payment standards and required notices to vendors.

Agency business practices shall conform to the following standards:

(a) *Required documentation.* Agencies will maintain paper or electronic documentation as required in § 1315.9.

(b) *Receipt of invoice.* For the purposes of determining a payment due date and the date on which interest will begin to accrue if a payment is late, an invoice shall be deemed to be received:

(1) On the later of:

(i) For invoices that are mailed, the date a proper invoice is actually received by the designated agency office if the agency annotates the invoice with date of receipt at the time of receipt. For invoices electronically transmitted, the date a readable transmission is received by the designated agency office, or the next business day if received after normal working hours; or

(ii) The seventh day after the date on which the property is actually delivered or performance of the services is actually completed; unless—

(A) The agency has actually accepted the property or services before the

[1] For availability of OMB circulars, see 5 CFR 1310.3.

[2] See footnote 1 in § 1315.3(b).

seventh day in which case the acceptance date shall substitute for the seventh day after the delivery date; or

(B) A longer acceptance period is specified in the contract, in which case the date of actual acceptance or the date on which such longer acceptance period ends shall substitute for the seventh day after the delivery date;

(2) On the date placed on the invoice by the contractor, when the agency fails to annotate the invoice with date of receipt of the invoice at the time of receipt (such invoice must be a proper invoice); or

(3) On the date of delivery, when the contract specifies that the delivery ticket may serve as an invoice.

(c) *Review of invoice.* Agencies will use the following procedures in reviewing invoices:

(1) Each invoice will be reviewed by the designated agency office as soon as practicable after receipt to determine whether the invoice is a proper invoice as defined in § 1315.9(b);

(2) When an invoice is determined to be improper, the agency shall return the invoice to the vendor as soon as practicable after receipt, but no later than 7 days after receipt (refer also to paragraph (g)(4) of this section regarding vendor notification and determining the payment due date.) The agency will identify all defects that prevent payment and specify all reasons why the invoice is not proper and why it is being returned. This notification to the vendor shall include a request for a corrected invoice, to be clearly marked as such;

(3) Any media which produce tangible recordings of information in lieu of ''written'' or ''original'' paper document equivalents should be used by agencies to expedite the payment process, rather than delaying the process by requiring ''original'' paper documents. Agencies should ensure adequate safeguards and controls to ensure the integrity of the data and to prevent duplicate processing.

(d) *Receipt of goods and services.* Agencies will ensure that receipt is properly recorded at the time of delivery of goods or completion of services.

(e) *Acceptance.* Agencies will ensure that acceptance is executed as promptly as possible. Commercial items and services should not be subject to extended acceptance periods. Acceptance reports will be forwarded to the designated agency office by the fifth working day after acceptance. Unless other arrangements are made, acceptance reports will be stamped or otherwise annotated with the receipt date in the designated agency office.

(f) *Starting the payment period.* The period available to an agency to make timely payment of an invoice without incurring an interest penalty shall begin on the date of receipt of a proper invoice (see paragraph (b) of this section) except where no invoice is required (e.g., for some recurring payments as defined in § 1315.2(dd)).

(g) *Determining the payment due date.* (1) Unless otherwise specified, the payment is due either:

(i) On the date(s) specified in the contract;

(ii) In accordance with discount terms when discounts are offered and taken (see § 1315.7);

(iii) In accordance with Accelerated Payment Methods (see § 1315.5); or

(iv) 30 days after the start of the payment period as specified in paragraph (f) of this section, if not specified in the contract, if discounts are not taken, and if accelerated payment methods are not used.

(2) *Certain commodity payments.* (i) For meat, meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, any perishable egg product, fresh or frozen fish as defined in the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), payment will be made no later than the seventh day after delivery.

(ii) For perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499 a(4)), payment will be made no later than the 10th day after delivery, unless another payment date is specified in the contract.

(iii) For dairy products (as defined in Section 111(e) of the Dairy Production Stabilization Act of 1983, 7 U.S.C. 4502(e)), and including, at a minimum, liquid milk, cheese, certain processed cheese products, butter, yogurt, and ice cream, edible fats or oils, and food products prepared from edible fats or oils (including, at a minimum, mayonnaise, salad dressings and other similar products), payment will be made no later than 10 days after the date on which a proper invoice, for the amount due, has been received by the agency acquiring the above listed products. Nothing in the Act permits limitation to refrigerated products. When questions arise about the coverage of a specific product, prevailing industry practices should be followed in specifying a contractual payment due date.

(3) *Mixed invoices for commodities.* When an invoice is received for items with different payment periods, agencies:

(i) May pay the entire invoice on the due date for the commodity with the earliest due date, if it is considered in the best interests of the agency;

(ii) May make split payments by the due date applicable to each category;

(iii) Shall pay in accordance with the contractual payment provisions (which may not exceed the statutory mandated periods specified in paragraph (g)(2) of this section); and

(iv) Shall not require vendors to submit multiple invoices for payment of individual orders by the agency.

(4) *Notification of improper invoice.* When an agency fails to make notification of an improper invoice within seven days according to paragraph (c)(2) of this section (three days for meat and meat food, fish and seafood products; and five days for perishable agricultural commodities, dairy products, edible fats or oils and food products prepared from edible fats or oils), the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the seventh day (or the third or fifth day, as otherwise specified in this paragraph (g)(4)) and the day notification was transmitted to the vendor. Calculation of interest penalties, if any, will be based on an adjusted due date reflecting the reduced number of days allowable for payment;

(h) *Payment date.* Payment will be considered to be made on the settlement date for an electronic funds transfer (EFT) payment or the date of the check for a check payment. Payments falling due on a weekend or federal holiday may be made on the following business day without incurring late payment interest penalties.

(i) *Late payment.* When payments are made after the due date, interest will be paid automatically in accordance with the procedures provided in this part.

(j) *Timely payment.* An agency shall make payments no more than seven days prior to the payment due date, but as close to the due date as possible, unless the agency head or designee has determined, on a case-by-case basis for specific payments, that earlier payment is necessary. This authority must be used cautiously, weighing the benefits of making a payment early against the good stewardship inherent in effective cash management practices. An agency may use the ''accelerated payment methods'' in § 1315.5 when it determines that such earlier payment is necessary.

(k) *Payments for partial deliveries.* Agencies shall pay for partial delivery of supplies or partial performance of services after acceptance, unless specifically prohibited by the contract.

Payment is contingent upon submission of a proper invoice if required by the contract.

§ 1315.5 Accelerated payment methods.

(a) *A single invoice under $2,500.* Payments may be made as soon as the contract, proper invoice , receipt and acceptance documents are matched except where statutory authority prescribes otherwise and except where otherwise contractually stipulated (e.g., governmentwide commercial purchase card.) Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

(b) *Small Business (as defined in FAR 19.001 (48 CFR 19.001)).* Agencies may pay a small business as quickly as possible, when all proper documentation, including acceptance, is received in the payment office and before the payment due date. Such payments are not subject to payment restrictions stated elsewhere in this part. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

(c) *Emergency payments.* Payments related to emergencies and disasters (as defined in the Robert T. Stafford Disaster Relief Act and Emergency Assistance, Pub. L. 93–288, as amended (42 U.S.C. 5 121 *et seq.*); payments related to the release or threatened release of hazardous substances (as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, Pub. L. 96–510, 42 U.S.C. 9606); and payments made under a military contingency (as defined in 10 U.S.C. 101(a)(13)) may be made as soon as the contract, proper invoice, receipt and acceptance documents or any other agreement are matched. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

§ 1315.6 Payment without evidence that supplies have been received (Fast Payment).

(a) In limited situations, payment may be made without evidence that supplies have been received. Instead, a contractor certification that supplies have been shipped may be used as the basis for authorizing payment. Payment may be made within 15 days after the date of receipt of the invoice. This payment procedure may be employed only when all of the following conditions are present:

(1) Individual orders do not exceed $25,000 (except where agency heads permits a higher amount on a case-by-case basis);

(2) Deliveries of supplies are to occur where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that make it impracticable to make timely payments based on evidence of Federal acceptance;

(3) Title to supplies will vest in the Government upon delivery to a post office or common carrier for mailing or shipment to destination or upon receipt by the Government if the shipment is by means other than the Postal Service or a common carrier; and

(4) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(b) Agencies shall promptly inspect and accept supplies acquired under these procedures and shall ensure that receiving reports and payment documents are matched and steps are taken to correct discrepancies.

(c) Agencies shall ensure that specific internal controls are in place to assure that supplies paid for are received.

(d) As authorized by the 1988 Amendment to the Prompt Payment Act (Section 11(b)(1)(C)), a contract clause at 48 CFR 52.213–1 is provided in the Federal Acquisition Regulations (FAR) at 48 CFR part 13, subpart 13.4 ''Fast Payment Procedure,'' for use when using this fast payment procedure.

§ 1315.7 Discounts.

Agencies shall follow these procedures in taking discounts and determining the payment due dates when discounts are taken:

(a) *Economically justified discounts.* If an agency is offered a discount by a vendor, whether stipulated in the contract or offered on an invoice, an agency may take the discount if economically justified (see discount formula in Treasury Financial Manual (TFM) 6–8040.40)[3] but only after acceptance has occurred. Agencies are encouraged to include discount terms in a contract to give agencies adequate time to take the discount if it is determined to be economically justified.

(b) *Discounts taken after the discount date.* If an agency takes the discount after the deadline, the agency shall pay an interest penalty on any amount remaining unpaid as prescribed in § 1315.10(a)(6).

(c) *Payment date.* When a discount is taken, payment will be made as close as possible to, but no later than, the discount date.

(d) *Start date.* The period for taking the discount is calculated from the date placed on the proper invoice by the vendor. If there is no invoice date on the invoice by the vendor, the discount period will begin on the date a proper invoice is actually received and date stamped or otherwise annotated by the designated agency office.

§ 1315.8 Rebates.

Agencies shall determine governmentwide commercial purchase card payment dates based on an analysis of the total costs and total benefits to the Federal government as a whole, unless specified in a contract. When calculating costs and benefits, agencies are expected to include the cost to the government of paying early. This cost is the interest the government would have earned, at the Current Value of Funds rate, for each day that payment was not made. Agencies may factor in benefits gained from paying early due to, for example, streamlining the payment process or other efficiencies. A rebate formula is provided in § 1315.17 and at the Prompt Payment website at *www.fms.treas.gov/prompt/index.html.*

§ 1315.9 Required documentation.

Agencies are required to ensure the following payment documentation is established to support payment of invoices and interest penalties:

(a) The following information from the contract is required as payment documentation:

(1) Payment due date(s) as defined in § 1315.4(g);

(2) A notation in the contract that partial payments are prohibited, if applicable;

(3) For construction contracts, specific payment due dates for approved progress payments or milestone payments for completed phases, increments, or segments of the project;

(4) If applicable, a statement that the special payment provisions of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), or the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), or Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)) shall apply;

(5) Where considered appropriate by the agency head, the specified acceptance period following delivery to inspect and/or test goods furnished or to evaluate services performed is stated;

(6) Name (where practicable), title, telephone number, and complete mailing address of officials of the Government's designated agency office, and of the vendor receiving the payments;

(7) Reference to requirements under the Prompt Payment Act, including the payment of interest penalties on late

[3] The Treasury Financial Manual is available by calling the Prompt Payment Hotline at 800–266–9667 or the Prompt Payment web site at http://www.fms.treas.gov/prompt/index.html.

invoice payments (including progress payments under construction contracts);

(8) Reference to requirements under the Debt Collection Improvement Act (Pub. L. 104–134, 110 Stat. 1321), including the requirement that payments must be made electronically except in situations where the EFT requirement is waived under 31 CFR 208.4. Where electronic payment is required, the contract will stipulate that banking information must be submitted no later than the first request for payment;

(9) If using Fast Payment, the proper FAR clause stipulating Fast Payment is required.

(b) The following correct information constitutes a proper invoice and is required as payment documentation:

(1) Name of vendor;

(2) Invoice date;

(3) Government contract number, or other authorization for delivery of goods or services;

(4) Vendor invoice number, account number, and/or any other identifying number agreed to by contract;

(5) Description (including, for example, contract line/subline number), price, and quantity of goods and services rendered;

(6) Shipping and payment terms (unless mutually agreed that this information is only required in the contract);

(7) Taxpayer Identifying Number (TIN), unless agency procedures provide otherwise;

(8) Banking information, unless agency procedures provide otherwise, or except in situations where the EFT requirement is waived under 31 CFR 208.4;

(9) Contact name (where practicable), title and telephone number;

(10) Other substantiating documentation or information required by the contract.

(c) The following information from receiving reports, delivery tickets, and evaluated receipts is required as payment documentation:

(1) Name of vendor;

(2) Contract or other authorization number;

(3) Description of goods or services;

(4) Quantities received, if applicable;

(5) Date(s) goods were delivered or services were provided;

(6) Date(s) goods or services were accepted;

(7) Signature (or electronic alternative when supported by appropriate internal controls), printed name, telephone number, mailing address of the receiving official, and any additional information required by the agency.

(d) When a delivery ticket is used as an invoice, it must contain information required by agency procedures. The requirements in paragraph (b) of this section do not apply except as provided by agency procedures.

§ 1315.10 Late payment interest penalties.

(a) *Application and calculation.* Agencies will use the following procedures in calculating interest due on late payments:

(1) Interest will be calculated from the day after the payment due date through the payment date at the interest rate in effect on the day after the payment due date;

(2) Adjustments will be made for errors in calculating interest;

(3) For up to one year, interest penalties remaining unpaid at the end of any 30 day period will be added to the principal and subsequent interest penalties will accrue on that amount until paid;

(4) When an interest penalty is owed and not paid, interest will accrue on the unpaid amount until paid, except as described in paragraph (a)(5) of this section;

(5) Interest penalties under the Prompt Payment Act will not continue to accrue:

(i) After the filing of a claim for such penalties under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*); or

(ii) For more than one year;

(6) When an agency takes a discount after the discount date, interest will be paid on the amount of the discount taken. Interest will be calculated for the period beginning the day after the specified discount date through the date of payment of the discount erroneously taken;

(7) Interest penalties of less than one dollar need not be paid;

(8) If the banking information supplied by the vendor is incorrect, interest under this regulation will not accrue until seven days after such correct information is received (provided that the vendor has been given notice of the incorrect banking information within seven days after the agency is notified that the information is incorrect);

(9) Interest calculations are to be based on a 360 day year; and

(10) The applicable interest rate may be obtained by calling the Department of Treasury's Financial Management Service (FMS) Prompt Payment help line at 1–800–266–9667.

(b) *Payment.* Agencies will meet the following requirements in paying interest penalties:

(1) Interest may be paid only after acceptance has occurred or when title passes to the government in a fast payment contract when title passing to the government constitutes acceptance for purposes of determining when interest may be paid;

(2) Late payment interest penalties shall be paid without regard to whether the vendor has requested payment of such penalty, and shall be accompanied by a notice stating the amount of the interest penalty, the number of days late and the rate used;

(3) The invoice number or other agreed upon transaction reference number assigned by the vendor should be included in the notice to assist the vendor in reconciling the payment. Additionally, it is optional as to whether or not an agency includes the contract number in the notice to the vendor;

(4) The temporary unavailability of funds does not relieve an agency from the obligation to pay these interest penalties or the additional penalties required under § 1315.11; and

(5) Agencies shall pay any late payment interest penalties (including any additional penalties required under § 1315.11) under this part from the funds available for the administration of the program for which the penalty was incurred. The Prompt Payment Act does not authorize the appropriation of additional amounts to pay penalties.

(c) *Penalties not due.* Interest penalties are not required:

(1) When payment is delayed because of a dispute between a Federal agency and a vendor over the amount of the payment or other issues concerning compliance with the terms of a contract. Claims concerning disputes, and any interest that may be payable with respect to the period, while the dispute is being settled, will be resolved in accordance with the provisions in the Contract Disputes Act of 1978, (41 U.S.C. 601 *et seq.*), except for interest payments required under 31 U.S.C. 3902(h)(2);

(2) When payments are made solely for financing purposes or in advance, except for interest payment required under 31 U.S.C. 3902(h)(2);

(3) For a period when amounts are withheld temporarily in accordance with the contract;

(4) When an EFT payment is not credited to the vendor's account by the payment due date because of the failure of the Federal Reserve or the vendor's bank to do so; or

(5) When the interest penalty is less than $1.00.

§ 1315.11 Additional penalties.

(a) *Vendor entitlements.* A vendor shall be entitled to an additional penalty payment when the vendor is owed a late

payment interest penalty by an agency of $1.00 or more, if it:

(1) Receives a payment dated after the payment due date which does not include the interest penalty also due to the vendor;

(2) Is not paid the interest penalty by the agency within 10 days after the actual payment date; and

(3) Makes a written request that the agency pay such an additional penalty. Such request must be postmarked, received by facsimile, or by electronic mail, by the 40th day after payment was made. If there is no postmark or if it is illegible, the request will be valid if it is received and annotated with the date of receipt by the agency by the 40th day. The written request must include the following:

(i) Specific assertion that late payment interest is due for a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required; and

(ii) A copy of the invoice on which late payment interest was due but not paid and a statement that the principal has been received, and the date of receipt of the principle.

(b) *Maximum penalty.* The additional penalty shall be equal to one hundred (100) percent of the original late payment interest penalty but must not exceed $5,000.

(c) *Minimum penalty.* Regardless of the amount of the late payment interest penalty, the additional penalty paid shall not be less than $25. No additional penalty is owed, however, if the amount of the interest penalty is less than $1.00.

(d) *Penalty basis.* The penalty is based on individual invoices. Where payments are consolidated for disbursing purposes, the penalty determinations shall be made separately for each invoice therein.

(e) *Utility payments.* The additional penalty does not apply to the payment of utility bills where late payment penalties for these bills are determined through the tariff rate-setting process.

§ 1315.12 Payments to governmentwide commercial purchase card issuers.

Standards for payments to government wide commercial purchase card issuers follow:

(a) *Payment date.* All individual purchase card invoices under $2,500 may be paid at any time, but not later than 30 days after the receipt of a proper invoice. Matching documents is not required before payment. The payment due date for invoices in the amount of $2,500 or more shall be determined in accordance with § 1315.8. I TFM 4–4535.10[4] permits payment of the bill in full prior to verification that goods or services were received.

(b) *Disputed line items.* Disputed line items do not render the entire invoice an improper invoice for compliance with this proposed regulation. Any undisputed items must be paid in accordance with paragraph (a) of this section.

§ 1315.13 Commodity Credit Corporation payments.

As provided in § 1315.1(d), the provisions of this part apply to payments relating to the procurement of property and services made by the Commodity Credit Corporation (CCC) pursuant to Section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)) (''CCC Charter Act'') and payments to which producers on a farm are entitled under the terms of an agreement entered into pursuant to the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) (''1949 Act''.) Such payments shall be subject to the following provisions:

(a) *Payment standards.* Payments to producers on a farm under agreements entered into under the 1949 Act and payments to vendors providing property and services under the CCC Charter Act, shall be made as close as possible to the required payment date or loan closing date.

(b) *Interest penalties.* An interest penalty shall be paid to vendors or producers if the payment has not been made by the required payment or loan closing date. The interest penalty shall be paid:

(1) On the amount of payment or loan due;

(2) For the period beginning on the first day beginning after the required payment or loan closing date and, except as determined appropriate by the CCC consistent with applicable law, ending on the date the amount is paid or loaned; and

(3) Out of funds available under Section 8 of the CCC Charter Act (15 U.S.C. 714f).

(c) *Contract Disputes Act of 1978.* Insofar as covered CCC payments are concerned, provisions relating to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*) in § 1315.10(a)(5)(i) and § 1315.6(a) do not apply.

(d) *Extended periods for payment.* Notwithstanding other provisions of this part, the CCC may allow claims for such periods of time as are consistent with authorities applicable to its operations.

[4] See footnote 3 in § 1315.7(a).

§ 1315.14 Payments under construction contracts.

(a) *Payment standards.* Agencies shall follow these standards when making progress payments under construction contracts:

(1) An agency may approve a request for progress payment if the application meets the requirements specified in paragraph (b) of this section;

(2) The certification by the prime vendor as defined in paragraph (b)(2) of this section is not to be construed as final acceptance of the subcontractor's performance;

(3) The agency shall return any such payment request which is defective to the vendor within seven days after receipt, with a statement identifying the defect(s);

(4) A vendor is obligated to pay interest to the Government on unearned amounts in its possession from:

(i) The eighth day after receipt of funds from the agency until the date the vendor notifies the agency that the performance deficiency has been corrected, or the date the vendor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the vendor discovers that all or a portion of a payment received from the agency constitutes a payment for the vendor's performance that fails to conform to the specifications, terms, and conditions of its contract with the agency, under 31 U.S.C. 3905(a); or

(ii) The eighth day after the receipt of funds from the agency until the date the performance deficiency of a subcontractor is corrected, or the date the vendor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the vendor discovers that all or a portion of a payment received from the agency would constitute a payment for the subcontractor's performance that fails to conform to the subcontract agreement and may be withheld, under 31 U.S.C. 3905(e);

(5) Interest payment on unearned amounts to the government under 31 U.S.C. 3905(a)(2) or 3905(e)(6), shall:

(i) Be computed on the basis of the average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the vendor received the unearned amount;

(ii) Be deducted from the next available payment to the vendor; and

(iii) Revert to the Treasury.

(b) *Required Documentation.* (1) Substantiation of the amount(s) requested shall include:

(i) An itemization of the amounts requested related to the various elements of work specified in the contract;

(ii) A listing of the amount included for work performed by each subcontractor under the contract;

(iii) A listing of the total amount for each subcontract under the contract;

(iv) A listing of the amounts previously paid to each subcontractor under the contract; and

(v) Additional supporting data and detail in a form required by the contracting officer.

(2) Certification by the prime vendor is required, to the best of the vendor's knowledge and belief, that:

(i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(ii) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of 31 U.S.C. chapter 39; and

(iii) The application does not include any amounts which the prime vendor intends to withhold or retain from a subcontractor or supplier, in accordance with the terms and conditions of their subcontract.

(c) *Interest penalties.* (1) Agencies will pay interest on:

(i) A progress payment request (including a monthly percentage-of-completion progress payment or milestone payments for completed phases, increments, or segments of any project) that is approved as payable by the agency pursuant to paragraph (b) of this section, and remains unpaid for:

(A) A period of more than 14 days after receipt of the payment request by the designated agency office; or

(B) A longer period specified in the solicitation and/or contract if required, to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the vendor's performance under the contract;

(ii) Any amounts that the agency has retained pursuant to a prime contract clause providing for retaining a percentage of progress payments otherwise due to a vendor and that are approved for release to the vendor, if such retained amounts are not paid to the vendor by a date specified in the contract, or, in the absence of such a specified date, by the 30th day after final acceptance;

(iii) Final payments, based on completion and acceptance of all work (including any retained amounts), and payments for partial performances that have been accepted by the agency, if such payments are made after the later of:

(A) The 30th day after the date on which the designated agency office receives a proper invoice; or

(B) The 30th day after agency acceptance of the completed work or services. Acceptance shall be deemed to have occurred on the effective date of contract settlement on a final invoice where the payment amount is subject to contract settlement actions.

(2) For the purpose of computing interest penalties, acceptance shall be deemed to have occurred on the seventh day after work or services have been completed in accordance with the terms of the contract.

§ 1315.15 Grant recipients.

Recipients of Federal assistance may pay interest penalties if so specified in their contracts with contractors. However, obligations to pay such interest penalties will not be obligations of the United States. Federal funds may not be used for this purpose, nor may interest penalties be used to meet matching requirements of federally assisted programs.

§ 1315.16 Relationship to other laws.

(a) *Contract Disputes Act of 1978 (41 U.S.C. 605).* (1) A claim for an interest penalty (including the additional penalty for non-payment of interest if the vendor has complied with the requirements of § 1315.9) not paid under this part may be filed under Section 6 of the Contract Disputes Act.

(2) An interest penalty under this part does not continue to accrue after a claim for a penalty is filed under the Contract Disputes Act or for more than one year. Once a claim is filed under the Contract Disputes Act interest penalties under this part will never accrue on the amounts of the claim, for any period after the date the claim was filed. This does not prevent an interest penalty from accruing under Section 13 of the Contract Disputes Act after a penalty stops accruing under this part. Such penalty may accrue on an unpaid contract payment and on the unpaid penalty under this part.

(3) This part does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a vendor over the amount of payment or compliance with the contract. A claim related to such a dispute and interest payable for the period during which the dispute is being resolved is subject to the Contract Disputes Act.

(b) *Small Business Act (15 U.S.C. 644(k)).* This Act has been amended to require that any agency with an Office of Small and Disadvantaged Business Utilization must assist small business concerns to obtain payments, late payment interest penalties, additional penalties, or information due to the concerns.

§ 1315.17 Formulas.

(a) *Rebate formula.* (1) Agencies shall determine credit card payment dates based on an analysis of the total benefits to the Federal government as a whole. Specifically, agencies should compare daily basis points offered by the card issuer with the corresponding daily basis points of the government's Current Value of Funds (CVF) rate. If the basis points offered by the card issuer are greater than the daily basis points of the government'' funds, the government will maximize savings by paying on the earliest possible date. If the basis points offered by the card issuer are less than the daily basis points of the government'' funds, the government will minimize costs by paying on the Prompt Payment due date or the date specified in the contract.

(2) Agencies may use a rebate spreadsheet which automatically calculates the net savings to the government and whether the agency should pay early or late. The only variables required for input to this spreadsheet are the CVF rate, the Maximum Discount Rate, that is, the rate from which daily basis points offered by the card issuer are derived, and the amount of debt. This spreadsheet is available for use on the prompt payment website at www.fms.treas.gov/prompt/index/.html.

(3) If agencies chose not to use the spreadsheet, the following may be used to determine whether to pay early or late. To calculate whether to pay early or late, agencies must first determine the respective basis points. To obtain Daily Basis Points offered by card issuer, refer to the agency's contract with the card issuer. Use the following formula to calculate the average daily basis points of the CVF rate:

$$(CVF/360) * 100$$

(4) For example: The daily basis points offered to agency X by card issuer Y are 1.5 basis points. That is, for every day the agency delays paying the card issuer the agency loses 1.5 basis points in savings. At a CVF of 5 percent, the daily basis points of the Current Value of Funds Rate are 1.4 basis points. That is, every day the agency delays paying,

the government earns 1.4 basis points. The basis points were calculated using the formula:

(CVF/360) * 100
(5/360) * 100 = 1.4

(5) Because 1.5 is greater than 1.4, the agency should pay as early as possible. If the basis points offered by the card issuer are less than the daily basis points of the government'' funds (if for instance the rebate equaled 1.3 basis points and the CVF was still 1.4 basis points or if the rebate equaled 1.5 but the CVF equaled 1.6), the government will minimize costs by paying as late as possible, but by the payment due date.

(b) *Daily simple interest formula.* (1) To calculate daily simple interest the following formula may be used:

P(r/360*d)

Where:

P is the amount of principle or invoice amount;
r equals the Prompt Payment interest rate; and
d equals the numbers of days for which interest is being calculated.

(2) For example, if a payment is due on April 1 and the payment is not made until April 11, a simple interest calculation will determine the amount of interest owed the vendor for the late payment. Using the formula above, at an invoice amount of $1,500 paid 10 days late and an interest rate of 6.5%, the amount of interest owed is calculated as follows:

$1,500 (.065/360*10) = $2.71

(c) *Monthly compounding interest formula.* (1) To calculate interest as required in § 1315.10(a)(3), the following formula may be used:

$P(1+r/12)^{n}*(1+(r/360*d)) - P$

Where:

P equals the principle or invoice amount;
r equals the interest rate;
n equals the number of months; and
d equals the number of days for which interest is being calculated.

(2) The first part of the equation calculates compounded monthly interest. The second part of the equation calculates simple interest on any additional days beyond a monthly increment.

(3) For example, if the amount owed is $1,500, the payment due date is April 1, the agency does not pay until June 15 and the applicable interest rate is 6 percent, interest is calculated as follows:

$ $1,500(1+.06/12)^{2}$ *(1+(0.06/360*15)) – $1,500 = $18.83

§ 1315.18 Inquiries.

(a) *Regulation.* Inquiries concerning this part may be directed in writing to the Department of the Treasury, Financial Management Service (FMS), Cash Management Policy and Planning Division, 401 14th Street, S.W. Washington, D.C. 20227, (202) 874–6590, or by calling the Prompt Payment help line at 1–800–266–9667, by emailing questions to FMS at *prompt.inquiries@fms.sprint.com*, or by completing a Prompt Payment inquiry form available at www.fms.treas.gov/prompt/inquiries.html.

(b) *Applicable interest rate.* The rate is published by the Fiscal Service, Department of the Treasury, semiannually in the **Federal Register** on or about January 1 and July 1. The rate also may be obtained from the Department of Treasury's Financial Management Service (FMS) at 1–800–266–9667. This information is also available at the FMS Prompt Payment Web Site at http://www.fms.treas.gov/prompt/index.html.

(c) *Agency payments.* Questions concerning delinquent payments should be directed to the designated agency office, or the office responsible for issuing the payment if different from the designated agency office. Questions about disagreements over payment amount or timing should be directed to the contracting officer for resolution. Small business concerns may obtain additional assistance on payment issues by contacting the agency's Office of Small and Disadvantaged Business Utilization.

§ 1315.19 Regulatory references to OMB Circular A–125.

This part supercedes OMB Circular A–125 (''Prompt Payment''). Until revised to reflect the codification in this part, regulatory references to Circular A–125 shall be construed as referring to this part.

[FR Doc. 99–24713 Filed 9–28–99; 8:45 am]
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federal register

Wednesday
September 29, 1999

Part III

Department of Health and Human Services

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Use With Oral Poliovirus Vaccine (OPV); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Use With Oral Poliovirus Vaccine (OPV)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: On September 2, 1999, the Centers for Disease Control and Prevention (CDC) published a **Federal Register** notice seeking comment on proposed revised vaccine information materials for use effective January 1, 2000, when the routine polio immunization schedule changes to an all inactivated poliovirus vaccine (IPV) schedule. With this notice, CDC seeks written comment on proposed supplemental vaccine information materials for use in those limited circumstances where oral poliovirus vaccine (OPV) will still be acceptable.

DATES: Written comments are invited and must be received on or before November 29, 1999.

ADDRESSES: Written comments should be addressed to Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: Under the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–26), the Centers for Disease Control and Prevention (CDC) develops and revises vaccine information materials for those vaccines covered under the National Vaccine Injury Compensation Program. As provided under that law, all health care providers in the United States, whether public or private, must distribute copies of these materials to any patient (or to the parent or legal representative in the case of a minor) prior to administering any of the covered vaccines.

On September 2, 1999, CDC published a **Federal Register** notice (64 FR 48238) seeking comment on proposed revised vaccine information materials for use effective January 1, 2000, when the routine polio immunization schedule changes to an all inactivated poliovirus vaccine (IPV) schedule. (See the September 2 notice for a description of the statutory requirements for development and use of the vaccine information materials. Also, see that notice for an explanation of the revisions in the CDC-recommended schedule for use of polio vaccines.)

As listed in the September 2 **Federal Register** notice, as of January 1, 2000, use of OPV will only be acceptable in the following special circumstances:

(1) Mass immunization campaigns to control outbreaks due to wild-type poliovirus;

(2) Unimmunized children where travel to polio-endemic areas is imminent (i.e. in less than four weeks) may receive OPV for the first dose;

(3) Children of parents who do not accept the recommended number of vaccine injections may receive OPV only for dose 3 or 4 or both. (OPV should be administered only after discussion of the risks of OPV vaccine-associated poliomyelitis.); and

(4) OPV may be administered when the vaccinee has had a life-threatening allergic reaction to any component of IPV.

With this notice, CDC seeks written comment on proposed supplemental vaccine information materials for use in these limited circumstances where oral poliovirus vaccine (OPV) will still be acceptable.

Proposed Supplemental Polio Vaccine Information Materials—OPV

We invite written comment on the proposed supplemental vaccine information materials that follow, entitled ''Oral Polio Vaccine: What You Need to Know.'' Comments submitted will be considered in finalizing these supplemental materials. As required under the National Childhood Vaccine Injury Act, prior to finalizing these materials CDC also will consult with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration.

Oral Polio Vaccine: What You Need To Know

1. What Is Polio?

Polio is a disease caused by a virus. It can get into a child's (or adult's) body, usually through the mouth. Sometimes it does not cause serious problems. But sometimes it causes paralysis (can't move arm or leg), and sometimes it kills its victims.

Polio used to be very common in the United States. It paralyzed and killed thousands of children each year before we had a vaccine for it.

2. Why Get Vaccinated?

Polio vaccine can prevent polio.

History: A 1916 polio epidemic in the United States killed 6,000 people and paralyzed 27,000 more. In the early 1950's there were more than 20,000 cases of polio each year.

Polio vaccine was introduced in 1955. By 1960 the number of cases had dropped to about 3,000, and by 1979 there were only about 30. This change would not have been possible without polio vaccine.

Today: No wild polio has been reported in the United States for over 20 years. But the disease is still common in some parts of the world. It would only take one case of polio from another country to bring the disease back if we were not protected by vaccine. Until the disease is gone from the whole world, we should keep getting our children vaccinated.

3. Two Types of Polio Vaccine

There are two types of polio vaccine:

IPV (Inactivated Polio Vaccine): A shot.

IPV is recommended for almost all people. It works very well to protect people from paralytic polio.

OPV (Oral Polio Vaccine): Drops, by mouth.

OPV works very well, especially in preventing polio outbreaks. It is due to OPV that there is no polio in the United States today. But it can also actually cause polio. This is rare, but with the risk of polio extremely low in the U.S., OPV is no longer recommended except in special situations.

This statement is about Oral Polio Vaccine. You can also request a copy of the Vaccine Information Statement that describes the routine all-IPV schedule.

4. Who Should Use Oral Polio Vaccine (OPV) and When?

OPV is no longer recommended for routine use in the United States. It may be used only in certain limited circumstances:

(1) Mass immunization campaigns to control polio outbreaks;

(2) Unimmunized people who plan to travel within 4 weeks to countries where polio is common. These people may get OPV for the first dose;

(3) Children whose parents want them to get fewer injections. These children should get IPV for the first two doses of the polio vaccine series, but may get OPV for the 3rd or 4th dose, or both;

(4) People with a life-threatening allergy to a component of IPV. These people may get OPV instead.

If you, or your child, are one of the few people who should get OPV, your doctor or nurse will tell you when the

vaccine should be given. Speak to your doctor or nurse about the risks of vaccine-associated polio before getting OPV.

OPV may be given at the same time as other vaccines.

5. Some People Should Not Get Oral Polio Vaccine (OPV) or Should Wait

Do not use OPV drops if your child, you, or anyone who takes care of your child:

- Can't fight infections
- Is taking long-term steroids
- Has cancer
- Has AIDS or HIV infection.

Do not use OPV drops if you or anyone who takes care of your child never had polio vaccine.

Anyone who has had a severe allergic reaction to a dose of OPV should not get another dose.

People who are moderately or severely ill at the time the immunization is scheduled should usually wait until they recover before getting OPV.

6. What Are the Risks From Oral Polio Vaccine (OPV)?

OPV can, in rare circumstances, actually cause polio. This is why it is not recommended for routine use any more. It caused several cases of polio each year (about 1 case for every 2.4 million doses of vaccine) during the years it was used. The oral vaccine can cause polio in children who get OPV or in people who are in close contact with them. The risk of polio is higher with the first dose than with later doses.

7. What if There Is a Serious Reaction?

What Should I Look for?

Look for any unusual condition, such as a serious allergic reaction, high fever, behavior changes, or signs of paralysis.

If a serious allergic reaction occurred, it would happen within a few minutes to a few hours after the vaccination. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

If paralysis were to occur, symptoms might include severe muscle aches and spasms, or loss of movement in an arm or leg. This could happen from about a week to about a month after the vaccination.

What Should I Do?

- Call a doctor or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Reporting System (VAERS) form, or call VAERS yourself at 1–800–822–7967.

8. The National Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, there is a federal program that can help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit the program's website at http://www.hrsa.gov/bhpr/vicp.

9. How Can I Learn More?

- Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department's immunization program.
- Contact the Centers for Disease Control and Prevention (CDC)

—Call 1–800–232–2522 (English)

—Call 1–800–232–0233 (Español)

—Visit the National Immunization Program's website at http://www.cdc.gov/nip

U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Immunization Program

Vaccine Information Statement, Polio—OPV Supplement (1/1/2000) (Proposed), 42 U.S.C. 300aa–26

Dated: September 23, 1999.

Thena M. Durham,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–25276 Filed 9–28–99; 8:45 am]

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federal register

Wednesday
September 29, 1999

Part IV

Department of Health and Human Services

Administration for Children and Families

Program Announcement; Request for Applications Under the Office of Community Services' Fiscal Year 2000 Community Food and Nutrition Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Program Announcement; Request for Applications Under the Office of Community Services' Fiscal Year 2000 Community Food and Nutrition Program

[Program Announcement No. OCS–2000–03]

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program (CFNP).

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681 of the Community Services Block Grant Act, as amended. This Program Announcement contains forms and instructions for submitting an application. The awarding of grants under this Program Announcement is subject to the availability of funds for support of these activities.

CLOSING DATE: The closing date for submission of applications is December 6, 1999. Mailed applications postmarked after the closing date will be classified as late.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of Community Discretionary Programs, 370 L'Enfant Promenade S.W., Washington DC 20447, Fax (202) 401–4687. Contact: Catherine Rivers, (202) 401–5252, Deloris Horton, (202) 401–9363.

This Program Announcement is accessible on the OCS Website for reading or downloading at: www.acf.dhhs.gov/programs/ocs/kits1.htm.

Application Submission

Mailing Address: CFNP Applications should be mailed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW, Washington, D.C. 20447; Attention: Application for Community Food and Nutrition Program.

Number of Copies Required: One signed original application and four copies should be submitted at the time of initial submission. (OMB–0970–0062, expiration date 10/31/2001).

Submission Instructions: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review.

Applications mailed must bear a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicants couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: Attention: Application for Community Food and Nutrition Program. (Applicants are again cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Once submitted, applications are considered final and no additional materials will be accepted.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

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Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Sections 681(a) and (b), Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded

on a competitive basis to eligible entities for community based, local and statewide programs: (1) To coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

Budget period: The term ''budget period'' refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.

Eligible entity: States, public agencies, and public and private non-profit agencies/organizations including Community Action Agencies. (See Part B–1)

Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.

Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Program income: Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

Project period: The term ''project period'' refers to the total time for which a project is approved for support, including any approved extensions.

Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Self-sufficiency: A condition where an individual or family does not need and is not eligible for public assistance.

Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

3. Purpose of Community Food and Nutrition Program

The Department of Health and Human Services (DHHS) is committed to improving the overall health and nutritional well-being of individuals through improved preventive health care and promotion of personal responsibility. The DHHS encourages the approach to health promotion and nutritional responsibility with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached.

The DHHS is specifically interested in improving the health and nutrition status of low-income persons through improved access to healthy nutritious foods or by other means. The DHHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

4. Project Requirements

Projects funded under this program should:

(a) Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

(b) Provide outreach and public education to inform eligible low-income individuals and families of other nutritional services available to them under the various Federally-assisted programs;

(c) Carry out targeted communications/social marketing to improve dietary behavior and increase program participation among eligible low-income populations. Populations to be targeted can include displaced workers, elderly people, children, and the working poor.

(d) Consult with and/or inform local offices that administer other food programs such as W.I.C. and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in the planning of grant applications.

(e) Focus on one or more legislatively-mandated program activities: (1) Coordination of private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) Assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating such programs in unserved or underserved areas; and (3) Development of innovative approaches at the state and local level to meet the nutrition needs of low-income individuals.

The OCS views this program as a capacity building program, rather than as a service delivery program.

Part B—Application Requirements

1. Eligible Applicants

Eligible applicants are States, public agencies, and public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. The OCS encourages Historically Black Colleges and Universities and minority institutions to submit applications. Eligible applicants with programs benefitting Native Americans and Migrant Farmworkers are also encouraged to submit applications.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS tax code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the applicant's Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Availability of Funds and Grant Amounts

a. Fiscal Year 2000 Funding

All grant awards are subject to the availability of appropriated funds. The Office of Community Services expects to award approximately $2,000,000 for grant awards under the CFNP in Fiscal Year 2000 for General Projects.

b. Grant Amounts

No individual grant application will be considered for an amount which is in excess of $50,000.

c. Mobilization of Resources

The OCS would like to mobilize as many resources as possible to enhance projects funded under this program. The OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

3. Project Periods and Budget Periods

For most projects, OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its application, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. Indirect costs consistent with approved indirect cost rate agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward low-income people as defined in the most recent annual update of the Poverty Income Guidelines published by DHHS. Attachment A to this Announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The **Federal Register** is also available on the Internet through GPO Access at the following web address: http://www.access.gpo.gov/su__docs/aces/aces140.html

No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Parts C and D. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted as long as each application is for a different project. However, no applicant can receive more than one grant.

8. Sub-Contracting or Delegating Projects

The OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Program Area

General Projects

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this Announcement must produce permanent and measurable results that fulfill the purposes of this program as described above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A). Failure to comply with the income guidelines may result in the application being ineligible for consideration for funding.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to DHHS.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS Poverty Income Guidelines as set forth in Attachment A.

Applications that propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. The OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. In cases where material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in Part A–3 of this Announcement.

The OCS is also interested in projects that address the needs of homeless families and welcomes applications that seek to develop innovative approaches to promote health and nutritional awareness among low-income populations.

Part D—Review Criteria

Applications that pass the initial screening and pre-rating review (see Part F, section 4) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

When writing their Project Narrative, applicants should respond to the review criteria using the same sequential order.

Note: The following review criteria reiterate the information requirements contained in Part B of this Announcement.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

a. Criterion I: Analysis of Needs/Priorities (Maximum: 10 Points)

(1) Target area and population to be served are adequately described. (0–4 Points)

In addressing the above criterion, the applicant should include a description of the target area and population to be

served including specific details on any minority population(s) to be served.

(2) Nature and extent of problem(s) and/or need(s) to be addressed are adequately described and documented. (0–6 Points)

In addressing the above criterion, the applicant should include a discussion of the nature and extent of the problem(s) and/or need(s), including specific information on minority populations(s).

b. Criterion II: Adequacy of Work Program (Maximum: 25 Points)

(1) Realistic quarterly time targets are set forth by which the various work tasks will be completed. (0–10 Points)

(2) Activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs. (0–15 Points)

In addressing the above criterion, the applicant should address the basic criteria and other mandated activities found in Part A–4 and should include:

a. Project priorities and rationale for selecting them which relate to the specific nutritional problem(s) and/or need(s) of the target population which were identified under Criterion I;

b. Goals and objectives that speak to the(se) problem(s) and/or need(s); and

c. Project activities that, if successfully carried out, can be reasonably expected to result in the achievement of these goals and objectives.

c. Criterion III: Significant and Beneficial Impact (Maximum: 30 Points)

(1) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified. (0–15 Points)

(2) Project incorporates promotional health and social services activities for low-income people, along with nutritional services. (0–5 Points)

(3) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified. (0–5 Points)

(4) Project addresses problem(s) that can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support. (0–5 Points)

In addressing the above criterion, the applicant must include quantitative data for items (1), (2), and (3), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in Part A–1 and the problems and/or needs described under Criterion I.

d. Criterion IV: Coordination/Services Integration (Maximum: 15 Points)

(1) Project shows evidence of coordinated community-based planning in its development, including strategies in the work program to carry on activities in collaboration with other locally-funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example, (1) unite funding streams at the local level to increase program outreach and effectiveness, (2) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients, or (3) bring project participants into direct interaction with holistic family development resources in the community where needed. (0–10 Points)

(2) Community Empowerment Consideration—Special consideration will be given to applicants who are located in areas which are characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20 percent, designation as an Empowerment Zone or Enterprise Community, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. Applicants should document that they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner. (0–5 Points)

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized, and how they will be coordinated with the proposed project to maximize the effectiveness of both. If State funds are being used in the project for which OCS funds are being requested, their usage should be specifically described.

e. Criterion V: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 Points)

(1) Organizational Experience in Program Area (0–5 Points)

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations that propose providing training and technical assistance have detailed competence in the program area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(2) Management History (0–5 Points)

Applicants must demonstrate their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also document that they have consistently complied with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) Staffing Skills, Resources and Responsibilities (0–5 Points)

The application adequately describes the experience and skills of the proposed project director showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The application must indicate that the applicant has adequate facilities and resources (*i.e.* space and equipment) to successfully carry out the work plan.

In addressing the above criterion, the applicant must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

f. Criterion VI: Adequacy of Budget (Maximum: 5 Points)

The budget is adequate and administrative costs are appropriate in relation to the services proposed. (0–5 Points)

Part E—Instructions for Completing Application Package

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement. It is recommended that you reproduce

single-sided copies of the SF–424, SF–424A and SF–424B, and type your application on the copies.

Please prepare your application in accordance with the instructions provided with the forms, as well as with the OCS specific instructions set forth below:

1. SF–424—Application for Federal Assistance (Attachment B–1)

Item 1. *Type of Submission*—For the purposes of this Announcement, all projects are considered Applications; there are no Pre-Applications.

Item 2. *Date Submitted* and *Applicant Identifier*—Enter the date the application is submitted to ACF and the applicant's internal control number, if applicable.

Item 3. *Date Received by State*—N/A.

Item 4. *Date Received by Federal Agency*—Leave blank.

Items 5. and 6. *Applicant Information and Employer Identification Number*—The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous DHHS grantee, enter the Central Registry System/Employee Identification Number (CRS/EIN) and the Payment Identifying Number (PIN), if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form.

Item 7. *Type of Applicant*—If the applicant is a non-profit corporation, enter the letter ''N'' in the box and specify non-profit corporation in the space marked ''Other''. Proof of non-profit status, such as IRS certification, Articles of Incorporation, or By-laws must be included as an appendix to the project narrative.

Item 8. *Type of Application*—Check ''New''.

Item 9. *Name of Federal Agency*—Enter ''DHHS–ACF/OCS.''

Item 10. *The Catalog of Federal Domestic Assistance (CFDA) Number*—The CFDA number for the OCS program covered under this Announcement is 93.571. The title is ''Community Services Block Grant Discretionary Awards—Community Food and Nutrition Program''.

Item 11. *Descriptive Title of Project*—Enter a brief descriptive title of the project.

Item 12. *Areas Affected by Project*—List only the largest unit or units affected, such as State, county or city.

Item 13. *Proposed Project Dates*—Show 12-month project period. (See Part B–3) In addition, the project period start date must be on or before September 30, 2000.

Item 14. *Congressional District of Applicant/Project*—Enter the number(s) of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional District(s) where the project will be located.

Item 15. *Estimated Funding*—15a. Show the total amount requested for the entire project period; 15b. thru 15e. For each line item, show both cash and third-party in-kind contributions for the total project period; 15f. Show the estimated amount of program income for the total project period; 15g. Enter the sum of all the lines.

2. SF–424A—Budget Information—Non-Construction Programs (Attachment B–2)

See the instructions accompanying the Attachment as well as the instructions set forth below.

In completing these sections, the Federal funds budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and Non-Federal will include mobilized funds from all other sources—applicants, State, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in Non-Federal entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds.

Section A—Budget Summary

Lines 1–4

—Column (a) Line 1—Enter OCS CFNP.
—Column (b) Line 1—Enter 93.571.
—Columns (c) and (d)—Not Applicable.
—Columns (e), (f) and (g)—For lines 1 through 4, enter in appropriate amounts needed to support the project for the entire project period.

Line 5

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the Code of Federal Regulations (CFR), Title 45, Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for Consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-federal share.

Note: Local transportation and Consultant travel costs are entered on Line 6h.

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000.

Note: If an applicant's current rate agreement was based on another definition for equipment, such as ''tangible personal property $500 or more'', the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies: office, classroom, medical, etc. Include equipment costing less than $5,000 per item.

Line 6f

Contractual—Enter the total costs of all contracts, including: (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification—Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note 1: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this Form (SF–424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR Part 74, Appendix A. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Note 2: Contractual cannot be a person—must be an organization, firm, etc. Enter Consultant cost on Line 6h.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual); fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use training costs including tuition and stipends; training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant. Indirect costs consistent with approved indirect cost rate agreements are allowable.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (see SF–424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

—Column (a)—Enter the project title.
—Column (b)—Enter the amount of cash or donations to be made by the applicant.
—Column (c)—Enter the State contribution.
—Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.
—Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank.

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13

Federal—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12-month budget period.

Line 14

Non-Federal—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Totals—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional,

predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B—Assurances Non-Construction Programs (Attachment B–3)

All applicants must sign and return the ''Assurances'' with the application.

4. Project Narrative

Each narrative should include the following major sections:

a. Analysis of Need.

b. Project Design (Work Program).

c. Organizational Experience in the Program Area.

d. Management History.

e. Staffing and Resources.

f. Staff Responsibilities.

The project narrative must address the specific purposes mentioned in Part A of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in Part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part E and the Attachments to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications.

A copy of this Program Announcement is available on the Internet through the OCS Website at the following web address: www.acf.dhhs.gov/programs/ocs/kits1.htm.

This Program Announcement also may be obtained by telephoning the office listed in the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this Announcement.

The information requested under this Program Announcement is covered under the following OMB information collection clearances: SF–424 (No. 0348–0043), SF–424A (No. 0348–0044), SF–424B (No. 0348–0040), and other requirements for OCS applications (No. 0970–0062, expiration date October 31, 2001).

2. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of March, 1999, the following jurisdictions have elected NOT to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau.

All remaining jurisdictions participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on the proposed new award.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this Announcement.

3. Application Consideration

Applications that meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this Announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicant; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. The OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

4. Criteria for Screening Applications

a. Initial Screening

All applications that meet the application deadline will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the below listed requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed and signed Standard Form SF–424.

(2) The SF–424 must be signed by an official of the organization applying for

the grant who has authority to obligate the organization legally.

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the section below and the specific requirements contained in Part A of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility*—Applicant meets the eligibility requirements found in Part B.

(2) *Number of Projects*—The application contains only one project.

(3) *Target Populations*—The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) *Grant Amount*—The amount of funds requested does not exceed $50,000.

(5) *Program Focus*—The application addresses the purposes described in Part A of this Announcement.

c. Evaluation Criteria

Applications that pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part G—Contents of Application Package and Receipt Process

1. Contents of Application

Each application submission must include a signed original and four additional copies of the application. Each copy of the application MUST contain, in the order listed, each of the following:

a. Table of Contents with page numbers noted for each major section and subsection of the application, including the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. A Project Abstract which is a succinct description of the project in 200 words or less.

c. The SF–424 (Application for Federal Assistance) (Attachment B–1) should be completed in accordance with instructions provided with the form, as well as OCS specific instructions set forth in Part E of this Announcement. The SF–424 must contain an original signature of the certifying representative of the applicant organization. Applicants must also be aware that the applicant's legal name (Item 5) MUST match the Employer Identification Number (Item 6).

d. SF–424A (Budget Information) (Attachment B–2) must be completed.

e. SF–424B (Assurances—Non-Construction Programs) (Attachment B–3) must be filed by applicants requesting financial assistance for a non-construction project. Applicants must sign and return the SF–424B with their applications.

f. Certification Regarding Lobbying (Attachment F–1) Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

g. Disclosure of Lobbying Activities (SF-LLL). Applicants must fill-in, sign and date form found at Attachment F–2. (This form is required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.)

h. Project Narrative (See Part E, section 4).

i. Certification Regarding Drug-Free Workplace Requirements (Attachment C). Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

j. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Attachment D). Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

k. Certification Regarding Environmental Tobacco Smoke (Attachment E). Applicants must make the appropriate certification of their compliance with the Pro-Children Act of 1944. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

The total number of pages for the narrative portion of the application package must not exceed 30 pages in its entirety. Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½ × 11-inch paper only. They must not include colored, oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc. Such materials will be discarded if included.

Applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip.

While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

2. Acknowledgment of Receipt

An acknowledgment will be mailed to all applicants with an identification number which will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the application deadline, applicants must notify ACF by telephone (202) 401–5103. Applicant should also submit a mailing label for the acknowledgment.

Note: To facilitate receipt of this acknowledgment from ACF, applicant should include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these items are available to applicant.

Part H—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) that will be applicable to grants, grantees will be subject to the provisions of 45 CFR Parts 74 (non-governmental) and 92 (governmental) along with Circulars 122 (non-governmental) and 87 (governmental).

Grantees will be required to submit semi-annual progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees: (1) To certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly updates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachments F–1 and F–2 for certification and disclosure forms to be submitted with the applications for this program.

Attachment H indicates the regulations that apply to all applicants/grantees under the FY 2000 Community Food and Nutrition Program.

Dated: September 22, 1999.

Donald Sykes,

Director, Office of Community Services.

Attachments

A—1999 Poverty Income Guidelines for the 48 Contiguous States and the District of Columbia, Alaska, and Hawaii
B–1—Application for Federal Assistance
B–2—Budget Information—Non-Construction Programs
B–3—Assurances—Non-Construction Programs
C—Certification Regarding Drug-Free Workplace Requirements
D—Certification Regarding Debarment, Suspension, and other Responsibility Matters (Primary and Lower Tier Covered Transactions)
E—Certification Regarding Environmental Tobacco Smoke
F–1—Certification Regarding Lobbying
F–2—Disclosure of Lobbying Activities
G—State Single Point of Contact Listing Maintained by OMB
H—DHHS Regulations applying to all Applicants/Grantees under the Community Food and Nutrition Program
I—Applicant's Checklist

Attachment A

1999 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty guideline
1	$8,240
2	11,060
3	13,880
4	16,700
5	19,520
6	22,340
7	25,160
8	27,980

For family units with more than 8 members, add $2,820 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

1999 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	$10,320
2	13,840
3	17,360
4	20,880
5	24,400
6	27,920
7	31,440
8	34,960

For family units with more than 8 members, add $3,520 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

1999 Poverty Guidelines for Hawaii

Size of family unit	Poverty guidelines
1	$9,490
2	12,730
3	15,970
4	19,210
5	22,450
6	25,690
7	28,930
8	32,170

For family units with more than 8 members, add $3,240 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

BILLING CODE 4184–01–P

Attachment B-1

OMB Approval No. 0348-004

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involvir this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance if being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*i.e.*, construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (*e.g.*, State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

Attachment B-2

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Previous Edition Usable

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

Attachment B-2, page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

BILLING CODE 4184–01–C

Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the Sponsoring Agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g):

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Columns (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisors (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or

any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the Sponsoring Agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*,), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific state(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended(Pub. L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 Pub. L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Applicant Organization

_____

Title

_____

Date Submitted

Attachment C

Certificate Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and(d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false

certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to his certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statues;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, or dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will not continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibitions;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a):

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statue occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR 21690, 21702, May 25, 1990]

Attachment D

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary

covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entered into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, (Page 33043) should the proposed covered transaction be entered into, it shall not knowingly under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment or a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment E

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor

routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment F–1

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connecting with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $10,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Attachment F-2

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Instruction for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity,whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier or the subawardee, *e.g.,* the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (*e.g.,* Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, *e.g.,* ''RFP–DE–90–001.''

9. For a covered action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless if displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources's gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment G

State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' Section 4, ''the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development.'' This attached list is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

August 23, 1999

OMB State Single Point of Contact Listing*

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordination, State Clearinghouse, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (301) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W., Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Cherie Trainor, (850) 414–5495

Georgia

Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Renee Miller, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2971 (directline), FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–0437

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, FAX: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, FAX: (601) 359–6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, 9th Floor, Jefferson Building, 9th Floor, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 220, Carson City, Nevada 89710, Telephone: (702) 687–3983, Contact: Heather Elliot, (702) 687–6367

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640, Fax: (505) 827–4984

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Jeanette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2983

South Carolina

Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 936–2681

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1027, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Sandy Ross, State Single Point of Contact, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, FAX: (307) 777–3696

Territories

Guam

Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932, Telephone: (671) 475–9411 or 9412, FAX: (671) 472–2825

Puerto Rico

Jose Caballero-Mercado, Chairman, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 727–4444, (787) 723–6190, FAX: (787) 724–3270

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden, Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

If you would like a copy of this faxed to your office, please call our publications office at: (202) 395–9068.

*In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC., DOES NOT HAVE A ''STATE SINGLE POINT OF CONTACT.'' STATES WITHOUT ''STATE SINGLE POINTS OF CONTACT'' INCLUDE: Alabama, Alaska; American Samoa; Colorado; Connecticut; Hawaii; Idaho; Kansas; Louisiana; Massachusetts, Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont, Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Attachment H

Department of Health and Human Services (DHHS), Regulations Applying to All Applicants/Grantees Under the Community Food and Nutrition Program

Title 45 of the Code of Federal Regulations

Part 16—DHHS Grant Appeals Process

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections:

- 74.26—Non-Federal Audits
- 74.27—Allowable cost for hospitals and non-profit organizations among other things
- 74.32 Real Property
- 74.34 Equipment
- 74.35 Supplies
- 74.24 Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension from Eligibility For Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through DHHS Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act

Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance

Part 85—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by DHHS

Part 86—Non-discrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of DHHS Programs and Activities

BILLING CODE 4184–01–M

Attachment I

APPLICANT'S CHECKLIST

This checklist will assist you with preparing and assembling your application. Completing the checklist carhelp ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements--Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information--Non-Construction Programs (SF 424A) or Budget Information--Construction Programs (SF 424C) was completed?			
Assurances-- Non-Construction Programs (SF 424B) or Assurances--Construction Programs (SF 424D)was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographicalsketch(es) with job description(s) and other additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

FOLLOW-UP QUESTIONS

	YES	N/A
On the Application for Federal Assistance (SF 424),		
⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?		
⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?		
⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?		
⇒ did you include city, county, state and zip code of the applicant did organization in Item #5?		
⇒ has the appropriate box been checked in Item #16?		
⇒ has the entire proposed project period been identified in Item #13?		
On the Budget Information form (SF 424A or SF 424C),		
⇒ do the totals in Section B match the totals provided in the budget and budget narrative?		

SUGGESTED ORDERING OF APPLICATION MATERIALS

FRONT MATTER			STANDARD APPLICATION FORMS			PROJECT DESCRIPTION	DISCLOSURES CERTIFICATIONS			END MATTER
COVER LETTER	Table of Contents	Project Abstract (executive summary)	SF 424	SF 424A or SF 424C	SF 424B or SF 424D	Project Descrip-tion	Certification regarding lobbying	Disclosure of lobbying activities	other Assurances and Certs	appendix resumes, letters of support, maps, etc.

[FR Doc. 99–25331 Filed 9–28–99; 8:45 am]
BILLING CODE 4184–01–C

federal register

Wednesday
September 29, 1999

Part V

The President

Proclamation 7226—Gold Star Mother's Day, 1999

Federal Register
Vol. 64, No. 188
Wednesday, September 29, 1999

Presidential Documents

Title 3—

The President

Proclamation 7226 of September 24, 1999

Gold Star Mother's Day, 1999

By the President of the United States of America

A Proclamation

For generations, the brave men and women of our Armed Forces have answered our Nation's call to service. In the air, on the sea, and across the world's battlefields, they have fought with valor and determination so that we might continue to live in freedom. The blessings of liberty and peace we know today have been paid for with the lives of those who never returned home.

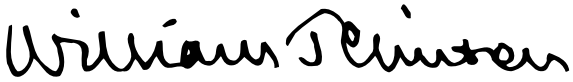
The Gold Star Mothers of America know the price of freedom all too well. They have experienced one of life's greatest joys in becoming a parent and have endured one of life's greatest sorrows in losing a son or daughter. The spirit of sacrifices made by our fallen warriors lives on in the hearts of our Gold Star Mothers.

Their sacrifice lives on as well in the work Gold Star Mothers perform in communities throughout our country, working with disabled veterans and their families, nurturing patriotism in a new generation of young Americans, reaching out to others who have lost a child in the service of our Nation, and ensuring that the contributions of their own sons and daughters are never forgotten. The generous and compassionate work of Gold Star Mothers is a powerful legacy of service that they carry on in loving memory of their children.

We have a profound obligation to honor the service and sacrifice of these remarkable women as we honor their children. That is why the Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as ''Gold Star Mother's Day'' and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 26, 1999, as Gold Star Mother's Day. I call on all government officials to display the United States flag on government buildings on this day. I also urge the American people to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places as a public expression of the sympathy and the respect that our Nation holds for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth 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.



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Federal Register

Vol. 64, No. 188

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 457/P.L. 106–56

Organ Donor Leave Act (Sept. 24, 1999; 113 Stat. 407)

Last List August 19, 1999

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