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Federal Register

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206-AI31

Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to provide agencies with greater flexibility to pay retention allowances of up to 10 percent of an employee's rate of basic pay (or up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances. This flexibility will help agencies retain the specialized skills they need to meet their work requirements. The final regulations revise the interim regulations to provide further guidance on defining the covered group or category of employees, to clarify the intended use of a retention allowance, and to add references to a group or category of employees in provisions dealing with the reduction or termination of retention allowances.

EFFECTIVE DATE: January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2858; FAX (202) 606-0824; EMAIL: payleave@open.gov.

SUPPLEMENTARY INFORMATION: On June 23, 1998, the Office of Personnel Management (OPM) published interim regulations to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances (63 FR 34119). Interested parties were invited to comment for a 60-day period. OPM received comments from three agencies. All three agencies expressed support for

the additional flexibility provided by the interim regulations. Specific comments are discussed below along with a description of changes made in the final regulations.

Administering the Discretionary Authority

One agency expressed concern regarding the administration of the discretionary authority. The agency expressed concern that it may be difficult to justify the exclusion of individuals from an identified group or to identify a group that includes only individuals whom the agency is anxious to retain. The agency believes the decision to approve a group retention allowance might be highly judgmental. Another agency asked whether employees newly hired into a group receiving a retention allowance could be (or should be) excluded from receiving the allowance.

We believe the type of discretion currently used to make a judgment for paying a retention allowance on a case-by-case basis to individual employees is essentially the same used in making a determination for a category of employees. Similar to the case-by-case determinations, agencies must authorize retention allowances based on written determination that employees have unusually high or unique qualifications or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category. What is different is that the regulations do not require agencies to determine whether each individual in the targeted group is likely to leave Federal service. Instead, agencies must determine whether there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of an allowance. Section 575.305(d)(1) requires agencies to have evidence of labor market conditions or other factors to fully support this determination.

It is essential, therefore, that agencies clearly define the characteristics and coverage criteria of the identified category of employees. These criteria may include the minimum length of service a newly hired employee must fulfill with the agency before being covered by an identified group. If an appropriate group cannot be clearly defined by specific factors, or if labor market or other conditions do not

indicate that there is a high risk that a significant number of employees in the group is likely to leave, then consideration should be given to granting retention allowances to selected employees in the identified group on a case-by-case basis as justified by the circumstances of the individual case. To provide further guidance to agencies on defining the covered group, we have added language to 5 CFR 575.305(d)(1) that identifies the types of factors that may be used to define the group.

Several agencies have informally requested clarification on whether a retention allowance may be offered when recruiting an employee from another agency when it knows the employee has a private sector job offer and is likely to leave Federal Service. Retention allowances are not intended to be used as a recruitment tool, especially when recruiting an employee from another agency. Section 575.305(b)(2) of the regulations further provides that a retention allowance may only be offered to an employee in or under an agency and based on the agency's determination that the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission. Therefore, in order for an agency to make its case, the employee would have to have been hired and performing a critical function for a period of time immediately prior to the payment of a retention allowance. To clarify this intent, we have added a new paragraph (d) to § 575.304 to read, "An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency."

Amount of Retention Allowance

One agency believes the interim regulations effectively allow an agency to provide a 10 percent pay raise to a significant number of employees. The agency supports the requirement for OPM approval of group/category retention allowances of more than 10 percent, thus guarding against the potential for creating an uneven playing field without reasonable notice to similarly-situated agencies. Another agency expressed concern that limiting the amount of the retention allowance

an agency can pay to a group of employees dilutes the effectiveness of extending the flexibility. The agency believes there would be no advantage to invoking this new provision unless 10 percent has already been determined to be a sufficient incentive for the situation. The agency also expressed concern that if it does seek OPM approval of a higher percentage, the agency must coordinate with other agencies, thus removing from the agency's control the discretionary flexibility which is part of the recruitment incentive.

We have not adopted any change in the amount of the retention allowance payable without OPM approval. We do not believe it would be desirable to allow individual Federal agencies to authorize retention allowances greater than 10 percent for an entire group of employees without coordination with other agencies with similar recruitment and retention needs. It would not be productive to have bidding wars between agencies, thereby depleting some agencies of the skilled workers they need. If an agency wishes to authorize an allowance of more than 10 percent, the current retention allowance authority in 5 U.S.C. 5754 and 5 CFR part 575, subpart C, continues to provide agencies with discretionary authority to pay a retention allowance of up to 25 percent of basic pay to individual employees on a case-by-case basis based on their unique qualifications or a special need of the agency if the employee would be likely to leave Federal service without the allowance.

Other Comments

One agency suggested that editorial changes should be made in the existing regulations in §§ 575.301 and 575.305 to add references to a group or category of employees in each place where a single employee is referenced. In addition, the agency suggested that the final regulations discuss the subsequent adjustment or discontinuation of retention allowances that have been approved on a group or category basis. The agency recommended that the regulations explicitly authorize agencies to adjust or discontinue such allowances either on a group/category basis or on a case-by-case basis.

OPM did not adopt the suggestion to add a reference to "a group or category of employees" in each place where an individual employee is referenced. In the interim regulation, we deliberately placed the authority and criteria for paying retention allowances on a group or category basis in a separate paragraph (d) at the end of § 575.305. We continue

to believe this is the simpler and better approach.

OPM agrees with the comment that the final regulations should discuss the subsequent adjustment or discontinuation of retention allowances for a group or category of employees, as applicable. We have added the term "group or category of employees" in § 575.307(b), which discusses the reduction or termination of retention allowances.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim rule amending part 575 of title 5 of the Code of Federal Regulations, which was published at 63 FR 34119 on June 23, 1998, is adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5733, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart C—Retention Allowances

2. Section 575.304 is amended by adding a new paragraph (d) to read as follows:

§ 575.304 Conditions for payment.

* * * * *

(d) An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency.

3. In § 575.30, paragraph (d) is revised to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(d) *Approval of retention allowances for groups or categories of employees.*

(1)(i) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance.

(ii) The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in paragraph (d)(1)(i) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique qualifications, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and performance level.

(While performance level may be a factor used in defining the targeted category, performance level by itself is not sufficient to justify a retention allowance. Performance level may function as a supporting factor in authorizing an allowance or setting the allowance rate only to the extent it directly relates to the conditions in paragraph (d)(1)(i).)

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not more than 25 percent, of an employee's rate of basic pay for a group of category or employees which meets the conditions specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group

retention allowance requests must include—

(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category or employees meets the conditions specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other conditions and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under paragraphs (d)(1) or (d)(2) of this section.

4. In § 575.307, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 575.307 Reduction or termination of retention allowance.

* * * * *

(b) * * *

(1) A lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(2) Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee (or group or category of employees);

(3) The agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all); or

* * * * *

[FR Doc. 99-33178 Filed 12-21-99; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AC74

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Local Agency Expenditure Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule announces that no adverse comments were received in

response to the direct final rule which amends the provisions of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) regulations to permit quarterly reporting of local agency expenditures. The rule was published in the **Federal Register** on November 9, 1999 (64 FR 61015).

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT:

Debbie McIntosh, Branch Chief, Supplemental Food Program Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 540, 3101 Park Center Drive, Alexandria, VA 22302-1594, (703) 305-2710.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Rule?

On November 9, 1999 (64 FR 61015), we published a direct final rule which amends the WIC Program regulations to allow State agencies to permit local agencies to submit their expenditure reports quarterly. State agencies may require more frequent reports if they wish. This rule also makes a parallel change to the requirement that State agencies offset advances against incoming claims each month.

The rule provided a 30-day comment period and stipulated that unless we received written adverse comments, or written rule of intent to submit adverse comments, the rule would become effective on January 24, 2000, which is 75 days after publication in the **Federal Register**. Since no adverse comments were received, this rule confirms the rule's effective date as January 24, 2000.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act of 1995

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in 7 CFR Part 3015, Subpart V and the final rule-related rule published at 48 FR 29115, June 24, 1983, this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99-33133 Filed 12-21-99; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-323-AD; Amendment 39-11456; AD 99-25-13 C1]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors that appeared in airworthiness directive (AD) 99-25-13 that applies to all Boeing Model 777-200 and -300 series airplanes. That AD currently requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch of certain airplanes under certain conditions. That AD also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. This document corrects incorrect paragraph references. This correction is necessary to ensure that operators accomplish the appropriate requirements of the AD.

DATES: Effective December 23, 1999. The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 23, 1999 (64 FR 68618, December 8, 1999).

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2681; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Airworthiness Directive (AD) 99-25-13, amendment 39-11456, applicable to all Boeing Model 777-200 and -300 series airplanes, was published in the **Federal Register** on December 8, 1999 (64 FR 68618). That AD requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch

of certain airplanes under certain conditions. That AD also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. That AD was prompted by reports of inflight shutdowns due to sheared backup generator shafts. The actions specified by that AD are intended to prohibit the dispatch of an airplane with an engine-mounted backup generator having a sheared shaft; and to detect and correct damage to the engine, which could result in inflight shutdowns.

Need for the Correction

Information obtained recently by the FAA indicates that paragraph (e) of AD 99-25-13 contains two typographical errors. That paragraph specifies "paragraphs (c)(1) and (c)(2)" as the appropriate paragraph references for the action required after replacement of the backup generators.

The FAA has determined that a correction to AD 99-25-13 is necessary. The correction to paragraph (e) of that AD will specify "paragraphs (e)(1) and (e)(2)" as the appropriate paragraph references.

Correction of Publication

This document corrects the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 23, 1999.

Since this action only corrects typographical errors, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

99-25-13 C1 Boeing: Amendment 39-11456. Docket 99-NM-323-AD.

Applicability: Model 777-200 and -300 series airplanes equipped with Rolls-Royce Trent 800, General Electric GE90, or Pratt & Whitney PW4000 series turbofan engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) 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 prohibit dispatch of an airplane with an engine-mounted backup generator having a sheared shaft; and to detect and correct damage to the engine, which could result in inflight shutdowns; accomplish the following:

Revisions to the Airplane Flight Manual

(a) For all airplanes: Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

"Dispatch of the airplane with an engine-mounted backup generator having a sheared shaft is prohibited.

Following replacement of the backup generator on both the left and right engines, extended twin-engine operations (ETOPS) flight is prohibited until a non-ETOPS flight of at least one hour in duration is accomplished."

Prohibited Servicing or Replacement

(b) For all airplanes: As of 14 days after the effective date of this AD, servicing of both the left and right backup generators or replacement of both backup generators with new or serviceable components by the same individual prior to the same flight is prohibited.

One-Time Actions for Rolls-Royce Engines

(c) For airplanes equipped with Rolls-Royce Trent 800 series turbofan engines: Within 14 days after the effective date of this AD, determine whether the status message "ELEC BACKUP GEN L(R)" and the maintenance message "Backup generator L(R) has a sheared shaft" have occurred within the last 250 flight hours prior to the effective date of this AD. If these messages have occurred during that time, accomplish

follow-on corrective actions, as applicable, at the times specified in paragraphs C.1.(c) and D. of Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999, in accordance with the procedures specified in the service bulletin.

Note 2: Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999, references Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999, as an additional source of service information to accomplish certain actions required by this AD.

Inspections and Corrective Actions

(d) Within 14 days after the effective date of this AD, and thereafter prior to each flight: Accomplish paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

Rolls-Royce Engines

(1) For airplanes equipped with Rolls-Royce Trent 800 series turbofan engines, accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Inspect the Electrical Maintenance Page of the engine indicating and crew alerting system (EICAS), and perform follow-on corrective actions, as applicable, at the times specified in and in accordance with the procedures specified in Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999.

(ii) If the status message "ELEC BACKUP GEN L(R)" is active: Prior to further flight, inspect the Maintenance Access Terminal (MAT) for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 2.a. of Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999; and accomplish the corrective actions specified in Steps 2.a.(1) or 2.a.(2), as applicable, in accordance with that service letter.

General Electric Engines

(2) For airplanes equipped with General Electric GE90 series turbofan engines: If the status message "ELEC BACKUP GEN L(R)" is active, prior to further flight, inspect the MAT for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 1.a. of Boeing Service Letter 777-SL-24-024, dated August 16, 1999; and accomplish the corrective actions specified in Steps 1.a.(1) or 1.a.(2), as applicable, in accordance with the service letter.

Pratt & Whitney Engines

(3) For Model 777 series airplanes equipped with Pratt & Whitney PW4000 series turbofan engines: If the status message "ELEC BACKUP GEN L(R)" is active, prior to further flight, inspect the MAT for certain maintenance messages indicating a sheared shaft or low oil pressure, as specified in Step 1.a. of Boeing Service Letter 777-SL-24-025, dated August 18, 1999, in accordance with that service letter.

(i) If any of the specified maintenance messages is active, prior to further flight, remove and replace the backup generator in accordance with Airplane Maintenance Manual (AMM) 24-25-01-000-801 or 24-25-01-400-801, as applicable.

(ii) If the backup generator shaft is found to be sheared, or either of the low oil

pressure messages are active, prior to further flight, accomplish the corrective actions specified in Step 1.a.(1) of Boeing Service Letter 777-SL-24-025, dated August 18, 1999, in accordance with that service letter.

Flight Test After Replacement of Backup Generators

(e) For all airplanes: As of 14 days after the effective date of this AD, following any replacement of the backup generator on both the left and right engines, accomplish paragraphs (e)(1) and (e)(2) of this AD at the times specified in those paragraphs.

(1) Prior to any ETOPS flight, conduct a non-revenue test flight of at least one hour in duration, or a non-ETOPS flight that is either a non-revenue or revenue flight of at least one hour in duration.

(2) Prior to further flight after accomplishment of the action required by paragraph (e)(1) of this AD: Verify accomplishment of the maintenance actions required by paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

Alternative Methods of Compliance

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

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

Special Flight Permits

(g) 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.

Incorporation by Reference

(h) Except as provided by paragraphs (a) and (d)(3)(i) of this AD, the actions shall be done in accordance with Rolls-Royce Service Bulletin RB.211-72-C813, Revision 1, dated July 16, 1999; Boeing Service Letter 777-SL-24-023-B, dated August 16, 1999; Boeing Service Letter 777-SL-24-024, dated August 16, 1999; or Boeing Service Letter 777-SL-24-025, dated August 18, 1999; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of December 23, 1999 (64 FR 68618, December 8, 1999). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) The effective date of this amendment remains December 23, 1999.

Issued in Renton, Washington, on December 16, 1999.

D.L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-33167 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ANM-08]

Establishment of Class E Airspace; Glendive, MT; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published on November 15, 1999 that inadvertently listed a wrong airway number in the legal description. This action corrects the final rule by reflecting the proper name of the airway in the legal description.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 99-ANM-08, 1601 Lind Avenue S.W., Renton, Washington, 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION: On November 15, 1999, the FAA published a final rule that established Class E airspace at Glendive, MT (64 FR 61785). However, that action erroneously listed an airway as V-493, instead of V-439. This action corrects the final rule by reflecting the proper airway.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Glendive, MT, as published in the **Federal Register** on November 15, 1999, (64 FR 61785), (**Federal Register** Document No. 99-29681) is corrected as follows:

§ 71.8 [Corrected]

1. On page 61786, in column 2, the airspace description in FAA Order 7400.9G incorporated by reference in 14 CFR 71.1 is corrected to read as follows:

Paragraph 6006 Class E airspace designated as an en route domestic airspace area.

* * * * *

Glendive, MT [New]

That airspace extending upward from 1200 feet AGL bounded on the east by the west edge of V-439, on the south by the north

edge of V-2, and on the northwest by the southeast edge of V-545.

* * * * *

Issued in Seattle, Washington, on December 2, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99-33217 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F-0116]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-methylpentene-1 copolymers resulting from the copolymerization of 4-methylpentene-1 and 1-alkenes having from 12 to 18 carbon atoms for use in contact with food. This action is in response to a petition filed on behalf of Mitsui Petrochemical Industries, Ltd.

DATES: The regulation is effective December 22, 1999; written objections and requests for a hearing by January 21, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3023.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 1, 1997 (62 FR 15526), FDA announced that a food additive petition (FAP 7B4534) had been filed by Mitsui Petrochemical Industries, Ltd., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of 4-methylpentene-1 copolymers manufactured by the catalytic copolymerization of 4-methylpentene-1 with 1-alkenes having from 12 to 18 carbon atoms in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and that therefore, (3) the regulations in § 177.1520 should be amended as set forth below in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget

under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 21, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1520 is amended by revising paragraphs (a)(3)(ii) and (c) in the table for items 3.3a and 3.3b under the heading "Olefin polymers" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(ii) 4-Methylpentene-1 and 1-alkenes having from 6 to 18 carbon atoms. Such olefin basic copolymers shall contain not less than 95 molar percent of polymer units derived from 4-methylpentene-1, except that copolymers manufactured with 1-alkenes having from 12 to 18 carbon atoms shall contain not less than 97 molar percent of polymer units derived from 4-methylpentene-1; or

* * * * *

(c) * * *

Olefin polymers	Density	Melting Point (MP) or softening point (SP) (Degrees Centigrade)	Maximum extractable fraction (expressed as percent by weight of the polymer in N-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* * *	* * *	* * *	* * *	* * *
3.3a Olefin copolymers described in paragraph (a)(3)(ii) of this section and manufactured with 1-alkenes having from 6 to 10 carbon atoms.				
3.3b Olefin copolymers described in paragraph (a)(3)(ii) of this section, provided that such olefin polymers have a melt temperature of 220 °C to 250 °C (428 °F to 482 °F) as determined by the method described in paragraph (d)(8) of this section and minimum intrinsic viscosity of 1.0 as determined in paragraph (d)(9) of this section.				
* * *	* * *	* * *	* * *	* * *

Substances			Limitations		
*	*	*	*	*	*
Di (<i>n</i> -octyl) phosphite (CAS Reg. No. 1809–14–9).			For use only as an extreme pressure-antiwear adjuvant at a level not to exceed 0.5 percent by weight of the lubricant.		
*	*	*	*	*	*

* * * * *

Dated: December 8, 1999.

L. Robert Lake,*Director, Office of Policy, Planning, and Strategic Initiatives, Center for Food Safety and Applied Nutrition.*

[FR Doc. 99-33095 Filed 12-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 522****Atipamezole; Technical Amendment****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect that Orion Corp. is the correct sponsor of a new animal drug application (NADA) for Atipamezole Injection. When FDA issued the regulation reflecting the NADA approval, Pfizer, Inc., the U.S. agent for Orion Corp., was incorrectly listed as the sponsor of the application. This document corrects that error.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1739.

SUPPLEMENTARY INFORMATION: FDA has discovered an error in the agency's regulations for animal drugs, feeds, and related products. A final rule published in the **Federal Register** of September 17, 1996 (61 FR 48829), added § 522.147 (21 CFR 522.147) and incorrectly stated that Pfizer, Inc., was the sponsor of the NADA. FDA is amending § 522.147 to correctly identify Orion Corp. as the sponsor.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.**§ 522.147 [Amended]**

2. Section 522.147 *Atipamezole hydrochloride* is amended in paragraph (b) by removing "000069" and adding in its place "052483".

Dated: December 14, 1999.

Claire M. Lathers,*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 99-33123 Filed 12-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 529****Certain Other Dosage Form New Animal Drugs; Sevoflurane****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Abbott Laboratories. The NADA provides for use of sevoflurane as an inhalant for induction and maintenance of general anesthesia in dogs.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7543.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064-4000, filed NADA 141-103 that provides for use of SevoFlo™ (sevoflurane) as an inhalant for induction and maintenance of general anesthesia in dogs. The NADA is approved as of November 17, 1999, and the regulations are amended by adding § 529.2150 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen

in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for nonfood producing animals qualifies for 5 years of market exclusivity beginning November 17, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application.

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

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

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

2. Section 529.2150 is added to read as follows:

§ 529.2150 Sevoflurane.

(a) *Specifications.* The drug is a clear, colorless, stable liquid containing no additives or chemical stabilizers.

(b) *Sponsor.* See No. 000074 in § 510.600(c) of this chapter.

(c) *Conditions of use—(1) Amount.* For induction of surgical anesthesia: 5 to 7 percent sevoflurane with oxygen. For maintenance of surgical anesthesia: 3.7 to 4 percent sevoflurane with oxygen in the absence of premedication and 3.3 to 3.6 percent in the presence of premedication.

(2) *Indications for use.* For induction and maintenance of general anesthesia in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 13, 1999.

Stephen F. Sundlof,*Director, Center for Veterinary Medicine.*

[FR Doc. 99-33121 Filed 12-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 602**

[TD 8852]

RIN 1545-AT52

Passthrough of Items of an S Corporation to its Shareholders**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Small Business Job Protection Act of 1996. These regulations provide the public with guidance needed to comply with the applicable law and will affect S corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective August 18, 1998.

Applicability Dates: For dates of applicability, see § 1.1366-5, § 1.1367-3, and § 1.1368-4, plus Transition Rule and Effective Date under

SUPPLEMENTARY INFORMATION.**FOR FURTHER INFORMATION CONTACT:**

Concerning the regulations under section 1366, Martin Schaffer, Deane M. Burke, or David Shulman (202) 622-3070; concerning the regulations under sections 1367 and 1368, Brenda Stewart, (202) 622-3120.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1613. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The burden for this requirement is reflected in the burden of Form 1040, "U.S. Individual Income Tax Return", and Form 1120S, "U.S. Income Tax Return for an S corporation".

Suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR part 1 to provide additional rules under sections 1366, 1367, and 1368 relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

On August 18, 1998, the IRS published in the **Federal Register** (63 FR 44181), a notice of proposed rulemaking (REG-209446-82) regarding sections 1366, 1367, and 1368. Comments responding to the proposed regulations were received. The public hearing was canceled because there were no requests to speak. After considering the comments received, the proposed regulations are adopted as amended by this Treasury decision.

Explanation of Revisions and Summary of Comments**1. Aggregation of Deductions From an S Corporation With Deductions From Other Sources**

The proposed regulations provide that a shareholder of an S corporation must aggregate its separate deductions and exclusions with the shareholder's pro rata share of the S corporation's separately stated deductions or exclusions in determining the allowable amount of any deduction or exclusion that is subject to a limitation in the Code.

The proposed regulations provide an example of this rule for property expensed under section 179. A commentator suggested that the example implies that a shareholder must expense its pro rata share of section 179 expense from the S corporation before it can expense any separately acquired property.

The example is intended to illustrate that a shareholder may expense only up to the amount allowable under section 179 in any given year regardless of

whether the property is owned individually or through an S corporation. The example is not intended to imply that a shareholder must elect to expense property held in an S corporation before it can expense any separately acquired property. However, once an S corporation elects to expense property under section 179, a shareholder will generally elect to expense personal property only to the extent the shareholder's pro rata share of the corporation's section 179 expense does not exceed the shareholder's individual limitation under section 179(b). Accordingly, no modifications have been made to the example in the final regulations.

The commentator also requested that the final regulations provide additional examples that illustrate the aggregation of the shareholder's pro rata share of deductions and exclusions from an S corporation with deductions and exclusions from other sources and the operation of any limitations on those aggregated deductions and exclusions. Specifically, the commentator requested that the final regulations include an example in which the shareholder's aggregate section 179 expenses from several passthrough sources exceeds the maximum section 179 expense allowable. The allocation of the section 179 expense among the various sources is more appropriately addressed in the regulations under section 179 and is beyond the scope of these regulations. Accordingly, the final regulations do not adopt this comment.

2. Recaracterization of Gains and Losses at the Shareholder Level

Generally, the items of an S corporation that are passed through, and reported by, a shareholder are characterized at the corporate level in the same manner that partnership items are characterized at the partnership level.

However, the proposed regulations also contain exceptions to this general rule for contributions of either noncapital gain property or capital loss property if an S corporation is formed or availed of by any shareholder or shareholders for a principal purpose of selling or exchanging the property that in the hands of the shareholder or shareholders would have produced a different character of gain or loss. The character of the gain or loss will be the same as it would have been if the property were in the hands of the shareholder or shareholders at the time of the sale or exchange.

Commentators suggested that, in the absence of a statutory provision like section 724 in the partnership context,

the IRS lacked the authority to recharacterize gain or loss at the shareholder level. Thus, the commentators asserted that the final regulations should not adopt the recharacterization rules. Alternatively, the commentators suggested limiting the recharacterization rule to sales or exchanges occurring within a specified time period.

Unlike the partnership rules, the recharacterization rules in the proposed regulations are limited to transactions in which an S corporation is used for a principal purpose of changing the character of the gain or loss of contributed property. These rules are reasonable approaches to remedying any improper attempts to utilize section 1366(b) to avoid tax. The length of time between the contribution of the property to the S corporation and the S corporation's sale or exchange of the property will be a factor considered in evaluating whether the S corporation was availed of for a principal purpose of changing the character of the gain or loss. However, the final regulations do not adopt any particular time period. Thus, the final regulations retain the recharacterization rules as proposed.

3. Gross Income Reporting Requirement

Section 1366(c), like section 702(c) in the partnership context, provides for the passthrough of gross income to a shareholder for federal income tax purposes. Thus, where it is necessary to determine the amount or character of the gross income of a shareholder, the proposed regulations provide that a shareholder's gross income includes the shareholder's pro rata share of the gross income of the S corporation. This amount is the amount of gross income of the corporation used to derive the shareholder's pro rata share of S corporation taxable income or loss.

A commentator suggested that the rule in the proposed regulations attempts to narrow the disclosure exception under section 6501(e) by applying a pro rata concept with respect to a shareholder's gross income. The commentator recommended that the final regulations not adopt the gross income reporting rules or, alternatively, provide a de minimis exception to the rule for certain shareholders who own minority interests in an S corporation.

The rule in the proposed regulations parallels the rules for determining the amount of gross income reported by a partner in a partnership. See section 702(c); § 1.702-1(c)(2). Accordingly, the final regulations do not adopt this suggestion.

4. Carryover of Disallowed Losses Under Section 1366(d)

Section 1366(d) provides that a shareholder's disallowed losses and deductions for any taxable year shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder. The proposed regulations provide that a shareholder's losses and deductions disallowed under section 1366(d) are personal to the shareholder and cannot in any manner be transferred to another person. A commentator requested that the final regulations provide an exception to this rule for transferees that have an identity of investment interest or common basis with the transferor, such as when stock is transferred incident to divorce under section 1041.

Under section 1366(d), the carryover of disallowed losses and deductions is with respect to the shareholder whose investment limited the items of loss or deduction. Thus, the carryover is not available to a transferee who acquires the stock whether by sale, death, gift, or otherwise. Accordingly, the final regulations retain the rule that disallowed losses and deductions are nontransferable.

The proposed regulations also provide that if a shareholder transfers all of the shareholder's stock in the corporation, any disallowed loss or deduction is permanently disallowed. A commentator suggested that the final regulations permit a former shareholder of an S corporation who subsequently reacquires stock in the S corporation to utilize the losses and deductions previously disallowed to the shareholder.

Losses and deductions that are disallowed in any taxable year carry over under section 1366(d) to the succeeding taxable year of the corporation with respect to a particular shareholder. If a shareholder completely terminates its interest in the corporation, the shareholder will not be a shareholder in the succeeding taxable year of the corporation and the disallowed losses would not carry over. There is no statutory authority for the carryover of disallowed items if a shareholder is not a shareholder in the year succeeding the disallowance. The disallowed items of loss and deduction are amounts that exceed the shareholder's economic investment in the corporation. Once the shareholder terminates its interest in the corporation, it is not necessary to preserve the shareholder's position in the corporation. Thus, the final regulations do not adopt this commentator's suggestion.

5. Basis in S Corporation Stock Received as a Gift

Section 1366(d)(1) limits the amount of corporate losses and deductions that can pass through to, and be deducted by, a shareholder to the shareholder's adjusted basis in the corporation's stock and debt of the corporation to the shareholder.

The proposed regulations provide that, for purposes of section 1366(d)(1), a shareholder's basis in stock acquired by gift is the basis of the stock used for purposes of determining loss under section 1015. Thus, if the fair market value of the stock exceeds the donor's adjusted basis on the date of the gift, for purposes of section 1366(d)(1), the adjusted basis of the stock in the hands of the donee is its adjusted basis in the hands of the donor. However, if the donor's adjusted basis in the stock exceeds the stock's fair market value on the date of the gift, for purposes of section 1366(d)(1), the adjusted basis of the stock in the hands of the donee is the stock's fair market value on the date of the gift.

One commentator argued that the basis for determining loss under section 1015 is applicable only on the disposition of the gifted asset. The basis for determining loss in section 1015 generally does not affect the basis for depreciation or the deductibility of net expenses arising out of the use or operation of the gifted asset.

The proposed regulations, however, apply the loss basis rule in section 1015 not for purposes of determining the depreciable basis of a gifted asset, but rather for purposes of determining the amount of passthrough losses and deductions (including depreciation deductions and operating losses) that are allowable to a shareholder under section 1366. The donee of loss stock cannot dispose of the stock and recognize the loss inherent in the stock on the date of gift. If the donee could use the donor's basis to take depreciation deductions and operating losses of the S corporation, the donee in effect would realize the benefit of the loss inherent in the stock.

Another commentator agreed that the basis for determining loss in section 1015 ought to be the basis of gifted stock for purposes of section 1366. Thus, the final regulations continue to provide that for purposes of section 1366, the basis of stock acquired by gift is the basis for determining loss under section 1015.

6. Allocation of Disallowed Losses in Certain Corporate Separations

The proposed regulations provide rules for the carryover of disallowed

losses and deductions in the case of certain corporate reorganizations. In the case of an S corporation that transfers a part of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, any disallowed loss or deduction with respect to a shareholder of the distributing corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation with respect to the shareholder. The proposed regulations provide that the amount of disallowed loss or deduction allocated to the distributing (or controlled) corporation with respect to the shareholder is an amount that bears the same ratio to each item of disallowed loss or deduction as the value of the shareholder's stock in the distributing (or controlled) corporation bears to the total value of the shareholder's stock in the distributing and controlled corporations, in each case as determined immediately after the distribution.

A commentator suggested that the term value as used in the proposed regulations is ambiguous and that the final regulations should specifically state "fair market value." The commentator also recommended that because the computation of fair market value introduces a host of valuation issues into the transaction, the final regulations should permit an allocation of disallowed losses and deductions based on the relative adjusted bases of the assets of the distributing and controlled corporations. Finally, the commentator requested that the final regulations allow S corporations to allocate disallowed losses and deductions to the controlled or distributing corporation based upon the source of those losses and deductions. The final regulations permit shareholders to allocate disallowed losses and deductions according to any reasonable method, including a method based on the relative fair market value of the shareholder's stock in the distributing and controlled corporations immediately after the distribution, a method based on the relative adjusted bases of the assets in the distributing and controlled corporations immediately after the distribution, or, in the case of losses and deductions clearly attributable to either the distributing or controlled corporation, a method that

allocates such losses and deductions accordingly.

7. Allocation of Tax on Passive Investment Income Under Section 1366(f)(3)

Section 1366(f)(3) provides that if any tax is imposed under section 1375 for a taxable year, each item of passive investment income is reduced by an amount which bears the same ratio to the amount of the tax as the amount of the item bears to the total passive investment income for the taxable year.

A commentator requested guidance in the final regulations on whether the allocation of any tax imposed under section 1375 is made based on the total gross or total net passive investment income. Under section 1375, the amount of excess passive investment income is allocated to the items of passive investment income based on the net passive investment income of the corporation. The allocation of the tax imposed on the excess passive investment income should be similarly allocated. Accordingly, the final regulations clarify that the allocation of any tax under section 1375 is based on the total net passive investment income for the taxable year.

8. Accrual of Charitable Contribution Deductions Under Section 170(a)(2)

The proposed regulations under section 1366 provide that each shareholder must take into account the shareholder's pro rata share of any charitable contributions paid by the corporation during the corporation's taxable year. A commentator requested that the final regulations clarify that separately stated items include charitable contributions paid or deemed to be paid. The commentator suggested that an accrual basis S corporation may elect under section 170(a)(2) to treat charitable contributions as paid in the year prior to the year in which the charitable contribution is actually paid.

Under section 1363(b), S corporations generally compute their taxable income in the same manner as in the case of an individual. However, S corporations are not permitted to take charitable contribution deductions by virtue of the cross reference in section 1363(b)(2) to section 703(a)(2). Instead, the deductions for charitable contributions pass through to the shareholders of the S corporation. Individuals cannot make the election under section 170(a)(2). Treasury and the Service believe that an S corporation also cannot make the election under section 170(a)(2). Accordingly, the final regulations do not adopt this suggestion.

9. Treatment of Section 108 Income

The regulations enumerate items of income (including tax-exempt income), loss, deduction, or credit of an S corporation that must be taken into account separately by each shareholder pursuant to section 1366(a)(1)(A). "Tax-exempt income" does not include income from discharge of indebtedness excluded from income under section 108 because such income is not permanently excludible from income in all circumstances in which section 108 applies. One commentator objected to this treatment of section 108 income, arguing that such income is tax-exempt and that application of section 108 at the S corporation level pursuant to section 108(d)(7)(A) does not preclude the pass-through of section 108 income. Another commentator, however, agreed with the approach taken by the regulations.

Treasury and the Service continue to believe that the absence of a stock basis increase for income of an S corporation excluded under section 108(a) is consistent with the legislative history of section 108 and the specific rules that apply to the discharge of indebtedness income of S corporations. Accordingly, the treatment of section 108 income is unchanged in the final regulations.

10. Adjustment to Basis of Stock

Section 1367(a) and § 1.1367-1 of the proposed regulations prescribe the order of adjustments required by subchapter S to the basis of a shareholder's stock in an S corporation and the manner in which those adjustments are made.

A commentator suggested that the final regulations should provide that life insurance premiums on policies owned by the S corporation do not affect either a shareholder's basis in stock/debt or the corporation's accumulated adjustments account (AAA). The commentator further suggested that § 1.1367-1(c)(2) (relating to noncapital, nondeductible expenses) be amended to make special provision for accounts receivable when debt is restored.

Because these comments relate to provisions in § 1.1367-1 that were not affected by the amendments contained in the proposed regulations, the comments are not reflected in the final regulations.

11. Adjustments Required Before Determining Tax Effect of Distribution

Section 1.1368-2 of the proposed regulations provides rules for determining the source of a distribution made by an S corporation with respect to its stock and the tax effect of the distribution to the shareholders for

taxable years of the corporation beginning on or after August 18, 1998.

One commentator interpreted § 1.1368-2(a)(5) of the proposed regulations, which prescribes the order in which adjustments are made to the AAA for purposes of determining the source of a distribution, as providing that the AAA is adjusted in the same order as the adjustments to the basis of a share of stock under § 1.1367-1 of the proposed regulations. The commentator stated that although the Small Business Job Protection Act of 1996 (1996 Act) changed the order of the adjustments to the basis of a share of stock, the 1996 Act did not change the order of the adjustments to the AAA except in situations involving a net negative adjustment (where the reductions in the account for the taxable year exceed the increases for the taxable year). When a net negative adjustment occurs, the AAA is adjusted to take into account distributions before the AAA is adjusted to take into account any net negative adjustment.

Consistent with the comment received, the final regulations make clear that except in situations involving a net negative adjustment, the order of adjustments to the AAA is not changed. Examples are added to the final regulations to illustrate the effect of the 1996 Act on the AAA ordering rules.

12. Transition Rule and Effective Date Sections 1367 and 1368

Sections 1.1367-3 and 1.1368-4 of the proposed regulations provide that the amendments to the final regulations under section 1367 and 1368 apply only to taxable years of the corporation beginning on or after August 18, 1998.

Commentators suggested that because the amendments to sections 1367 and 1368 under the 1996 Act are effective for taxable years beginning after December 31, 1996, the final regulations should be effective, at least on an elective basis, for the period beginning from the effective date of the 1996 Act and ending on the effective date of the final regulations.

Sections 1.1367-3 and 1.1368-4 of the final regulations reflect this comment and provide that for taxable years beginning on or after January 1, 1997, and before August 18, 1998, the adjustments to the basis of a shareholder's stock and the treatment of distributions by an S corporation, respectively, must be determined in a reasonable manner, taking into account the statute and the legislative history.

Return positions consistent with the final regulations will be considered reasonable.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not impose a collection of information that is not already required by the underlying statute or the current regulations and reflected in the appropriate forms. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal authors of these final regulations are Terri A. Belanger, Deane M. Burke, and Brenda Stewart of the Office of Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Sections 1.1366-0 and 1.1366-1 are added, § 1.1366-2 is revised, and §§ 1.1366-3 through 1.1366-5 are added to read as follows:

§ 1.1366-0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1366-1 through 1.1366-5:

§ 1.1366-1 Shareholder's share of items of an S corporation.

(a) Determination of shareholder's tax liability.

(1) In general.

(2) Separately stated items of income, loss, deduction, or credit.

(3) Nonseparately computed income or loss.

(4) Separate activities requirement.

(5) Aggregation of deductions or exclusions for purposes of limitations.

(b) Character of items constituting pro rata share.

(1) In general.

(2) Exception for contribution of noncapital gain property.

(3) Exception for contribution of capital loss property.

(c) Gross income of a shareholder.

(1) In general.

(2) Gross income for substantial omission of items.

(d) Shareholders holding stock subject to community property laws.

(e) Net operating loss deduction of shareholder of S corporation.

(f) Cross-reference.

§ 1.1366-2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) In general.

(1) Limitation on losses and deductions.

(2) Carryover of disallowance.

(3) Basis limitation amount.

(i) Stock portion.

(ii) Indebtedness portion.

(4) Limitation on losses and deductions allocated to each item.

(5) Nontransferability of losses and deductions.

(6) Basis of stock acquired by gift.

(b) Special rules for carryover of disallowed losses and deductions to post-termination transition period described in section 1377(b).

(1) In general.

(2) Limitation on losses and deductions.

(3) Limitation on losses and deductions allocated to each item.

(4) Adjustment to the basis of stock.

(c) Carryover of disallowed losses and deductions in the case of liquidations, reorganizations, and divisions.

(1) Liquidations and reorganizations.

(2) Corporate separations to which section 368(a)(1)(D) applies.

§ 1.1366-3 Treatment of family groups.

- (a) In general.
- (b) Examples.

§ 1.1366-4 Special rules limiting the passthrough of certain items of an S corporation to its shareholders.

- (a) Passthrough inapplicable to section 34 credit.
- (b) Reduction in passthrough for tax imposed on built-in gains.
- (c) Reduction in passthrough for tax imposed on excess net passive income.

§ 1.1366-5 Effective date.

§ 1.1366-1 Shareholder's share of items of an S corporation.

(a) *Determination of shareholder's tax liability*—(1) *In general.* An S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2), (3), and (4) of this section. A shareholder's pro rata share is determined in accordance with the provisions of section 1377(a) and the regulations thereunder. The shareholder takes these items into account in determining the shareholder's taxable income and tax liability for the shareholder's taxable year with or within which the taxable year of the corporation ends. If the shareholder dies (or if the shareholder is an estate or trust and the estate or trust terminates) before the end of the taxable year of the corporation, the shareholder's pro rata share of these items is taken into account on the shareholder's final return. For the limitation on allowance of a shareholder's pro rata share of S corporation losses or deductions, see section 1366(d) and § 1.1366-2.

(2) *Separately stated items of income, loss, deduction, or credit.* Each shareholder must take into account separately the shareholder's pro rata share of any item of income (including tax-exempt income), loss, deduction, or credit of the S corporation that if separately taken into account by any shareholder could affect the shareholder's tax liability for that taxable year differently than if the shareholder did not take the item into account separately. The separately stated items of the S corporation include, but are not limited to, the following items—

(i) The corporation's combined net amount of gains and losses from sales or exchanges of capital assets grouped by applicable holding periods, by applicable rate of tax under section 1(h), and by any other classification that may be relevant in determining the shareholder's tax liability;

(ii) The corporation's combined net amount of gains and losses from sales or exchanges of property described in section 1231 (relating to property used in the trade or business and involuntary conversions), grouped by applicable holding periods, by applicable rate of tax under section 1(h), and by any other classification that may be relevant in determining the shareholder's tax liability;

(iii) Charitable contributions, grouped by the percentage limitations of section 170(b), paid by the corporation within the taxable year of the corporation;

(iv) The taxes described in section 901 that have been paid (or accrued) by the corporation to foreign countries or to possessions of the United States;

(v) Each of the corporation's separate items involved in the determination of credits against tax allowable under part IV of subchapter A (section 21 and following) of the Internal Revenue Code, except for any credit allowed under section 34 (relating to certain uses of gasoline and special fuels);

(vi) Each of the corporation's separate items of gains and losses from wagering transactions (section 165(d)); soil and water conservation expenditures (section 175); deduction under an election to expense certain depreciable business expenses (section 179); medical, dental, etc., expenses (section 213); the additional itemized deductions for individuals provided in part VII of subchapter B (section 212 and following) of the Internal Revenue Code; and any other itemized deductions for which the limitations on itemized deductions under sections 67 or 68 applies;

(vii) Any of the corporation's items of portfolio income or loss, and expenses related thereto, as defined in the regulations under section 469;

(viii) The corporation's tax-exempt income. For purposes of subchapter S, tax-exempt income is income that is permanently excludible from gross income in all circumstances in which the applicable provision of the Internal Revenue Code applies. For example, income that is excludible from gross

income under section 101 (certain death benefits) or section 103 (interest on state and local bonds) is tax-exempt income, while income that is excludible from gross income under section 108 (income from discharge of indebtedness) or section 109 (improvements by lessee on lessor's property) is not tax-exempt income;

(ix) The corporation's adjustments described in sections 56 and 58, and items of tax preference described in section 57; and

(x) Any item identified in guidance (including forms and instructions) issued by the Commissioner as an item required to be separately stated under this paragraph (a)(2).

(3) *Nonseparately computed income or loss.* Each shareholder must take into account separately the shareholder's pro rata share of the nonseparately computed income or loss of the S corporation. For this purpose, nonseparately computed income or loss means the corporation's gross income less the deductions allowed to the corporation under chapter 1 of the Internal Revenue Code, determined by excluding any item requiring separate computation under paragraph (a)(2) of this section.

(4) *Separate activities requirement.* An S corporation must report, and each shareholder must take into account in the shareholder's return, the shareholder's pro rata share of an S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2) and (3) of this section for each of the corporation's activities as defined in section 469 and the regulations thereunder.

(5) *Aggregation of deductions or exclusions for purposes of limitations*—(i) *In general.* A shareholder aggregates the shareholder's separate deductions or exclusions with the shareholder's pro rata share of the S corporation's separately stated deductions or exclusions in determining the amount of any deduction or exclusion allowable to the shareholder under subtitle A of the Internal Revenue Code as to which a limitation is imposed.

(ii) *Example.* The provisions of paragraph (a)(5)(i) of this section are illustrated by the following example:

Example. In 1999, Corporation M, a calendar year S corporation, purchases and places in service section 179 property costing \$10,000. Corporation M elects to expense the entire cost of the property. Shareholder A

owns 50 percent of the stock of Corporation M. Shareholder A's pro rata share of this item after Corporation M applies the section 179(b) limitations is \$5,000. Because the aggregate amount of Shareholder A's pro rata share and separately acquired section 179 expense may not exceed \$19,000 (the aggregate maximum cost that may be taken into account under section 179(a) for the applicable taxable year), Shareholder A may elect to expense up to \$14,000 of separately acquired section 179 property that is purchased and placed in service in 1999, subject to the limitations of section 179(b).

(b) *Character of items constituting pro rata share*—(1) *In general.* Except as provided in paragraph (b)(2) or (3) of this section, the character of any item of income, loss, deduction, or credit described in section 1366(a)(1)(A) or (B) and paragraph (a) of this section is determined for the S corporation and retains that character in the hands of the shareholder. For example, if an S corporation has capital gain on the sale or exchange of a capital asset, a shareholder's pro rata share of that gain will also be characterized as a capital gain regardless of whether the shareholder is otherwise a dealer in that type of property. Similarly, if an S corporation engages in an activity that is not for profit (as defined in section 183), a shareholder's pro rata share of the S corporation's deductions will be characterized as not for profit. Also, if an S corporation makes a charitable contribution to an organization qualifying under section 170(b)(1)(A), a shareholder's pro rata share of the S corporation's charitable contribution will be characterized as made to an organization qualifying under section 170(b)(1)(A).

(2) *Exception for contribution of noncapital gain property.* If an S corporation is formed or availed of by any shareholder or group of shareholders for a principal purpose of selling or exchanging contributed property that in the hands of the shareholder or shareholders would not have produced capital gain if sold or exchanged by the shareholder or shareholders, then the gain on the sale or exchange of the property recognized by the corporation is not treated as a capital gain.

(3) *Exception for contribution of capital loss property.* If an S corporation is formed or availed of by any shareholder or group of shareholders for a principal purpose of selling or exchanging contributed property that in the hands of the shareholder or shareholders would have produced capital loss if sold or exchanged by the shareholder or shareholders, then the loss on the sale or exchange of the property recognized by the corporation

is treated as a capital loss to the extent that, immediately before the contribution, the adjusted basis of the property in the hands of the shareholder or shareholders exceeded the fair market value of the property.

(c) *Gross income of a shareholder*—(1) *In general.* Where it is necessary to determine the amount or character of the gross income of a shareholder, the shareholder's gross income includes the shareholder's pro rata share of the gross income of the S corporation. The shareholder's pro rata share of the gross income of the S corporation is the amount of gross income of the corporation used in deriving the shareholder's pro rata share of S corporation taxable income or loss (including items described in section 1366(a)(1)(A) or (B) and paragraph (a) of this section). For example, a shareholder is required to include the shareholder's pro rata share of S corporation gross income in computing the shareholder's gross income for the purposes of determining the necessity of filing a return (section 6012(a)) and the shareholder's gross income derived from farming (sections 175 and 6654(i)).

(2) *Gross income for substantial omission of items*—(i) *In general.* For purposes of determining the applicability of the 6-year period of limitation on assessment and collection provided in section 6501(e) (relating to omission of more than 25 percent of gross income), a shareholder's gross income includes the shareholder's pro rata share of S corporation gross income (as described in section 6501(e)(1)(A)(i)). In this respect, the amount of S corporation gross income used in deriving the shareholder's pro rata share of any item of S corporation income, loss, deduction, or credit (as included or disclosed in the shareholder's return) is considered as an amount of gross income stated in the shareholder's return for purposes of section 6501(e).

(ii) *Example.* The following example illustrates the provisions of paragraph (c)(2)(i) of this section:

Example. Shareholder A, an individual, owns 25 percent of the stock of Corporation N, an S corporation that has \$10,000 gross income and \$2,000 taxable income. A reports only \$300 as A's pro rata share of N's taxable income. A should have reported \$500 as A's pro rata share of taxable income, derived from A's pro rata share, \$2,500, of N's gross income. Because A's return included only \$300 without a disclosure meeting the requirements of section 6501(e)(1)(A)(ii) describing the difference of \$200, A is regarded as having reported on the return only \$1,500 (\$300/\$500 of \$2,500) as gross income from N.

(d) *Shareholders holding stock subject to community property laws.* If a shareholder holds S corporation stock that is community property, then the shareholder's pro rata share of any item or items listed in paragraphs (a)(2), (3), and (4) of this section with respect to that stock is reported by the husband and wife in accordance with community property rules.

(e) *Net operating loss deduction of shareholder of S corporation.* For purposes of determining a net operating loss deduction under section 172, a shareholder of an S corporation must take into account the shareholder's pro rata share of items of income, loss, deduction, or credit of the corporation. See section 1366(b) and paragraph (b) of this section for rules on determining the character of the items. In determining under section 172(d)(4) the nonbusiness deductions allowable to a shareholder of an S corporation (arising from both corporation sources and any other sources), the shareholder separately takes into account the shareholder's pro rata share of the deductions of the corporation that are not attributable to a trade or business and combines this amount with the shareholder's nonbusiness deductions from any other sources. The shareholder also separately takes into account the shareholder's pro rata share of the gross income of the corporation not derived from a trade or business and combines this amount with the shareholder's nonbusiness income from all other sources. See section 172 and the regulations thereunder.

(f) *Cross-reference.* For rules relating to the consistent tax treatment of subchapter S items, see section 6037(c).

§ 1.1366-2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) *In general*—(1) *Limitation on losses and deductions.* The aggregate amount of losses and deductions taken into account by a shareholder under § 1.1366-1(a) (2), (3), and (4) for any taxable year of an S corporation cannot exceed the sum of—

(i) The adjusted basis of the shareholder's stock in the corporation (as determined under paragraph (a)(3)(i) of this section); and

(ii) The adjusted basis of any indebtedness of the corporation to the shareholder (as determined under paragraph (a)(3)(ii) of this section).

(2) *Carryover of disallowance.* A shareholder's aggregate amount of losses and deductions for a taxable year in excess of the sum of the adjusted basis of the shareholder's stock in an S corporation and of any indebtedness of

the S corporation to the shareholder is not allowed for the taxable year. However, any disallowed loss or deduction retains its character and is treated as incurred by the corporation in the corporation's first succeeding taxable year, and subsequent taxable years, with respect to the shareholder. For rules on determining the adjusted bases of stock of an S corporation and indebtedness of the corporation to the shareholder, see paragraphs (a)(3)(i) and (ii) of this section.

(3) *Basis limitation amount*—(i) *Stock portion.* A shareholder generally determines the adjusted basis of stock for purposes of paragraphs (a)(1)(i) and (2) of this section (limiting losses and deductions) by taking into account only increases in basis under section 1367(a)(1) for the taxable year and decreases in basis under section 1367(a)(2) (A), (D) and (E) (relating to distributions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions) for the taxable year. In so determining this loss limitation amount, the shareholder disregards decreases in basis under section 1367(a)(2) (B) and (C) (for losses and deductions, including losses and deductions previously disallowed) for the taxable year. However, if the shareholder has in effect for the taxable year an election under § 1.1367-1(g) to decrease basis by items of loss and deduction prior to decreasing basis by noncapital, nondeductible expenses and certain oil and gas depletion deductions, the shareholder also disregards decreases in basis under section 1367(a)(2) (D) and (E). This basis limitation amount for stock is determined at the time prescribed under § 1.1367-1(d)(1) for adjustments to the basis of stock.

(ii) *Indebtedness portion.* A shareholder determines the shareholder's adjusted basis in indebtedness of the corporation for purposes of paragraphs (a)(1)(ii) and (2) of this section (limiting losses and deductions) without regard to any adjustment under section 1367(b)(2)(A) for the taxable year. This basis limitation amount for indebtedness is determined at the time prescribed under § 1.1367-2(d)(1) for adjustments to the basis of indebtedness.

(4) *Limitation on losses and deductions allocated to each item.* If a shareholder's pro rata share of the aggregate amount of losses and deductions specified in § 1.1366-1(a)(2), (3), and (4) exceeds the sum of the adjusted basis of the shareholder's stock in the corporation (determined in accordance with paragraph (a)(3)(i) of this section) and the adjusted basis of

any indebtedness of the corporation to the shareholder (determined in accordance with paragraph (a)(3)(ii) of this section), then the limitation on losses and deductions under section 1366(d)(1) must be allocated among the shareholder's pro rata share of each loss or deduction. The amount of the limitation allocated to any loss or deduction is an amount that bears the same ratio to the amount of the limitation as the loss or deduction bears to the total of the losses and deductions. For this purpose, the total of losses and deductions for the taxable year is the sum of the shareholder's pro rata share of losses and deductions for the taxable year, and the losses and deductions disallowed and carried forward from prior years pursuant to section 1366(d)(2).

(5) *Nontransferability of losses and deductions.* Any loss or deduction disallowed under paragraph (a)(1) of this section is personal to the shareholder and cannot in any manner be transferred to another person. If a shareholder transfers some but not all of the shareholder's stock in the corporation, the amount of any disallowed loss or deduction under this section is not reduced and the transferee does not acquire any portion of the disallowed loss or deduction. If a shareholder transfers all of the shareholder's stock in the corporation, any disallowed loss or deduction is permanently disallowed.

(6) *Basis of stock acquired by gift.* For purposes of section 1366(d)(1)(A) and paragraphs (a)(1)(i) and (2) of this section, the basis of stock in a corporation acquired by gift is the basis of the stock that is used for purposes of determining loss under section 1015(a).

(b) *Special rules for carryover of disallowed losses and deductions to post-termination transition period described in section 1377(b)*—(1) *In general.* If, for the last taxable year of a corporation for which it was an S corporation, a loss or deduction was disallowed to a shareholder by reason of the limitation in paragraph (a) of this section, the loss or deduction is treated under section 1366(d)(3) as incurred by that shareholder on the last day of any post-termination transition period (within the meaning of section 1377(b)).

(2) *Limitation on losses and deductions.* The aggregate amount of losses and deductions taken into account by a shareholder under paragraph (b)(1) of this section cannot exceed the adjusted basis of the shareholder's stock in the corporation determined at the close of the last day of the post-termination transition period. For this purpose, the adjusted

basis of a shareholder's stock in the corporation is determined at the close of the last day of the post-termination transition period without regard to any reduction required under paragraph (b)(4) of this section. If a shareholder disposes of a share of stock prior to the close of the last day of the post-termination transition period, the adjusted basis of that share is its basis as of the close of the day of disposition. Any losses and deductions in excess of a shareholder's adjusted stock basis are permanently disallowed. For purposes of section 1366(d)(3)(B) and this paragraph (b)(2), the basis of stock in a corporation acquired by gift is the basis of the stock that is used for purposes of determining loss under section 1015(a).

(3) *Limitation on losses and deductions allocated to each item.* If the aggregate amount of losses and deductions treated as incurred by the shareholder under paragraph (b)(1) of this section exceeds the adjusted basis of the shareholder's stock determined under paragraph (b)(2) of this section, the limitation on losses and deductions under section 1366(d)(3)(B) must be allocated among each loss or deduction. The amount of the limitation allocated to each loss or deduction is an amount that bears the same ratio to the amount of the limitation as the amount of each loss or deduction bears to the total of all the losses and deductions.

(4) *Adjustment to the basis of stock.* The shareholder's basis in the stock of the corporation is reduced by the amount allowed as a deduction by reason of this paragraph (b). For rules regarding adjustments to the basis of a shareholder's stock in an S corporation, see § 1.1367-1.

(c) *Carryover of disallowed losses and deductions in the case of liquidations, reorganizations, and divisions*—(1) *Liquidations and reorganizations.* If a corporation acquires the assets of an S corporation in a transaction to which section 381(a) applies, any loss or deduction disallowed under paragraph (a) of this section with respect to a shareholder of the distributor or transferor S corporation is available to that shareholder as a shareholder of the acquiring corporation. Thus, where the acquiring corporation is an S corporation, a loss or deduction of a shareholder of the distributor or transferor S corporation disallowed prior to or during the taxable year of the transaction is treated as incurred by the acquiring S corporation with respect to that shareholder if the shareholder is a shareholder of the acquiring S corporation after the transaction. Where the acquiring corporation is a C corporation, a post-termination

transition period arises the day after the last day that an S corporation was in existence and the rules provided in paragraph (b) of this section apply with respect to any shareholder of the acquired S corporation that is also a shareholder of the acquiring C corporation after the transaction. See the special rules under section 1377 for the availability of the post-termination transition period if the acquiring corporation is a C corporation.

(2) *Corporate separations to which section 368(a)(1)(D) applies.* If an S corporation transfers a portion of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, any loss or deduction disallowed under paragraph (a) of this section with respect to a shareholder of the distributing S corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation with respect to the shareholder. Such allocation shall be made according to any reasonable method, including a method based on the relative fair market value of the shareholder's stock in the distributing and controlled corporations immediately after the distribution, a method based on the relative adjusted basis of the assets in the distributing and controlled corporations immediately after the distribution, or, in the case of losses and deductions clearly attributable to either the distributing or controlled corporation, any method that allocates such losses and deductions accordingly.

§ 1.1366-3 Treatment of family groups.

(a) *In general.* Under section 1366(e), if an individual, who is a member of the family of one or more shareholders of an S corporation, renders services for, or furnishes capital to, the corporation without receiving reasonable compensation, the Commissioner shall prescribe adjustments to those items taken into account by the individual and the shareholders as may be necessary to reflect the value of the services rendered or capital furnished. For these purposes, in determining the reasonable value for services rendered, or capital furnished, to the corporation, consideration will be given to all the facts and circumstances, including the amount that ordinarily would be paid in order to obtain comparable services or capital from a person (other than a

member of the family) who is not a shareholder in the corporation. In addition, for purposes of section 1366(e), if a member of the family of one or more shareholders of the S corporation holds an interest in a passthrough entity (e.g., a partnership, S corporation, trust, or estate), that performs services for, or furnishes capital to, the S corporation without receiving reasonable compensation, the Commissioner shall prescribe adjustments to the passthrough entity and the corporation as may be necessary to reflect the value of the services rendered or capital furnished. For purposes of section 1366(e), the term *family* of any shareholder includes only the shareholder's spouse, ancestors, lineal descendants, and any trust for the primary benefit of any of these persons.

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. The stock of an S corporation is owned 50 percent by F and 50 percent by T, the minor son of F. For the taxable year, the corporation has items of taxable income equal to \$70,000. Compensation of \$10,000 is paid by the corporation to F for services rendered during the taxable year, and no compensation is paid to T, who rendered no services. Based on all the relevant facts and circumstances, reasonable compensation for the services rendered by F would be \$30,000. In the discretion of the Internal Revenue Service, up to an additional \$20,000 of the \$70,000 of the corporation's taxable income, for tax purposes, may be allocated to F as compensation for services rendered. If the Internal Revenue Service allocates \$20,000 of the corporation's taxable income to F as compensation for services, taxable income of the corporation would be reduced by \$20,000 to \$50,000, of which F and T each would be allocated \$25,000. F would have \$30,000 of total compensation paid by the corporation for services rendered.

Example 2. The stock of an S corporation is owned by A and B. For the taxable year, the corporation has paid compensation to a partnership that rendered services to the corporation during the taxable year. The spouse of A is a partner in that partnership. Consequently, if based on all the relevant facts and circumstances the partnership did not receive reasonable compensation for the services rendered to the corporation, the Internal Revenue Service, in its discretion, may make adjustments to those items taken into account by the partnership and the corporation as may be necessary to reflect the value of the services rendered.

§ 1.1366-4 Special rules limiting the passthrough of certain items of an S corporation to its shareholders.

(a) *Passthrough inapplicable to section 34 credit.* Section 1.1366-1(a) does not apply to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(b) *Reduction in passthrough for tax imposed on built-in gains.* For purposes of § 1.1366-1(a), if for any taxable year of the S corporation a tax is imposed on the corporation under section 1374, the amount of the tax imposed is treated as a loss sustained by the S corporation during the taxable year. The character of the deemed loss is determined by allocating the loss proportionately among the net recognized built-in gains giving rise to the tax and attributing the character of each net recognized built-in gain to the allocable portion of the loss.

(c) *Reduction in passthrough for tax imposed on excess net passive income.* For purposes of § 1.1366-1(a), if for any taxable year of the S corporation a tax is imposed on the corporation under section 1375, each item of passive investment income shall be reduced by an amount that bears the same ratio to the amount of the tax as the amount of the item bears to the total net passive investment income for that taxable year.

§ 1.1366-5 Effective date.

Sections 1.1366-1 through 1.1366-4 apply to taxable years of an S corporation beginning on or after August 18, 1998.

Par. 3. Section 1.1367-0 is amended in the table as follows:

1. The entries for § 1.1367-1 (e) through (g) are revised.
2. The entries for § 1.1367-1 (h) through (j) are added.

The additions and revisions read as follows:

§ 1.1367-0	Table of contents.
* * *	
§ 1.1367-1	Adjustments to basis of shareholder's stock in an S corporation.
* * *	
(e)	Ordering rules for taxable years beginning before January 1, 1997.
(f)	Ordering rules for taxable years beginning on or after August 18, 1998.
(g)	Elective ordering rule.
(h)	Examples.
(i)	[Reserved]
(j)	Adjustments for items of income in respect of a decedent.
* * *	

Par. 4. Section 1.1367-1 is amended as follows:

1. The paragraph heading and introductory text of paragraph (e) are revised.
2. Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h), respectively.
3. New paragraph (f) is added.
4. The first and second sentences of newly designated paragraph (g) are revised.
5. Newly designated paragraph (h) is amended as follows:
 - a. The heading for *Example 1* is revised.

b. *Example 2* and *Example 3* are redesignated as *Example 3* and *Example 4*, respectively.

c. New *Example 2* is added.

d. The heading of newly designated *Example 4* is revised.

e. *Example 5* is added.

6. Paragraph (i) is added and reserved and paragraph (j) is added.

The additions and revisions read as follows:

§ 1.1367-1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(e) *Ordering rules for taxable years beginning before January 1, 1997.* For any taxable year of a corporation beginning before January 1, 1997, except as provided in paragraph (g) of this section, the adjustments required by section 1367(a) are made in the following order—

* * * * *

(f) *Ordering rules for taxable years beginning on or after August 18, 1998.* For any taxable year of a corporation beginning on or after August 18, 1998, except as provided in paragraph (g) of this section, the adjustments required by section 1367(a) are made in the following order—

(1) Any increase in basis attributable to the income items described in section 1367(a)(1)(A) and (B), and the excess of the deductions for depletion described in section 1367(a)(1)(C);

(2) Any decrease in basis attributable to a distribution by the corporation described in section 1367(a)(2)(A);

(3) Any decrease in basis attributable to noncapital, nondeductible expenses described in section 1367(a)(2)(D), and the oil and gas depletion deduction described in section 1367(a)(2)(E); and

(4) Any decrease in basis attributable to items of loss or deduction described in section 1367(a)(2)(B) and (C).

(g) *Elective ordering rule.* A shareholder may elect to decrease basis under paragraph (e)(3) or (f)(4) of this section, whichever applies, prior to decreasing basis under paragraph (e)(2) or (f)(3) of this section, whichever applies. If a shareholder makes this election, any amount described in paragraph (e)(2) or (f)(3) of this section, whichever applies, that is in excess of the shareholder's basis in stock and indebtedness is treated, solely for purposes of this section, as an amount described in paragraph (e)(2) or (f)(3) of this section, whichever applies, in the succeeding taxable year. * * *

(h) * * *

Example 1. Adjustments to basis of stock for taxable years beginning before January 1, 1997. * * *

Example 2. Adjustments to basis of stock for taxable years beginning on or after August

18, 1998. (i) On December 31, 2001, A owns a block of 50 shares of stock with an adjusted basis per share of \$6 in Corporation S. On December 31, 2001, A purchases for \$400 an additional block of 50 shares of stock with an adjusted basis of \$8 per share. Thus, A holds 100 shares of stock for each day of the 2002 taxable year. For S's 2002 taxable year, A's pro rata share of the amount of items described in section 1367(a)(1)(A) (relating to increases in basis of stock) is \$300, and A's pro rata share of the amount of the items described in section 1367(a)(2)(B) (relating to decreases in basis of stock attributable to items of loss and deduction) is \$300, and A's pro rata share of the amount of the items described in section 1367(a)(2)(D) (relating to decreases in basis of stock attributable to noncapital, nondeductible expenses) is \$200. S makes a distribution to A in the amount of \$100 during 2002.

(ii) Pursuant to the ordering rules of paragraph (f) of this section, A first increases the basis of each share of stock by \$3 (\$300/100 shares) and then decreases the basis of each share by \$1 (\$100/100 shares) for the distribution. A next decreases the basis of each share by \$2 (\$200/100 shares) for the noncapital, nondeductible expenses and then decreases the basis of each share by \$3 (\$300/100 shares) for the items of loss. Thus, on January 1, 2003, A has a basis of \$3 per share in the original block of 50 shares (\$6 + \$3 - \$1 - \$2 - \$3) and a basis of \$5 per share in the second block of 100 shares (\$8 + \$3 - \$1 - \$2 - \$3).

* * * * *

Example 4. Effects of section 1377(a)(2) election and distribution on basis of stock for taxable years beginning before January 1, 1997. * * *

Example 5. Effects of section 1377(a)(2) election and distribution on basis of stock for taxable years beginning on or after August 18, 1998. (i) The facts are the same as in *Example 4*, except that all of the events occur in 2001 rather than in 1994 and except as follows: On June 30, 2001, B sells 25 shares of her stock for \$5,000 to D and 25 shares back to Corporation S for \$5,000. Under section 1377(a)(2)(B) and § 1.1377-1(b)(2), B and C are affected shareholders because B has transferred shares to Corporation S. Pursuant to section 1377(a)(2)(A) and § 1.1377-1(b)(1), B and C, the affected shareholders, and Corporation S agree to treat the taxable year 2001 as if it consisted of two separate taxable years for all affected shareholders for the purposes set forth in § 1.1377-1(b)(3)(i).

(ii) On June 30, 2001, B and C, pursuant to the ordering rules of paragraph (f)(1) of this section, increase the basis of each share by \$60 (\$6,000/100 shares) for the nonseparately computed income. Then B and C reduce the basis of each share by \$120 (\$12,000/100 shares) for the distribution. Finally, B and C decrease the basis of each share by \$40 (\$4,000/100 shares) for the separately stated deduction item.

(iii) The basis of the stock of B is reduced from \$120 to \$20 per share (\$120 + \$60 - \$120 - \$40). Prior to accounting for the separately stated deduction item, the basis of the stock of C is reduced from \$80 to \$20 (\$80 + \$60 - \$120). Finally, because the

period from January 1 through June 30, 2001 is treated under § 1.1377-1(b)(3)(i) as a separate taxable year for purposes of making adjustments to the basis of stock, under section 1366(d) and § 1.1366-2(a)(2), C may deduct only \$20 per share of the remaining \$40 of the separately stated deduction item, and the basis of the stock of C is reduced from \$20 per share to \$0 per share. Under section 1366 and § 1.1366-2(a)(2), C's remaining separately stated deduction item of \$20 per share is treated as having been incurred in the first succeeding taxable year of Corporation S, which, for this purpose, begins on July 1, 2001.

(i) [Reserved]

(j) *Adjustments for items of income in respect of a decedent.* The basis determined under section 1014 of any stock in an S corporation is reduced by the portion of the value of the stock that is attributable to items constituting income in respect of a decedent. For the determination of items realized by an S corporation constituting income in respect of a decedent, see sections 1367(b)(4)(A) and 691 and applicable regulations thereunder. For the determination of the allowance of a deduction for the amount of estate tax attributable to income in respect of a decedent, see section 691(c) and applicable regulations thereunder.

Par. 5. § 1.1367-3 is revised to read as follows:

§ 1.1367-3 Effective date and transition rule.

Except for § 1.1367-1(f), (h) *Example 2* and *Example 5*, and (j), §§ 1.1367-1 and 1.1367-2 apply to taxable years of the corporation beginning on or after January 1, 1994. Section 1.1367-1(f), (h) *Example 2* and *Example 5*, and (j) apply only to taxable years of the corporation beginning on or after August 18, 1998. For taxable years beginning before January 1, 1994, and taxable years beginning on or after January 1, 1997, and before August 18, 1998, the basis of a shareholder's stock must be determined in a reasonable manner, taking into account the statute and legislative history. Except for § 1.1367-1(f), (h) *Example 2* and *Example 5*, and (j), return positions consistent with §§ 1.1367-1 and 1.1367-2 are reasonable for taxable years beginning before January 1, 1994. Return positions consistent with § 1.1367-1(f), (h) *Example 2* and *Example 5*, and (j) are reasonable for taxable years beginning on or after January 1, 1997, and before August 18, 1998.

Par. 6. Section 1.1368-0 is amended in the table as follows:

1. The entry for § 1.1368-1(e) is revised and entries for § 1.1368-1(e)(1) and (2) are added.

2. The entry for § 1.1368-2(a)(4) is revised.

3. An entry for § 1.1368-2(a)(5) is added.

4. The entry for § 1.1368-2(d) is revised.

The additions and revisions read as follows:

§ 1.1368-0 Table of contents.

* * * * *

§ 1.1368-1 Distributions by S corporations.

* * * * *

(e) Certain adjustments taken into account.

(1) Taxable years beginning before January 1, 1997.

(2) Taxable years beginning on or after August 18, 1998.

* * * * *

§ 1.1368-2 Accumulated adjustments account (AAA).

(a) * * *

(4) Ordering rules for the AAA for taxable years beginning before January 1, 1997.

(5) Ordering rules for the AAA for taxable years beginning on or after August 18, 1998.

* * * * *

(d) Adjustment in the case of redemptions, liquidations, reorganizations, and divisions.

* * * * *

Par. 7. Section 1.1368-1 is amended by revising paragraphs (d)(1) and (e) to read as follows:

§ 1.1368-1 Distributions by S corporations.

* * * * *

(d) *S corporation with earnings and profits*—(1) *General treatment of distribution.* Except as provided in paragraph (d)(2) of this section, a distribution made with respect to its stock by an S corporation that has accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(c). See section 316 and § 1.316-2 for provisions relating to the allocation of earnings and profits among distributions.

* * * * *

(e) *Certain adjustments taken into account*—(1) *Taxable years beginning before January 1, 1997.* For any taxable year of the corporation beginning before January 1, 1997, paragraphs (c) and (d) of this section are applied only after taking into account—

(i) The adjustments to the basis of the shares of a shareholder's stock described in section 1367 (without regard to section 1367(a)(2)(A) (relating to decreases attributable to distributions not includible in income)) for the S corporation's taxable year; and

(ii) The adjustments to the AAA required by section 1368(e)(1)(A) (but

without regard to the adjustments for distributions under § 1.1368-2(a)(3)(iii)) for the S corporation's taxable year.

(2) *Taxable years beginning on or after August 18, 1998.* For any taxable year of the corporation beginning on or after August 18, 1998, paragraphs (c) and (d) of this section are applied only after taking into account—

(i) The adjustments to the basis of the shares of a shareholder's stock described in section 1367(a)(1) (relating to increases in basis of stock) for the S corporation's taxable year; and

(ii) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368-2(a)(3)(iii)) for the S corporation's taxable year. Any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)) for the taxable year shall not be taken into account.

* * * * *

Par. 8. Section 1.1368-2 is amended as follows:

1. Paragraphs (a)(1) and (a)(3)(ii), and the paragraph heading and introductory text of paragraph (a)(4) are revised.

2. Paragraph (a)(5) is added.

3. The paragraph heading for paragraph (d) is revised.

The additions and revisions read as follows:

§ 1.1368-2 Accumulated adjustments account (AAA).

(a) *Accumulated adjustments account*—(1) *In general.* The accumulated adjustments account is an account of the S corporation and is not apportioned among shareholders. The AAA is relevant for all taxable years beginning on or after January 1, 1983, for which the corporation is an S corporation. On the first day of the first year for which the corporation is an S corporation, the balance of the AAA is zero. The AAA is increased in the manner provided in paragraph (a)(2) of this section and is decreased in the manner provided in paragraph (a)(3) of this section. For the adjustments to the AAA in the case of redemptions, liquidations, reorganizations, and corporate separations, see paragraph (d) of this section.

* * * * *

(3) * * *

(ii) *Extent of allowable reduction.* The AAA may be decreased under paragraph (a)(3)(i) of this section below zero. The AAA is decreased by noncapital, nondeductible expenses under paragraph (a)(3)(i)(C) of this section even though a portion of the noncapital, nondeductible expenses is not taken into account by a shareholder under § 1.1367-1(g) (relating to the elective ordering rule). The AAA is also

decreased by the entire amount of any loss or deduction even though a portion of the loss or deduction is not taken into account by a shareholder under section 1366(d)(1) or is otherwise not currently deductible under the Internal Revenue Code. However, in any subsequent taxable year in which the loss, deduction, or noncapital, nondeductible expense is treated as incurred by the corporation with respect to the shareholder under section 1366(d)(2) or § 1.1367-1(g) (or in which the loss or deduction is otherwise allowed to the shareholder), no further adjustment is made to the AAA.

* * * * *

(4) *Ordering rules for the AAA for taxable years beginning before January 1, 1997.* For any taxable year beginning before January 1, 1997, the adjustments to the AAA are made in the following order—

* * * * *

(5) *Ordering rules for the AAA for taxable years beginning on or after August 18, 1998.* For any taxable year of the S corporation beginning on or after August 18, 1998, the adjustments to the AAA are made in the following order—

(i) The AAA is increased under paragraph (a)(2) of this section before it is decreased under paragraph (a)(3)(i) of this section for the taxable year;

(ii) The AAA is decreased under paragraph (a)(3)(i) of this section (without taking into account any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)) before it is decreased under paragraph (a)(3)(iii) of this section;

(iii) The AAA is decreased (but not below zero) by any portion of an ordinary distribution to which section 1368(b) or (c)(1) applies;

(iv) The AAA is decreased by any net negative adjustment (as defined in section 1368(e)(1)(C)(ii)); and

(v) The AAA is adjusted (whether negative or positive) for redemption distributions under paragraph (d)(1) of this section.

* * * * *

(d) *Adjustment in the case of redemptions, liquidations, reorganizations, and divisions* * * *

Par. 9. Section 1368-3 is amended as follows:

1. The heading for *Example 1* is revised.

2. *Example 3* through *Example 6* are redesignated as *Example 6* through *Example 9*, respectively.

3. *Example 2* is redesignated as *Example 3*.

4. The heading for newly redesignated *Example 3* is revised.

5. New *Example 2*, *Example 4*, and *Example 5* are added.

The revisions and additions read as follows:

§ 1.1368-3 Examples.

* * * * *

Example 1. Distributions by S corporations without C corporation earnings and profits for taxable years beginning before January 1, 1997. * * *

Example 2. Distributions by S corporations without earnings and profits for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has no earnings and profits as of January 1, 2001, the first day of its 2001 taxable year. S's sole shareholder, A, holds 10 shares of S stock with a basis of \$1 per share as of that date. On March 1, 2001, S makes a distribution of \$38 to A. The balance in Corporation S's AAA is \$100. For S's 2001 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is \$50. A's pro rata share of the amount of the items described in sections 1367(a)(2)(B) through (D) (relating to decreases in basis of stock for items other than distributions) is \$26, \$20 of which is attributable to items described in section 1367(a)(2)(B) and (C) and \$6 of which is attributable to items described in section 1367(a)(2)(D) (relating to decreases in basis attributable to noncapital, nondeductible expenses).

(ii) Under section 1368(d)(1) and § 1.1368-1(e)(1) and (2), the adjustments to the basis of A's stock in S described in sections 1367(a)(1) are made before the distribution rules of section 1368 are applied. Thus, A's basis per share in the stock is \$6.00 (\$1 + [\$50/10]) before taking into account the distribution. Under section 1367(a)(2)(A), the basis of A's stock is decreased by distributions to A that are not includible in A's income. Under § 1.1367-1(c)(3), the amount of the distribution that is attributable to each share of A's stock is \$3.80 (\$38 distribution/10 shares). Thus, A's basis per share in the stock is \$2.20 (\$6.00-\$3.80), after taking into account the distribution. Under section 1367(a)(2)(D), the basis of each share of A's stock in S after taking into account the distribution, \$2.20, is decreased by \$.60 (\$6 noncapital, nondeductible expenses/10). Thus, A's basis per share after taking into account the nondeductible, noncapital expenses is \$1.60. Under section 1367(a)(2)(B) and (C), A's basis per share is further decreased by \$2 (\$20 items described in section 1367(a)(2)(B) and (C)/10 shares). However, basis may not be reduced below zero. Therefore, the basis of each share of A's stock is reduced to zero. As of January 1, 2002, A has a basis of \$0 in his shares of S stock. Pursuant to section 1366(d)(2), the \$.40 of loss in excess of A's basis in each of his shares of S stock is treated as incurred by the corporation in the succeeding taxable year with respect to A.

Example 3. Distributions by S corporations with C corporation earnings and profits for taxable years beginning before January 1, 1997. * * *

Example 4. Distributions by S corporations with earnings and profits and no net negative adjustment for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has accumulated earnings and profits of \$1,000 and a balance in the AAA of \$2,000 on January 1, 2001. S's sole shareholder B holds 100 shares of stock with a basis of \$20 per share as of January 1, 2001. On April 1, 2001, S makes a distribution of \$1,500 to B. B's pro rata share of the income earned by S during 2001 is \$2,000 and B's pro rata share of S's losses is \$1,500. For the taxable year ending December 31, 2001, S does not have a net negative adjustment as defined in section 1368(e)(1)(C). S does not make the election under section 1368(e)(3) and § 1.1368-1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The AAA is increased from \$2,000 to \$4,000 for the \$2,000 of income earned during the 2001 taxable year. The AAA is decreased from \$4,000 to \$2,500 for the \$1,500 of losses. The AAA is decreased from \$2,500 to \$1,000 for the portion of the distribution (\$1,500) to B that does not exceed the AAA.

(iii) As of December 31, 2001, B's basis in his stock is \$10 (\$20 + \$20 (\$2,000 income/100 shares)—\$15 (\$1,500 distribution/100 shares)—\$15 (\$1,500 loss/100 shares).

Example 5. Distributions by S corporations with earnings and profits and net negative adjustment for taxable years beginning on or after August 18, 1998. (i) Corporation S, an S corporation, has accumulated earnings and profits of \$1,000 and a balance in the AAA of \$2,000 on January 1, 2001. S's sole shareholder B holds 100 shares of stock with a basis of \$20 per share as of January 1, 2001. On April 1, 2001, S makes a distribution of \$2,000 to B. B's pro rata share of the income earned by S during 2001 is \$2,000 and B's pro rata share of S's losses is \$3,500. For the taxable year ending December 31, 2001, S has a net negative adjustment as defined in section 1368(e)(1)(C). S does not make the election under section 1368(e)(3) and § 1.1368-1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The AAA is increased from \$2,000 to \$4,000 for the \$2,000 of income earned during the 2001 taxable year. Because under section 1368(e)(1)(C)(ii) and § 1.1368-2(a)(ii), the net negative adjustment is not taken into account, the AAA is decreased from \$4,000 to \$2,000 for the portion of the losses (\$2,000) that does not exceed the income earned during the 2001 taxable year. The AAA is reduced from \$2,000 to zero for the portion of the distribution to B (\$2,000) that does not exceed the AAA. The AAA is decreased from zero to a negative \$1,500 for the portion of the \$3,500 of loss that exceeds the \$2,000 of income earned during the 2001 taxable year.

(iii) Under § 1.1367-1(c)(1), the basis of a shareholder's share in an S corporation stock may not be reduced below zero. Accordingly, as of December 31, 2001, B's basis per share in his stock is zero (\$20 + \$20 income—\$20 distribution—\$35 loss). Pursuant to section 1366(d)(2), the \$15 of loss in excess of B's basis in each of his shares of S stock is treated as incurred by the corporation in the succeeding taxable year with respect to B.

* * * * *

Par. 10. § 1.1368-4 is revised to read as follows:

§ 1.1368-4 Effective date and transition rule.

Except for §§ 1.1368-1(e)(2), 1.1368-2(a)(5), and 1.1368-3 *Example 2*, *Example 4*, and *Example 5*, §§ 1.1368-1, 1.1368-2, and 1.1368-3 apply to taxable years of the corporation beginning on or after January 1, 1994. Section 1.1368-1(e)(2), § 1.1368-2(a)(5), and § 1.1368-3 *Example 2*, *Example 4*, and *Example 5* apply only to taxable years of the corporation beginning on or after August 18, 1998. For taxable years beginning before January 1, 1994, and taxable years beginning on or after January 1, 1997, and before August 18, 1998, the treatment of distributions by an S corporation to its shareholders must be determined in a reasonable manner, taking into account the statute and legislative history. Except with regard to the deemed dividend rule under § 1.1368-1(f)(3), § 1.1368-1(e)(2), § 1.1368-2(a)(5), and § 1.1368-3 *Example 2*, *Example 4*, and *Example 5*, return positions consistent with §§ 1.1368-1, 1.1368-2, and 1.1368-3 are reasonable for taxable years beginning before January 1, 1994. Return positions consistent with §§ 1.1368-1(e)(2), 1.1368-2(a)(5), and 1.1368-3 *Example 2*, *Example 4*, and *Example 5* are reasonable for taxable years beginning on or after January 1, 1997, and before August 18, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. In § 602.101, paragraph (b) is amended by adding an entry for 1.1366-1 to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* * *
1.1366-1	1545-1613
* * *	* * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: December 13, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.
[FR Doc. 99-32697 Filed 12-21-99; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

RIN 1029-AB69

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance with Court Order

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule: suspension.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are suspending certain portions of our permanent program regulations dealing with subsidence from underground coal mining. We are taking this action to make our rules consistent with a recent decision by the U.S. Court of Appeals for the District of Columbia Circuit.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Vermell Davis, Technology Development Staff, Division of Technical Support, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., N.W., Washington, D.C. 20240 (202) 208-2802.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Is The Background Of The Rules We Are Suspending?
- II. Why Are We Publishing This Notice?
- III. What Is The Effect On Approved State Regulatory Programs?
- IV. Which Regulatory Provisions Are We Suspending?
- V. Procedural Matters.

I. What Is the Background Of The Rules We Are Suspending?

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) (hereinafter, "The Energy Policy Act or EAct"). Section 2504 of that Act, 106 Stat. 2776, 3104, amends the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*

Section 2504 of EAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal

mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior was required to promulgate final regulations to implement the provisions of section 720(a).

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. We adopted final regulations on March 31, 1995 (60 FR 16722).

II. Why Are We Suspending These Rules?

The rules were challenged by the National Mining Association in the District Court for the District of Columbia and in the U.S. Court of Appeals for the District of Columbia Circuit. On April 27, 1999, the U.S. Court of Appeals issued a decision vacating certain portions of the regulatory provisions of the subsidence regulations. *See National Mining Association v. Babbitt*, 173 F.3d 906 (1999). We are suspending those regulatory provisions that are inconsistent with the rationale provided in the U.S. Court of Appeals' decision.

III. What Effect Will This Suspension Have on Existing State Regulatory Programs?

States that have not yet revised their approved regulatory programs (see Subchapter T of 30 CFR Chapter VII) in response to our March 31, 1995 rule changes need not amend those programs to include counterparts to the provisions that we are suspending in this rulemaking.

States that have already revised their regulatory programs to include counterparts to the provisions that we are suspending in this rulemaking may remove or modify those counterparts in accordance with 30 CFR Part 732. However, under section 505(b) of

SMCRA, these States also may elect to retain their existing regulations, unless otherwise provided by State law.

IV. Which Regulatory Provisions Are We Suspending?

1. 30 CFR 817.121(c)(4)(i)-(iv)

This regulation provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurred as a result of earth movement within an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause. The purpose of this regulatory provision was to set out a procedure under which damage occurring within a specific area would be subject to a rebuttable presumption that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures.

The Court of Appeals vacated, in its entirety, this rule that established an angle of draw and that created a rebuttable presumption that damage to EAct protected structures within an area defined by an "angle of draw" was in fact caused by the underground mining operation. 173 F.3d at 913.

In reviewing the regulation, the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply. The Secretary had explained that the rebuttable presumption merely shifted the burden of document production to the operator in evaluating whether the damage was actually caused by the underground mining operation within the surface area defined by the angle of draw. The Court nevertheless held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. In reviewing the rebuttable presumption requirement, the Court held "an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact * * * until the adversary disproves it.'" That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation "more likely than not" caused the damage at the surface. See *National Mining Association*, 173 F.3d at 906–910.

In compliance with the Court of Appeals' decision of April 27, 1999, we are suspending 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) will remain in force.

2. Section 784.20(a)(3)

This regulatory provision required, unless the applicant was denied access for such purposes by the owner, a survey which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures which were within the area encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any postmining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above).

This regulatory provision was challenged insofar as it required a specific structural condition survey of all EAct protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EAct protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the "angle of draw" regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the "angle of draw".

In compliance with the Court of Appeals' decision, we are suspending that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EAct protected structures. The remainder of this section continues in force to the extent that it applies to the EAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

V. Procedural Matters

1. National Environmental Policy Act

This notice suspends those sections of the March 31, 1995, final rule invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. The action is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969, as amended 42 U.S.C. 4332 *et seq.* This determination is made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

2. Author

The author of this suspension notice is Vermell Davis, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

List of Subjects

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 817

Environmental Protection, Reporting and recordkeeping requirements, Underground mining.

Dated: December 7, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, we are suspending portions of 30 CFR Parts 784 and 817 as set forth below:

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 784 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and 16 U.S.C. 470 *et seq.*

2. In § 784.20, paragraph (a)(3) is amended by adding a sentence at the end, reading as follows:

§ 784.20 Subsidence control plan.

(a) * * *

(3) * * * However, the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompassed by the applicable angle of draw is suspended per court order.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 817.121—[Suspended in part]

4. In § 817.121, paragraphs (c)(4)(i) through (iv) are suspended.

[FR Doc. 99–32738 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–075]

RIN 2115–AE47

Drawbridge Operation Regulations: Navesink River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the Oceanic Bridge, at mile 4.5, across the Navesink River at Locust Point, New Jersey. The bridge owner has asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for bridge openings from December through March because there have been few requests to open the bridge during the winter months. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: This rule is effective January 21, 2000.

ADDRESSES: Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, are part of docket (CGD01-99-075) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 1999, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Navasink River, New Jersey, in the **Federal Register** (64 FR 47751). We received no comments in

response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Oceanic Bridge at mile 4.5 across the Navesink River at Locust Point, New Jersey, has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water. The existing operating regulations for the Oceanic Bridge require the bridge to open on signal at all times.

The bridge owner, the County of Monmouth, asked the Coast Guard to change the regulations for the bridge and submitted bridge opening log data for the Coast Guard to evaluate.

The log data indicated the following number of openings:

	1994	1995	1996	1997	1998
December	4	12	9	6	8
January	1	1	14	2	6
February	1	1	0	1	10
March	11	13	4	6	13

The bridge owner asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for openings from December through March. The bridge opening log data shows that during this time period there have been few requests to open the bridge. The Coast Guard believes the bridge owner's request to not crew the bridge during the winter months and the twenty-four hour advance notice requirement are reasonable based upon the low number of bridge openings during that time period.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge has not had many requests to open during the winter months. Mariners will still be able to obtain bridge openings during the winter

months provided they give twenty-four hours notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs

the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and

concluded that under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.734 is revised to read as follows:

§ 117.734 Navesink River (Swimming River).

The Oceanic Bridge, mile 4.5, shall open on signal; except that, from December 1 through March 31, the draw shall open on signal, if at least a twenty-four hour notice is given by calling the number posted at the bridge. The owner of this bridge shall provide and keep in good legible condition clearance gauges with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: December 8, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard.

[FR Doc. 99-33212 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-99-150]

RIN 2115-AE84

Regulated Navigation Area; Arrival Notification and Year 2000 (Y2K) Reporting Requirements for Vessels Transiting the Cape Cod Canal

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area for U.S. and foreign flag vessels transiting the Cape Cod Canal during the peak Y2K risk periods of December 30, 1999 to January 1, 2000 and February 27, 2000 to February 29, 2000. Owners and operators of U.S. vessels transiting the Cape Cod Canal during these periods will be required to notify the Captain of the Port, Marine Safety Office Providence RI, (hereinafter COTP Providence RI) 24 hours in advance of their transit. Owners and operators of foreign vessels will be required to notify and report Year 2000 (Y2K) preparedness information to the COTP Providence, RI 24 hours in advance of transiting the Cape Cod Canal. The advance notice and Y2K information will allow the COTP Providence, RI to assess vessel preparedness for potential Y2K-related malfunctions of equipment and systems and enable appropriate measures to be taken to protect the Cape Cod Canal from a serious marine casualty.

DATES: This temporary rule is effective from December 22, 1999 and expires on March 1, 2000. Comments must reach the addresses below on or before January 21, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 22, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to Commander, First Coast Guard District (m), 408 Atlantic Avenue, Boston, Massachusetts, 02210.

(2) By hand to room 632 on the 6th floor at the address listed above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8334.

(3) By fax to the Docket Manager at 617-223-8904.

Commander, First Coast Guard District (m) maintains the public docket for this rulemaking. Comments and related material, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 632 on the 6th floor at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dennis O'Mara, Marine Safety Division, First Coast Guard District, 617-223-8334.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD1-99-150), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand or fax, to the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard encourages you to file any important comments as quickly as possible. We will consider all comments and material received during the comment period and may change this rule, if necessary, in response to the comments.

Regulatory Information

Due to the unique nature of the Y2K problem, this rule is being made effective on the date of publication. It will have considerable positive impact on marine safety and environmental protection in the Cape Cod Canal by establishing a reporting requirement for vessels transiting the Cape Cod Canal during the peak Y2K risk periods of midnight December 30, 1999 to midnight January 1, 2000 and midnight February 27, 2000 to midnight February 29, 2000. The Cape Cod Canal is administered by the Army Corps of Engineers. There is presently no regulation requiring either a U.S. or a foreign flag vessel planning on transiting the Cape Cod Canal to notify either the Army Corps of Engineers or the Coast Guard prior to arrival at the eastern or western entrance to the Cape Cod Canal. Therefore, without this rule, the COTP Providence, RI would not be able to assess a vessel's Y2K compliance prior to the vessel arriving at the entrance of the Cape Cod Canal. Vessels could experience delay while the COTP Providence, RI determines whether the vessel should transit the Cape Cod Canal. This rule will facilitate the movement of vessels through the Cape Cod Canal during the peak Y2K risk periods by allowing the COTP Providence, RI to determine a vessel's Y2K compliance status prior to its arrival at the entrance to the Cape Cod

Canal. The reporting of the information causes no harm and the time requirements to report the information are minimal.

For these reasons, the Coast Guard finds good cause exists, under 5 U.S.C. 553 (b)(B) and 5 U.S.C. 553(d)(3), for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The maritime industry incorporates automation and computer technology into almost every aspect of its business operations. Automation is used for many shipboard systems such as main propulsion, boilers, auxiliary systems, power generation, position fixing navigation systems, communications, radar, steering systems, cargo systems, and bilge/ballast controls. Despite current regulations for equipment and systems testing, the potential technological malfunctions associated with the Year 2000 (Y2K) problem could disrupt maritime operations.

What is the Y2K Problem?

The Y2K problem stems from the widespread computer industry practice of using 2 digits instead of 4 to represent the year in databases, software applications, and hardware microchips. Certain systems will face difficulty in the year 2000 when that year is represented as "00". Unable to differentiate "00" from the year 1900, computer programs and systems aboard ships could malfunction or completely shut down.

How Might the Y2K Problem Affect Vessels?

Computer programs for engine automation systems that send critical operating signals are good examples of the Y2K problem. If these programs misread "00" as the year 1900 instead of 2000, they may misinterpret that 100 years have passed and respond with an inappropriate action or a series of inappropriate actions, creating a domino effect, that could shut down systems. Temporary loss of main engine operation or steering at sea on a calm day with no other ships in sight may only prove inconvenient. However, the unexpected loss of a ship's propulsion in the Cape Cod Canal could result in a serious casualty. The risk period for Y2K-related equipment and system failures and malfunctions is not limited to January 1, 2000. Similar problems are associated with the date February 29, 2000.

Why Is February 29, 2000 a Date of Concern?

February 29, 2000 is a date of concern because of how leap years are determined. Our calendars reflect leap years occur every four years; however, leap years do not adhere to a strict four-year cycle. As a result, century years generally are not leap years (i.e. year 1800 or 1900). However, exceptions apply to century years evenly divisible by 400, such as February 29, 2000. Problems could occur in computers not properly programmed to accept this date. If a microprocessor reads "00" as the year 1900, it will fail to accept the 29th of February because 1900, unlike 2000, was not a leap year.

Why is this Temporary Rule Necessary?

On June 23, 1999, the Coast Guard published a Temporary Interim Rule (hereinafter referred to as the "Interim Rule") that requires certain vessels to report Y2K preparedness information via the submission of a questionnaire (64 FR 33404, June 23, 1999); (64 FR 41794, August 2, 1999). The Interim Rule and current regulations do not require vessels to give advance notification prior to transiting the Cape Cod Canal. U.S. vessels are required to provide 24 hour notice of arrival to the port of destination, but the existing rules do not require canal transits to be reported. The Interim Rule requires certain U.S. vessels that are operating during the peak periods to submit a vessel Y2K questionnaire so that it is received by the Coast Guard no later than August 20, 1999. This rule requires U.S. vessels to notify COTP Providence, RI 24 hours prior to transiting the Cape Cod Canal. This will allow COTP Providence RI to access the information already provided to the Coast Guard under the Interim Rule.

The Interim Rule requires foreign vessels operating on waters subject to the jurisdiction of the U.S. during peak risk periods to submit a Y2K vessel questionnaire so that it is received by the Coast Guard no later than 24 hours prior to arrival in a U.S. port or place of destination. However, since the Cape Cod Canal is not a port or place of destination as defined by the Interim Rule, a foreign flag vessel could arrive at the canal entrance without having submitted a questionnaire to the Coast Guard within the previous 24 hour period, leaving the COTP Providence, RI uncertain as to a foreign vessel's Y2K compliance. This rule requires foreign vessels to submit Y2K preparedness information and arrival notification 24 hours in advance of arrival at the Cape Cod Canal.

Timely Y2K assessments of vessels transiting the Cape Cod Canal during peak risk periods are required due to the congested approaches, narrow width of the canal and environmental sensitivity of the surrounding area. Several shellfish beds are located in close proximity of the approaches of the Cape Cod Canal. By requiring vessels to provide 24 hour advance notification before transiting the Cape Cod Canal, the COTP Providence, RI will have time to assess a U.S. vessel's Y2K compliance (using the information submitted by the vessel) prior to its arrival at the canal. This will prevent unnecessary delays to the vessel while its Y2K compliance is determined.

How Will the COTP Providence RI Collect Y2K Preparedness Information From Foreign Vessels?

Vessels will be required to complete IMO Year 2000 questionnaire 2 and United States (U.S.) Supplement 1. The questionnaire is based on the questionnaire found in the IMO's Year 2000 Code of Good Practice. The questionnaire has U.S. specific instructions and includes a U.S. supplement. More information on this questionnaire, including applicability and submission requirements, can be found in the Discussion section of this document.

How Will COTP Providence, RI, Assess Y2K-Related Risks for Vessels Requesting To Transit the Cape Cod Canal?

The COTP Providence, RI, will use the "Y2K Risk Assessment Matrix" as a tool to help assess potential Y2K risks associated with vessel operations during peak risk periods. The risk assessment matrix is part of NVIC 7-99. NVIC 7-99 will be available in the docket at the address under **ADDRESSES** and on the Internet at <http://www.uscg.mil/hq/g-m/nvic/>.

COTP Providence, RI will conduct risk assessments during two peak risk periods:

- Between midnight December 30, 1999, and midnight January 1, 2000 (48 hours); and
- Between midnight February 27, 2000, and midnight February 29, 2000 (48 hours).

The risk assessment matrix, however, is not meant to be a binding mechanism from which the COTP cannot deviate. It is simply one tool that is designed to assist the COTP in making decisions regarding maritime safety and the marine environment. The COTP Providence, RI will use the vessel movement section of the matrix to evaluate whether or not a vessel will be

permitted to transit the Cape Cod Canal or if any conditions will be placed on the vessel prior to transit. The vessel movement section identifies vessel and cargo risk factors (inspection status, cargo, vessel history, etc.) and balances these factors with local environmental factors (time of day, weather, etc.) and the potential consequences of accidents (health and safety, environmental, vessel traffic, etc.) in the Cape Cod Canal. The matrix considers these risk factors along with mitigating factor information obtained from the questionnaires (equipment testing, contingency planning, etc.) to calculate an overall risk factor.

The Y2K Risk Assessment Matrix is a tool designed to analyze information from a variety of sources. The questionnaire required by this temporary interim rule is only one component of the risk assessment process. It is conceivable, if unlikely, that a vessel or representative could reply "no" to every question on the applicable questionnaire (indicating that no Y2K preparedness actions have been taken). The COTP, after conducting a risk assessment and classifying the vessel as low risk, could allow the vessel to transit the Cape Cod Canal without restriction during one or more peak risk periods. A vessel not prepared for Y2K could be classified as low risk based on a number of factors such as weather conditions, tide and current, type of cargo, vessel traffic density, etc. However, in most cases, a vessel that demonstrates some level of Y2K preparedness should receive a better overall risk factor score than a vessel that is not prepared for Y2K. We encourage vessel owners and operators to obtain copies of NVIC 7-99 so they can use the risk assessment matrix to conduct Y2K preparedness self-assessments.

Discussion

This rulemaking will prescribe temporary advance arrival notification for certain U.S. vessels and temporary advance arrival notification and Y2K preparedness reporting requirements for foreign vessels desiring to transit the Cape Cod Canal by adding a temporary new section in 33 CFR 165.123—Regulated Navigation Area: Advance Arrival Notification and Year 2000 (Y2K) Preparedness Reporting for Certain Vessels Transiting the Cape Cod Canal. The new section contains applicability for certain vessels and instructions for submitting the appropriate advance arrival notification and Y2K preparedness information. These temporary reporting requirements will help COTP Providence, RI assess

potential Y2K risks associated with vessels transiting the Cape Cod Canal during peak risk periods.

Applicability and Exemptions

The 24 hour advance notification will apply to vessels owned in the U.S. and foreign flag vessels transiting the Cape Cod Canal during one of the following periods:

- a. Between midnight December 30, 1999 and midnight January 1, 2000 (48 hours)
- b. Between midnight February 27, 2000 and midnight February 29, 2000 (48 hours).

The following vessels are exempt from the 24 hour advance notification requirement:

- Recreational vessels under 46 U.S.C. 4301 *et seq.*;
- Public vessels;
- Uninspected commercial fishing vessels;
- Uninspected barges; and
- Uninspected passenger vessels.

The Y2K reporting requirements will apply to foreign flag vessels transiting the Cape Cod Canal during one of the following periods:

- a. Between midnight December 30, 1999 and midnight January 1, 2000
- b. Between midnight February 27, 2000 and midnight February 29, 2000 (48 hours).

Foreign flagged public vessels are exempt from the Y2K reporting requirements.

Definitions

The terms used in § 165.123 have the same meaning as those found in 33 CFR 160.309. (64 FR 33404, June 23, 1999).

Questionnaire

The Questionnaire consists of four pages. Page 1 includes instructions for completing the Questionnaire. The instructions provide very specific and detailed information on how to use the questionnaire, where to send it, when and how to update information, etc. Page 2 is the IMO Year 2000 Questionnaire 2. This questionnaire is designed to collect specific Y2K preparedness information for a vessel or fleet of vessels. Page 3 is the U.S. Supplement 1. The Coast Guard developed U.S. Supplement 1 to collect vessel specific information such as vessel type and cargo. It also asks one additional risk assessment-related question concerning Y2K contingency planning. Page 4 is a list of Marine Safety Offices/Captains of the Port. Foreign vessels requesting to transit the Cape Cod Canal must submit the questionnaire directly to COTP Providence, RI.

Y2K Reporting Requirements for Vessels Owned in the United States

Vessels owned in the U.S. are required by the Interim rule published on June 23, 1999 (amended August 2, 1999), to submit Y2K compliance information by August 20, 1999. Therefore there is no additional Y2K information required. However, if you are the vessel representative of a vessel owned in the U.S. that will transit the Cape Cod Canal during any of the peak risk periods, you must provide advance notification to COTP Providence, RI, no later than 24 hours prior to the vessel's transit of the canal.

Y2K Reporting Requirements for Foreign Flag Vessels

If you are a representative of a foreign flag vessel that will transit the Cape Cod Canal during one of the peak risk periods, you must give notification and submit a Vessel Questionnaire to COTP Providence, RI, no later than 24 hours prior to the vessel's arrival at the approach buoys of the canal.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Costs

The costs of the rule are the labor costs, and fax and mail costs required by industry to complete and submit the questionnaires, plus costs to the government to review the forms. The total cost of the rule to industry and government is less than \$1,000.

Benefits

This rule will provide COTP Providence RI with critical Y2K preparedness information on vessels desiring to transit the Cape Cod Canal. COTP Providence, RI will use this information to identify potentially high risk operations during peak risk periods so appropriate measures can be taken to promote safety and environmental protection.

Small Entities

Since we did not publish a notice of proposed rulemaking, this action is not covered by the Regulatory Flexibility Act (5 U.S.C. 601-612). However, we have considered whether this temporary rule would have a significant economic

impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Small entities that own or operate certain U.S. vessels or foreign flag vessels that desire to transit the Cape Cod Canal on one of the peak dates are affected by this rule. Small entities that own or operate uninspected commercial fishing vessels, uninspected passenger vessels, uninspected barges, recreational vessels, and public vessels are exempted from this rule. It is expected to take a foreign vessel representative, on average, 13 minutes to complete a Vessel Questionnaire (includes 8 minutes to complete IMO Year 2000 Questionnaire 2 and 5 minutes to complete U.S. Supplement 1). The total cost for a single vessel, on average, is expected to range from \$9.45 to \$10.75 (depending on delivery costs). For each additional vessel in a fleet, total labor cost increases by \$3.60 per vessel, and total delivery cost increases by \$0 to \$0.65, depending upon method of delivery.

The smaller a company's fleet, the smaller the hour burden and labor cost to complete and submit the Vessel Questionnaire. Because fleet size is a reasonable measure of entity size, we expect small entities to have relatively small fleets. According to the Coast Guard's data base, a U.S. vessel company, on average, has 4 vessels. Thus, the total hour burden and total cost of this rule to an entity with an average fleet is 0.47 hours and from \$21.15 to 24.58, respectively. We expect the hour burden and cost of this rule to small entities to be less than this average.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this temporary interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call LT Dennis O'Mara at (617) 223-8334.

Small businesses may send comments on the actions of Federal employees

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

Need for Information: At present, there are no regulations requiring advance notification or Y2K preparedness information for vessel transiting the Cape Cod Canal during one of the peak risk periods. The advance notice of arrival and Y2K preparedness information required by this rule will help COTP Providence, RI assess vessel preparedness for potential Y2K-related malfunctions of equipment and systems. This preparedness information will help COTP Providence, RI identify potentially hazardous situations during peak Y2K risk periods, enabling him to take appropriate measures to promote port safety and environmental protection.

Proposed Use of Information: To help COTP Providence, RI conduct Y2K risk assessments for vessels transiting the Cape Cod Canal. Risk assessments will identify potentially hazardous situations during peak risk periods so appropriate measures can be taken to help ensure port safety and environmental protection.

Description of the Respondents: Vessels that transit the Cape Cod Canal during one of the peak risk periods.

Number of Respondents: 50 U.S. Vessels and 25 foreign vessels. These totals are based upon information provided by the Army Corps of Engineers regarding the average number of vessel transits through the Cape Cod Canal.

Frequency of Response: One arrival notification for each U.S. vessel and one arrival notification, one IMO Year 2000 questionnaire 2, and one U.S. supplement 1 for each foreign flag vessel. Each U.S. company will be required to give 24-hour advance notice of arrival for every vessel in its fleet that desires to transit the Cape Cod canal during one of the peak risk periods. We expect that 50 advance notices of arrival will be submitted for U.S. vessels. The Coast Guard estimates it will take, on average, 5 minutes (0.08 hours) to submit advance notification of arrival. Thus, the total hour burden to U.S. vessel companies is less than 3 hours. With an average unit labor cost of \$45

per hour, we expect the total labor cost to owners/operators of U.S. vessels is \$135.

The Coast Guard estimates the average delivery cost for the required vessel information is \$0.65 per page by fax. The Coast Guard anticipates receiving 100% notice of arrivals via fax. U.S. vessel representatives will submit a total of 50 submissions via fax. Thus, the delivery cost of this rule to U.S. vessels is \$32.50. The total cost to U.S. vessels is \$167.50.

The Coast Guard estimates that 25 foreign flag vessels will desire to transit the Cape Cod Canal during one of the peak risk periods. Thus, we expect that a total of 25 arrival notifications, 25 IMO Year 2000 Questionnaire 2's and 25 U.S. Supplement 1's will be submitted by foreign flag vessel representatives. The Coast Guard estimates it will take, on average, 5 minutes (0.08 hours) to complete and submit an advance notification of arrival, 5 minutes (0.08 hours) to complete and submit U.S. Supplement 1, and 8 minutes (0.13 hours) to complete and submit IMO Year 2000 Questionnaire 2. Consequently, the total hour burden to foreign flag vessels is 6.25 hours. At a unit labor cost of \$45 per hour, the total labor cost is \$281.25.

We expect foreign flag vessel representatives to submit a total of 25 submissions (25 advance arrival notifications, 25 IMO Year 2000 Questionnaires and 25 U.S. Supplement 1's). The Coast Guard estimates that 100% (75 pages) will be submitted via fax at a cost of \$0.65 per page. Thus, we estimate the total delivery cost to foreign flag vessels is \$48.75. The total cost of this rule to foreign flag vessels is \$330.00. The total cost of this rule to industry is \$497.50.

Estimate of Total Annual Burden

The estimated total annual burden is 11.5 hours. The temporary interim rule implementing this collection will be effective from December 22, 1999 through February 29, 2000.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this temporary interim rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the

quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

The Coast Guard has received emergency approval from OMB on the collection of information requirements (OMB approval number 2115-0643). This emergency OMB approval is effective until March 31, 2000.

Federalism

We have analyzed this temporary rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary rule would not impose an unfunded mandate.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this temporary rule and concluded that, under figure 2-1, paragraph (34)(i), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. This rule

establishes temporary reporting requirements that will assist the Coast Guard in assessing Y2K-related risks. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46. § 165.100 is also issued under the authority of sec. 311, Pub. L. 105-383.

2. Add temporary § 165.123 to read as follows:

§ 165.123 Regulated Navigation Area: Cape Cod Canal.

(a) The waters of the Cape Cod Canal as defined by the area between Cleveland East Ledge lighted buoy in Buzzards Bay to the 1351 lighted buoy at the east end of the canal in Cape Cod Bay.

(b) *Definitions.* Terms used in this section have the same meaning as those found in 33 CFR 160.309.

(c) *Effective period.* This section is effective from December 22, 1999 to March 1, 2000.

(d) *Applicability.* This section applies to U.S. and foreign flag vessels transiting the Cape Cod Canal during one of the following periods:

(1) Between midnight December 30, 1999 and midnight January 1, 2000 (48 hours); and,

(2) Between midnight February 27, 2000 and midnight February 29, 2000 (48 hours).

(e) *Exemptions.* The following vessels are exempt from complying with this section:

(1) Recreational vessels under 46

U.S.C. 4301 et seq.;

(2) Public vessels;

(3) Uninspected commercial fishing vessels;

(4) Uninspected barges; and

(5) Uninspected passenger vessels.

(f) *Regulations.*

(1) The vessel representative of a U.S. vessel that will transit the Cape Cod Canal during a period described in paragraph (d) of this section, must provide arrival notification to COTP Providence RI, in accordance with requirements contained in 33 CFR 160.207 at least 24 hours prior to transiting the canal.

(2) The vessel representative of a foreign flag vessel that will transit the Cape Cod Canal during a period described in paragraph (d) of this section, must provide the following to COTP Providence, RI, at least 24 hours prior to transiting the canal:

(i) Arrival notification in accordance with 33 CFR 160.207; and

(ii) A Vessel Questionnaire, as contained in appendix A to subpart D of part 160 of this chapter.

(iii) The information required to complete the questionnaire includes:

(A) Name of person completing the questionnaire;

(B) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available);

(C) Vessel's name;

(D) Vessel's type;

(E) Cargo type;

(F) Vessel's gross tonnage;

(G) Vessel's Flag State;

(H) Vessel's IMO or Official Number;

and,

(I) Status of Y2K preparedness.

Dated: December 9, 1999.

R.M. Larrabee,

Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99-33213 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-15-U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. RM 99-8 CARP]

Rate Adjustment of the Satellite Carrier Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing the reduction of royalty rates for the section 119 satellite carrier statutory license pursuant to Title I of the Intellectual Property and Communications Omnibus Reform Act. The royalty rates for the section 119 satellite carrier statutory license are reduced from 27 cents per subscriber per month for network and superstations, respectively, to 14.85 cents for network stations and 18.9 cents for superstations.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box

70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed into law the Intellectual Property and Communications Omnibus Reform Act. Title I of that legislation, the "Satellite Home Viewer Improvement Act of 1999," amends section 119 of the Copyright Act to, among other things, reduce the royalty fees paid under the satellite carrier statutory license.

In October of 1997, pursuant to the Copyright Arbitration Royalty Panel process, the Librarian of Congress adjusted the royalty rates of the satellite license to 27 cents per subscriber per month for the retransmission of a network station and 27 cents per subscriber per month for the retransmission of a superstation. 62 FR 55742 (October 28, 1997). The Satellite Home Viewer Improvement Act reduces these rates by 45 percent for a network station and 30 percent for a superstation. 17 U.S.C. 119(c)(4) (A) and (B). Consequently, the new rates are 14.85 cents per subscriber per month for each network station retransmitted by a satellite carrier and 18.9 cents per subscriber per month for each superstation retransmitted by a satellite carrier.

The Satellite Home Viewer Improvement Act also amends the section 119 satellite license to include retransmissions of the Public Broadcasting Service satellite feed, which is not a television broadcast station. The Public Broadcasting Service satellite feed is treated like a network station for purposes of the royalty fee, and therefore incurs the 14.85-cent fee. The section 119 license for the Public Broadcasting Service satellite feed, however, is in effect only until January 1, 2002.

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Final Regulations

For the reasons set out in the preamble, chapter II of title 37 of the Code of Federal Regulations is to be amended as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

1. The authority citation for part 258 reads as follows:

Authority: 17 U.S.C. 119, 702, 802.

2. In § 258.3, add new paragraph (c) to read as follows:

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

* * * * *

(c) Commencing July 1, 1999, the royalty rate for secondary transmission of broadcast stations for private home viewing by satellite carriers shall be as follows:

- (1) 18.9 cents per subscriber per month for distant superstations.
- (2) 14.85 cents per subscriber per month for distant network stations.
- (3) 14.85 cents per subscriber per month for the Public Broadcasting Service satellite feed.

Dated: December 15, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99-33196 Filed 12-21-99; 8:45 am]

BILLING CODE 1410-33-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038-0193a; FRL-6510-7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rule rescissions from the South Coast Air Quality Management District (SCAQMD). This approval action will rescind these rules from the federally approved SIP. The intended effect of approving these rule rescissions is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rule rescissions consist of obsolete rules that have been superseded or removed from the SCAQMD's regulations. EPA is finalizing the approval of these rule rescissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on February 22, 2000 without further notice, unless

EPA receives adverse comments by January 21, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule rescissions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule rescissions are available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being rescinded from the California SIP are listed below. The rescissions were submitted by the California Air Resources Board to EPA on the dates listed under each grouping.

South Coast Air Quality Management District (AQMD)

Rule 107, Determination of Volatile Organic Compounds in Organic Materials, Rescission Adopted: 3-9-92, Submitted to EPA: 9-14-92

Rule 1231, Judicial Review, Rescission Adopted: 2-2-79, Submitted to EPA: 7-25-79

Rule 1311, Power Plants, Rescission Adopted: 6-28-90 Submitted to EPA: 1-28-92

Los Angeles County Air Pollution Control District (APCD)

Rule 51, Nuisance, Rescission Adopted: 5-7-76, Submitted to EPA: 8-2-76

Orange County APCD

Rule 51, Nuisance,
Rule 67.1, Fuel Burning Equipment,

*Rule 68, Fuel Burning Equipment—
Oxides of Nitrogen.*

Rescissions Adopted: 5-7-76
Submitted to EPA: 8-2-76

Riverside County APCD

Rule 51, Nuisance

Rescission Adopted: 5-7-76
Submitted to EPA: 8-2-76

II. Background

On March 3, 1978, EPA promulgated a list of ozone and total suspended particulate (TSP) nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Basin. 43 FR 8964, 40 CFR 81.305.

On July 1, 1987 at 52 FR 24672, EPA replaced the TSP standards with new Particulate Matter (PM) standards applying only to PM up to 10 microns in diameter (PM-10).¹

On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the South Coast Air Basin portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. South Coast Air Basin is classified as extreme non-attainment for ozone.

On November 15, 1990, PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated non-attainment by operation of law and classified as moderate pursuant to section 188(a). The South Coast Air Basin was among the areas designated non-attainment. On February 8, 1993, EPA re-classified the South Coast Air Basin from moderate non-attainment to serious non-attainment for PM-10. (See 58 FR 3334—January 1, 1993).

This **Federal Register** action for SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

The State of California submitted the rule rescissions listed above to update the federally enforceable SIP for the

SCAQMD. In addition, some of these rescissions are necessary to remove obsolete rules from the original districts that made up the South Coast Air Basin: Los Angeles County Air Pollution Control District (APCD), Orange County APCD, and Riverside County APCD.² The rescissions were adopted and submitted on the dates listed above.

These rules were originally adopted as part of individual districts' efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and particulate matter. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining whether to approve removing each rescinded rule from the SIP, EPA must evaluate the rescissions for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA, and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. In general the rules which SCAQMD has rescinded are not appropriate for the SIP because they do not control criteria pollutants or have been superseded by other SIP-approved rules.

EPA has evaluated the rule rescissions and has determined that rescission is consistent with the CAA, EPA regulations, and EPA policy. Therefore, all of the rule rescissions listed in section I, Applicability are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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 the SIP revision should adverse comments be filed. This rule will be effective February 22, 2000 without further notice unless the Agency receives adverse comments by January 21, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** 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. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on February 22, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a

¹ On July 18, 1997, EPA promulgated revised and new standards for PM-10 and PM-2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards. This action is part of SCAQMD's efforts to achieve compliance with the 1987 PM-10 standards.

² On July 16, 1975, the Los Angeles County APCD, Orange County APCD, Riverside County APCD, and San Bernardino County APCD were unified into the Southern California APCD. On February 1, 1977, the Southern California APCD became the South Coast Air Quality Management District.

federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of

Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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**. A major rule cannot take effect until 60 days after it is published 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 February 22, 2000. 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 7, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, 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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(6)(xvii) to (6)(xviii), (47)(i)(D), (68)(ii), and (121)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(xvii) Los Angeles County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rule 51.

(xviii) Orange County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rules 51, 67.1 and 68.

(xvii) Riverside County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rule 51.

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(47) * * *

(i) * * *

(D) Previously approved on May 9, 1980 and now deleted without replacement for implementation in the South Coast Air Quality Management District, Rule 1231. (JR)

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(68) * * *

(ii) Previously approved on January 21, 1981 and now deleted without replacement Rule 1311.

* * * * *

(121) * * *

(i) * * *

(D) Previously approved on October 11, 1983 and now deleted without replacement Rule 107.

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[FR Doc. 99-32642 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[Region VII Tracking No. MO-074-1074a; FRL-6512-2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing a revision to the State Implementation Plan (SIP) which incorporates portions of new Kansas City rules contained in the Kansas City Air Pollution Control Ordinance in Sections 8-2 and 8-5. These Sections pertain to the emission of particulate matter from incinerators. This revision will concurrently remove incinerator SIP provisions contained in Chapter 18 of the 1972 version of the Kansas City Code. This action will unify the local, state, and Federal requirements for Kansas City incinerators.

DATES: This direct final rule is effective on February 22, 2000 without further notice, unless EPA receives adverse comment by January 21, 2000. 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: All comments should be addressed to: Wayne A. Kaiser at the Environmental Protection Agency, Air Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at the Environmental Protection Agency at (913) 551-7603.

SUPPLEMENTARY INFORMATION:

Background

This section provides additional information by addressing the following questions:

What is an SIP?
What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this action?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal

Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Action?

The Kansas City Air Pollution Control Code (KCAPCC) was originally submitted to EPA for approval in 1972. The incinerator provisions which were approved in 1972 are still in the Federally approved SIP today. The SIP contains two different particulate matter requirements for incinerators based on the capacity of the incinerator. Large capacity incinerators (with a charging capacity equal to or greater than 4166 pounds per hour) are required to meet an emission limit of 0.1 grains per dry standard cubic foot. Small capacity incinerators (with a charging capacity less than 4166 pounds per hour) are required to meet an emission limit of 0.2 grains per dry standard cubic foot.

The KCAPCC was amended in 1984; however, the SIP was not updated at that time. Consequently, two separate versions of the Kansas City incinerator regulations were in force at that time. The Kansas City Health Department Environmental Program enforced the 1984 version while EPA enforced the 1972 version in the SIP.

In 1996, the Air Pollution Control Code was again revised by the Kansas City Health Department. This time, a more stringent version of the incinerator rule was adopted which required incinerators of any charging capacity to meet a 0.1 grains per dry standard cubic foot particulate matter emission limit. Other limits were also included in the 1996 rule for pollutants such as hydrogen chloride, mercury, and dioxin and furans.

The Missouri Department of Natural Resources held a public hearing before the Missouri Air Conservation Commission (MACC) on October 29, 1998, on the replacement of the 1972 KCAPCC requirements for incinerators

with the 1996 KCAPCC provisions which pertain to incinerators. After considering comments on this issue, on December 10, 1998, the MACC approved the submission of certain provisions of Section 8-2, "Definitions," which pertain to incinerators and certain provisions of Section 8-5, "Emission of particulate matter," pertaining to the emission of particulate matter from incinerators with a request to amend the SIP to incorporate this submission. The MACC also approved the submittal of a request to remove the 1972 Kansas City incinerator requirements contained in KCAPCC Chapter 18, Sections 18.83, "Definitions," and 18.91, "Incinerators."

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this notice, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The revision constitutes a slight increase in the stringency of requirements which pertain to incinerators operating in Kansas City, Missouri.

What Action Is EPA Taking?

EPA is processing this action as a direct final action to approve the replacement of the 1972 KCAPCC incinerator provisions contained in Chapter 18, Sections 18.83, and 18.91, with the incinerator particulate matter provisions contained in the 1996 KCAPCC in Chapter 8, Sections 8-2, "Definitions," and 8-5, "Emission of particulate matter." Specifically, the following definitions are being approved from Section 8-2: Air contaminant, Ambient air, Building, Construction, Emission, Fugitive emissions, Incinerator, Installation, Open burning, Owner, Particulate matter, Refuse, Smoke, Source, Stack, Trade waste, and Uncombined water. EPA is approving the following provisions of Section 8-5: "Emission of Particulate Matter"; subsection 8-5(c)(1)b., "Emission of Particulate Matter, Incinerators—Test Schedule"; subsection 8-5(c)(1)c., "Emission of Particulate Matter, Incinerators—Capacity"; subsection 8-5(c)(2)a., "Emission of Particulate Matter, Incinerators—Particulate and Opacity Limitations"; subsection 8-5(c)(3)a., "Emission of Particulate Matter,

Incinerators—Performance Testing, Representative Sample"; subsection 8-5(c)(3)b., "Emission of Particulate Matter, Incinerators—Performance Testing, Procedure"; subsection 8-5(c)(3)c., "Emission of Particulate Matter, Incinerators—Performance Testing, Compliance"; and subsection 8-5(c)(3)d., "Emission of Particulate Matter, Incinerators—Performance Testing, When Required."

EPA's direct final approval of this submittal incorporates incinerator provisions which are already in force under the authority of the Kansas City Health Department. These revisions make routine changes to the existing SIP rules to make them consistent with the local agency rules. EPA views these revisions as noncontroversial. Therefore, we do not anticipate any adverse comments.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 22, 2000 without further notice unless the Agency receives adverse comments by January 21, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 22, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to

ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 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 Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which

implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

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

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

E. Regulatory Flexibility Act (RFA)

The 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 CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, 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

CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to 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 annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting 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 United States Senate, the United States House of Representatives, and the United States Comptroller General 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. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by February 22, 2000. 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).]

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 2, 1999.

William A. Spratlin,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

EPA-APPROVED MISSOURI REGULATIONS

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320 in paragraph (c), the table for “Kansas City Article III—Air Pollution” is removed and to the table for “Kansas City Chapter 8—Air Quality 17” is revised to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) EPA-approved regulations.

MISSOURI citation	Title	State effective date	EPA approval date	Explanations
* * *	* * *	* * *	* * *	* * *
Kansas City Chapter 8—Air Quality				
8–2	Definitions	12/10/98	12/22/99	
* * *	* * *	* * *	* * *	* * *
8–5	Emission of Particulate Matter	12/10/98	12/22/99	Only subsections 8–5(c)(1)b, 8–5(c)(1)c, 8–5(c)(2)a, 8–5(c)(3)a, 8–5(c)(3)b, 8–5(c)(3)c, 8–5(c)(3)d are approved in the SIP.
* * *	* * *	* * *	* * *	* * *

[FR Doc. 99–32860 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–115–1–7434a; FRL–6504–4]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Miscellaneous Industrial Sources, Cutback Asphalt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. The EPA is approving these revisions to regulate emissions of VOCs

in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on February 22, 2000, without further notice, unless EPA receives adverse comment by January 21, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality,

12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

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SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means EPA.

1. What Action Is EPA Taking?

On August 31, 1999, the Governor of Texas submitted the Subchapter F, "Miscellaneous Industrial Sources," of Chapter 115, "Control of Air Pollution From Volatile Organic Compounds," as a revision to the SIP. This rule making will specifically approve revisions to sections 115.512 concerning Control Requirements, 115.513 concerning Alternate Control Requirements, 115.515 concerning Testing Requirements, and 115.516 concerning Recordkeeping Requirements. Also, we are approving a new section 115.510 concerning definitions of "cutback asphalt," "conventional cutback asphalt," "exempt cutback asphalt," and "asphalt emulsion." In this document we are approving revisions to the Texas SIP concerning control of VOC emissions from asphaltic operations in Nueces County and ozone nonattainment areas. The County of Nueces is not classified as a nonattainment area for ozone. The ozone nonattainment areas include the Houston/Galveston (H/G), Beaumont/Port Arthur (B/PA), Dallas Fort Worth (DFW), and El Paso (EP). For more information on the SIP revision and EPA's evaluation, please refer to our TSD dated October 1999.

In the "Final Action" section of this document we state that we are publishing this rule without prior proposal and EPA is planning to approve this action without further notice.

2. What Is Cutback Asphalt?

If you liquify paving asphalt (asphaltic cement) with petroleum distillates, you will have cutback asphalt (liquified asphalt). Cutback asphalt contains a significant amount of light petroleum solvents such as kerosene, diesel, or naphtha. These solvents or diluents are added to the asphalt either at the refinery or the asphalt plant. As a result, cutback asphalt can be a significant source of VOCs.

3. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

4. Where Can I Find EPA Guidelines on Cutback Asphalt?

You can find our guidelines on cutback asphalt in the document number EPA-450/2-77-037—"Control of Volatile Organic Compounds from Use of Cutback Asphalt."

5. What Are the Asphalt Rule Changes?

The intended purpose of this rule is to reduce VOC emissions. Specifically, this rule revision applies to sources located or operating in the Nueces county, Texas. The county of Nueces is classified as an attainment area for ozone. This rule will limit the VOC volume on cutback use in the Nueces county from 8 to 7 percent. This revision will make the volume limitation for cutback use in the Nueces county more consistent with the volume limitation for cutback use in the ozone nonattainment areas.

This rule will replace the term "emulsified asphalt" with the term "alternative asphalt" for sources located or operating in both the DFW, EP, B/PA, and H/G ozone nonattainment areas and the Nueces county. See section 115.510.

Control requirements in section 115.512 for the DFW, EP, B/PA, and H/G ozone nonattainment areas remain the same as the control requirements in the existing federally approved SIP for Texas. The only change to the control requirements in section 115.512 is lowering of the volume limitation for cutback use in the Nueces county.

If you are in the Nueces county or any of the above-mentioned nonattainment areas, you should refer to the rule to determine if and how this rule will affect you.

For detailed evaluation of the asphalt rule changes, please see pages 2 and 3 of our TSD dated October 1999.

6. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G, DFW, EP, and B/PA are nonattainment areas for ozone.

7. What Is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air

quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The NAAQS are established under section 109 of the Act to protect public health, and they address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

8. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by us under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

9. What Does Federal Approval of a SIP Mean to Me?

Enforcement of the State regulation before and after it is incorporated into federally approved SIP is primarily a State function. However, once the regulation is federally approved, we and the public may take enforcement action

against violators of these regulations if the State fails to do so.

10. What Are Advantages of Adopting This Rule?

Adopting this rule will have the following advantages: (1) Reduces the VOC content of the asphalt, for Nueces county, from 8 percent of the total annual volume to 7 percent. The total annual volume percentage for the asphalt use is calculated over a two-year period, (2) makes the VOC content requirement for asphalt in the Nueces county more consistent with that of nonattainment areas, (3) allows use of alternative asphalt mixes with equal or

less VOC emissions, and (4) offers more operational flexibility for a source to meet the market demands.

11. What Test Methods Will Texas Use To Determine Compliance With the VOC Content Requirements?

According to section 115.515, Texas will apply the following test methods to determine compliance with this VOC rule: (1) American Society of Testing and Materials (ASTM) Test Method D 244, "Standard Test Methods for Emulsified Asphalts, Sections 11 to 15, Residue and Oil Distillate by Distillation," as published in the 1997 edition of the Annual Book of ASTM

Standards, for determining VOC content of asphalt emulsions; or (2) ASTM Test Method D 402, "Standard Test Method for Distillation of Cut-Back Asphaltic Products," as published in the 1997 edition of the Annual Book of ASTM Standards, for determining the VOC content of cutback asphalt.

12. What Are the Subchapter F Requirements for Cutback Asphalt?

The following table contains a summary of the requirements in Subchapter F for the H/G, the B/PA, the DFW, and the EP areas and the Nueces county concerning VOC contents in cutback asphalt and asphalt emulsion.

TABLE 1.—ASPHALTIC VOC CONTENT REQUIREMENTS AND THEIR CORRESPONDING AREAS IN TEXAS

Location	Requirement	Explanation
H/G, B/PA, DFW, EP areas and Nueces county	VOC content 7 percent or less of total volume, averaged over 2-year period.	For paving roadways, driveways, or parking lots.
H/G, B/PA, DFW, EP areas	No cutback asphalt	From April 16 to September 15 of any year
H/G, B/PA, DFW, EP areas and Nueces county	Asphalt emulsion 0.5 percent for seal coats	By weight percent.
H/G, B/PA, DFW, EP areas and Nueces county	3.0 percent for chip seals when dusty or dirty aggregate used.	By weight percent for asphaltic emulsion.
H/G, B/PA, DFW, EP areas and Nueces county	8.0 percent for mixing with open graded aggregate containing less than 1 percent of dust or clay-like materials.	By weight percent for asphaltic emulsion.
H/G, B/PA, DFW, EP areas and Nueces county	12.0 percent for mixing with dense graded aggregate when used to produce a mix designed to have 10 percent or less voids when fully compacted.	by weight percent for asphaltic emulsion.

When more than one asphaltic VOC content requirement from the above table applies to an asphaltic emulsion, one must use the most stringent requirement. See section 115.512(3).

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on February 22, 2000, without further notice unless we receive adverse comment by January 21, 2000. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, "Federalism," and E.O. 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the E.O. to include regulations that 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." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute,

unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "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.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

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. The 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective February 22, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Asphalt, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: November 19, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, 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 SS—Texas

2. Section 52.2270 is amended under Chapter 115, Subchapter F, by removing the entry for section 115.512 to 115.519 and inserting in its place individual entries for section 115.510 through section 115.519 reading as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Regulation 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter F Miscellaneous Industrial Sources				
Cutback Asphalt				
Section 115.510	Definitions	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
*	*	*	*	*
Section 115.512	Control Requirements	August 18, 1999/August 31, 1999.	December 22, 1999 and Federal Register cite.	
Section 115.513	Alternative Control Requirements.	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
*	*	*	*	*
Section 115.515	Testing Requirements	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
Section 115.516	Recordkeeping Requirements.	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
Section 115.517	Exemptions	05/08/92	03/07/95 60 FR 12438	Ref 52.2299(c)(88).
*	*	*	*	*
Section 115.519	Counties and Compliance Schedules.	05/08/92	03/07/95 60 FR 12438	Ref 52.2299(c)(88).
*	*	*	*	*

[FR Doc. 99–32858 Filed 12–21–99; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300957; FRL–6398–2]

RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil and its metabolites in or on hops at 5.0 parts per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2001. This regulation also extends time-limited tolerances for combined residues of the fungicide myclobutanil and its metabolites, in or on caneberries at 1.0 ppm and in or on peppermint and spearmint at 2.5 ppm for an additional 1-year period. These tolerances will

expire and are revoked on December 31, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on caneberries, hops, peppermint and spearmint. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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.

DATES: This regulation is effective December 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300957, must be received by EPA on or before February 22, 2000.

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 III. of the “SUPPLEMENTARY INFORMATION.” To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–

300957 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9358; and e-mail address: Deegan.Dave@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	111 112 311 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 under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-300957. 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.

II. Background and Statutory Findings

EPA a final rule, published in the **Federal Register** of July 10, 1998 (63 FR 37289) (FRL-5798-6), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection

Act of 1996 (FQPA) (Public Law 104-170) it established a time-limited tolerance for the combined residues of myclobutanil and its metabolites in or on hops at 5.0 ppm, and caneberries at 1.0 ppm with an expiration date of December 31, 1999. In the **Federal Register** of July 17, 1998 (63 FR 38481) (FRL-6016-8), a time-limited tolerance for myclobutanil and its metabolites was established in or on peppermint and spearmint at 2.5 ppm, with an expiration date of January 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of myclobutanil on hops, caneberries, and mint for this year's growing season, due to the ongoing difficulties of controlling powdery mildew on hops and mint, peppermint rust on mint, and of orange rust on caneberries. EPA's review of these exemption requests have concluded that there are no other readily-available means to effectively control these pest situations at the current time. After reviewing each of these submissions, EPA concurs that emergency conditions existed, and EPA authorized the requested uses of myclobutanil under provisions of FIFRA section 18.

EPA's assessed the potential risks presented by residues of myclobutanil in or on caneberries, hops, and mint. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of July 10, 1998 (63 FR 37289). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1 or 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2000, or December 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 the commodities after the expiration date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. 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-300957 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 February 22, 2000.

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 III.A., 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. Mail your copies, identified by docket control number OPP-300957, 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. 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).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408 in response to a FIFRA section 18 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 any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and*

Safety Risks (62 FR 19885, April 23, 1997). 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, 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. In addition, 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 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This final rule 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 FFDCA section 408(n)(4).

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

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: December 8, 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), 346(a) and 371.

2. In § 180.443, by amending the table in paragraph (b), by revising the following entries to read as follows:

§ 180.443 Myclobutanol; tolerances for residues.

(b) * * * * *

Commodity	Parts per million	Expiration/revocation date
Caneberries	1.0	12/31/00
Hop cones, dried ..	5.0	12/31/01
Peppermint	2.5	12/31/00
Spearmint	2.5	12/31/00

* * * * *

[FR Doc. 99-33158 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 422

[HCFA-1011-F]

RIN 0938-A183

Medicare Program; Solvency Standards for Provider-Sponsored Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: The Balanced Budget Act of 1997 established a new Medicare+Choice (M+C) program that offers eligible individuals Medicare benefits through enrollment in one of an array of private health plans that contract with us. Among the new options available to Medicare beneficiaries is enrollment in a provider-sponsored organization (PSO). This final rule revises and responds to comments on solvency standards that certain entities must meet to contract as PSOs under the new M+C program. These standards, originally established in an interim final rule published on May 7, 1998, apply to PSOs that have received a waiver of the requirement that M+C organizations must be licensed by a State as risk-bearing entities.

DATES: *Effective date:* These regulations are effective on January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Marty Abeln, (410) 786-1032.

SUPPLEMENTARY INFORMATION:

I. Background—Balanced Budget Act of 1997 and the Medicare+Choice Program

Section 4001 of the Balanced Budget Act (BBA) (Public Law 105-33), enacted August 5, 1997, added a new Part C (sections 1851 through 1859) to title XVIII of the Social Security Act (the Act), establishing the "Medicare+Choice" (M+C) program. Under Part C, M+C eligible individuals (generally individuals with both Part A and Part B coverage who do not have End Stage Renal Disease (ESRD) may elect to receive their Medicare benefits through private health plans (M+C organizations) that choose to contract with HCFA. M+C organizations may offer one or more M+C plans of one of three types. Under "coordinated care plans," beneficiaries receive benefits through a network of providers, as in the case of an health maintenance organization (HMO) or preferred provider organization (P.O.). A "provider sponsored organization" (PSO), which is owned by providers through which it provides benefits, and which is the subject of this final rule, necessarily offers a coordinated care plan. (See section 1851(a)(2)(A) of the Act). Other M+C plan options provided for in Part C, but not yet offered by any M+C organization, are private-fee-for service plans and medical savings account (MSA) plans (that is, a combination of a high deductible, catastrophic insurance plan with a contribution to an M+C MSA account).

Interim final regulations for the overall implementation of the M+C program were published in the **Federal Register** on June 26, 1998 (63 FR 34968) and are set forth in part 422 of title 42 of the Code of Federal Regulations (CFR). Provisions enacted by the BBA and implemented in the interim final M+C regulations establish broad and comprehensive requirements for contracting as an M+C organization, including basic benefits, payment, access to service, quality assurance, beneficiary hold harmless, continuation of benefits, appeals mechanisms, marketing, and enrollment processes. These overall M+C regulations apply to M+C organizations that are PSOs.

A PSO is described in section 1855(d) of the Act as a public or private entity—

- That is established or organized, and operated, by a health care provider or group of affiliated health care providers;
- That provides a substantial proportion of the health care items and services directly through the provider or affiliated group of providers; and
- With respect to which the affiliated providers share, directly or indirectly, substantial financial risk for the provision of these items and services and have at least a majority financial interest in the entity.

On April 14, 1998, we published an interim final rule in the **Federal Register** at 63 FR 18124, titled "Definition of Provider-Sponsored Organization and Related Requirements" with an opportunity for public comment setting out the PSO definition, clarifying certain terms, and establishing related requirements. This PSO definitions rule established 42 CFR part 422 and subpart H of that part, dealing with PSOs. The terms and requirements related to the definition of a PSO are now found at §§ 422.350 through 422.356. On May 7, 1998, we published an interim final rule in the **Federal Register** at 63 FR 25360 titled "Waiver Requirements and Solvency Standards for Provider Sponsored Organizations," establishing solvency requirements that apply to PSOs that obtain a waiver of the M+C State licensure requirement and setting forth procedures and standards that apply to requests for the waivers. The solvency portion of the interim final PSO regulation was based on the work of the PSO negotiated rulemaking committee, as required at section 1856(a) of the Act, which provides that the Secretary establish through a negotiated rulemaking process the solvency standards that entities will be required to meet if they obtain a waiver of the otherwise applicable requirement that

they be licensed by a State. The results of the PSO solvency negotiated rulemaking committee are described in the preamble to the interim final regulation published on May 7, 1998 (63 FR 25360).

In this final rule, we focus solely on the solvency standards that will apply to PSOs that have obtained a waiver. Other PSO provisions will be addressed in the upcoming overall final M+C regulation. We note that based on §§ 422.352(a) and 422.380, State-licensed organizations that meet the PSO definition (see §§ 422.350 through 422.356) may qualify for the minimum enrollment standards established under section 1857(b) of the Act but are not subject to these solvency standards.

II. Response to Comments

The PSO solvency standards are the result of a negotiated rulemaking process. The participants in the negotiated rulemaking described their agreement on the PSO solvency standards in a Committee Statement titled "Negotiated Rulemaking Committee on PSO Solvency Standards" dated March 5, 1998. Based on these agreed upon PSO solvency standards, we published an interim final PSO solvency regulation on May 7, 1998 (63 FR 25360). The participants in the negotiated rulemaking process agreed not to submit negative comments on the interim final rule unless they determined that any provision of the interim rule incorrectly reflects the Committee solvency agreement. Section 1856(a)(9) of the Act, as amended by the BBA, requires that we publish final solvency standards within 1 year of the interim final regulations. Accordingly, this final regulation will address only the solvency standards for PSOs. Other comments on PSOs (for example, on the waiver process and definitions) will be addressed in the final M+C regulation due to be published in the fall of 1999.

We received eight public comments. Seven of the letters were from major organizations, and one letter was from a State. The comments we received are summarized below along with our responses.

Comment: We received several comments regarding whether unique solvency standards should be established for PSOs operating in rural areas. Several commenters discouraged establishing separate solvency standards for rural PSOs. One commenter noted that no State has separate solvency standards for entities that operate in distinct geographic areas. Another commenter stated that developing a successful Medicare managed care program is more difficult in a rural area

than in an urban area in part because enrollment growth is smaller in rural areas, making it more difficult to cover fixed administrative costs. The commenter was also concerned that it would be difficult to track "rural" and "nonrural" PSOs within a State.

According to the commenter, regulators would have the additional burden of monitoring the rural PSOs to determine whether, through growth or other reasons, it no longer met the definition of a rural PSO. If the PSO was no longer considered rural, there could be a possible disruption of services since the PSO would have to recapitalize in order to meet the higher solvency requirements for non-rural PSOs. The commenters also pointed out that rural PSOs, given less stringent solvency standards, would have a more difficult time making the transition from meeting the standards required for a Federal waiver to meeting the solvency requirements of a State once the 36-month waiver period expires.

Two commenters suggested that we consider allowing rural PSOs to "aggregate" specifically for purposes of meeting solvency standards (Regional PSOs). For example, we could permit rural providers or local rural PSOs that band into a regional PSO or rural PSOs that link to nonrural PSOs to be considered as one entity for the purpose of satisfying the PSO solvency standards. The commenter contended that such a regional approach to PSOs is likely to produce greater financial stability and greater access to care and would reduce unnecessary redundancy of solvency requirements as applied to individual entities that comprise the regional plan.

Another commenter recommended that solvency adjustments for rural PSOs be allowed in circumstances under which the commenter believes the solvency rules require more financial resources than might be necessary for smaller rural PSOs. The commenter suggested that certain solvency requirements could be reduced for rural PSOs without placing the PSO in financial jeopardy. Specifically, this commenter recommended that we have discretion to—(1) selectively allow for reductions in the minimum cash and liquidity requirements for rural PSOs; (2) allow for a reduction in the insolvency deposit for small and rural PSOs; (3) allow the use of irrevocable letters of credit for the insolvency deposit; and (4) allow for a reduction in the minimum cash portion of a rural PSO's net worth requirement.

Response: At this time, we will not establish separate solvency standards for rural PSOs. We believe that the lack

of current rural PSO activity makes it difficult to realistically evaluate under what circumstances it would be feasible for us to reduce certain solvency standards for rural PSOs. We note that the States do not have different solvency requirements depending on whether an entity is operating in a rural area compared to an urban area. As a commenter noted, PSOs will be subject to State standards at the end of the 36-month waiver period. In addition, we are concerned about lessening solvency requirements and thereby putting beneficiaries at increased risk if the rural PSO becomes insolvent.

With respect to the proposal to allow rural PSOs to band together for the purpose of collectively meeting the solvency requirements, we are concerned that if more than one of these PSOs becomes insolvent, there will not be adequate funds available to protect beneficiaries. We believe the possibility of two PSOs becoming insolvent at the same time is significant because the PSOs will be operating in the same region. Accountability questions would also be raised if we allow organizations to combine for the purpose of meeting certain requirements in regulations. If several PSOs combine to meet the solvency standards, it is not clear whether these combined PSOs would be in noncompliance if one of the PSOs experienced financial difficulty. In regard to recommendations that we reduce or modify various solvency reserves, we believe these changes would be a significant departure from the solvency standards carefully worked out during the negotiated rulemaking process. For that reason and those cited above, we will not selectively reduce the solvency requirements for rural PSOs.

Comment: A commenter noted that with respect to affiliate guarantees, the Solvency Committee agreed that it was up to us to determine which entities could provide guarantees. Because of this agreement, the commenter believed that it is appropriate to comment on this part of the interim final regulation. The commenter recommended that the independently audited financial statement provided by a guarantor can only be acceptable to us if it consists of unqualified opinions from the auditor.

Response: We will not require that guarantee opinions in audited independent financial statements always be unqualified. There may be circumstances where a qualification of a financial opinion does not significantly affect the conclusions regarding the entity's ability to meet the financial solvency standards. Accordingly, we reserve the right to accept or reject a

financial statement depending on the nature and significance of the qualification of the opinion.

Comment: Several commenters requested that we clarify in this regulation whether Federal bankruptcy or State receivership law should take precedence if a PSO goes bankrupt.

Response: We recognize the importance of this question. Accordingly, we are researching the alternatives regarding the appropriate jurisdiction and venue in which to administer a financially insolvent PSO. However, resolving the precedence of Federal bankruptcy law versus State receivership law is beyond the scope of this regulation.

Comment: Several commenters stated that a current ratio of 1:1 should be a factor we will use in evaluating the ongoing solvency of a PSO but not an absolute requirement as indicated at § 422.386 of the interim final rule. Section 422.386(d) of the interim final regulations states that if a PSO fails to maintain a current ratio requirement of 1:1, we will require the PSO to initiate corrective action. The commenters pointed out that the Liquidity section of the PSO Solvency Committee Statement states that we *may* require a PSO to initiate corrective action if either of the following is evident—(1) the current ratio declines significantly, or (2) there is a continued downward trend in the current ratio.

The corrective action may include change in the distribution of assets, a reduction of liabilities, or alternative arrangements to secure additional funding requirements to restore the current ratio to 1:1.

Response: We agree that the Committee Statement indicates that a PSO current ratio of 1:1 should be a factor we will use in evaluating the solvency of a PSO but not an absolute requirement that will always result in corrective action when violated. Accordingly, we will change § 422.386(d) in the final regulation to read as follows:

(d) If HCFA determines that a PSO fails to meet the requirement of paragraph (b)(2) of this section, HCFA may require the PSO to initiate corrective action to * * *

Comment: A commenter noted that § 422.382(a) requires that the initial net worth requirement be met at “* * * the time an organization applies to contract with us as a PSO.” The commenter recommended that this requirement be changed to require that the initial net worth requirement be met at the time the application is approved or the contract entered into, rather than on the date the application is first submitted.

The commenter expressed concern that since the application process can take a number of months, the PSO might have drawn down its net worth in the intervening months after the initial application and may have an inadequate net worth by the time the PSO actually enters into the contract with us.

Response: The Committee Statement on the PSO solvency standards specifies that the PSO minimum net worth amount must be met when the PSO submits the initial application. The interim final PSO regulations at § 422.382 reflect this Committee Statement. We believe it is necessary that the net worth requirement be met at the start of the application process to ensure that the applicant is financially able to enter into a contract with us. We also believe that the ongoing net worth requirement will ensure that PSOs have adequate net worth on the effective date of the contract.

Comment: Section 422.382(b) describes the ongoing net worth requirement as the greater of four amounts. The fourth amount, set forth in § 422.382(b)(4), begins with the statement “Using the most recent annual financial statement filed with HCFA, an amount equal to the sum of * * *”. A commenter contended that this language was intended to be an adaptation of a similar provision set forth in Section 13.A.(2)(d) of the National Association of Insurance Commissioners (NAIC) HMO Model Act, requiring that the calculation be based “* * * on the most recent financial statement filed with the commissioner * * *” rather than the most recent annual financial statement.

The commenter noted that while the calculation results in an annualized number, the calculation should be based on the most recent HCFA filing, which could be a quarterly statement, not an annual statement. Accordingly, the commenter requested that the word “annual” be deleted from § 422.382(b)(4) in order to conform to the NAIC structure.

Response: We agree with the commenter that the word “annual” should be removed from § 422.382(b)(4). This is also consistent with the PSO Committee Agreement in which the ongoing minimum net worth requirements are specified and verification is through “* * * the most recent financial statement filed with us.” Accordingly, we will revise § 422.382(b)(4) to read as follows:

Using the most recent financial statement filed with us, an amount equal to the sum of * * *

Comment: A commenter noted that § 422.384(b)(5) requires certification of reserves and actuarial liabilities by a “qualified HMO actuary,” which is not defined (the regulation does define “qualified actuary”). The commenter requested clarification of what is meant by “qualified HMO actuary.”

Response: We agree that the use of the phrase “qualified HMO actuary” at § 422.384(b)(5) is confusing. Accordingly, we will change the reference at § 422.384(b)(5) to read “qualified actuary.” We are not imposing any requirements on the qualifications of an actuary employed by a PSO beyond what is stated in the definition of qualified actuary under § 422.350(b).

Comment: Section 422.382(b)(4) describes the four-tiered minimum net worth test that will be applied to a PSO after the effective date of its M+C contract. Section 422.382(b)(4)(iii) states that the annual health care expenditures that are paid on a capitated basis to affiliated providers must not be included in the calculation of net worth under paragraphs (a) and (b)(4) of § 422.382. A commenter noted that the negotiated rulemaking committee specifically addressed this issue and was careful to note that the exclusion set forth in paragraph (b)(4)(iii) of § 422.382 would apply regardless of the downstream risk arrangements among providers. The commenter recommended that this nuance be noted in the text of the regulations.

Response: We agree as referenced in the Committee Statement that the exclusion from the net worth requirement calculation at § 422.382(b)(4)(iii) applies regardless of the downstream risk arrangements among providers. Accordingly, we will change the regulation at § 422.382(b)(4)(iii) by adding the following parenthetical clarification:

Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement (regardless of downstream arrangements from the affiliated provider) under paragraphs (a) and (b)(4) of this section.

Comment: A commenter recommended that a statement be added to the preamble of the final solvency regulation clarifying (1) that funds accumulated by a PSO as subordinated liabilities may be disbursed to the affiliated providers if they are not needed to satisfy net worth requirements during the period for which the funds were held and (2) that the PSO has the flexibility to convert those funds to equity or debt to benefit the providers.

Response: As long as the minimum net worth requirement is maintained, any assets including those associated with subordinated liabilities may be disbursed as the PSO deems appropriate on the basis of sound business judgment. We do not believe any additional clarification in the preamble is necessary.

Comment: Under § 422.386(b)(3), in determining liquidity, we evaluate the level of outside financial resources to the PSO. A commenter recommended that we change § 422.386(e) to clarify that we will require a PSO to obtain funding from alternative financial resources under this provision only if there has been a change in the availability of outside financial resources available to the PSO. In support of its recommendation, the commenter pointed out that the language of the Solvency Standards Agreement (under the Part C Liquidity requirements) reads, "If there is a change in the availability of the outside resources, we will require the PSO to obtain funding from alternative financial resources."

Response: We agree with this comment. Section 422.386(b)(3) provides that, in monitoring liquidity, we will examine the "availability of outside financial resources to the PSO." We will change § 422.386(e) to read as follows:

If HCFA determines that there has been a change in the availability of outside financial resources as required by paragraph (b)(3) of this section, HCFA requires the PSO to obtain funding from alternative financial resources.

Comment: Under § 422.390(d)(2)(ii), a guarantor must agree to not subordinate the PSO guarantee to any other claim on its resources. A commenter contended that in a typical PSO scenario, a tax-exempt hospital or health system may provide the guarantee to the PSO. In this case, the commenter believes it is likely that the hospital or health system has tax-exempt bonds in place that contain certain covenants with respect to the use and disposition of assets, including a pledge of revenues. Under most circumstances and bond documents, it would not be problematic in the commenter's view to satisfy the requirements at § 422.390(d)(2)(ii). However, the commenter believes that if a PSO were able to demonstrate that this requirement was unduly and substantially burdensome to the guarantor, we should have the authority to consider the specific facts and circumstances and sufficient discretion to modify this requirement.

Response: Section 422.390(a) of the Medicare+Choice regulations explicitly

states that we have the discretion to approve or deny approval of the use of a guarantor. We believe this authority generally allows us to exercise discretion in the approval or modification of a guarantor agreement. We do not believe further clarification of this authority in the regulations is necessary.

Comment: One commenter expressed concerns that the requirement that the guarantor have a net worth of three times the amount of the guarantee may not always be adequate. The commenter noted that this amount may be adequate for some companies, but it may be a very slender margin. As an alternative approach, the commenter suggested that perhaps the net worth of a guarantor be determined as a percentage of assets or related to total liabilities in some fashion.

Response: While we agree with the commenter's concern that the guarantor having a net worth of three times the amount of the guarantee may not always be adequate, we do not believe it is necessary to change the regulation to address this concern. Section 422.390(a) explicitly states that we have the discretion to approve or deny approval of the use of a guarantor. We believe this authority generally allows us to exercise discretion in determining the net worth to be required of a particular guarantor that could be based on alternative approaches like those suggested by the commenter.

Comment: Section 422.384(e)(i) provides that guarantees will be an acceptable resource to fund projected losses of a PSO provided that, before the effective date of the PSO's M+C contract, the PSO obtains from the guarantor cash or cash equivalents to fund the amount of projected losses for the first two quarters. A commenter noted that the preamble to the interim final rule stated that funding for the first two quarters will need to be in the PSO "at least (45) days before the effective date of the contract". The commenter recommended that, rather than enforcing a uniform 45-day requirement, we exercise discretion consistent with the current language of § 422.384(e)(i). The commenter maintained that under certain circumstances the 45-day requirement could prove to be unduly burdensome and we have sufficient discretion to ensure that the guarantee amounts are sufficiently prefunded for the first quarter of operation under the contract.

Response: The preamble of the May 7, 1998 interim final rule (63 FR 25370) calls for organizations to have assets to fund the first two quarters of projected losses on their balance sheets 45 days

before the effective date of the contract. However, this 45-day time period is a guideline to ensure that there is adequate time before the contract date for us to update necessary data systems. If a PSO is unable to have this funding in place 45 days before the contract effective date, this may result in a delay in the implementation of the contract.

III. Provisions of the Final Rule

We have agreed to the following changes in regulations text in response to comments on the interim final rule: Each change is based on a commenter establishing that the interim final regulation was not consistent with the agreement developed through the solvency negotiated rulemaking process.

- We have revised § 422.382(b)(4), which states that the ongoing net worth requirement be evaluated based on the most recent financial statement filed with us and not restricted to the most recent "annual" financial statement.

- We have accepted a comment to clarify in the final regulation that the exclusion from the net worth requirement calculation at § 422.382(b)(4)(iii) applies regardless of the downstream risk arrangements among providers.

- We have clarified that we are not imposing any requirement on the qualification of an actuary employed by a PSO beyond what is stated in the definition of a qualified actuary at § 422.384.

- We have changed § 422.386(d) to state that the PSO current ratio will be a factor we will use in evaluating the solvency of a PSO but not an absolute requirement that will always result in corrective action being imposed by us when violated.

- We have accepted a comment to change § 422.386(e) to make it clear that we will require a PSO to obtain funding from alternative financial resources if there is a change in the availability of outside financial resources available to the PSO.

IV. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation will not have a significant economic impact on a substantial number of small entities. Most hospitals, and most other providers, physicians, and health care suppliers, are small entities either by nonprofit status or by having revenues of less than \$5 million annually. The impact of this regulation will be to create a new business opportunity for these small entities to form provider-sponsored organizations to contract with the Medicare program.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. This final rule does not mandate any requirements for State, local, or tribal governments. Therefore, we have not prepared an assessment of anticipated costs and benefits of this final rule.

Because of the probability that these solvency standards may have an impact on certain hospitals, physicians, health plans, and other providers we prepared the following analysis which constitutes both a regulatory impact analysis and a regulatory flexibility analysis.

B. Background

While the term "provider-sponsored organization" has been used generally in reference to health care delivery systems that providers own or control and operate, the term has a more specific meaning for purposes of the M+C program. Accordingly, we defined, by regulation, the fundamental

organizational requirements for entities seeking to be PSOs. These definitions are set forth at § 422.350. Organizations that meet these definitional requirements can apply for a Federal waiver and an M+C contract. Having defined the term PSO and the waiver process in earlier regulations, the purpose of this final rule is to finalize the interim standards for financial solvency to which these Federally waived organizations must adhere.

The solvency standards only affect organizations that have received a Federal waiver and are either applying for or actually have received an M+C contract. It is likely that waiver activity will be greater in States that have solvency standards that differ significantly from the standards developed in this regulation. Below we consider the anticipated impact of this rule.

C. Anticipated Effects

1. Effects on Providers

This final regulation establishes solvency standards for PSOs that have an approved waiver and are applying for a Medicare PSO contract. These solvency requirements are designed to ensure that provider groups have the necessary financial resources to participate in the M+C program. In addition, the regulations are intended to ensure the ongoing solvency of PSOs and to protect enrolled beneficiaries if an insolvency occurs. Through the negotiated rulemaking process and our own deliberations, we have carefully balanced the PSO solvency requirements to ensure that we are not imposing unreasonable financial barriers to the participation of provider groups in the M+C program. We believe that these solvency requirements will make it easier for provider groups to participate in the M+C program.

2. Effects on the Market Place

Since solvency standards vary by State, and State standards are evolving, it is difficult to assess the relative effect of these solvency standards. However, with several key exceptions (for example, a different initial minimum net worth requirement and a lower insolvency deposit), these solvency standards track the HMO Model Act. Therefore, we do not believe there will be a significant impact due to the existence of an unlevel playing field between PSOs and other entities. We believe that establishing standards of financial solvency is necessary to ensure that PSOs have the financial resources to provide adequate quality care and to

reduce the possibility of disrupting beneficiary care.

3. Effects on States

For PSOs that obtain a Federal waiver, responsibility for monitoring their financial solvency will be transferred from the States to us. This a temporary reduction, since waivers last only 36 months and the Secretary's authority to grant waivers ends on November 1, 2002. By the end of a PSO's waiver, it will need a State license in order to continue its M+C contract. Therefore, to ease the transition from a Federal waiver to a State license, we encourage PSOs to establish a relationship with regulators in their respective States soon after receiving a waiver.

4. Effects on Beneficiaries

We expect that the advent of PSOs and M+C in general will have the effect of further mainstreaming managed care plans among Medicare enrollees. We do not anticipate an increase in the potential for service interruptions because these new PSOs will be subject to the same beneficiary hold-harmless provisions and continuation of benefits requirements as all M+C organizations. Lastly, section 1855(a)(2)(G) of the Act requires PSOs to comply with all existing State consumer protection and quality standards as if the PSO were licensed under State law.

D. Effects on the Medicare Program

We assume that PSOs will be more prone to favorable selection than other coordinated care plans since the providers in the PSO will, in many cases, know their patients. This may increase the level of favorable selection for the M+C program and could result in increased costs for the Medicare program. However, since PSOs are expected to make up a very small part of the M+C program, for the foreseeable future any PSO favorable selection will have a minimal dollar impact on the Medicare program.

We expect a greater insolvency rate from the PSOs than from the current coordinated care plans because PSOs generally have less business experience and they are smaller. Despite the insolvency rules including hold harmless, Medicare can lose money when there is an insolvency. This is particularly true when insolvency is imminent and providers therefore defer nonemergency procedures to the next month. Medicare may have to pick up the costs, especially if the beneficiary elects fee-or-service. However, as noted above, given the small number of PSOs participating in the M+C program, the

expected cost of insolvencies for the Medicare program is low.

E. Alternatives Considered

As previously discussed, the PSO solvency standards were developed through a formal negotiated rulemaking process. During the negotiated rulemaking, a number of alternatives were considered in the process of developing a consensus regarding the PSO solvency regulations. Please refer to the interim final PSO solvency regulation published in the **Federal Register** on May 7, 1998 for details on the negotiated rulemaking process including the solvency alternatives considered.

F. Conclusion

We conclude that this regulation will have an indeterminable impact on small health service providers. The provisions of this final rule are expected to be favorable for the managed care community as a whole, as well as for the beneficiaries that they serve. We have also determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of rural hospitals.

In accordance with the provisions of Executive order 12866, this regulation was reviewed by the Office of Management and Budget.

G. Federalism

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications.

In this final rule, we focus solely on the solvency standards that apply to PSOs that have obtained a waiver from State licensure requirements. The PSO waiver provisions that describe the process by which a PSO obtains a waiver from HCFA of State licensure requirements will be addressed in the final M+C regulation expected to be published in the first quarter of 2000.

The solvency portion of the PSO regulation in this final regulation is based on the work of the PSO negotiated rulemaking committee, as required at section 1856(a) of the Act, which provides that we establish through a negotiated rulemaking the solvency standards that entities will be required to meet if they obtain a waiver of the otherwise applicable requirement that they be licensed by a State. The

negotiated rulemaking process and participants are discussed in the preamble to the interim final waiver and solvency regulations published in the **Federal Register** on May 7, 1998 (63 FR 25364). Among the participants in the negotiated rulemaking were the National Association of Insurance Commissioners, which is the organization of the chief insurance regulators from the 50 States, the District of Columbia, and four U.S. territories. This final solvency regulation is consistent with the solvency standards agreed upon by all participants in the negotiated rulemaking process, which, as noted, included the NAIC. We received no comments on the interim final waiver and solvency regulation and made no determinations that materially altered the PSO solvency standards agreed upon in the negotiated rulemaking. It is also notable that with limited exceptions these solvency standards track those in the HMO model act which are the model solvency standards developed by all of the States through the NAIC. Accordingly, we believe this final regulation meets Federalism requirements because we have consulted with the appropriate State officials who are in agreement with these solvency standards.

List of Subjects in 42 CFR Part 422

Health maintenance organizations (HMO), Medicare+Choice, Provider sponsored organizations (PSO).

For the reasons set forth in the preamble, 42 CFR Chapter IV, part 422, is amended as follows:

PART 422—MEDICARE—CHOICE PROGRAM

1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1851 and 1855 of the Social Security Act.

Subpart H—Provider-Sponsored Organization

2. In § 422.382, the introductory text to paragraph (b) is republished, and the introductory text to paragraph (b)(4) and paragraph (b)(4)(iii) are revised to read as follows:

§ 422.382 Minimum net worth amount.

* * * * *

(b) After the effective date of a PSO's M+C contract, a PSO must maintain a minimum net worth amount equal to the greater of—

* * * * *

(4) Using the most recent financial statement filed with HCFA, an amount equal to the sum of—

* * * * *

(iii) Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement (regardless of downstream arrangements from the affiliated provider) under paragraphs (a) and (b)(4) of this section.

* * * * *

§ 422.384 [Amended]

3. In § 422.384, in paragraph (b)(5), the phrase “qualified health maintenance organization actuary” is removed and the phrase “qualified actuary” is added in its place.

4. In § 422.386, the introductory text to paragraph (d) and paragraph (e) are revised to read as follows:

§ 422.386 Liquidity.

* * * * *

(d) If HCFA determines that a PSO fails to meet the requirement of paragraph (b)(2) of this section, HCFA may require the PSO to initiate corrective action to—

* * * * *

(e) If HCFA determines that there has been a change in the availability of outside financial resources as required by paragraph (b)(3) of this section, HCFA requires the PSO to obtain funding from alternative financial resources.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 3, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Approved: August 16, 1999.

Donna E. Shalala,
Secretary.

[FR Doc. 99–32939 Filed 12–21–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7721]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: We, FEMA, are suspending one community on the effective date of

this rule because of its failure to enforce its floodplain management regulations under the National Flood Insurance Program (NFIP). If we receive documentation that the community has acted to bring its floodplain management program into compliance with NFIP requirements before the effective suspension date, we will withdraw the suspension by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column of the table.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-3619, or (email) Bob.Shea@fema.gov.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance that is generally not commercially available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures.

The community listed in this notice no longer meets that statutory requirement for compliance with program regulations (44 CFR part 59 *et seq.*). Accordingly, we will suspend unincorporated areas of Hamilton County, Illinois, on the effective date in the third column of the table. As of that date, the purchase of new flood insurance policies or the renewal of

existing flood insurance policies will no longer be available.

However, Hamilton County, Illinois may submit the documentation required to correct the deficiencies and to remedy the violations identified in the suspension notice to the maximum extent possible, before the actual suspension date. If the County does this, we will not suspend the County and it will continue its eligibility for the sale of insurance. And if so, we will publish in the **Federal Register** notice withdrawing the suspension of the community. In the interim, if you wish to determine whether we suspend the County on the suspension date, please contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

We have also identified the special flood hazard areas in this community by publishing a Flood Insurance Rate Map. The date of this flood map is indicated in the fourth column of the table. By law no Federal officer or agency may approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director of FEMA as an area having special flood hazards unless the community in which that area is located is participating in the NFIP (42 USC 4106). Formally identified flood-prone communities that do not qualify for the NFIP within one year after such notification or other specified date are subject to the prohibition in 42 USC 4106. The prohibition against certain types of Federal assistance becomes effective for Hamilton County, Illinois on the date shown in the last column.

The Administrator finds that notice and public comment procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule has been adequately notified. The community received a 90-day probationary letter on November 11, 1998, and a 30-day show cause letter was sent October 18, 1999. We addressed these notifications to the

Hamilton County Board Chairman indicating that we will suspend the County unless the County takes the required corrective actions and remedial measures before the effective suspension date. Since we have made these notifications, this final rule may take effect within less than 30 days.

Under the provisions of 5 U.S.C. 605(b), I certify as Associate Director for Mitigation that this rule will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002), the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to enforce adequate floodplain management, thus not complying with the Federal standards required for community participation. In each entry, a complete chronology of the effective date appears for the listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

Accordingly, we are amending 44 CFR part 64 as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

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

§ 64.6—LIST OF ELIGIBLE COMMUNITIES

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V: Illinois: Hamilton, County of.	170910	July 3, 1975, Emerg.; Aug. 19, 1985, Reg.; Jan. 17, 2000, Susp.	02-01-90	Jan. 17, 2000

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-33008 Filed 12-21-99; 8:45 am]

BILLING CODE 6718-21-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE32

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Sidalcea oregana* var. *calva* (Wenatchee Mountains Checker-Mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act (Act) of 1973, as amended, for *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow). This plant species is endemic to meadows that have surface water or saturated soil in the spring and early summer at middle elevations in the Wenatchee Mountains of Chelan County, Washington. Although five populations of this plant are known, three of these have very few individuals. The estimated total number of plants is about 3,300. The primary threats to *S. oregana* var. *calva* include habitat fragmentation and destruction due to alterations of hydrology, rural residential development and associated activities, competition from native and alien plants, recreation, fire suppression, and activities associated with fire suppression. To a lesser extent, the species is threatened by livestock grazing, road construction, and timber harvesting and associated impacts including changes in surface runoff in the small watersheds in which the plant occurs. This rule implements the Federal protections provided by the Act for this plant.

EFFECTIVE DATE: This final rule is effective January 21, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Western Washington Office, North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, 510 Desmond Drive, Suite 102, Lacey, WA 98503-1273.

FOR FURTHER INFORMATION CONTACT: Gerry Jackson, Supervisor, at the above

address (telephone 360/753-4327; facsimile 360/753-9815).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea oregana var. *calva* (Wenatchee Mountains checker-mallow) is known only from the Wenatchee Mountains of central Washington. Specimens assignable to var. *calva* were first collected from Icicle Creek near Leavenworth in Chelan County and from wet meadows near the town of Peshastin in Chelan County by Sandberg and Leiberg on July 25, 1893 (herbarium collection, stored in permanent collection at the Smithsonian Institution and the University of Oregon herbaria (Sandberg and Leiberg #586)). Occasional collections were made over subsequent decades until the type specimen was collected by Hitchcock on June 21, 1951, from Camas Land in Chelan County (herbarium collection, stored in permanent collection at Washington State University and the University of Oregon (Hitchcock #19,427)). The taxon was first recognized as a distinct variety named *S. oregana* ssp. *oregana* var. *calva* by Hitchcock and Kruckeberg (1957). Hitchcock and Cronquist (1973) reduced *S. oregana* ssp. *oregana* to varietal status (*S. oregana* var. *spicata*), thereby eliminating the need to include the subspecies *oregana* as part of the scientific name for this taxon. No further taxonomic revisions have been made for this taxon. In recent discussions, knowledgeable individuals confirmed the distinctness of this variety (Arthur Kruckeberg, University of Washington, pers. comm. 1995; John Gamon, Washington Natural Heritage Program, pers. comm. 1996).

A member of the mallow family (Malvaceae), *Sidalcea oregana* var. *calva* is a perennial plant with a stout taproot that branches at the root-crown and gives rise to several stems that are 20 to 150 centimeters (cm) (8 to 60 inches (in)) tall. Plants vary from glabrous (lacking hairs and glands) to pubescent (hairy) or stellate (with star-shaped hairs) below, are finely stellate above, and have flower clusters with one to many stalked flowers arranged singly along a common stem. The flowers have pink petals 1 to 2 cm (0.4 to 0.8 in) long. The flowers are borne on stalks ranging from 1 to 10 millimeters (mm) (0.04 to 0.4 in) in length; the calyx (outer whorl of floral parts) ranges from uniformly finely stellate to bristly with a mixture of longer, simple to four-rayed, spreading hairs sometimes as long as 2.5 to 3 mm (0.1 to 0.12 in) (Hitchcock and Cronquist 1961). Flowering begins in

the middle of June and peaks in the middle to end of July. Fruits are ripe by August. *Sidalcea oregana* var. *calva* is similar morphologically to *S. oregana* var. *procera*, which occurs in the same general region but with a more southerly distribution. *Sidalcea oregana* var. *calva* can be distinguished from var. *procera* by the type and degree of pubescence on the stems and calyx and its large, fleshy, basal leaves, which are smooth to the touch on both surfaces (Gamon 1987).

The historical site location of the 1893 collection near the town of Peshastin and three other early (pre-1940) collections in the Peshastin area have not been relocated (Gamon 1987). The location given for each of these early collections was too vague to allow for relocation. Conversion of the Peshastin and Leavenworth area to orchards or other agricultural uses and rural residential development has likely extirpated *Sidalcea oregana* var. *calva* from this area. Resurveying of three other locations thought to have *Sidalcea oregana* var. *calva* revealed plants found to be *S. oregana* var. *procera* (Gamon 1987). At another three sites where *S. oregana* var. *calva* was discovered in 1984, no plants were found in 1987, possibly because the few plants found in 1984 went undetected in 1987, the original location information was imprecise, or the few plants found in 1984 did not survive due to changes in the hydrologic regimes of the area (J. Gamon, pers. comm. 1997).

Currently, *Sidalcea oregana* var. *calva* is known to occur at five sites (populations). The largest population is located in an area called Camas Land, a wetland and moist meadow complex surrounded by ponderosa pine and Douglas-fir forests. The area is a mixture of private land, State of Washington land managed as the Camas Land Natural Area Preserve (NAP) by the Washington Department of Natural Resources (WDNR), and land administered by the Wenatchee National Forest (U.S. Forest Service). Camas Land is located and named on U.S. Forest Service and WDNR maps. Based on a recent inventory, about 2,470 individuals occur on 36 hectares (ha) (90 acres (ac)) of WDNR property in Camas Land (Washington Natural Heritage Program 1997). These plants are thought to represent about 75 percent of the Camas Land population (David Wilderman, WDNR, pers. comm. 1997). The second largest population, discovered in 1987 on private land at Mountain Home Meadow, consists of about 100 plants within a few hectares (Ted Thomas, Service, pers. obs. 1995). Two other populations on the Wenatchee National Forest have a total

of seven plants (Richy Harrod, U.S. Forest Service, pers. comm. 1997). The fifth population, on private land, has fewer than 30 plants (T. Thomas, pers. obs. 1995). The estimated total number of plants in these 5 populations is fewer than 3,300. The total area occupied by the 5 populations is approximately 50 ha (125 ac).

Sidalcea oregana var. *calva* is most abundant in moist meadows that have surface water or saturated upper soil profiles during spring and early summer, but it also occurs in open conifer stands dominated by *Pinus ponderosa* (ponderosa pine) and *Pseudotsuga menziesii* (Douglas-fir) and on the margins of shrub and hardwood thickets. Extant populations are found at elevations ranging from 600 to 1,000 meters (m) (1,970 to 3,300 feet (ft)). The soils are typically clay-loams and silty loams with low moisture permeability. Associated species include *Populus tremuloides* (quaking aspen), *Crataegus douglasii* (black hawthorn), *Symphoricarpus albus* (common snowberry), *Amelanchier alnifolia* (serviceberry), *Lathyrus pauciflorus* (few-flowered peavine), *Wyethia amplexicaulis* (northern mule's-ear), *Geranium viscosissimum* (sticky purple geranium) and *Veratrum californicum* (California false hellebore). Sixty percent of the *S. oregana* var. *calva* populations are found in association with *Delphinium viridescens* (Wenatchee larkspur), a former Federal category 1 candidate plant species.

Previous Federal Action

Federal action on *Sidalcea oregana* var. *calva* began when we published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *S. oregana* var. *calva* as a category 1 candidate species. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The Notice of Review published on September 27, 1985 (50 FR 39526), included *Sidalcea oregana* var. *calva* as a category 2 candidate species. Category 2 candidates were defined as taxa for which information indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a listing proposal. Later notices of review published on February 21, 1990 (55 FR 6185), and September 30, 1993 (58 FR 51144), identified the plant as a category 1 candidate species. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we

ceased using the category designations and included *Sidalcea oregana* var. *calva* as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. That provision of the Act applied to *Sidalcea oregana* var. *calva*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1995.

On August 1, 1997, we published a proposed rule to list *Sidalcea oregana* var. *calva* as an endangered species (62 FR 41328). The comment period was open until September 30, 1997. With publication of this final rule, we now determine that *Sidalcea oregana* var. *calva* is endangered.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

We have updated this rule to reflect any changes in distribution, status, and threats since publishing the proposed rule and to incorporate information obtained through the public comment period. This additional information did not alter our decision to list this species.

Summary of Comments and Recommendations

In the August 1, 1997, proposed rule (62 FR 41328) and associated notifications, we requested interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published announcements of the proposed rule in newspapers, including the *Seattle Times*, *Seattle Post-Intelligencer*, *Olympian*, *Wenatchee World*, *Leavenworth Echo*, *Bremerton Sun*, *Centralia Chronicle*, *Everett World*, *Longview World*, *Skagit Valley Herald*, *Peninsula Daily News*, *Spokesman Review*, *Yakima Herald*, *Aberdeen Daily World*, *Bellingham Herald*, *Bellevue Daily*, and *Vancouver Columbian*, on August 1, 1997, inviting public comment.

During the comment period, we received five comments, from one Federal agency, one State agency, one conservation organization, and two individuals or groups. All commenters, except one, supported the listing of *Sidalcea oregana* var. *calva* under the Act.

Because multiple respondents offered similar comments, we grouped comments of a similar nature or point. These comments and our responses to each are discussed below.

Issue 1: One commenter was concerned that listing this species would restrict further development of the commenter's property.

Our Response: Nothing prohibits "take" of plants on private land. Future construction activities on private land would not be restricted by any regulations under the Act, provided that there is no Federal agency involvement in the activities. If actions on private property require Federal funding, authorizations, or a Federal permit, the Federal action agency must consult with us. For further discussion on consultation requirements under section 7 of the Act, see the "Available Conservation Measures" section of this final rule.

Issue 2: One commenter questioned our authority to regulate interstate

commerce, as related to this endangered species.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidus terminatus abdominalis*). As with *Sidalcea oregana* var. *calva*, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate—(1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because applying the Act in that case prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial development that is part of interstate commerce.

The Federal Government also has the authority under the Property Clause of the Constitution to protect this species. *Sidalcea oregana* var. *calva* occurs on Federal land in the Wenatchee National Forest. If this species were to become extinct, the diversity of plant life in the Wenatchee National Forest would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See e.g., *Kleppe v. New Mexico*, 429 U.S. 873 (1976); *United States v. Alford*, 274 U.S. 264 (1927); *Camfield v. United States*, 167 U.S. 518 (1897); *United States v. Lindsey*, 595 F.2d 5 (9th Cir. 1979).

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts

and specialists. Two scientists responded to our request for peer review of this listing action. Both responders provided information that was incorporated and is presented in the final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their applications to *Sidalcea oregana* (Nutt.) var. *calva* C.L. Hitchcock (Wenatchee Mountains checker-mallow) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

All known sites and habitats for *Sidalcea oregana* var. *calva* have undergone various alterations. Conversion of land to orchards or other agricultural uses and rural residential development are thought to have extirpated historical populations (Gamon 1987). Numerous houses already exist at Camas Land, the site of the largest population, and two houses have been built there since 1987 (T. Thomas, pers. obs. 1995). Current threats to this population are posed by further subdivision for residences and associated habitat modifications, such as alterations in hydrology, increased nutrient loads into the meadow from septic systems, introduction of non-native grasses, conversion of portions of the meadow to agricultural uses including pasture land and gardens, access road construction, and trampling by people and off-road vehicles (Gamon 1987; T. Thomas, pers. obs. 1995; D. Wilderman, pers. comm. 1997).

Natural drainage channels within Camas Land have been altered to direct water away from the primary wet meadow area for agricultural purposes (Gamon 1987; R. Harrod, pers. comm. 1996; D. Wilderman, pers. comm. 1997). Alterations in hydrology threaten the species by changing the amount, timing, duration, and/or frequency of the water supply to the habitat for the species. Most individuals of *Sidalcea oregana* var. *calva* in the Camas Land meadow are associated with the drainage channels or areas that retain moisture relatively longer (Gamon 1987).

Livestock occur in Camas Land, and the sheep, horses, and cows trample vegetation, compact soils, and serve as

vectors for introducing non-native plant seeds either directly or indirectly through their feed. Portions of the primary meadow have also been seeded to non-native grasses to increase forage for livestock. In addition, non-native grasses have been planted near residences for lawns and appear to be encroaching into the primary meadow area (T. Thomas, pers. obs. 1995). These introduced grasses are rhizomatous (forming a thick layer of matted roots), and tend to outcompete and, therefore, displace native species for nutrients and water (R. Harrod, pers. comm. 1996). *Sidalcea oregana* var. *calva* is generally absent from these areas except for occasional individuals along the periphery, suggesting that the introduced species are able to displace *S. oregana* var. *calva* (Gamon 1987).

The primary Camas Land meadow is used by recreationists, which has had detrimental effects on the population of *Sidalcea oregana* var. *calva* (Gamon 1987; D. Wilderman, pers. comm. 1997). People engaging in a variety of recreational activities, including trailbike riding, bow-hunting competitions, and camping, contribute to the species' decline by trampling plants and compacting the soil. Trampling of *S. oregana* var. *calva* plants has been documented (D. Wilderman, pers. comm. 1997).

Timber harvest has occurred throughout the general Camas Land area (R. Harrod, pers. comm. 1996). Local ground disturbance associated with timber harvest, such as log yarding and slash disposal, probably poses a greater threat than tree removal (Gamon 1987) by crushing plants and compacting the soil. Timber harvest may also have long-term effects on the hydrology in the small watershed and poses a threat to the species by increasing erosion and sedimentation in the wetlands where it occurs and changing the patterns of surface and subsurface water runoff.

A large portion of the two largest populations of *Sidalcea oregana* var. *calva* in Camas Land was adversely impacted by fire-suppression activities associated with the Rat Creek and Hatchery Creek fires during the fall of 1994 on the Wenatchee National Forest (Harrod 1994; T. Thomas, pers. obs. 1995). During construction of a fire safety zone in a small drainage flowing into the Camas Land Meadow, a bulldozer destroyed several hundred *S. oregana* var. *calva* plants. The plants were bladed and uprooted, the topsoil removed, and the site scraped to mineral soil. During a visit to the disturbed site in May of 1995, researchers observed no sprouts or seedlings of *S. oregana* var. *calva* (T.

Thomas, pers. obs. 1995). The likelihood of recovery of *S. oregana* var. *calva* within the disturbed portion of the population appears low (R. Harrod, pers. comm. 1996).

A second population, at Mountain Home Meadow, was also adversely impacted by fire-suppression activities associated with the Rat Creek Fire during 1994 (Harrod 1994). A fire safety area was constructed in the wetland supporting a population of *Sidalcea oregana* var. *calva*. Blading of the area by a bulldozer destroyed approximately 50 percent (more than 100 plants) of the population, disturbed the soil, and altered the hydrology of this wet meadow. One year after the disturbance, no *S. oregana* var. *calva* plants were observed at this location (T. Thomas, pers. obs. 1995). The likelihood of recovery of the destroyed portion of this population appears low (R. Harrod, pers. comm. 1996).

The potential for forest fires is high in the east side ponderosa pine and Douglas-fir forest type. Prior to 1900, historic fire frequency in the forests east of the Cascade Crest was approximately 13 years, with fire essentially absent from 1900 to 1990 (Everett *et al.* 1997). With the reduction of fires during this century, the structure of east-side forests has been altered with an increase in tree density and development into multiple canopy layers. Because of the changes in stand structure, these forests are highly susceptible to wildfire (Agee 1993). Because fires threatening private property and public structures are suppressed, the likelihood for further direct disturbance to *Sidalcea oregana* var. *calva* populations in the future remains high. Fire may play a role in the maintenance of suitable habitat for *S. oregana* var. *calva* (Gamon 1987), and fire suppression has probably resulted in less suitable habitat (R. Harrod, pers. comm. 1996). In the absence of fire, conifer recruitment and woody plant invasion may reduce the amount of habitat suitable for *S. oregana* var. *calva* by increasing competition for light, nutrients, and water. A significant increase in vegetative growth due to fire suppression outside of the immediate habitat for *S. oregana* var. *calva* may also adversely affect habitat suitability for the species by reducing the surface runoff within the small wetlands where it occurs.

Other current threats at Mountain Home Meadow, where the second largest known population of *Sidalcea oregana* var. *calva* occurs, include alteration of hydrology due to road construction, timber harvesting activities, and inadvertent trampling of the small population by guests at a

nearby resort lodge. The hydrology of the site may be altered by the main access road that borders the population on the west. Timber on the ridge immediately west of the main access road was harvested in 1987. This timber was within 50 m (164 ft) of the population, and the harvest temporarily modified the area's hydrology by increasing water flow from the hillside directly into the plant's habitat. Timber was also harvested from the ridge directly above and east of Mountain Home Meadow during the summer of 1995, and this harvest may have modified surface runoff (R. Harrod, pers. comm. 1996). Construction activities and facilities maintenance at the lodge may also alter the site hydrology and adversely impact the *S. oregana* var. *calva* population at this location (Gamon 1987; T. Thomas, pers. obs. 1995).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Seed of the full species *Sidalcea oregana* is collected by horticulturists. Some populations are small enough that even limited collecting pressure could have adverse impacts. *S. oregana* var. *calva* is an attractive plant and may be sought for collection if its rarity and population locations become well known. All perennial species in the genus are considered attractive plants with horticultural potential (Hitchcock and Cronquist 1961; Gamon 1987; Hill 1993). Wild-collected seed of the species, *S. oregana* (no variety given), is available through a seed exchange program offered by the international gardening society North American Rock Garden Society (North American Rock Garden Society 1996).

C. Disease or Predation

Large numbers of aphids have infested individuals of *Sidalcea oregana* var. *calva* at the Camas Land and Mountain Home Meadow populations (Gamon 1987). The effect of these aphids, or the relationship of the aphids to *S. oregana* var. *calva*, is not known. In 1987, researchers observed that weevils had eaten the majority of the seeds that had been produced (Gamon 1987); herbivory has also been observed more recently (R. Harrod, pers. comm. 1996). Livestock, especially sheep, have grazed the Camas Land meadow complex, and the southeast portion of the meadow is currently grazed by horses. Whether herbivory by livestock or wildlife has adversely impacted the *S. oregana* var. *calva* population is unknown, as is the potential threat herbivory may currently pose. Some

grazing by horses and wildlife (deer and elk) also has been observed, although the impact from grazing is unknown (Gamon 1987; R. Harrod, pers. comm. 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

Sidalcea oregana var. *calva* is included on the U.S. Forest Service Region 6 Sensitive Plant List and is listed as endangered by the WDNR's Natural Heritage Program (1994). The State of Washington has no State Endangered Species Act, and therefore, the WDNR designation provides no legal protection for this species.

The Wenatchee National Forest has developed a draft conservation agreement with us for another sensitive plant species, *Delphinium viridescens*, which would indirectly provide some measures for conserving *Sidalcea oregana* var. *calva* at the three sites where the two species occur together. Some protective mechanisms discussed in the draft agreement have been implemented and may serve to promote the recovery of *S. oregana* var. *calva* on Forest Service land. However, this agreement has not been finalized, does not address all of the threats to *S. oregana* var. *calva*, and is inadequate to protect and recover the species throughout its range (Gamon 1987; J. Gamon, pers. comm. 1997). Protection provided through this conservation agreement would not extend to private or State-owned land, where most of the individual plants occur, nor would it protect the species from alteration of hydrology, rural residential development and associated impacts, competition from non-native plants, fire and fire-suppression activities, insect outbreaks, and random events. The numbers of *S. oregana* var. *calva* plants are so low on Forest Service land that these two populations may not be viable, and little opportunity exists for genetic exchange between the Wenatchee National Forest populations and the other Camas Land populations. The area where the two populations occur is designated under the Northwest Forest Plan as matrix, which is land that is available to harvest. A small portion of the area does occur in a managed late-successional reserve, which provides some protection by limiting some of the activities that may occur there. The two populations on Forest Service land occur behind locked vehicle gates, so they are afforded some measure of protection. However, foot and bicycle traffic is permitted.

The wetland habitat of *Sidalcea oregana* var. *calva* is under the jurisdiction of the U.S. Army Corps of

Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Section 404 requires project proponents to obtain a permit from the Corps prior to undertaking activities (e.g., grading, discharge of soil or other fill material) that would result in the fill of wetlands under the Corps' jurisdiction. Denial or restriction of an activity under section 404 can occur if the effects of the activity would have an adverse effect on such things as municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

Generally, if a project falls below certain thresholds, such as the fill of wetlands less than 0.13 ha (0.33 ac) under Nationwide Permit 26 (33 CFR 330.5(a)(26)), the project is considered authorized. Projects meeting the criteria for a nationwide permit are normally permitted with minimal environmental review by the Corps.

Individual permits are required for the discharge of fill material into wetlands above the thresholds established by the nationwide permits. The review process for the issuance of individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, for individual permit applications, an alternatives analysis and an assessment of cumulative wetland impacts and a 30-day public review period is required. Resulting permits may include special conditions that require the avoidance or mitigation of environmental impacts. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless the project has substantial or more than minimal impacts, or a species is listed as threatened or endangered, or other significant resources might be adversely affected by the proposed activity.

Three out of the five populations of *Sidalcea oregana* var. *calva* are very small, two occupying habitat less than a couple of meters in size, and one occupying a site of no more than 0.2 ha (0.05 ac). Any one of these three populations could conceivably be eliminated if the wetlands they occupy were covered by fill or discharged material. The remaining two populations could lose a large number of individuals, as well as have the hydrology of its habitat adversely modified by discharge of fill or dredged material. Because many activities that could cause modification or destruction of the wetland habitats of *S. oregana* var. *calva* could be authorized by nationwide permit, section 404 of the Clean Water Act provides insufficient

protection of the species. Following listing of the species, however, section 404 could provide greater protection.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fewer than 5 individuals are present at each of 2 sites on Forest Service land, and fewer than 30 individuals are present at 1 of the sites on private land. When populations reach such low numbers of individuals, their vulnerability to extirpation from human-caused and random events increases (Gilpin and Soule 1986; Given 1994; Schemske *et al.* 1994). An outbreak of insects, soil disturbance from livestock grazing, or a fire during the growing season of *Sidalcea oregana* var. *calva* could extirpate these small populations or reduce the habitat suitability for this species. The small, isolated nature of these populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. Small populations may lose a large amount of genetic variability because of genetic drift and, therefore, have a reduced likelihood of long-term viability (Soule 1980, as cited in Lesica and Allendorf 1992). The Mountain Home Meadow population has fewer than 100 plants and is also vulnerable to many of these same threats. An additional threat to the Mountain Home Meadow population from an adjacent gravel road is dust, which may hinder pollination of the plants nearest the road (Gamon 1987).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in making this rule final. Threats to *Sidalcea oregana* var. *calva*, including alterations of wetland hydrology, development of property for residential and agricultural use, habitat modification or destruction from fire-suppression and related activities, competition with native and non-native plant species, and impacts from recreational activities, imperil the continued existence of this species. Much of the habitat where this species occurs is suitable for development and for modification by logging or agriculture and is unprotected from these threats. The small populations of this species are particularly vulnerable to extirpation from random natural events. *Sidalcea oregana* var. *calva* is known from only five populations. The most likely random natural threat to *S. oregana* var. *calva* is wildfires, which remain a concern in the east-side Cascade forest ecosystem. Two of these populations have fewer than 5 individuals each, while 1 population

has fewer than 30 individuals. Another population has about 100 individuals remaining after being reduced 50 percent by fire-suppression activities. The largest population has about 2,470 individuals. *Sidalcea oregana* var. *calva* is in danger of extinction throughout its range and, therefore, meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of *S. oregana* var. *calva*, the preferred action is to list *S. oregana* var. *calva* as endangered. Other alternatives to this action were considered but not preferred; not listing *S. oregana* var. *calva* or listing it as threatened would not be in accordance with the Act.

Critical Habitat

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Sidalcea oregana* var. *calva* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Sidalcea oregana* var. *calva* would be prudent.

Due to the small number of populations, *Sidalcea oregana* var. *calva* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *S. oregana* var. *calva* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree

of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Sidalcea oregana* var. *calva*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Sidalcea oregana* var. *calva* has allowed us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *S. oregana* var. *calva* without further delay. However, because we have successfully reduced, although

not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Sidalcea oregana* var. *calva* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing can encourage and result in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required by Federal agencies and prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of

proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, pursuant to section 7(a)(2) of the Act.

Two of the five known populations of *Sidalcea oregana* var. *calva* are found entirely on Federal lands managed by the Wenatchee National Forest, while a third population lies partially within its boundaries. The U.S. Forest Service would be required to consult with us if any actions such as timber harvesting, road construction, fire-suppression/management, or grazing activities may affect *S. oregana* var. *calva*. Other Federal agency actions that may require conference and/or consultation include Army Corps of Engineers authorization of projects affecting wetlands and other waters under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System, Natural Resource Conservation Service projects, and Department of Housing and Urban Development and Veterans Administration mortgage programs (Federal Home Administration loans). In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

Listing of this plant as endangered would provide for development of a recovery plan for the plant. Such a plan would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These

prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove such plants from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would be sought or issued because the species is not common in cultivation or in the wild.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy is to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Two of the five known populations of *Sidalcea oregana* var. *calva* are found entirely on Federal lands managed by the Wenatchee National Forest, while a third population lies partially within its boundaries. Collection, damage, or destruction of this species on Federal lands is prohibited, although in appropriate cases a Federal permit could be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal land would constitute a violation of section 9 of the Act if activities were conducted in knowing violation of Washington State law or regulations, or in the course of a violation of Washington State criminal trespass law.

We believe that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (if the species were found on Federal lands), (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire-break.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Supervisor of the Western Washington Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-6241).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in

connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered plant species, see 50 CFR 17.62 and 17.63.

This rule has not been reviewed by the Office of Management and Budget under C.O.12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Western Washington Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Ted Thomas, Western Washington Office of the North Pacific Coast Ecoregion (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
<i>Sidalcea oregana</i> <i>var. calva.</i>	Wenatchee Moun- tains checker-mal- low.	U.S.A. (WA)	Malvaceae—Mallow	E	673	NA	NA
*	*	*	*	*	*		*

Dated: December 8, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99-33100 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259-8312-02; I.D. 121699B]

Summer Flounder Fishery

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

ACTION: Commercial quota transfer; commercial quota harvest reopening.

SUMMARY: NMFS announces that the State of North Carolina is transferring 70,000 lb (31,752 kg) of commercial summer flounder quota to the State of New York from its 1999 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved. NMFS also announces that the summer flounder commercial fishery in the EEZ for the State of New York is reopened. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New York for the remainder of calendar year 1999, unless closed due to the State of New York harvesting its commercial quota before the end of the calendar year. Regulations governing the summer flounder fishery require the publication of this notification to advise the State of New York that the fishery has reopened and to advise vessel permit holders and dealer permit holders that commercial quota is available for landing summer flounder in New York.

DATES: Effective December 17, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

After taking into account any overages of state quotas that occurred in 1998, the total commercial quota for summer flounder for the 1999 calendar year was set equal to 10,729,274 lb (4,866,717 kg), with a quota of 790,006 lb (358,341 kg) for New York and a quota of 3,044,589 lb (1,381,002 kg) for North Carolina (64 FR 46596; August 26, 1999).

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided the mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS, (Regional Administrator) can transfer or combine summer flounder commercial quota under section 648.100(e). The Regional Administrator is required to consider the criteria set forth in § 648.100(e)(1), in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 70,000 lb (31,752 kg) of its 1999 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.100(e)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1999 are: New York, 860,006 lb (390,099 kg); and North Carolina, 2,974,589 lb (1,349,274 kg).

NMFS issued a notification in the **Federal Register** on October 26, 1999 (64 FR 57586), announcing that the summer flounder commercial quota available to the State of New York had been harvested. The Regional Administrator has determined, based upon dealer reports and upon other available information, that the State of

North Carolina will not attain its quota for 1999 and, based on the 70,000-lb (31,752-kg) transfer of commercial summer flounder quota to the State of New York, that the State of New York commercial summer flounder fishery in the EEZ will reopen effective 0001 hours, December 17, 1999 through December 31, 1999. Therefore, vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New York for the remainder of calendar year 1999, unless closed due to the State of New York harvesting its commercial quota before the end of the calendar year. Effective December 17, 1999 through December 31, 1999, federally permitted dealers are also advised that they may purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year.

Classification

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.03a.3(b)(1) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses. This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 17, 1999.

Bruce C. Morehead,

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

[FR Doc. 99-33151 Filed 12-17-99; 2:41 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 113099C]

Fisheries of the Exclusive Economic Zone Off Alaska; Community Development Quota Program

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

ACTION: Approval of amendments to the 1998-2000 Multispecies Community Development Plans (CDPs) for six Community Development Quota (CDQ) groups.

SUMMARY: NMFS announces the approval of recommendations made by the State of Alaska (State) for the amendments to the 1998-2000 Multispecies (MS) CDPs for the six CDQ groups under the Western Alaska CDQ Program. This action is necessary to announce NMFS' decision to approve the State's recommendations and is intended to further the goals and objectives of the Magnuson-Stevens

Fishery Conservation and Management Act.

DATES: Approval of the amendments to the CDPs and the 2000 CDQ and prohibited species quota (PSQ) allocations are effective December 21, 1999.

ADDRESSES: Copies of the findings made by NMFS in approving the State's recommendations may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The current percentage allocations of pollock, arrowtooth flounder, and "other species" CDQ and chinook salmon and non-chinook salmon PSQ to the CDQ groups expire on December 31, 1999. To synchronize the 3-year CDP cycles for all CDQ species by the end of 2000, and to allow the State to evaluate the impact of the American Fisheries Act (AFA) on the pollock CDQ fisheries, percentage allocations of pollock CDQ and associated incidental catch species are being made on an annual basis in 1999 and 2000. NMFS approved the 1999 percentage allocation recommendations for pollock and the associated incidental catch species on January 11, 1999. Percentage allocations to the CDQ groups for these five CDQ and PSQ species groups now must be approved for 2000. For the 2001 through

2003 fishing years, all groundfish CDQ and PSQ species will be combined into a single 3-year CDP cycle.

Eligible Western Alaska communities submitted to the State six applications for amendments to the MS CDPs for pollock and the related incidental catch species under 50 CFR 679.30. The State conducted a public hearing on September 28, 1999. During the North Pacific Fishery Management Council's October 1999 meeting, the State consulted with the Council concerning the proposed amendments to the MS CDPs. At that time, the State recommended the same percentage allocations to all of the CDQ groups as were approved for 1999, and the Council concurred in the State's recommendations.

On November 5, 1999, the State submitted a letter and findings to NMFS recommending that the CDPs for the six CDQ groups be complete and recommending the same percentage allocations for pollock and the associated incidental catch species as those approved for these CDQ groups for 1999. NMFS agrees with the State's recommendations and approves the amendments to the 1998-2000 MS CDPs for the six CDQ groups and the percentage allocations of pollock and other associated incidental catch species for 2000.

The allocations to each CDQ group are presented in the table following. NMFS' findings regarding this decision are also available (see **ADDRESSES**).

Selected Multispecies Groundfish and Prohibited Species Community Development Quota Allocations for 2000

Species or Species Group	APICDA	BBEDC	CBSFA	CVRF	NSDC	YDFDA
Pollock	16%	21%	5%	22%	22%	14%
Arrowtooth Flounder	18%	21%	9%	16%	16%	20%
Other Species	19%	22%	9%	14%	15%	21%
Chinook Salmon PSQ	16%	21%	5%	22%	22%	14%
Non-chinook Salmon PSQ	16%	21%	5%	22%	22%	14%

APICDA = Aleutian Pribilof Island Community Development Association

BBEDC = Bristol Bay Economic Development Corporation

CBSFA = Central Bering Sea Fishermen's Association

CVRF = Coastal Villages Region Fund

NSDC = Norton Sound Economic Development Corporation

YDFDA = Yukon Delta Fisheries Development Association

PSQ = prohibited species quota

Dated: December 16, 1999.

Gary C. Matlock,

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

[FR Doc. 99-33197 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 64, No. 245

Wednesday, December 22, 1999

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

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99-63]

RIN 3069-AA80

Advance Participations; Sales of Whole Advances; Withdrawal of Proposed Rule

AGENCY: Federal Housing Finance Board.

ACTION: Withdrawal of proposed rule.

SUMMARY: In light of the enactment of the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), the Federal Housing Finance Board (Finance Board) is withdrawing its proposed rule that would have amended Part 935 of its regulation to approve the sale of whole advances between Federal Home Loan Banks (Banks) under certain limited circumstances.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Senior Financial Analyst, Office of Policy, Research and Analysis, (202) 408-2866; Jane S. Converse, Attorney-Advisor, Office of General Counsel, (202) 408-2976; or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, (202) 408-2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Finance Board proposed a regulation in the **Federal Register** of August 16, 1999, to amend part 935 of its regulation to approve any sale and purchase of whole advances between Banks that met the requirements of the proposed rule. *See* 64 FR 44444 (August 16, 1999). The preamble to the proposed rule includes a detailed discussion of the background of, basis of, and reasons for, the proposed regulation.

II. Reasons for Withdrawal of the Proposed Regulation

Section 606(f)(2)(B) of the Modernization Act, Title VI, Pub. L. 106-102 (Nov. 12, 1999), removed the requirement for Finance Board approval of the sale of whole advances, or participations in advances, between Banks. *See* 12 U.S.C. 1430(d), as amended by section 606(f)(2)(B), Pub. L. 106-102 (Nov. 12, 1999). In light of the enactment of this provision, the Finance Board is withdrawing the proposed regulation approving the sale of whole advances.

In a separate action, the Finance Board also will be rescinding current section 935.16 of its regulation, which authorizes the sale of participation interests in advances between Banks.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby withdraws the Proposed Rule published at 64 FR 44444 on August 16, 1999.

Dated: December 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,
Chairman.

[FR Doc. 99-33164 Filed 12-21-99; 8:45 am]

BILLING CODE 6725-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-338-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8 series airplanes, that currently requires a revision to the Airplane Flight Manual Supplement to ensure that the main

deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. This action would require, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This proposal is prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety; the latching and locking mechanisms are not of adequate design to prevent structural deformation in the event of component jamming; and that there is an absence of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions specified by the proposed AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

DATES: Comments must be received by February 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-338-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from National Aircraft Service, Inc. (NASI), 9133 Tecumseh-Clinton Road, Tecumseh, MI 49286. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood,

California 90712-4137; telephone (562) 627-5320; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-338-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-338-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On October 8, 1993, the FAA issued AD 93-20-02, amendment 39-8709 (58 FR 53635, October 18, 1993), applicable to certain McDonnell Douglas Model DC-8 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW. That AD requires a revision to the FAA-approved Airplane Flight Manual Supplement (AFMS) to include detailed procedures for use of the cargo door warning light system; repetitive inspections of the cargo door warning system wiring and door latching roller mechanism to detect damage; and repair or replacement of damaged components. That action was prompted by the FAA's review of data indicating that disabling

of certain circuit breakers may deprive the flight crew of necessary information. The requirements of that AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since issuance of that AD, the FAA has conducted a design review of McDonnell Douglas Model DC-8 series airplanes modified in accordance with STC SA1802SO [originally issued to Rosebalm and currently held by National Aircraft Services, Inc. (NASI)] and has identified several potential unsafe conditions. [Results of this design review are contained in "DC-8 Cargo Modification Review Team Review of Rosebalm Supplemental Type Certificate SA1802SO-Installation of a Cargo Door and Interior, Final Report, Revision A, dated November 29, 1999," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket for this NPRM.] The modification defined by STC SA421NW (held by NASI) is nearly identical to that defined by SA1802SO; therefore, SA421NW has the same potential unsafe conditions. STC SA1802SO and SA421NW specify a design for installation of a main deck cargo door, associated door cutout in the fuselage, door system hydraulics, door indication system, and Class "E" cargo interior with a cargo barrier on McDonnell Douglas Model DC-8 series airplanes.

This NPRM proposes corrective action for those potential unsafe conditions that relate to the hydraulic and indication systems of the main deck cargo door and provides for a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. These conditions, if not corrected, could result in opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

Other Related Rulemaking

The FAA is considering further rulemaking to address the remaining potential unsafe conditions relating to the unreinforced main deck floor, main deck cargo door hinge, and fuselage structure in the area modified by installation of a main deck cargo door, 9g crash barrier, and fire/smoke detection system.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing Model 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC-9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap shortly after the airplane was in flight, these two accidents served to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783-1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD

contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Using the applicable requirements of Civil Air Regulations (CAR) part 4b and the design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including McDonnell Douglas Model DC-8 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's:

- For certain McDonnell Douglas Model DC-9 series airplanes: AD 89-11-02 R1, amendment 39-6415 (54 FR 50489, December 7, 1989);
- For all Boeing Model 747 series airplanes: AD 90-09-06, amendment 39-6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC-8 series airplanes: AD 89-17-01 R1, amendment 39-6521 (55 FR 8446, March 8, 1990);
- For certain Boeing Model 747-100 and -200 series airplanes: AD 96-01-51, amendment 39-9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727-100 and -200 series airplanes: AD 96-16-08, amendment 39-9708 (61 FR 41733, August 12, 1996).

In late 1997, the FAA informed the STC holders and operators of Model DC-8 series airplanes that it was embarking on a review of Model DC-8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration by STC. The FAA proposed, at an industry sponsored meeting in early 1998, that DC-8 operators and STC holders work together to identify and address potential safety concerns. This suggestion to the affected industry resulted in the creation of the DC-8 Cargo Conversion Joint Task Force (JTF) (hereinafter referred to as "the JTF").

The current composition of the JTF includes holders of each of the five STC's that addresses the installation of a main deck cargo door in Model DC-8 series airplanes and operators and lessors of those modified airplanes. At the JTF's request, the FAA participates in its meetings to offer counsel and guidance with respect to the FAA's regulatory processes. The JTF is a clearinghouse for the gathering and sharing of information among the parties affected by the FAA review of STC cargo conversions of Model DC-8 series airplanes. The JTF also is a liaison between the FAA, operators, and STC holders.

The JTF has been working with the FAA to provide data relating to the number of STC modified Model DC-8 series airplanes and operators of those airplanes, and to identify which airplanes are modified by each STC. It also has been instrumental in polling the operators and providing maintenance schedules and locations to the FAA, which helped the FAA arrange visits to operators of airplanes modified by each of the STC's. These visits allowed the FAA to review both the available data supporting each STC and modified airplanes and to identify potential safety concerns with each of the STC modifications. Additionally, the JTF has been coordinating the funding of the industry review of the data supporting the STC's and ongoing efforts to resolve safety issues identified by the FAA.

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA, in collaboration with the JTF, conducted an engineering design review and inspection of an airplane modified in accordance with STC SA1802SO. The FAA identified a number of design features of the main deck cargo door systems of this STC that are unsafe and do not meet the criteria specified in the ATA Final Report and the FAA Memorandum. These systems include the door indication and hydraulic systems, and the lack of a means to prevent pressurization of the airplane to an unsafe level if the door is not fully closed, latched, and locked. The FAA design review team also determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

The FAA has received reports of a recent event in which a main deck cargo door came open during take-off. This event was attributed, in part, to improper indication to the flight crew that the main deck cargo door was closed, latched, and locked. Service experience indicates that opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways, including possible loss of flight control, severe structural damage, or rapid decompression of the airplane.

For airplanes modified in accordance with STC's SA1802SO or SA421NW, the FAA considers the following five specific design features of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STC's SA1802SO and SA421NW uses a warning light at the flight engineer's panel. This light indicates the door open or closed status

but does not provide the status of the cargo door latch and lock positions. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight.

The light on the flight engineer's panel is labeled "CARGO DOOR WARNING" and is displayed in red since it indicates an event that requires immediate pilot action.

However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

2. Means To Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door, installed in accordance with STC's SA1802SO and SA421NW monitors only one of the 12 locks of the main deck cargo door. Therefore, the single view port does not provide confirmation that all of the locks of the main deck cargo door are engaged properly in the latches.

3. Means To Prevent Pressurization to an Unsafe Level

McDonnell Douglas DC-8 series airplanes modified in accordance with STC SA1802SO or SA421NW have no means of preventing pressurization to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked, which could precipitate a cargo door opening while the airplane is in flight.

4. Powered Lock Systems

Evaluation of the powered lock systems of the main deck cargo door for STC's SA1802SO and SA421NW indicates the potential for latent and/or single point failures that could restore or continue power to the door controls, which could result in inadvertent door openings while the airplane is in flight. STC's SA1802SO and SA421NW utilize a nose gear squat switch to remove door control power (*i.e.*, electrical and hydraulic). Latent failure of the squat

switch together with other latent and/or single point failures could precipitate inadvertent door openings.

AD 93-20-02 requires, prior to takeoff, pulling the circuit breakers of the main deck cargo door labeled "pump" and "valve" to ensure power is removed from the main deck cargo door. This requirement is considered to be interim action. To minimize the potential for latent failure of a circuit breaker in conjunction with the squat switch, the FAA finds that, for the purposes of this proposed AD, these circuit breakers must be replaced with new parts.

The design data for STC's SA1802SO and SA421NW do not include a systems safety analysis to show that an inadvertent opening of a cargo door is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

5. Lock Strength

Analysis of the existing latching and locking mechanism of the main deck cargo door indicates that, because of the existing latching and locking hydraulic cylinders, the translating beam, lever, swivel arm brackets, lock pins, and swivel arms have inadequate strength to prevent structural deformation of these parts in the event of components jamming. Structural deformation of the locking mechanism could result in the door latches not being locked and erroneous indication to the flightcrew that the latches are locked properly.

Explanation of Relevant Service Information

The FAA has reviewed and approved NASI Service Bulletin SB-99-01, Revision A, dated October 15, 1999. The service bulletin describes procedures for modification of the mechanical and hydraulic systems of the main deck cargo door installed in accordance with STC SA1802SO or SA421NW. The modification provides new parts of adequate strength to prevent structural deformation of the latching and locking mechanism by reducing the force of the latching and locking hydraulic cylinders and increasing the structural strength of the locking components. The modification involves installing a new translating beam, lever, swivel arm brackets, lock pins, swivel arms, hydraulic cylinders, and hydraulic lines.

Accomplishment of the actions specified in the service bulletin and the actions described below is intended to adequately address the identified unsafe conditions.

Explanation of Requirements of Proposed Rule

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93-20-02 to continue to require a revision to the FAA-approved AFMS to include detailed procedures for use of the cargo door warning light system; repetitive inspections of the cargo door warning system wiring and door latching roller mechanism to detect damage; and repair or replacement of damaged components.

The proposed AD also would require, within 30 days after the effective date of this AD, unless previously accomplished within the last 18 months prior to the effective date of this AD, replacement of the circuit breakers of the main deck cargo door labeled "pump" and "valve" with new circuit breakers.

The proposed AD also would require, within 18 months after the effective date of this AD, accomplishment of the actions specified in the service bulletin described previously.

In addition, the proposed AD would require, within 18 months after the effective date of this AD, modification of the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is closed, latched, and locked; installation of a means to visually inspect the locking mechanism of the main deck cargo door; installation of a means to remove power to the door while the airplane is in flight; and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. These actions would be required to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Installation of STC ST01116CH (held by NASI) is an approved means of compliance with the modification requirements described previously. Accomplishment of these actions and the procedures described in NASI Service Bulletin SB-99-01 would constitute terminating action for the requirements of AD 93-20-02 [paragraphs (a) and (b) of this proposed AD].

Differences Between the AD and Relevant Service Information

The referenced service bulletin recommends accomplishing the modification of the hydraulic systems of the main deck cargo door within 180 days from July 1, 1999, not to exceed

270 calendar days from July 1, 1999.

However, the FAA finds that accomplishing the following actions provides an acceptable level of safety until accomplishment of the modification:

- Replacement of the circuit breakers of the main deck cargo door labeled "pump" and "valve" with new circuit breakers;
- An FAA-approved AFMS revision to include detailed procedures for use of the cargo door warning light system as specified in paragraph (b) of the proposed AD; and
- Repetitive inspections of the cargo door warning system wiring and door latching roller mechanism to detect damage as specified in paragraph (a) of the proposed AD.

Therefore, the FAA finds an 18-month compliance time for initiating the required modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 32 Model DC-8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 93-20-02, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$1,740, or \$60 per airplane, per inspection cycle.

It would take 1 work hour per airplane to accomplish the new replacement of circuit breakers, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$265 per airplane. Based on these figures, the cost impact of this new replacement proposed by this AD on U.S. operators is estimated to be \$9,425, or \$325 per airplane.

It would take 80 work hours per airplane to accomplish the new modification of the hydraulic systems, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$20,000 per airplane. Based on these figures, the cost impact of this new modification proposed by this AD on U.S. operators is estimated to be \$719,200, or \$24,800 per airplane.

The FAA estimates that it would take approximately 130 work hours per airplane to accomplish the modification required by paragraph (d) of the

proposed AD, at an average labor rate of \$60 per work hour. The FAA also estimates that required parts would cost approximately \$25,000 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be \$951,200, or \$32,800 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8709 (58 FR 53635, October 18, 1993), and by adding

a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99-NM-338-AD. Supersedes AD 93-20-02, Amendment 39-8709.

Applicability: Model DC-8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage, accomplish the following:

Restatement of Requirements of AD 93-20-02

Actions Addressing the Main Deck Cargo Door

(a) Within 7 days after January 21, 1992 (the effective date of AD 92-02-05, amendment 39-8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(b) Within 7 days after November 17, 1993 (the effective date of AD 93-20-02, amendment 39-8709), revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

"Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled "pump" and "valve" prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

New Requirements of This AD

Actions Addressing the Main Deck Cargo Door Powered Lock Systems

(c) Except as provided by paragraph (f) of this AD, within 30 days after the effective date of this AD, unless previously accomplished within the last 18 months prior to the effective date of this AD, replace the circuit breakers of the main deck cargo door labeled "pump" and "valve" with new circuit breakers.

Actions Addressing the Main Deck Cargo Door Hydraulic Systems

(d) Within 18 months after the effective date of this AD, modify the mechanical and hydraulic systems of the main deck cargo door, in accordance with National Aircraft Services, Inc. (NASI) Service Bulletin SB-99-01, Revision A, dated October 15, 1999.

Actions Addressing the Main Deck Cargo Door Indication System

(e) Within 18 months after the effective date of this AD, modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is closed, latched, and locked; install a means to visually inspect the locking mechanism of the main deck cargo door; install a means to remove power to the door while the airplane is in flight; and install a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Installation of NASI Vent Door System STC ST01116CH, is an approved means of compliance with the requirements of paragraph (e) of this AD.

(f) Compliance with both paragraphs (d) and (e) of this AD constitutes terminating action for the requirements of both paragraphs (a) and (b) of this AD, and the AFMS revision required by paragraph (b) of this AD may be removed. Compliance with paragraph (e) of this AD within 30 days after the effective date of this AD eliminates the requirement to comply with paragraph (c) of this AD.

Alternative Methods of Compliance

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

Angeles ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

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

Special Flight Permits

(h) 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.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

“(1) Indication System:

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be red and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) Means to Visually Inspect the Locking Mechanism: There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) Means to Prevent Pressurization:

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) Lock Strength:

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) Power Availability:

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) Powered Lock Systems:

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.”

Issued in Renton, Washington, on December 16, 1999.

D.L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-33171 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-CE-65-AD]

RIN 2120-AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P-180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P-180 airplanes. The proposed AD would require repetitively inspecting the brake assembly rods and tubings for wear or damage, and replacing any worn or damaged parts. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-65-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from

I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4126; facsimile: (816) 329-4091.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. 99-CE-65-AD.” The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-65-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on all I.A.M. Model Piaggio P-180 airplanes. The R.A.I. reports that the brake assembly rods may interfere with and rub on the tubings connected to the brake valves. This could cause wear and

damage to the tubing, which could result in brake fluid leakage.

This condition, if not detected and corrected in a timely manner, could result in the inability to adequately stop the airplane during ground operations.

Relevant Service Information

I.A.M. has issued Piaggio Service Bulletin (Mandatory) No.: SB-80-0107, Original Issue: April 30, 1999, which specifies procedures for inspecting the brake system assembly for wear or damage.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 99-219, dated June 22, 1999, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy 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 R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; 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 the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other I.A.M. Model Piaggio P-180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the brake assembly rods and tubings for wear or damage, and replacing any worn or damaged parts.

Accomplishment of the proposed inspections would be required in accordance with Piaggio Service Bulletin (Mandatory) No.: SB-80-0107, Original Issue: April 30, 1999. Accomplishment of any necessary replacement would be required in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed initial inspection, and that the average labor

rate is approximately \$60 an hour. Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be \$720, or \$180 per airplane.

These figures only take into account the cost of the initial inspection and do not take into account the costs of any replacements necessary or repetitive inspections. The FAA has no way of determining the number of parts that would need replacement or the number of inspections each owner/operator of the affected airplanes would incur.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Industrie Aeronautiche e Meccaniche: Docket No. 99-CE-65-AD.

Applicability: Model Piaggio P-180 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations, accomplish the following:

(a) Within the next 150 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 150 hours TIS, inspect the brake system assembly for wear or damage. Accomplish the inspection in accordance with the Accomplishment Instructions in Piaggio Service Bulletin (Mandatory) No.: SB-80-0107, Original Issue: April 30, 1999.

(b) If any worn or damaged parts are found during any inspection required by this AD, prior to further flight, replace the parts in accordance with the appropriate maintenance manual. The repetitive inspections required by paragraph (a) of this AD still apply after replacing any worn or damaged parts.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 901 Locust, Room 301, 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.

(e) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No.: SB-80-0107, Original Issue: April 30, 1999, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 99-219, dated June 22, 1999.

Issued in Kansas City, Missouri, on December 16, 1999.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-33170 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-331-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the spoiler servocontrol piston rod, which could result in reduced controllability of the airplane.

DATES: Comments must be received by January 21, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-331-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-331-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-331-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that several cases of spoiler servocontrol

piston rod breakage have been reported. As a result, and in almost every case, the associated hydraulic system did not function correctly and the spoilers were extended in flight to the zero hinge moment position. Analysis determined that the piston rod breakage was due to excessive misalignment of the actuator housing backface. Failure of the spoiler servocontrol piston rod, if not corrected, could result in failure of the associated hydraulic system and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A320-27-1126, dated April 26, 1999 (for Model A320 series airplanes); and A320-27-1127, dated April 26, 1999, and Revision 01, dated October 6, 1999 (for Model A319 and A321 series airplanes). The service bulletins describe procedures to visually inspect the part number and serial number of the installed spoiler servocontrol. For certain serial numbers, the servocontrol must be replaced. For certain other serial numbers, the servocontrol must be re-identified. Revision 01 of Service Bulletin A320-27-1127 is essentially the same as the original issue except that the effectivity has been updated. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1999-362-139(B), dated September 8, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 210 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$25,200, or \$120 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 4 work hours per airplane, at an average labor rate of \$60 per work hour. The cost of required parts would be free of charge. Based on these figures, the cost impact of the modification is estimated to be \$240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 99-NM-331-AD.

Applicability: The following models, certificated in any category, excluding those on which Airbus Service Bulletin A320-27-1126, dated April 26, 1999 (for Model A319 and 321 series airplanes); or A320-27-1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); has been accomplished:

- Model A319 series airplanes, serial numbers (S/N) 0546 through 0972 inclusive;
- Model A320 series airplanes, S/N 0002 through 0842 inclusive, 0846 through 0859 inclusive, 0865, 0866, and 0872 through 0960 inclusive; and
- Model A321 series airplanes, S/N 0364 through 0974 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the servocontrol piston rod, which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform a general visual inspection to determine the part number and serial number for the spoiler servocontrols, in accordance with Airbus Service Bulletin A320-27-1126, dated April 26, 1999 (for Model A319 and A321 series airplanes); or Airbus Service Bulletin A320-

27-1127, dated April 26, 1999, or Revision 1, dated October 6, 1999 (for Model A320 series airplanes); as applicable. If the part number and serial number are identified in paragraph 2.B.(1)(b) of the Accomplishment Instructions of the applicable service bulletin, prior to further flight, perform applicable corrective actions (including removal, reidentification of the servocontrol, and replacement of the servocontrol with a modified part) as specified in the applicable service bulletin.

(1) For Model A319 and A321 series airplanes: Inspect within 2 months after the effective date of this AD.

(2) For Model A320 series airplanes: Inspect within 28 months after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) As of the effective date of this AD, no person shall install on any airplane a spoiler servocontrol having part number 31077-050, 31077-060, or 31077-110; and S/N 0001 to 3499, except those serial numbers excluded in paragraph 2.B.(1)(b)1 of the Accomplishment Instructions in Airbus Service Bulletin A320-27-1126, dated April 26, 1999; unless that servocontrol has been inspected, and corrective actions have been performed, in accordance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

(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.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999-362-139(B), dated September 8, 1999.

Issued in Renton, Washington, on December 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-33169 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR-4425-N-08]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The committee meeting will be held on January 25 and January 26, 2000. On January 25, 2000, the meeting will begin at approximately 9:30 am and end at approximately 5:30 pm. On January 26, 2000, the meeting will begin at approximately 9 am and end at approximately 4 pm.

ADDRESSES: The committee meeting will take place at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Acting Director, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed that would change the current method of determining the payment of operating

subsidies to public housing agencies (PHAs). The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub.L. 105-276, approved October 21, 1998) (the "Public Housing Reform Act"). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. The next committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meeting includes the development and review of draft regulatory and preamble language; and the scheduling of future meetings, if necessary.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: December 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-33108 Filed 12-21-99; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS Nos. NM-037-FOR and NM-039-FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to two previously proposed amendments to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for New Mexico's proposed rules pertain to timing of backfilling and grading; definitions of "material damage" and "occupied residential dwelling and associated structures"; design criteria and inspection requirements for impoundments and spillways; adjustment of bond amount for subsidence damage; ground cover requirements for lands to be developed for recreation and shelterbelts; other transportation facilities; and review criteria for improvidently issued permits. The amendments are intended to revise the New Mexico program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 21, 2000.

ADDRESSES: You should mail or hand deliver written comments to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827-5970

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248-5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

SPATS Nos. NM-037-FOR and NM-039-FOR

By letters dated March 11, 1996 (SPATS No. NM-037-FOR), and November 13, 1998 (SPATS No. NM-039-FOR), New Mexico submitted proposed amendments (respectively, administrative record Nos. NM-773 and NM-804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendments in response to the required program amendments at 30 CFR 931.16 (w), (x), and (aa), and at its own initiative.

OSM announced receipt of the proposed amendments in the, respectively, March 26, 1996 and the December 3, 1998 **Federal Register** (respectively, 59 FR 13117 and 63 FR 66772), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (respectively, administrative record Nos. NM-802 and NM-808). Because no one requested public hearings or meetings, none were held. The public comment periods ended on, respectively, April 25, 1996 and January 4, 1999.

SPATS No. NM-037-FOR

During its review of the March 11, 1996 amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record no. NM-785). New Mexico responded in a letter dated November 9, 1998 by submitting

a revised amendment and additional explanatory information (administrative record no. NM-803).

OSM announced receipt of the proposed amendments in the December 3, 1998 **Federal Register** (63 FR 66774) and invited public comment on its adequacy (administrative record No. NM-809). The public comment period ended on December 18, 1998.

During its review of the November 9, 1998, revised amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated December 21, 1998 (administrative record no. NM-814). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment (administrative record No. NM-816).

New Mexico proposes further revisions to 19 NMAC 8.2 2054.A(1), (2), and (3), concerning timing of backfilling and grading. Specifically, New Mexico proposes to revise 19 NMAC 8.2 2054.A(1), concerning contour mining, to require rough backfilling and grading by not more than 60 days or 1500 linear feet; 19 NMAC 8.2 2054.A(2), concerning open pit mining, to require rough backfilling and grading on the basis of the materials submitted under 19 NMAC 8.2 906.B(3) which shall establish in specific increments the period between removal of coal and completion of backfilling and grading; and 19 NMAC 8.2 2054.A(3), concerning strip mining, to require rough backfilling and grading to be completed within 180 days and not more than four spoil ridges behind the pit being worked. New Mexico also revised both 19 NMAC 8.2 2054.A(1) and (3) to provide for additional time or distance for rough backfilling and grading if the permittee con, on the basis of the materials submitted under 19 NMAC 8.2 906.B(3) that additional time or distance is necessary. New Mexico's existing rule at 19 NMAC 8.2 906.B(3) requires a reclamation plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area. New Mexico also proposes to add a new rule at 19 NMAC 8.2 2054.A(5), concerning final pit at completion of mining, to require that rough backfilling and grading occur in accordance with a time schedule approved by the Director based on materials submitted under 19 NMAC 8.2. 906.B9(3).

SPATS No. NM-039-FOR

During its review of the November 13, 1998 amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated January 7,

1999 (administrative record no. NM-815). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment (administrative record No. NM-816).

New Mexico proposes further revisions to 19 NMAC 8.2 107.M(1) and O(2), definitions of "material damage" and "occupied residential dwelling and associated structures"; 19 NMAC 8.2 2017.D, 2017.F(2), and 2017.G(4) and (5), design criteria for impoundments and spillways and inspection requirements for impoundments; and 19 NMAC 8.2 2072, adjustment of bond amount for subsidence damage. New Mexico also submitted, in response to required amendments at 30 CFR 931.16(o) and (t), new explanatory information concerning, respectively, (1) ground cover requirements for lands to be developed for recreation and shelterbelts at 19 NMAC 8.2 2065.B, and (2) other transportation facilities at 19 NMAC 8.2 2076. In addition, in response to the required amendment at 30 CFR 931.16(y), New Mexico submitted a new revision to 19 NMAC 8.2 1107.C(4), concerning improvidently issued permits.

Specifically, New Mexico proposed to revise:

(1) The definitions of "material damage" and "occupied residential dwelling and associated structures" at 19 NMAC 8.2 107.M(1) and O(2) to be applicable to the rules at 19 NMAC 8.2 2069 through 2072;

(2) 19 NMAC 8.2 1107.C(4) by requiring the use of the violations review criteria published in the preamble of the **Federal Register** at 54 FR 18440-18441 when determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationships will apply in finding that a permit was improvidently issued permits;

(3) 19 NMAC 8.2 2017.D, 2017.F(2), and 2017.G (4) and (5), design criteria for impoundment and spillways and inspection requirements for impoundments, to apply the design or inspection criteria applicable for those structures meeting the size criteria of 30 CFR 77.216(a) to those structures meeting the Class B or C criteria for dams in TR-60; and

(4) 19 NMAC 8.2 2072 by adding a paragraph that requires adjustment of the bond amount for subsidence damage.

New Mexico explained, in response to the required amendments at 30 CFR 931.16 (o) and (t), that the ground cover requirements for lands to be developed for recreation and shelterbelts are at 19 NMAC 8.2 2065.B, and that the

requirements for other transportation facilities are at 19 NMAC 8.2 2076.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendments to provide the public an opportunity to reconsider the adequacy of the proposed amendments in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve the amendments, they will become part of the New Mexico program.

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. NM-037-FOR and/or SPATS No. NM-039-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248-5096.

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1999.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 99-33140 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM-040-FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under this Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to revegetation success standards and sampling techniques. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4 p.m., m.s.t., January 21, 2000. If requested, a public hearing on the proposed amendment will be held on January 18, 2000. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t., on January 6, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive

one free copy of the amendment by contracting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102. Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT:

Willis L. Gainer, Telephone: (505) 248-5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico Program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, *Federal Register* (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated December 1, 1999 (administrative record No. NM-816), New Mexico submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(m), (n), and (z). The provisions of New Mexico Annotated Code (NMAC) that New Mexico proposed to revise were: 19 NMAC 8.2 2065.A, sampling techniques used to measure success of revegetation; and 19 NMAC 2065.B(1), success standards for ground cover and productivity of living plants on revegetated areas.

Specifically, New Mexico proposes to revise:

(1) 19 NMAC 8.2 2065(A) to reference a guidance document entitled *Coal Mine Reclamation Program Vegetation Standards* for the sampling techniques that can be used to measure success of revegetation and to allow for the comparison of ground cover and productivity to be made using technical standards developed using an historic record of premining conditions rather than a reference area; and

(2) 19 NMAC 2065.B(1), to allow the success standards for ground cover and

productivity to be developed using the technical standards set forth in the guidance document entitled *Coal Mine Reclamation Program Vegetation Standards* rather than by comparison to a reference area.

In addition, New Mexico submitted a copy of the guidance document entitled *Coal Mine Reclamation Program Vegetation Standards* and requested OSM's approval of it as part of the New Mexico program. This document established methods and acceptable techniques of measurement that are approved and recommended when conducting vegetation baseline inventories in accordance with 19 NMAC Subpart 808 and when assessing revegetation success in accordance with 19 NMAC Subparts 2065 and 2066. Additional standards are provided regarding the selection and use of reference areas and technical standards, approved normal husbandry practices, and the demonstration of postmine suitability for livestock grazing.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

1. Written Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. NM-040-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248-5096.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking, and

include explanations in support of the commenter's recommendations. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

In accordance with the provisions of 30 CFR 732.17(h), we are requesting comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on January 6, 2000. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

ADDRESSES. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of the Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1999.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 99-33139 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Changes in Procedures for Standard Mail Destination Entry Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Domestic Mail Manual procedures for destination entry mailings of Standard Mail (A) and Standard Mail (B) by changing the current frequency for standing appointments from once a month to once a week.

In addition, this document also proposes that when a mailer requests a standing appointment at a destination delivery unit (DDU) for a Standard Mail (A) or Standard Mail (B) mailing, the ZIP Codes of the mail being deposited must be provided at the time of request. Also, to be consistent with current standards for Standard Mail (A), a change is being made to provide for the redirection of Standard Mail (B) by the Postal Service to a facility other than the one designated by the mailer.

DATES: Comments on the proposed standards must be received on or before January 21, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6830, Washington DC 20260-2405. Copies of all written comments will be available at the Postal Service

Library, 475 L'Enfant Plaza SW, Room 11-N, Washington DC, for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

RoseMarie Gay (202) 268-7810; or Patricia Bennett, (202) 268-6350.

SUPPLEMENTARY INFORMATION: Effective January 10, 1999, a number of classification and mail preparation changes were made for Standard Mail (B). In order to align the processing of Standard Mail (A) with Standard Mail (B), the Postal Service needs to modify current standards for the frequency at which recurring appointments must be made, the additional information required when depositing DDU rate mailings, and the reasons for redirect by the Postal Service.

For Standard Mail (A) and Standard Mail (B), the frequency at which recurring appointments must be made will be changed from once a month to once a week. This change was recommended by the Drop Shipment Appointment System (DSAS) workgroup of the Mailer's Technical Advisory Committee (MTAC). The Postal Service identified a high percentage of no-shows from mailers holding standing appointments. Changing the frequency to once a week should reduce the number of no-shows and make more appointments available in the DSAS for other mailers.

Since January 10, 1999 there have been instances of DDU rate Standard Mail (B) deposited at the wrong postal facility, forcing the Postal Service to reroute the mail to the proper facility. Asking mailers to provide ZIP Code information will ensure that the mail is being deposited at the correct facility. If the mailing is not for that facility, the DDU can inform the mailer/agent of the correct facility to deposit the mail when the appointment is scheduled. This will save the mailers the added expense of additional stops to reroute the mail to the correct facility. Accordingly, the Postal Service proposes to require mailers to provide the 5-digit ZIP Codes of the mail being deposited when contacting the delivery unit to make an appointment for DDU entry of Standard Mail (A) or Standard Mail (B).

The Domestic Mail Manual will be amended to include language concerning the redirection of Standard Mail (B) to a facility other than the designated bulk mail center (BMC), sectional center facility (SCF), or DDU, to be consistent with current standards for Standard Mail (A). Language will also be added to describe when the Postal Service can redirect the shipment.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service is seeking comments on the following revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and
Enhanced Carrier Route Standard
Mail

* * * * *

3.0 DEPOSIT

* * * * *

[Redesignate 3.3 through 3.11 as 3.4 through 3.12 respectively; add new 3.3 to read as follows:]

3.3 Appointments

Appointments must be made for destination entry rate mail as follows:

a. Except for a local mailer under 4.0 and mailings of perishable commodities, appointments for deposit of destination entry rate mail at BMCs, ASFs, and SCFs must be scheduled through the appropriate appointment control center at least one business day in advance. Same-day appointments may be granted by a control center on the basis of a telephone request. All appointments for BMC loads must be scheduled by the appropriate BMC control center. Appointments for SCFs and ASFs must be scheduled through the appropriate district control center. Appointments may be made up to 30 calendar days before a desired appointment date. The mailer must adhere to the scheduled mail deposit time and location. The mailer must cancel any appointment by notifying the appropriate control center at least one business day in advance of a scheduled appointment time.

b. Electronic appointments may be made by a mailer or agent using a USPS-issued computer log-on ID. Electronic appointments or cancellations must be made at least 12 hours before the desired time and date. All information

required by the USPS appointment system regarding a mailing must be provided.

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, the mailer must notify the DDU at least one business day in advance of a scheduled appointment. Recurring appointments are allowed if shipment frequency is once a week or more often.

d. When Periodicals are transported together with Standard Mail (A) or (B) as a mixed load (see E250), an appointment must be obtained for deposit at a destination entry facility. [Revise heading of redesignated 3.4 to read as follows:]

3.4 Advance Scheduling

[Amend 3.4b by adding a second sentence to read as follows:]

When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

a. Mailer's name and address and, when applicable, the name and telephone number of the mailer's agent or local contact.

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

c. Where and how mailing was verified.

d. Method of postage payment.

e. Requested appointment date and destination facility for mailing.

f. Vehicle identification number, size, and type.

* * * * *

3.6 Redirection by USPS

[Revise redesignated 3.6 to read as follows:]

A mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

* * * * *

[Amend heading of 3.8 by changing "Standing" to "Recurring" to read as follows:]

3.8 Recurring Appointments

[Revise redesignated 3.8 to read as follows:]

A mailer may request recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that

administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointments procedures can cause revocation of the recurring appointment.

* * * * *

E652 Parcel Post

* * * * *

4.0 DEPOSIT

* * * * *

[Redesignate current 4.6 through 4.11 as 4.7 through 4.12, respectively; add new 4.6 to read as follows:]

4.6 Redirection by USPS

With the exception of mail deposited under 1.3e, a mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

[Revise heading of 4.7 to read as follows:]

4.7 Advance Scheduling

[Amend redesignated 4.7b by adding second sentence to read as follows:]

When making an appointment, or as soon as available, the mailer must provide the control center or DDU with this information:

* * * * *

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

4.8 Deposit Conditions

[Amend redesignated 3.8b by changing the frequency from "once a month" to "once a week" to read as follows:]

Deposit of mail is also subject to these conditions:

* * * * *

b. A mailer may request for recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointment procedures can cause revocation of the recurring appointment.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99-33088 Filed 12-21-99; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038-0193b; FRL-6510-8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern rule rescissions from the South Coast Air Quality Management District (SCAQMD). This action will rescind these rules from the federally approved SIP.

The intended effect of this action is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, 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. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by January 21, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule rescissions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business

hours. Copies of the submitted rule rescissions are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, [AIR-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1184.

SUPPLEMENTARY INFORMATION: This document concerns the rule rescissions listed below from the South Coast Air Quality Management District and its predecessor agencies, submitted to EPA by the California Air Resources Board on the dates listed for each rule.

South Coast Air Quality Management District (AQMD)

Rule 107, Determination of Volatile Organic Compounds in Organic Materials, Recission Adopted: 3-9-92

Submitted to EPA: 9-14-92

Rule 1231, Judicial Review, Recission Adopted:

Submitted to EPA: 7-25-79

Rule 1311, Power Plants, Recission Adopted: 6-28-90

Submitted to EPA: 1-28-92

Los Angeles County Air Pollution Control District (APCD)

Rule 51, Nuisance, Recission Adopted: 5-7-76

Submitted to EPA: 8-2-76

Orange County APCD

Rule 51, Nuisance

Rule 67.1, Fuel Burning Equipment

Rule 68, Fuel Burning Equipment—Oxides of Nitrogen

Recissions Adopted: 5-7-76

Submitted to EPA: 8-2-76

Riverside County APCD

Rule 51, Nuisance, Recission Adopted: 5-7-76

Submitted to EPA: 8-2-76

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: December 7, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99-32643 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO-074-1074b; FRL-6512-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of revising the Federally approved incinerator provisions of the Kansas City Air Pollution Control Code to ensure that they reflect the provisions currently enforced by the Kansas City Health Department in Chapter 8 of the Air Pollution Control Code. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by January 21, 2000.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603.

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

Dated: December 2, 1999.

William A. Spratlin,

Acting Regional Administrator, Region VII.

[FR Doc. 99-32861 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[TX-115-1-7434b; FRL-6504-3]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Miscellaneous Industrial Sources, Cutback Asphalt**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan (SIP). The revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. The EPA is proposing this revision to revise emissions of VOCs in accordance with the requirements of the Federal Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by January 21, 2000.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Digs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from VOC, Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

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

Dated: November 19, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99-32859 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[NH043-7170B; A-1-FRL-6514-1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire and Rhode Island; Approval of National Low Emission Vehicle Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by both the States of New Hampshire and Rhode Island on August 16, 1999 and November 17, 1999, respectively, providing that the national low emission vehicle (National LEV) be an acceptable compliance option for new motor vehicles sold in each State. In New Hampshire's case, they are providing a commitment by rule to remain part of the National LEV program, and not adopt a California low emission vehicle (CAL LEV) program for the duration of National LEV. In the case of Rhode Island, they have modified their CAL LEV rule to allow the national low emission vehicle program to be a compliance alternative under their rule. Auto manufacturers have agreed to sell these cleaner vehicles throughout each of these States for the duration of the National LEV program. These SIP revisions are

required as part of the agreement between States and automobile manufacturers to ensure the continuation of this program to bring clean cars throughout the country, beginning with 1999 model year vehicles.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

DATES: Written comments must be received on or before January 21, 2000.

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. Copies of the State 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 Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE-131), Washington, D.C. 20460. In addition, the information for each respective State is available at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095, and Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918-1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate for the model years affected. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and

23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of federal and California new motor vehicle standards and test procedures, which enables manufacturers to design and test vehicles to one set of standards nationwide. The National LEV program demonstrates how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

The National LEV program will result in substantial reductions in non-methane organic gases (NMOG) and nitrogen oxides (NOx), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles are estimated to cost an additional \$76 above the price of vehicles otherwise required today, but it is expected that due to factors such as economies of scale and historical trends related to emission control costs, the per vehicle cost will be even lower. This incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV program will help ozone nonattainment areas across the country improve their air quality as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to come into effect, and will remain in effect, only if the Northeastern State and auto manufacturer participants commit to the program and abide by their commitments. The States and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the State commitments is to be made through SIP revisions that incorporate the State commitments to National LEV in State regulations, which EPA will approve into the federally-enforceable SIPs. The National LEV regulations laid

out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve the revision as adequately committing the State to the National LEV program. In today's action, EPA is proposing to approve the National LEV SIP revisions for New Hampshire and Rhode Island as adequately committing each State to the program. EPA expects to take similar actions for the other States that have elected to join the National LEV program in the future.

Rhode Island has adopted a State clean vehicle program identical to the CAL LEV program (without the zero emission vehicle requirements) pursuant to section 177 of the Clean Air Act. The State has also modified that regulation accepting compliance with National LEV as an alternative for auto manufacturers to comply with the CAL LEV requirements. Rhode Island's regulation now provides that for the duration of the State's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with a State program adopted pursuant to section 177. The regulation accepts National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The regulation further provides that the State's participation in National LEV extends until model year 2006, if by December 15, 2000, EPA adopts mandatory standards at least as stringent as the National LEV standards and such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through these rules, and an earlier February 22, 1999 submittal, Rhode Island has adequately committed to the National LEV program, as provided in the final National LEV rule.

New Hampshire did not adopt a State clean vehicle program identical to the CAL LEV program pursuant to section 177 of the Clean Air Act. Instead, the State adopted a regulation accepting compliance with National LEV as the State's clean vehicle program, and forgoing their right to adopt a CAL LEV program. New Hampshire's regulation provides that for the duration of the State's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of

compliance with any State program adopted pursuant to section 177. The regulation accepts National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The regulation further provides that the State's participation in National LEV extends until model year 2006, if by December 15, 2000, EPA adopts mandatory standards at least as stringent as the National LEV standards and such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through these regulations, New Hampshire has adequately committed to the National LEV program, as provided in the final National LEV rule.

The final National LEV rule also stated that if States submitted SIP revisions containing language substantively identical to the language in the regulations without additional conditions, and if the submissions met the Clean Air Act requirements for approvable SIP submissions, EPA would not need to go through notice-and-comment rulemaking to approve the SIP revisions. In the National LEV rulemaking, EPA already provided full opportunity for public comment on the language for the SIP revisions. Thus, as discussed in more detail in the final rule, the requirements for EPA approval are easily verified objective criteria. See 63 FR 936 (January 7, 1998). While EPA believes that it could have appropriately approved the New Hampshire and Rhode Island submissions without providing for additional notice and comment, EPA nonetheless decided to propose approval of this action, which allows an opportunity for further public comment. Here, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus EPA decided there was no need to deviate from the Agency's usual procedures for SIP approvals.

Proposed Action

EPA has evaluated the submitted SIP revisions submitted by New Hampshire and Rhode Island and has determined that they are consistent with the EPA National LEV regulations and meet the section 110 requirements for SIP approvals. Therefore, EPA is proposing approval of the New Hampshire and Rhode Island low emission vehicle rules as submitted on August 16, 1999 and November 17, 1999, respectively, into the New Hampshire and Rhode Island SIP.

Nothing in this action should be construed as permitting 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.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule 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, as specified in Executive Order 13132, because it merely approves a state rule implementing a voluntary standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

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 proposed 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 proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 14, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99-33155 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300959; FRL-6399-6]

RIN 2070-AB78

Azinphos-Methyl; Proposed Revocation and Lowering of Certain Tolerances; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the tolerances for azinphos-methyl by revoking certain tolerances and modifying certain other tolerances for residues of the insecticide azinphos-methyl (40 CFR 180.154). This proposed revision is in compliance with a Memorandum of Understanding between the EPA and registrants of azinphos-methyl. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by docket control number OPP-300959, must be received on or February 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION" section of this document. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-300959 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barry O'Keefe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703-308-8035; fax number: 703-308-8041; e-mail address: okeefe.barry@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 the following:

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 exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. 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-300959. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official

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

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-300959 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-300959. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be

CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

In accordance with a Memorandum of Agreement (MOA) of August 2, 1999, between registrants and EPA, the EPA is proposing to revoke and to modify certain tolerances for residues of the insecticide azinphos-methyl in 40 CFR 180.154. In particular, the EPA is proposing to revoke the tolerance on sugarcane, with a revocation/expiration date of June 30, 2000, since by agreement this use has been deleted from active labels, because of surface water vulnerability and to prevent

unreasonable risks to wildlife and contamination of water. EPA is setting the revocation/expiration date of June 30, 2000, in order to allow time for existing stocks in the hands of users to be used. The Agency believes that once cancellation of this use occurs, residues of azinphos-methyl will likely be nondetectable in all sugarcane commodities shortly after harvest. The MOA states that azinphos-methyl manufacturing-use products may not be reformulated for use on sugarcane, and end-use product labels intended for use in the 2000 growing season shall not have sugarcane listed as a use site in the directions for use section.

In the MOA, the registrants agreed to submit a petition requesting specific tolerance modifications to be effective January 1, 2000. Such a petition has been received by the Agency. Therefore, EPA is proposing to lower tolerances found in 40 CFR 180.154 for residues of the insecticide azinphos-methyl in or on apples, crabapples, pears, and quinces, each from 2.0 parts per million (ppm) to 1.5 ppm, in or on cranberries from 2.0 ppm to 0.5 ppm, and in or on grapes from 5.0 ppm to 4.0 ppm. The Agency intends to make these modifications effective upon publication of the final rule. These reductions in tolerances are based on the most recent data that more accurately reflect recent label changes and residue levels that are likely to be detected. Additionally, monitoring data for the years 1993–1998 indicate that the new lower tolerances are not likely to be exceeded. These data represent residues resulting from the use pattern allowed under old labels which allowed higher amounts of use than reflected in recent label changes. Little use of the older labeled products should be reflected in residues of commodities in the channels of trade.

In addition, this document also proposes to revoke tolerances found in 40 CFR 180.154 for residues of azinphos-methyl in or on commodities for which there are no registered uses; including: apricots; artichokes; barley, grain; barley, straw; beans (dry); gooseberries; grass, pasture (green); grass, pasture, hay; kiwifruit; oats, grain; oats, straw; peas, black-eyed; rye, grain; rye, straw; soybeans; wheat, grain; and wheat, straw. Additionally, in 40 CFR 180.154(b), the tolerance for pomegranates is proposed to be revoked, because there is no registered use. These revocations are for uses that have not been on active labels since January 1999. Additionally, the Agency believes that azinphos-methyl had not been used on these crops for some time. Consequently, no treated commodities covered by these tolerances are expected

to be in the channels of trade. The Agency intends to make these modifications effective upon publication of the final rule.

This document also proposes to remove 40 CFR 180.531, and to revoke the three tolerances found in this section for residues of azinphos-methyl; which are as follows:

- (1) Sugarcane bagasse, since this commodity is not considered a significant livestock feed item.
- (2) Citrus pulp, dried, since an adequate orange processing study did not show concentration in dried orange pulp (in accordance with FFDCA section 408(a)(2), since residues in the processed food will not exceed the raw food tolerance).
- (3) Soybean oil, since there are no active registrations with soybeans on the label.

Changes in commodity terminology and definitions are proposed to conform to current Agency practice. These proposed changes are in accordance with the revised Crop Group Regulation (40 CFR 180.41) and the updated Table I "Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops" (August, 1996) in the Residue Chemistry Test Guidelines: OPPTS 860.1000 (EPA 721-C-96-169). Table I contains data on both crops and livestock diets, and lists feed commodities considered significant in livestock diets. Significant feedstuffs account for more than 99 percent of the available annual tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of more than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs. The EPA has devised criteria to include or exclude feedstuffs from Table I and set tolerances for significant feedstuffs. Tolerances are not set for feedstuffs which are neither significant nor a human food. Pesticide residues on such feedstuffs are governed by tolerances on the commodity from which they are derived (62 FR 66020, December 17, 1997) (FRL-5753-1). These changes relate only to nomenclature and have no effect on the scope of the tolerance. The specific commodity terminology name changes proposed are listed in the following table:

Old Commodity Name	New Commodity Name
Almonds	Almond
Almonds, hulls	Almond, hulls
Apples	Apple
Beans, snap	Bean, snap
Blackberries	Blackberry
Blueberries	Blueberry
Boysenberries	Boysenberry
Cherries	Cherry

Old Commodity Name	New Commodity Name
Citrus fruits	Fruit, citrus, group
Crabapples	Crabapple
Cranberries	Cranberry
Cucumbers	Cucumber
Eggplants	Eggplant
Filberts	Filbert
Grapes	Grape
Loganberries	Loganberry
Melons (honeydew, muskmelon, cantaloupe, watermelon, and other melons).	Melon
Nuts, pistachio	Pistachio
Onions	Onion
Parsley, leaves	Parsley, leaf
Parsley, roots	Parsley, root
Peaches	Peach
Pears	Pear
Pecans	Pecan
Peppers	Pepper
Plums (fresh prunes).	Plum, prune
Potatoes	Potato
Quinces	Quince
Raspberries	Raspberry
Strawberries	Strawberry
Tomatoes (PRE- and POST-H).	Tomato
Walnuts	Walnut

Since the available data indicate that finite residues of azinphos-methyl are not expected in animal tissues or milk, in accordance with 40 CFR 180.6(a)(3) EPA is proposing to revoke tolerances found in 40 CFR 180.154 for cattle, fat; cattle, mby; cattle, meat; goat, fat; goat, mby; goat, meat; horse, fat; horse, mby; horse, meat; sheep, fat; sheep, mby; and sheep, meat; and in 40 CFR 180.154a, the tolerance for milk. This proposal to revoke these 13 meat, milk, poultry and egg (MMPE) tolerances implements the Agency findings announced in the August 2, 1999 FR Notice (64 FR 41933) (FRL-6097-3) that, under 40 CFR 180.6 there is no reasonable expectation of finite residues for azinphos-methyl on the MMPE commodities and, therefore, these tolerances were considered reassessed and could be revoked, because they are not needed. These findings are based on feeding studies that used exaggerated amounts of azinphos-methyl (up to 11 times the dietary burden) and measurable residues still were not found. These studies were submitted after the tolerances were originally established.

This document also proposes to revoke the tolerance found in 40 CFR 180.154 for residues of azinphos-methyl in or on nectarines, in accordance with 40 CFR 180.1(h), since the tolerance on peaches covers nectarines.

This document also proposes to lower tolerances found in 40 CFR 180.154 for

residues of azinphos-methyl in or on almond and potato, each from 0.3 to 0.2 ppm, and in or on almond hulls from 10.3 to 5.0 ppm, since the available data indicate that these tolerances can be lowered to achieve compatibility with the corresponding Codex maximum residue limits (MRLs). These reductions in tolerances are based on the most recent data that more accurately reflect residue levels that are likely to be detected.

It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. EPA expects to determine whether any individuals or groups want to comment on these tolerance modifications. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104-170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. 21 U.S.C. 346(a). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3, section 5, or section 18 of FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid these trade-restricting situations, the Agency is proposing to revoke tolerances for residues on crops for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably

required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerances at issue.

Under section 408(d) of the FFDCA, the Agency may issue a final or proposed regulation establishing, modifying, or revoking a tolerance in response to a petition filed with the Agency that proposes the issuance of such regulation. On August 2, 1999, EPA and the registrants holding Section 3 registrations for azinphos-methyl signed a Memorandum of Agreement (MOA), which specifically states that the registrants shall submit to EPA a petition requesting many of the tolerance modifications detailed in this proposal; i.e. lowering tolerances on apples, crabapples, cranberries, grapes, pears, and quinces, and revoking the tolerance on sugarcane. Such a petition has been received by the Agency, dated September 22, 1999. Thus, the Agency is authorized by section 408(d) of the FFDCA to issue a proposed regulation in response to that petition. The MOA was made to help mitigate acute dietary, agricultural worker, and environmental risks. During phase five of the Tolerance Reassessment Advisory Committee (TRAC) process, the Agency invited the registrants, and any other affected or interested parties, to submit to the Agency additional risk mitigation thoughts or measures, since the acute dietary risk estimates from the revised human health risk assessment remained above the Agency's level of concern. The revised human health risk assessment may be found at <http://www.epa.gov/pesticides/op>. In addition to the MOA, EPA is also proposing the revocation or lowering of other tolerances, as well as changes in commodity nomenclature for various reasons as described in Unit II of this document.

F. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66%, or about 6,400, of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of November 1, 1999, EPA has assessed over 3,400 tolerances. This document proposes to revoke 35 tolerances. Since 13 tolerances were previously counted as reassessed, 22 of the 35 revocations will be counted when the final rule is published. The 22 reassessments will be counted toward the August, 2002 review deadline of FFDCA section 408(q), as amended by

the Food Quality Protection Act (FQPA) of 1996.

III. Regulatory Assessment Requirements

This proposed rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments

on the proposal, and will be addressed prior to issuing a final rule.

In addition, 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 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This rule 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 FFDCA section 408(n)(4).

IV. Consistency with International Obligations

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA is developing guidance concerning submissions for import tolerance support. This guidance

will be made available to interested parties.

Codex MRLs exist for the following tolerances proposed for revocation in this document, i.e. apricot at 2.0 ppm, cereal grains at 0.2 ppm, kiwifruit at 4.0 ppm, and soy bean at 0.2 ppm. Notwithstanding the existence of these MRLs, EPA is proposing to revoke the tolerances because retention would increase the chances of misuse and may result in unnecessary restriction on trade of pesticides and foods as well as inhibiting the retention and approval of tolerances, as discussed in greater detail in Unit II.B., of this document.

List of Subjects in 40 CFR Part 180

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

Dated: December 16, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. By revising § 180.154 to read as follows:

§ 180.154 O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl]phosphorodithioate; tolerances for residues.

(a) Tolerances are established for residues of the insecticide *O,O*-dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl]phosphorodithioate in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa	2.0	
Alfalfa, hay	5.0	
Almond	0.2	
Almond, hulls	5.0	
Apple	1.5	
Bean, snap	2.0	
Birdfoot trefoil ...	2.0	
Birdfoot trefoil hay	5.0	
Blackberry	2.0	
Blueberry	5.0	
Boysenberry	2.0	
Broccoli	2.0	
Brussels sprout ..	2.0	
Cabbage	2.0	
Cauliflower	2.0	
Celery	2.0	
Cherry	2.0	
Fruit, citrus, group	2.0	

Commodity	Parts per million	Expiration/Revocation Date
Clover	2.0	
Clover, hay	5.0	
Cottonseed	0.5	
Crabapple	2.0	
Cranberry	0.5	
Cucumber	2.0	
Eggplant	0.3	
Filbert	0.3	
Grape	4.0	
Loganberry	2.0	
Melon	2.0	
Onion	2.0	
Parsley, leaf	5.0	
Parsley, root	2.0	
Peach	2.0	
Pear	1.5	
Pecan	0.3	
Pepper	0.3	
Pistachio	0.3	
Plum, prune	2.0	
Potato	0.2	
Quince	1.5	
Raspberry	2.0	
Spinach	2.0	
Strawberry	2.0	
Sugarcane	0.3	6/30/00
Tomato	2.0	
Walnut	0.3	

(b) *Section 18 emergency exemptions.*

[Reserved]

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

(d) *Indirect or inadvertent residues.*

[Reserved]

§§ 180.154a and 180.531 [REMOVED]

3. By removing § 180.154a and § 180.531.

[FR Doc. 99-33161 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-339; FCC 99-353]

Implementation of Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the *Federal Register* of December 1, 1999, regarding the adoption of limited requirements for television video description. This corrects paragraph 44 of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy and Rules Division, Mass Media Bureau (202) 418-2130.

Correction

In the proposed rule 99-31116, page 67241, column 3, paragraph 44 set forth

certain instructions for filing comments on diskettes, and directed commenters to reference MM Docket No. 99-353. The document should have directed commenters to reference MM Docket No. 99-339. Therefore, the docket reference in paragraph 44, fifth sentence, to "99-353" is hereby deleted and replaced with the docket reference "99-339."

Dated: December 2, 1999.

Victoria Phillips,

Chief, Legal Branch.

[FR Doc. 99-33101 Filed 12-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-292; FCC 99-389]

Establishment of a Class A Television Service; Comments Suspended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comment date suspension.

SUMMARY: This document announces that the Commission, on its own motion, has suspended the filing of comments that were due December 21, 1999, in its rulemaking proceeding in MM Docket No. 99-292 concerning the Establishment of a Class A Television Service.

EFFECTIVE DATE: December 14, 1999.

FOR FURTHER INFORMATION CONTACT: James Brown, Video Services Division, Mass Media Bureau at (202) 418-1600.

SUPPLEMENTARY INFORMATION: On September 29, 1999, the Commission issued a Notice of Proposed Rule Making, FCC 99-257, setting forth for public comment a wide-range of issues and concerns dealing with the establishment of a form of primary status for qualifying low power television stations and on the appropriate regulatory framework for a Class A television service. On November 29, 1999, however, the Community Broadcasters Protection Act of 1999 (CBPA) was signed into law. Among other things, the legislation directed that, within 120 days after enactment of the CBPA, the Commission shall, by rulemaking, set forth regulations establishing a Class A television service for licensees of low power television that satisfy certain statutorily-prescribed criteria. The Commission is currently assessing the impact of the CBPA,

whose provisions are more narrowly focused than the matters in the instant rulemaking, and believes that suspension of the scheduled filing of comments would be more conducive to orderly rulemaking in the abbreviated proceeding mandated by the CBPA. The comment filing date IS SUSPENDED until further notice from the Commission.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-33102 Filed 12-21-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA-99-6355; Notice 2]

Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High-Consequence Areas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice extending comment period and establishing Electronic Public Discussion Forum.

SUMMARY: This notice announces that the Office of Pipeline Safety (OPS) will extend to January 17, 2000, the comment period following the public meeting on pipeline system integrity programs in high-consequence areas. This notice also announces that OPS is establishing an electronic public discussion forum on pipeline system integrity management. OPS requests comments that address how to provide additional safety and environmental protection for gas transmission pipelines and hazardous liquid pipelines in high-consequence areas through regulated integrity management programs.

DATES: No later than January 17, 2000, comments can be submitted over the Internet to the OPS integrity management site at <http://ops.dot.gov/imp.htm>. You may also submit written comments by mail or delivery directly to the Dockets Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments may be submitted directly to the docket at the following Internet Web address: <http://dms.dot.gov>. Click on "Help & Information" for instructions on how to file a document electronically. All

comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

ADDRESSES: The Dockets Facility is located on the plaza level, Room PL-401, of the U.S. Department of Transportation building, 400 7th St., SW, Washington, DC. It is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Israni (tel: 202-366-4571; E-mail: mike.israni@rspa.dot.gov). You can access additional information and participate in a discussion forum at the OPS pipeline system integrity management Internet site at <http://ops.dot.gov/imp.htm>.

SUPPLEMENTARY INFORMATION:

Background

On November 18-19, 1999, the Office of Pipeline Safety held a public meeting to discuss the need for additional safety and environmental regulations for pipelines in high-consequence areas (i.e., areas where a pipeline failure could have serious consequences for the public or the environment). The notice announcing the meeting was published on October 21, 1999, at 64 FR 56725. OPS wanted information on pipeline operators' system integrity management programs so that it could incorporate a process into the regulations for validating pipeline system integrity in high-consequences areas. OPS is committed to enhancing protection in these areas for several reasons. OPS and National Transportation Safety Board (NTSB) investigations and analyses of major pipeline incidents have underscored the importance of protecting areas of high population density and environmentally sensitive areas. Congressional mandates have directed OPS to undertake various activities in these areas, including requiring periodic pipeline inspections in areas of high population density and in areas unusually sensitive to environmental damage.

Recent OPS initiatives have validated the importance of focusing pipeline resources and establishing higher levels of protection in areas where a pipeline accident could have serious consequences. OPS has seen a wide array of existing operator safety programs that identify, assess, and address all significant risks to the pipeline in an integrated manner. These operator-developed programs closely examine in-line inspection survey data, together with other surveillance and

operating data, (e.g., expected population growth, land use, construction activity along the pipeline) and other information relevant to ensuring the integrity of the pipeline in high population areas and in environmentally sensitive areas.

Need for Extending Comment Period and Opening Electronic Discussion Forum

The November public meeting gathered information from government, industry, and public participants on integrity management programs and how to deal with integrity issues in high-consequence areas. The meeting provided a wealth of information on identifying high-consequence areas, testing and inspection technologies, and using risk data to manage pipeline system integrity. The meeting revealed the complexity inherent in requiring integrity management inspections and programs in high-consequence areas. Breakout sessions addressed the following issues:

- What are the key elements and characteristics of integrity management within companies?
- What are the characteristics of high-consequence areas?
- What are the minimum standards for integrity management programs?
- What elements should OPS review, evaluate, and inspect?
- What means are used to assemble and integrate information?
- What types of information need to be integrated to ensure pipeline system integrity?
- What are the key questions for OPS to ask during an inspection?

At the meeting, OPS announced that written comments on pipeline system integrity management issues would be accepted through December 20, 1999. The questions raised at the public meeting and subsequent discussions with the pipeline industry and regulators have shown that more time is needed to prepare and file comments. Therefore, we are extending the comment period to January 17, 2000. We are also setting up an electronic discussion forum so that we can get a free exchange of ideas on how to implement a pipeline system integrity management process into the pipeline safety regulations. This forum will be open until at least January 17, 2000. The transcript of the November 18-19, 1999, public meeting and public comments concerning issues raised at the meeting are available in the docket, which is accessible at the Dockets Facility or through the OPS pipeline system integrity management Internet site.

After the public meeting, OPS began discussing a conceptual model for ensuring extra protection in high-consequence areas. This model, along with additional information on the public meeting and on pipeline system integrity management issues for high-consequence areas, is posted on OPS's pipeline system integrity management Internet site at <http://ops.dot.gov/imp.htm>. Information on this site includes:

- General Summary of the November 18, 1999 public meeting
- Discussion page for facilitating communication
- **Federal Register** Notice on the November 18, 1999 public meeting
- Meeting Agenda and selected presentations/summaries by various speakers.
- Meeting transcripts for November 18, 1999 public meeting
- Summary of the Breakout sessions
- Conceptual pipeline system integrity management model for high-consequence areas
- Link to the DMS page for submissions to the electronic docket
- Contact (e-mail) information for Mike Israni and Beth Callsen

RSPA encourages all interested persons to access the pipeline system integrity management conceptual model and other background information at <http://ops.dot.gov/imp.htm>.

In particular, OPS wants comment on how to improve protection for the public and the environment for pipelines located in high-consequence areas through a more integrated approach to identifying and addressing risks. Interested persons are urged to present their views on whether and what additional inspection requirements or other preventive and mitigative actions are needed to ensure adequate protection of high-consequence areas. Comments are sought from pipeline companies on the extent of their inspection and testing programs, the types of inspection tools employed, and experience with intervals between inspections and testing. OPS is also interested in comments on the expected cumulative costs and benefits associated with implementing a pipeline system integrity management process, on whether any of these measures would have a disproportionate impact on small operators, and any concerns on the information collection, recordkeeping, or reporting requirements of this initiative under the Paperwork Reduction Act of 1995 (44 USC 3057(d)).

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Issued in Washington, DC on December 17, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99-33207 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF83

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the southern California distinct vertebrate population segment (DPS) of mountain yellow-legged frog (*Rana muscosa*) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). In southern California, this DPS has been reduced to only a few isolated remnants in the San Gabriel, San Jacinto, and San Bernardino Mountains. Hypothesized causes of the decline include predation from introduced trout or possibly some other widespread environmental effects such as airborne contaminants. These effects have probably acted in combination to produce the decline. The chronology of the decline is not well documented, but it appears that a precipitous decline occurred over the last three or four decades. The decline went largely unnoticed and was not studied. In addition to predation from trout and other widespread factors, the few remaining frogs are now threatened by recreational suction dredging for gold and human activities at campgrounds and day use areas. The remnant populations are so small that they are now at risk from random genetic, demographic, and environmental effects as well. This proposed rule constitutes the 12-month finding on a petition to list the southern California population of mountain yellow-legged frog as threatened or endangered. This proposed rule, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this DPS. We welcome data and comment from the public on this proposal.

DATES: You must submit any comments by February 22, 2000 and public hearing requests by February 7, 2000.

ADDRESSES: You may send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. You may inspect comments and materials received, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg at the above address (telephone 760/431-9440).

SUPPLEMENTARY INFORMATION:

Background

The mountain yellow-legged frog is a true frog in the family Ranidae. Mountain yellow-legged frogs were originally described by Camp in 1917 (as cited by Zweifel 1955) as a subspecies of *Rana boylei*. Zweifel (1955) demonstrated that frogs from the high Sierra and the mountains of southern California were somewhat similar to each other yet were distinct from the rest of the *R. boylei* (= *boylei*) group. Since that time, most authors have followed Zweifel, treating the mountain yellow-legged frog as a full species, *Rana muscosa*.

Mountain yellow-legged frogs are moderately sized, about 40 to 80 millimeters (mm) (1.5 to 3 inches (in)) from snout to urostyle (the pointed bone at the base of the backbone) (Jennings and Hayes 1994; Zweifel 1955). The pattern is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous spots with a mixture of sizes and shapes, to irregular lichen-like patches or a poorly defined network (Zweifel 1955). The body color is also variable, usually a mix of brown and yellow, but often with gray, red, or green-brown. Some individuals may be dark brown with little pattern (Jennings and Hayes 1994). The back half of the upper lip is pale. Folds are present on each side of the back, but usually they are not prominent (Stebbins 1985). The throat is white or yellow, sometimes with mottling of dark pigment (Zweifel 1955). The belly and undersurface of the high limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. The iris is gold with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

In the Sierra Nevada Mountains of California, the mountain yellow-legged frog ranges from southern Plumas County to southern Tulare County (Jennings and Hayes 1994), at elevations

mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the Sierra Nevada are isolated from the frogs of the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)). The southern California frogs now occupy portions of the San Gabriel, San Bernardino, and San Jacinto Mountains. Zweifel (1955) noted the presence of an isolated southern population on Mt. Palomar in northern San Diego County, but this population appears to be extinct (Jennings and Hayes 1994). In southern California, the elevation range reported by Stebbins (1985) is 182 m (600 ft) to 2,273 m (7,500 ft). Representative localities, including some that are no longer occupied, which demonstrate the wide elevation range that mountain yellow-legged frogs inhabited in southern California, include Eaton Canyon, Los Angeles County (370 m (1,220 ft)) and Bluff Lake, San Bernardino County (2,290 m (7,560 ft)). The southern California locations now occupied by mountain yellow-legged frogs range from City Creek, in the San Bernardino Mountains (760 m (2,500 ft)), to Dark Canyon in the San Jacinto Mountains (1,820 m (6,000 ft)).

Southern California mountain yellow-legged frogs are diurnal, highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. In these areas, juveniles and adults feed on small, streamside arthropods (Jennings and Hayes 1994). They do not occur in the smallest creeks. The coldest winter months are spent in hibernation, probably under water or in crevices in the bank. Mountain yellow-legged frogs emerge from overwintering sites in early spring, and breeding soon follows. Eggs are deposited in shallow water where the egg mass is attached to vegetation or the substrate. In the Sierra Nevada, larvae select warm microhabitats (Bradford 1984 cited in Jennings and Hayes 1994), and the time to develop from fertilization to metamorphosis reportedly varies from 1 to 2.5 years (Jennings and Hayes 1994).

Prior to the late 1960s, mountain yellow-legged frogs were abundant in many southern California streams (G. Stewart, *in litt.* 1995), but they now appear to be absent from most places in which they previously occurred. Jennings and Hayes (1994) believe that mountain yellow-legged frogs are now absent from more than 99 percent of their previous range in southern California. This decline is part of a well-known larger pattern of declines among native ranid frogs in the western United States (Hayes and Jennings 1986; Drost and Fellers 1996). Some of the western

ranid frog species experiencing noticeable declines are the California red-legged frog (*Rana aurora draytonii*) (61 FR 25813), the spotted frog (*R. pretiosa* and *R. luteiventris*), the Cascades frog (*R. cascadae*), and the Chiricahua leopard frog (*R. chiricauhensis*) (62 FR 49398). Nowhere have the declines been any more pronounced than in southern California, where, besides declines in mountain yellow-legged frogs, the California red-legged frog has been reduced to a few small remnants (61 FR 25813), and the foothill yellow-legged frog (*R. boylei*) may be extinct (Jennings and Hayes 1994.)

The mechanisms causing the declines of western frogs are not well understood and are certain to vary somewhat among species, but the two most common and well-supported hypotheses for widespread declines of western ranid frogs are: (1) Past habitat destruction related to unregulated activities such as logging and mining and more recent habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986; 61 FR 25813); and (2) alien predators and competitors (Bradford 1989; Knapp 1996; Kupferberg 1997). Natural populations may be killed off directly by these factors operating alone or in combination, or these factors so severely disrupt the normal population dynamics that when local extinctions occur, regardless of the cause, natural recolonization is impossible. Other environmental factors that could have adverse effects over a wide geographic range include pesticides, certain pathogens, and ultraviolet-B (beyond the visible spectrum) radiation, but their role, if any, in amphibian declines is not well understood (Reaser 1996). These factors, acting singly or in combination, may be contributing to widespread, systematic declines of western ranid frogs. Determining their effects, however, is not an easy task (Reaser 1996; Wake 1998), and the Department of the Interior (USDOI) currently supports an initiative to fund research on the causes of amphibian declines (see examples in USDOI 1998).

Some of the same factors that are hypothesized to have caused declines of other western ranid frogs are likely to be responsible for the reduction of the mountain yellow-legged frog in southern California. Because the declines have been so precipitous, and have spared only a small number of frogs in a few localities, the factors, and their interactions, that caused the decline may never be fully understood. We believe that these factors are still

operating, and unless reversed, a high probability exists that this frog may be extinct in southern California within a few decades. In the case of the mountain yellow-legged frog, the only factor listed above that we believe can be ruled out as a likely cause of decline is habitat destruction related to activities such as logging, mining, irrigated agriculture, and commercial development. The range of the mountain yellow-legged frog in southern California is mainly on public land administered by the U.S. Forest Service (FS). Most of the rugged canyons and surrounding mountainous terrain have been altered little and look much the same today as they did when earlier naturalists such as Lawrence Klauber collected mountain yellow-legged frogs there in the early decades of the 1900s.

Current Range and Status

In southern California, mountain yellow-legged frogs can still be found in four small streams in the San Gabriel Mountains, the upper reaches of the San Jacinto River system in the San Jacinto Mountains, and at a single locality on City Creek, a tributary of the Santa Ana River, in the San Bernardino Mountains (Jennings and Hayes 1994; M. D. Wilcox *in litt.*, 1998). These areas along with the numbers of frogs most recently observed in each area are described below.

San Gabriel Mountains: Surveys conducted from 1993 to 1997 revealed small isolated populations in the upper reaches of Prairie Creek/Vincent Gulch, Devil's Canyon, and Alder Creek/East Fork, on the East Fork of the San Gabriel River, and Little Rock Creek on the Mojave River (Jennings and Hayes 1994 and references therein; Jennings 1995; Jennings 1998). The surveys involved one to three field biologists and were conducted over 1–5 days per site. Over the course of these field studies, 15 adults or fewer were observed at any 1 site, and, after the 1995 season, Jennings (1995) concluded that the actual population at each of the sites was only 10–20 adults.

San Jacinto Mountains: Small populations of mountain yellow-legged frogs also occur in four tributaries in the upper reaches of the North Fork, San Jacinto River on Mount San Jacinto: Dark Canyon, Hall Canyon, Fuller Mill Creek, and the main North Fork, San Jacinto River (Jennings and Hayes 1994; Jennings 1995; Jennings 1998). The number of frogs occupying these sites is not known, but fewer than 10 adult frogs per site per year have been observed in surveys from 1995 to the present.

San Bernardino Mountains: A few tadpoles and 26 recently transformed

juveniles, but no adults, were rediscovered on a roughly 1-mile reach of the East Fork, City Creek during the summer of 1998 (M. D. Wilcox *in litt.*, 1998). Previous to this finding, mountain yellow-legged frogs had not been observed in the San Bernardino Mountains since the 1970s (Jennings and Hayes 1994), even though surveys were conducted during the summer and fall of 1997 and 1998 (Holland 1997; Tierra Madre 1999).

When frogs were encountered during field surveys accomplished between 1988 and 1995, only a few individuals were observed. Jennings and Hayes (1994) and Jennings (1995) suggested that the entire population of mountain yellow-legged frogs in the San Gabriel and San Jacinto Mountains (8 more or less isolated sites) was probably fewer than 100 adult frogs. Their rough estimate is based on a compilation of the results of visual surveys generally conducted on a single day, not on formal population abundance estimation techniques. While the precise number of adult frogs may be greater than 100, we concur with Jennings and Hayes (1994) that, in the San Gabriel and San Jacinto Mountains, the available data indicate that this once widespread species is now found in only a small number of relatively isolated populations. We do not know the population size of adult frogs at the recently rediscovered site on the east fork of City Creek in the San Bernardino Mountains, but because no adults and only a few juveniles and tadpoles were encountered, the adult population is probably small. Thus, we conclude that each of the three mountain ranges (San Gabriel, San Jacinto, San Bernardino) contains a small number of small, relatively isolated populations.

Distinct Vertebrate Population Segment

We analyzed the mountain yellow-legged frog according to the joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Populations, published in the **Federal Register** on February 7, 1996 (61 FR 4722). We consider three elements in determining whether a vertebrate population segment could be treated as threatened or endangered under the Act: discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity,

or (2) populations delimited by international boundaries. We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. Our policy lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards.

Discreteness: The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which isolate Sierran frogs from those in the mountains of southern California. The distance of the separation is about 225 km (140 mi), but the separation may not have been this great in the recent past because a frog collected in 1952 on Breckenridge Mountain in Kern County was identified by Jennings and Hayes (1994) as a mountain yellow-legged frog. The geographic separation of the Sierran and southern California frogs was recognized in the earliest description of the species by Camp (1917, cited in Zweifel 1955), who treated frogs from the two localities as separate subspecies within the *R. boylii* group. He designated the Sierran frogs *R. b. sierrae* and the southern California frogs *R. b. muscosa*, based on geography and subtle morphological differences. Zweifel (1955) reevaluated the morphological evidence and found it insufficient to warrant Camp's recognition of two subspecies, the chief difference between the two being hind-limb length.

More recently, Ziesmer (1997) analyzed the calls of Sierran (Alpine and Mariposa Counties) and southern California (San Jacinto Mountains and Riverside County) mountain yellow-legged frogs. He found that the calls of Sierran frogs differed from southern California frogs in pulse rate, harmonic structure, and dominant frequency. Based on a limited sample, Ziesmer concluded that the results supported the hypothesis that mountain yellow-legged

frogs from the Sierra Nevada and southern California are separate species.

Allozyme (a form of an enzyme produced by a gene) variation throughout the range of the mountain yellow-legged frog has been examined, but the results are open to interpretation (Jennings and Hayes 1994 and references therein). In the work most applicable to the question of the distinctiveness of the Sierran and southern California frogs, David Green (pers. comm., 1998) analyzed allozyme variation in central Sierran mountain yellow-legged frogs (four individuals, Tuolumne County) and southern California mountain yellow-legged frogs (two individuals, Riverside County). He found fixed differences at 6 of 28 loci (sites on a chromosome occupied by specific genes). These limited, unpublished data suggest that Sierran and southern California mountain yellow-legged frogs are different at a level that could support the recognition of full species. However, because of the small number of individuals per sample and the limited number of samples, we view these results cautiously. It is possible that existing variation at those six loci may not have been detected with such a small number of individuals sampled. To better understand whether a genetic discontinuity significant enough to warrant full species rank exists between Sierran frogs and those from the mountains of southern California, samples of frogs from the southern Sierra Nevada, especially the Greenhorn Mountains, would be of particular interest.

Although Green's limited allozyme analysis may not be sufficient to support recognizing the Sierran and southern California populations as separate species, it does support the conclusion of significant geographic separation. This conclusion is also supported by earlier observations of morphological differences (Zweifel 1955, and references therein) and differences in vocalizations (Ziesmer 1997). Considered together, the evidence supports an interpretation of isolation between the two populations of frogs over a very long period. We find that the southern California frogs meet the criterion of "marked separation from other populations of the same taxon" and qualify as discrete according to the Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722).

Significance: One of the most striking differences between Sierran and southern California mountain yellow-legged frogs is the habitats they occupy. Zweifel (1955) observed that the frogs in southern California are typically found

in steep gradient streams in the chaparral belt, even though they may range up into small meadow streams at higher elevations. In contrast, Sierran frogs are most abundant in high elevation lakes and slow-moving portions of streams. Bradford's (1989) southern Sierra Nevada study site, for example, was in Sequoia and Kings Canyon National Parks at high elevations (between 2,910–3,430 m (9,600–11,319 ft)). The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes of the Sierra Nevada. On the basis of habitat alone, one might easily conclude that these are two very different frogs.

The mountain yellow-legged frogs of southern California comprise the southern portion of the species' range. The extinction of this southern group would be significant because it would substantially reduce the overall range as it is currently understood, and what is now a gap in the distribution, the Tehachapi Mountains, would become the southern limit of the species' range.

In addition, evidence exists that the mountain yellow-legged frog is not simply a single species with a disjunct distribution (cited in Zweifel 1955; Stebbins 1985). As discussed above, vocal and genetic differences exist between Sierran and southern California mountain yellow-legged frogs. Although the data are limited and some important variation may have been missed, they are consistent with the earlier interpretation by Camp (1917 cited in Zweifel 1955) and numerous other authors prior to Zweifel (e.g., Stebbins 1954) who treated the two forms as taxonomically distinct. If the differences in vocalization described by Ziesmer (1997) and the allozyme variation described by Green (per. comm., 1998) accurately characterize differences between the two forms, then the Sierran and southern California frogs are quite different and have been isolated for a very long time.

Our conclusion that Sierran and southern California frogs are very different from each other, and may even merit recognition as separate subspecies or possibly even species, is based on the cumulative weight of the available evidence. We find that the mountain yellow-legged frogs inhabiting the mountains of southern California meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722) on the basis of the geographical, ecological, vocal, and genetic discontinuities described above.

In the remainder of this proposed rule, we evaluate the southern

California mountain yellow-legged frog for endangered status based on the Act's standards. For clarity, we refer to all mountain yellow-legged frogs south of the Tehachapi Mountains as the southern California DPS. We use the word "population" to describe all of the frogs living in a particular place.

Previous Federal Action

On July 13, 1995, we received a petition dated July 10, 1995, from D.C. "Jasper" Carlton (of the Biodiversity Legal Foundation), Bonnie M. Dombrowski, and Michael C. Long to list as threatened or endangered the southern California populations of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Act. Accompanying the petition was supporting information related to the taxonomy, ecology, and the past and present distribution of the species. We reviewed the petition, supporting documentation, and other information cited in this proposed rule to determine if substantial information was available to indicate that the requested action may be warranted. On July 8, 1997, we published a 90-day finding for the petition to list the southern California populations of the mountain yellow-legged frog (62 FR 36481). We found the southern California population to be a DPS and furthermore found the petition presented substantial information indicating the listing of the species (DPS) may be warranted. Once we made the finding that the petition presented substantial information, we commenced a status review pursuant to section 4(b)(3)(A) of the Act. However, consistent with the applicable Listing Priority Guidances (62 FR 55268; 63 FR 25502), our Carlsbad Field Office completed work on higher priority listing actions before completing this 12-month finding and proposed rule to list this DPS of the mountain yellow-legged frog.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The

processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. The processing of this proposed rule is a Priority 3 action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southern California DPS of mountain yellow-legged frogs are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

All nine known populations of southern California *Rana muscosa* occur on lands owned and managed by the FS and are clustered within three drainages, one in the San Gabriel Mountains, one in the San Bernardino Mountains, and another on Mount San Jacinto. As such, the habitats in which they live are protected against wholesale conversions to other uses. However, with so few populations remaining, and with each of those numbering only a few individuals, localized habitat alterations, which would not be appreciable if the DPS were more wide-ranging and abundant, threaten the DPS. Local habitat changes caused by recreational suction dredging for gold and human use around campgrounds, picnic grounds, and heavily used trails may harm the habitat and contribute to local extinctions wherever these activities intersect with mountain yellow-legged frogs.

Jennings (1995) observed suction dredging within the Wilderness Area where mountain yellow-legged frogs occur on the East Fork, San Gabriel River. He reported observing large quantities of trash and toxic materials being dumped into the stream bed. If this practice is continued, it could have harmful effects on the population inhabiting the East Fork, San Gabriel River. The consequences for populations on other San Gabriel River tributaries is difficult to predict, but any losses would further isolate the remaining populations and probably

reduce the time to extinction for the DPS. Other than the East Fork, San Gabriel River site, we do not know if recreational gold mining occurs or at what level on or near sites occupied by frogs. Extensive suction dredging activity at or near a breeding site could have the harmful effect of killing eggs or larvae or changing the hydrology, rendering it unsuitable for breeding. Some of the habitat effects of suction dredging on streams are described by Harvey (1986), who found dredging altered substrates and changed the habitat for fish and invertebrates.

Fairly heavy camping and day use coincides with frog habitat along the East Fork, San Gabriel River (dispersed camping), Prairie Fork Creek (campground, recently burned and presently closed by the FS), Little Rock Creek (trail, rock climbing), Dark Canyon (campground), and Fuller Mill Creek (picnic ground). In areas occupied by frogs, human presence in and along streams can disrupt the lives of eggs, larvae, and adult frogs and change the entire character of the stream and its bank and associated vegetation in ways that make whole sections of stream less suitable for frogs. Only nine very small populations remain, and at least four of these are in areas that receive reasonably heavy human camping or day use. The loss of even small numbers of frogs from any of these populations due to human camping or day use, either alone or in combination with other factors, will increase the probability of local extinction. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Numerous museum specimens from many localities (Jennings and Hayes 1994) attest to the fact that, for decades, mountain yellow-legged frogs from the southern DPS have been collected for scientific purposes. These collections probably did not have an appreciable effect. Now that the DPS has declined precipitously, populations are so few in number, and the size of each population is so small, very little or no scientific collecting of the southern DPS occurs. Collecting, scientific or amateur, if it did occur, could seriously increase the probability of extinction of any of the remaining populations. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the DPS.

C. Disease or Predation

Predation by introduced trout, including rainbow trout (*Oncorhynchus mykiss*), is one of the best documented causes of the decline of Sierran mountain yellow-legged frogs. Careful study of the distributions of introduced trout and mountain yellow-legged frogs for several years has shown conclusively that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989; Knapp 1996). Bradford (1989) and Bradford *et al.* (1993) concluded that introduced trout eliminate many populations of mountain yellow-legged frogs and the presence of trout in intervening streams sufficiently isolates other frog populations so that recolonization after stochastic (random, naturally occurring) local extinctions is essentially impossible. This mechanism is sufficient to explain the elimination of Sierran mountain yellow-legged frogs from the majority of sites they once inhabited, and, alone or in combination with other factors, introduced trout have almost certainly contributed to the widespread and systematic decline of the southern DPS as well.

Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and trout are routinely planted in Dark Canyon, Fuller Mill Creek in the San Jacinto Mountains, and City Creek in the San Bernardino Mountains. Most of the other streams still occupied by mountain yellow-legged frogs have histories of trout introductions and probably contain naturally reproducing, sustainable populations at, or very near, the sites occupied by the frogs. Wherever the two species co-occur, trout are likely to eliminate mountain yellow-legged frogs or keep populations low and limit dispersal. The widespread occurrence of introduced trout in the mountains of southern California may make it very difficult to reverse the decline to extinction of the DPS.

Another introduced predator that could have effects on the DPS similar to those of the trout, yet on a more limited scale, is the bullfrog, *Rana catesbeiana*. Bullfrogs have been listed among the threats to other western frogs (61 FR 25813; Kiesecker and Blaustein 1998) and toads (59 FR 64859). Bullfrogs are now widespread in southern California and occur in many drainages formerly and currently occupied by mountain yellow-legged frogs. The negative effects of bullfrogs on mountain yellow-legged frogs in the mountains of southern California are probably less widespread than those of introduced trout because

there is less overlap in their occurrence. Any habitat alterations that are favorable to bullfrogs, however, will cause them to become abundant locally. In areas where mountain yellow-legged frogs occur, this increase could lead to local extinctions and increased isolation of the remaining populations, which would probably reduce the time to extinction for the entire DPS.

Bradford (1991) documented the loss of a Sierran population of *Rana muscosa* due to the combined effect of "red-leg" disease (caused by the bacterium *Aeromonas hydrophila*) and predation by Brewer's blackbirds, *Euphagus cyanocephalus*. Another pathogen that is generating concern among those who study amphibian declines is the chytrid fungus. Chytrids may be seriously affecting amphibians in many places around the world, and they have recently been discovered on larval mountain yellow-legged frogs in the Sierra Nevada (Gary Fellers, pers. comm. 1999). Because of the small and isolated nature of the remaining populations, disease could be serious. Any local extinctions caused by disease would further isolate the remaining populations and probably reduce the time to extinction for the entire DPS.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not stopped the decline of mountain yellow-legged frogs in southern California. Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog include: (1) Consideration under the California Environmental Quality Act (CEQA); (2) consideration under section 404 of the Clean Water Act (CWA); and (3) co-occurrence with other species protected by the Endangered Species Act of 1973.

The State of California considers mountain yellow-legged frogs a species of special concern, but it is not a threatened or endangered species and receives no protection under the California Endangered Species Act. California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time except under special permit from the California Department of Fish and Game. This prohibition may help prevent threats from collecting, but this threat is not a significant cause of the decline, and the DPS is expected to continue declining toward extinction even in the absence of collecting.

The CEQA requires a full public disclosure of the potential environmental impact of proposed

projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines require a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. The CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be threatened, or where adverse impacts are not mitigated to the point of insignificance.

Besides the Act, the primary Federal law that potentially affords some protection for the mountain yellow-legged frog is section 404 of the CWA. The CWA may provide some general protections for species, however, this DPS has declined precipitously under this Federal law.

The arroyo toad (*Bufo microscaphus californicus*), a federally listed endangered species, is present in the San Gabriel Mountains, but there is no benefit to the mountain yellow-legged frog because the two species occupy different areas in the San Gabriel Mountains and the arroyo toads are not known to occur elsewhere in the limited range of the mountain yellow-legged frog.

The Angeles and San Bernardino National Forests manage all known locations of mountain yellow-legged frogs in southern California. However, the FS does not include *Rana muscosa* on its list of sensitive species, although the Angeles and San Bernardino National Forests manage the frog as if it were sensitive (M. Rogers, *in litt.*, 1997). Nevertheless, the FS does not have a management plan for the mountain yellow-legged frog or an adaptive management strategy that addresses the

specific conservation and recovery needs of the species. As noted in the discussion of factors A through C above, the presence of introduced trout on FS lands is a serious threat, and, now that the DPS has been reduced to small isolated remnants, some other legal recreational activities occurring on FS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall failure or inability of existing CEQA, National Environmental Policy Act, and other Federal, State, and local ordinances and statutes to protect and provide for the conservation of this DPS.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Because the remaining populations of the DPS are small, isolated remnants, they are vulnerable to random natural events that could quickly eliminate them. It is a widely recognized principle that, in general, small populations are more vulnerable to extinction than large ones (Pimm 1991; Noss and Cooperrider 1994). Noss and Cooperrider (1994) identified four major factors that predispose small populations to extinction: (1) Environmental variation and natural catastrophes like unusually harsh weather, fires, or other unpredictable environmental phenomena; (2) chance variation in age and sex ratios or other population parameters (demographic stochasticity); (3) genetic deterioration resulting in inbreeding depression and genetic drift (random changes in gene frequencies); and (4) disruption of metapopulation dynamics (*i.e.*, some species are distributed as systems of local populations linked by occasional dispersal, which wards off demographic or genetic deterioration).

It is likely that some or a combination of these factors contribute to an increased probability of extinction of the remaining populations and the entire DPS. For example, Stewart (*in litt.*, 1995) and Jennings (*in litt.*, 1995) believe that flooding and fires could easily eliminate entire populations of mountain yellow-legged frogs, and Stewart (*in litt.*, 1995) believes flooding during the winter of 1969 was the major factor in the loss of mountain yellow-legged frogs from Evey Canyon in the San Gabriel Mountains. An illustration of possible demographic effects is seen in the results of a limited survey by Jennings (1995), who found skewed sex ratios in the San Gabriel Mountains populations. If the results accurately reflect the real sex ratios in these populations, the effective population sizes are much lower than the census populations. When effective population

size is small, the negative consequences can be demographic (*e.g.*, not enough individuals of a given sex) or genetic (*e.g.*, inbreeding depression), and can predispose these populations to a higher risk of extinction. The population genetics and metapopulation dynamics of the southern mountain yellow-legged frog have not been investigated, but we believe that the connectivity of populations within the DPS is substantially reduced compared to the recent past.

Because the southern DPS consists of small, isolated populations, it is particularly vulnerable to some or all of the effects of chance listed above. Given the low probability of improving the status of the DPS under the status quo, the probability of small population size playing a role in the extinction of one or more local populations within the next few years is high. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the entire DPS.

In summary, in southern California the mountain yellow-legged frog DPS is threatened by predation from introduced trout and possibly by other factors (*e.g.*, airborne contaminants, pathogens) that are difficult to pinpoint and are currently the subject of national and worldwide investigations. Other local factors (recreational dredging, camping, day use), that would not cause appreciable harm if the DPS had not been reduced to small remnants, now represent serious actual or potential local threats. Compounding the effects of the large-scale (trout) and local (recreation) threats, the DPS has been reduced to very small isolated or semi-isolated populations that random events are now likely to contribute to local extinctions, which will reduce the time to extinction of the entire DPS. Even though we may never fully understand all the causes of decline, the available information suggests a high probability that this frog may be extinct in southern California within a few decades. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing the DPS in determining to propose listing. Based on this evaluation, we propose to list the southern California DPS of mountain yellow-legged frog as endangered. We considered but did not select other alternatives to this action because not listing this DPS as endangered, or listing it as threatened, would not provide adequate protection and would not be in keeping with the purpose of the Act or the definitions therein. This DPS consists of 9 small, relatively isolated

populations from which a combined total of fewer than 100 adults have been observed in recent surveys. Although all of the factors that have caused it to decline to this low level may never be known, the DPS is in immediate danger of extinction.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). "Conservation" means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which protection under the Act is no longer necessary.

Due to the small number of populations, the mountain yellow-legged frog is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for the mountain yellow-legged frog and have not found significant specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such

critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for this DPS of the mountain yellow-legged frog.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for this DPS of the mountain yellow-legged frog will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the mountain yellow-legged frog without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for this DPS of the mountain yellow-legged frog as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include requirements for Federal protection,

prohibitions against certain practices, and recovery actions. The Act provides for possible land acquisition/exchange and cooperation with the States. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below. Listing of the southern California DPS as endangered will provide for the development of a recovery plan. Such a plan will bring together both State and Federal efforts for the mountain yellow-legged frog's conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It will also describe site-specific management actions necessary to achieve conservation and survival of the southern California DPS of the mountain yellow-legged frog.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with section 7 regarding the southern California DPS of mountain yellow-legged frog include the U.S. Forest Service through its management activities and the U.S. Army Corps of Engineers through its permit authority under section 404 of the Clean Water Act. These agencies either administer lands containing the DPS or authorize, fund, or otherwise conduct activities that may affect the DPS.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. If the DPS is eventually listed, we believe the following actions would not be likely to result in a violation of section 9:

Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxa that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of endangered species.

Activities that the Service believes could potentially harm the southern California DPS of mountain yellow-legged frog and result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of southern California mountain yellow-legged frogs without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken mountain yellow-legged frogs;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section);

(4) Introduction of nonnative species that compete or hybridize with, or prey on, mountain yellow-legged frogs; and

(5) Destruction or alteration of mountain yellow-legged frog habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant

degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding; and

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting mountain yellow-legged frogs by mining, or other developmental or land management activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181 (503/231-6241; FAX 503/231-6243).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing these permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The distribution of resident rainbow trout in the mountains of southern California prior to the stocking programs of the California Department of Fish and Game;

(3) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(4) Additional information concerning the range, distribution, and population size of this species; and

(5) Current or planned activities in the subject area and their possible impacts on the southern California population of mountain yellow-legged frogs.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein are available upon request from the Carlsbad Field Office (see **ADDRESSES** above).

Author

The primary author of this document is Paul J. Barrett, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of

Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, mountain yellow-legged.	<i>Rana muscosa</i>	U.S.A. (California, Nevada) including San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties.	U.S.A., southern California.	E	.....	NA	NA
*	*	*	*	*	*		*

Dated: December 10, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99-33087 Filed 12-17-99; 11:48 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 991210333-9333-01; I.D. 111099C]

RIN 0648-AN37

Dolphin-Safe Tuna Labeling; Official Mark

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement provisions of the International Dolphin Conservation Program Act (IDCPA) that pertain to the establishment of an official dolphin-safe mark. This rule proposes that mark. The Dolphin Protection Consumer Information Act (DPCIA), as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that may be used to label tuna products as "dolphin-safe." This rule will allow consumers to distinguish dolphin-safe tuna products using the official mark from non-dolphin-safe tuna products.

DATES: Comments on the proposed rule must be received on or before January 5, 2000.

ADDRESSES: Written comments should be sent to Christopher Fanning, NMFS, Southwest Region, Sustainable Fisheries Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Comments also may be sent via facsimile, to (562) 980-4047. NMFS will not accept comments sent by e-mail or via Internet. A full color version of the proposed official mark may be found at the NMFS Southwest Region website at <http://swr.ucsd.edu/>.

FOR FURTHER INFORMATION CONTACT: Christopher Fanning, NMFS, Southwest Region, Sustainable Fisheries Division, (562) 980-4030 or J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980-4020.

SUPPLEMENTARY INFORMATION:

Background

The DPCIA, 16 U.S.C. 1385, as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The IDCPA and the DPCIA became effective on March 3, 1999, when the Secretary of State certified to Congress that the Agreement on the International Dolphin Conservation Program had been adopted and was in force.

Official Mark

As discussed in the proposed rule to implement the IDCPA (64 FR 31806; June 14, 1999), the Secretary of Commerce considered the designation of a commonly used dolphin-safe logo as the official mark, but instead has decided to develop a unique logo as the official mark. This rule proposes a specific logo as the official mark.

The DPCIA establishes dolphin-safe standards applicable to tuna products

labeled with either the official mark or an alternative mark, (16 U.S.C. 1385(d)). The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals. The dolphin-safe labeling standards are set forth under 50 CFR 216.91 through 216.94. This proposed rule would codify the official mark at 50 CFR 216.96.

Public Comments Solicited

NMFS is soliciting comments on this proposed rule, including the proposed official mark (see **ADDRESSES**).

Classification

Executive Order 12866

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

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since the IDCPA does not mandate the use of the official mark, and use of the official mark is discretionary. Thus there are no compliance costs associated with this proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 216

Food Labeling, Marine mammals, Seafood.

Dated: December 15, 1999.

Andrew A. Rosenberg,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

**PART 216—REGULATIONS
GOVERNING THE TAKING AND
IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.96 is added to read as follows:

§ 216.96 Official mark for “Dolphin-safe” tuna products.

(a) This is the “official mark” (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the “dolphin-safe” standards set forth in the DPCIA, 16 U.S.C. 1385, and implementing regulations at 50 CFR 216.91 through 216.94:

BILLING CODE 3510-22-F

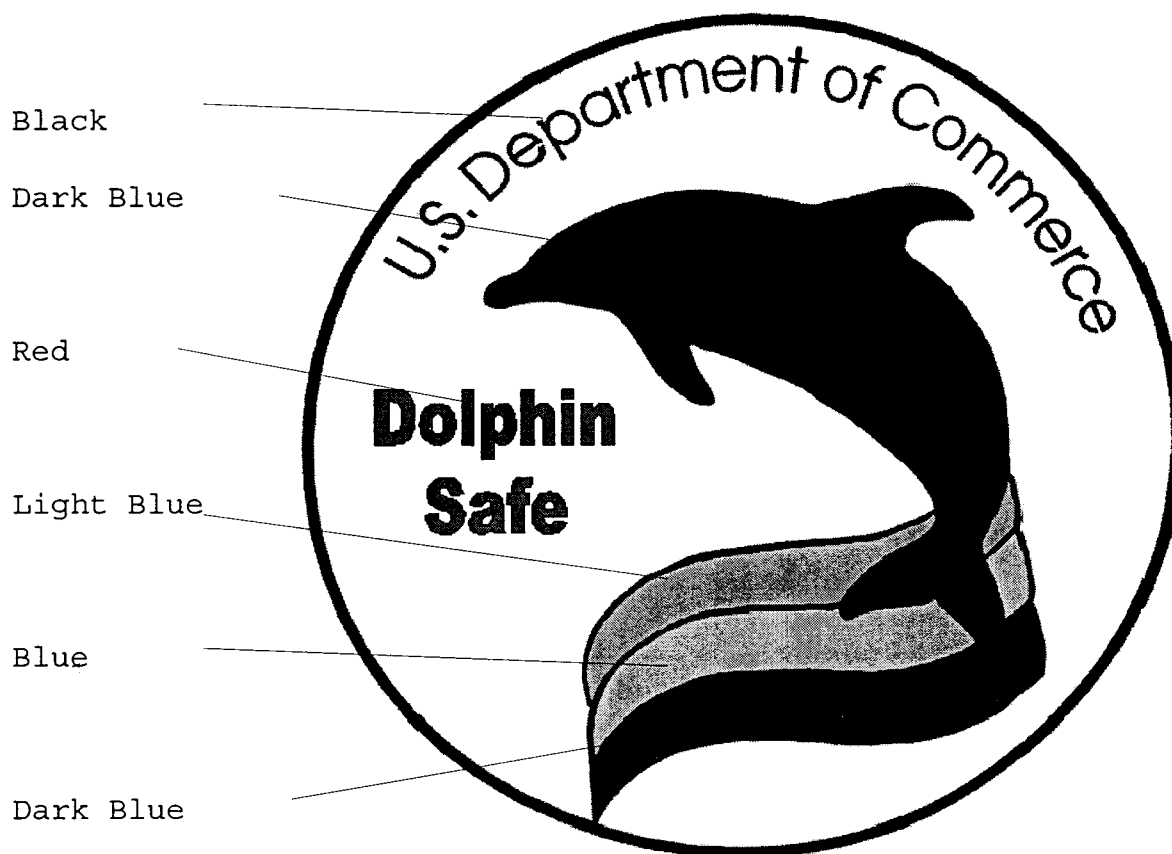


Figure 1.

BILLING CODE 3510-22-C

(b) *Location and size of the official mark.*

The official mark on labels must allow the consumer to identify the official

mark and be similar in design and scale to figure 1. A full color version of the

official mark may be found at <http://swr.ucsd.edu/>.

[FR Doc. 99-33065 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 64, No. 245

Wednesday, December 22, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: January 6, 2000 (9 a.m. to 1 p.m.).

Location: Pan American Health Organization (PAHO), Auditorium A, 525—23rd Street, N.W., Washington, D.C.

The meeting will focus on building new constituencies for U.S. international cooperation in the new millennium. The ACVFA is seeking input from a broad range of private voluntary organizations (PVOs), non-governmental organizations (NGOs), and citizens' groups on fresh strategies for reaching out to new audiences and for building alliances to increase the public's understanding of, and support for, international cooperation and development. The meeting is free and open to the public. However, notification by January 4, 2000 through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison on (703) 741-0567.

Dated: December 9, 1999.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 99-33188 Filed 12-21-99; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—The Assessment of Computer Matching in the Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of data collection activities that will help to assess the effectiveness of computer matching in the Food Stamp Program.

DATES: Written comments on this notice must be received by February 22, 2000.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Alberta C. Frost, Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Alberta C. Frost, (703) 305-2017.

SUPPLEMENTARY INFORMATION:

Title: The Assessment of Computer Matching in the Food Stamp Program.
OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The project entitled "Assessment of Computer Matching in the Food Stamp Program" will examine how States are currently using or planning to use computer matching strategies to reduce fraud and abuse in the Food Stamp Program (FSP). Computer matching is most frequently used in the FSP to verify the eligibility

of new applicants (intake) or to verify the continuing eligibility of current recipients (recertification). It is a powerful management tool which has increased program integrity and efficiency.

State program waivers and welfare reform legislation have substantially increased States' discretion and authority for making operational choices. As a result, the States vary considerably on many aspects of program operations, their costs, and their effectiveness. By collecting and disseminating information on computer matching, this project will help States improve program integrity and support FNS oversight to ensure that States manage the FSP as efficiently as possible.

Telephone interviews with appropriate staff in each State will be conducted to determine how they are currently using or planning to use computer matching. To reduce the respondent burden, interview protocols will be customized to include State specific items and exclude non-relevant items for each State.

Estimate of Burden: Public reporting burden is estimated to range between 1 and 2 hours for each respondent.

Respondents: Interviews will be conducted with State staff knowledgeable about food stamp computer matching activities and operations.

Estimated Number of Respondents: An average of 2 respondents for each State or a total of 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Dated: December 16, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99-33190 Filed 12-21-99; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Forest Service

Knox-Brooks Timber Sales and Road Rehabilitation; Superior Ranger District, Lolo National Forest; Mineral County, Montana

Authority: 40 CFR 1508.22.

AGENCY: Forest Service, USDA.

ACTION: Notice; Revised notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement (EIS) for the Knox-Brooks Timber Sales and Road Rehabilitation project in the **Federal Register** (vol. 63, no. 127, doc. no. 98-17665) on July 2, 1998. That notice of intent is revised to change the schedule for completion of the draft EIS.

Forest Service Policy mandates that a revised Notice of Intent be filed when there is a delay of more than six months in filing the draft EIS. Originally the draft EIS was to be released in November of 1998 and the final EIS in February of 1999. The draft EIS is now anticipated to be done in January of 2000 with the final EIS published in September of 2000.

DATES: This action is effective upon publication of this notice.

ADDRESSES: Michael Cole, acting District Ranger, Superior Ranger District, Box 460, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Bruce Erickson, EIS Team Leader, Superior Ranger District, as above, or phone: (406) 822-4233.

Dated: December 13, 1999.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. 99-33184 Filed 12-21-99; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250-1522.

Telephone: (202) 720-9550. FAX: (202) 720-4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. FAX: (202) 720-4120.

Title: Deferment of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572-0097.

Type of Request: Reinstatement, with change, of a previously approved collection.

Abstract: The Deferment of RUS Loan Payments for Rural Development Projects program allows RUS electric and telephone borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purpose of the Deferment program is to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR 1703, subpart H.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3.5 hours per response.

Respondents: Business or other for profit, Not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 140 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690-1078. FAX: (202) 720-4120. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 10, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99-32956 Filed 12-21-99; 8:45 am]

BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1999 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. M. Catherine Gates, Director of Human Resources, U.S. Commission on Civil Rights, 624 9th Street, N.W., Washington, D.C. 20425, (202) 376-8364.

Members: Gloria Guterrez, Assistant Director Marketing and Customer Liaison, U.S. Bureau of the Census; Robert Kugelman, Director, Office of Budget, Department of Commerce; Joseph Mancias, Senior Management Counsel, Department of Justice.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99-33105 Filed 12-21-99; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE**International Trade Administration****Extension of Time Limit for Final Results of Expedited Five-Year Reviews**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of expedited five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of 28 expedited sunset reviews initiated on September 1, 1999 (64 FR 47767) covering various antidumping and countervailing duty orders. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of these extensions, the Department intends to issue its final results not later than March 29, 2000.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6397, or (202) 482-1560 respectively.

Extension of Final Results:

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. The Department has determined that the sunset reviews of the following antidumping and countervailing duty orders are extraordinarily complicated:

A-583-080 Carbon Steel Plate from Taiwan
C-401-401 Carbon Steel Products from Sweden
C-423-806 Cut-to-Length Carbon Steel Plate from Belgium
C-351-818 Cut-to-Length Carbon Steel Plate from Brazil
C-427-810 Corrosion-Resistant Carbon Steel Flat Products from France

C-580-818 Cold-Rolled Carbon Steel Flat Products from Korea
C-580-818 Corrosion-Resistant Carbon Steel Flat Products from Korea
C-201-810 Cut-to-Length Carbon Steel Plate from Mexico
C-469-804 Cut-to-Length Carbon Steel Plate from Spain
C-401-804 Cut-to-Length Carbon Steel Plate from Sweden
C-412-815 Cut-to-Length Carbon Steel Plate from the United Kingdom
A-602-803 Carbon Steel Flat Products from Australia
A-423-805 Cut-to-Length Carbon Steel Plate from Belgium
A-351-817 Cut-to-Length Carbon Steel Plate from Brazil
A-122-822 Corrosion-Resistant Carbon Steel Flat Products from Canada
A-122-823 Cut-to-Length Carbon Steel Plate from Canada
A-405-802 Cut-to-Length Carbon Steel Plate from Finland
A-427-808 Corrosion-Resistant Carbon Steel Flat Products from France
A-428-815 Corrosion-Resistant Carbon Steel Flat Products from Germany
A-428-814 Cold-Rolled Carbon Steel Flat Products from Germany
A-428-816 Cut-to-Length Carbon Steel Plate from Germany
A-580-816 Corrosion-Resistant Carbon Steel Flat Products from Korea
A-580-815 Cold-Rolled Carbon Steel Flat Products from Korea
A-201-809 Cut-to-Length Carbon Steel Plate from Mexico
A-455-802 Cut-to-Length Carbon Steel Plate from Poland
A-469-803 Cut-to-Length Carbon Steel Plate from Spain
A-401-805 Cut-to-Length Carbon Steel Plate from Sweden
A-412-814 Cut-to-Length Carbon Steel Plate from the United Kingdom

Therefore, the Department is extending the time limit for completion of the final results of these reviews until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-33222 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****Extension of Time Limit for Preliminary Results of Full Five-Year Reviews**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of full five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of six full sunset reviews initiated on September 1, 1999 (64 FR 47767) covering various antidumping and countervailing duty orders. Based on adequate responses from domestic and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of these extensions, the Department intends to issue its preliminary results not later than March 20, 2000.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6397, or (202) 482-1560 respectively.

Extension of Preliminary Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. The Department has determined that the sunset reviews of the following antidumping and countervailing duty orders are extraordinarily complicated:

C-428-817 Cut-To-Length Carbon Steel Flat Products from Germany
C-428-817 Corrosion-Resistant Carbon Steel Flat Products from Germany
C-428-817 Cold-Rolled Carbon Steel Flat Products from Germany
A-588-826 Corrosion-Resistant Carbon Steel Flat Products from Japan
A-421-804 Cold-Rolled Carbon Steel Flat Products from The Netherlands
A-485-803 Cut-To-Length Carbon Steel Plate from Romania

Therefore, the Department is extending the time limit for completion of the preliminary results of these reviews until not later than March 20, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-33221 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-001]

Sorbitol From France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sorbitol from France. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is April 1, 1998 through March 31, 1999. The respondent failed to respond to our supplemental questionnaires. As a result, we are basing our preliminary results on adverse facts available. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries during the POR.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2924 (Baker), (202) 482-0649 (James).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made

to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (1998).

Background

The Department published an antidumping duty order on sorbitol from France on April 9, 1982 (47 FR 15391). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 1998/99 review period on April 15, 1999 (64 FR 18600). On April 30, 1999, SPI Polyols, Inc. (petitioner) requested that the Department conduct an administrative review of Roquette Freres (Roquette). We published a notice of initiation of the review on May 28, 1999 (64 FR 28973).

The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The merchandise under review is crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

Crystalline sorbitol is currently classifiable under item 2905.440.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Use of Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

On May 28, 1999 the Department issued its standard antidumping questionnaire to Roquette. Roquette submitted its response to section A of the questionnaire on July 7, 1999, and

its response to sections B and C of the questionnaire on July 30, 1999. On September 23, 1999 and September 29, 1999 the Department issued supplemental questionnaires to Roquette. In an October 6, 1999, submission, Roquette informed the Department that it would not provide the Department with the information requested in the two supplemental questionnaires. The information in these questionnaires related to fundamental problems in Roquette's initial section B and C responses; absent this supplemental information the initial section B and C responses are unusable for purposes of our analysis. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) of the Act because Roquette withheld information requested by the Department.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997), (Final Rule).

The Department finds that in not responding to the supplemental questionnaires, Roquette failed to cooperate by not acting to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. For this review we have determined to assign 12.07 percent as the facts available rate to Roquette. This rate represents the highest rate for any respondent in any prior segment of this proceeding. See *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 52 FR 20444 (June 1, 1987).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1 103d Cong., 2d Sess. 870(1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we preliminarily find that the 12.07 percent rate is corroborated.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 12.07 percent exists for Roquette for the period April 1, 1998 through March 31, 1999.

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication. *See* 19

CFR 351.309(c)(1)(ii). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, not to exceed five pages in length. Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the submission of rebuttal briefs, if any, or the first working day thereafter. *See* 19 CFR 351.310(d). The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results. *See* 19 CFR 351.213(h).

Cash Deposit

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisal instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Roquette will be the rate established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 2.90 percent, the "all others" rate established in the final determination of sales at LTFV (47 FR 7459, February 12, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 1999.

Robert S. LaRossa,

Assistant Secretary for Import Administration.

[FR Doc. 99-33223 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-815]

Certain Welded Stainless Steel Pipe From Taiwan: Preliminary Results of Antidumping Administrative Review and Intent To Revoke in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results in the antidumping duty administrative review of certain welded stainless steel pipe from Taiwan.

SUMMARY: In response to requests from Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and the domestic industry, the U.S. Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain welded stainless steel pipe ("WSSP") from Taiwan for the period December 1, 1997 through November 30, 1998. The Department preliminarily determines that a *de minimis* dumping margin exists for Ta Chen's sales of WSSP in the United States. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106). The preliminary results are listed in the section titled "Preliminary Results of Review," *infra*.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT:

Juanita H. Chen or Robert Bolling, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-0409, or 202-482-3434, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Background

On December 30, 1992, the Department published in the **Federal Register** (57 FR 62300) the amended antidumping duty order on WSSP from Taiwan. On December 8, 1998, the Department published in the **Federal Register** (63 FR 67646) a notice of opportunity to request administrative review of this order for the period December 1, 1997 through November 30, 1998. On December 29, 1998, Ta Chen, a Taiwan producer and exporter of subject merchandise, requested that the Department conduct a review of its sales and also requested revocation of the Department's antidumping duty order on WSSP from Taiwan. On December 30, 1998, Avesta Sheffield Pipe Co., Damascus Tube Division, Damascus-Bishop Tube Co., and the United Steelworkers of America, AFL-CIO/CLC (collectively "Petitioners"), on behalf of the domestic industry, requested that the Department conduct an administrative review with respect to Ta Chen. On January 25, 1999, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period December 1, 1997 through November 30, 1998 (64 FR 3682).

On March 12, 1999, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review in its response to Section A of the Department's questionnaire. On April 5, 1999, Ta Chen submitted its responses to Sections B, C and D of the Department's questionnaire. On July 27, 1999, Petitioners requested that the Department reject Ta Chen's request for revocation. Ta Chen submitted a

response on August 3, 1999 to the Department's supplemental questionnaire. On September 22, 1999, Ta Chen requested an extension of time in which to respond to the Department's second supplemental questionnaire due to the earthquake in Taiwan on September 21, 1999. On October 5, 1999, Ta Chen submitted its response to the Department's second supplemental questionnaire. On December 8, 1999, the Department issued a third supplemental questionnaire to Ta Chen, the response to which is due December 23, 1999.

Scope of Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe ("WSSP") that meets the standards and specifications set forth by the American Society for Testing and Materials ("ASTM") for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5062, 7306.40.5064, 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

Period of Review

The period of review ("POR") for this administrative review is December 1, 1997 through November 30, 1998.

Verification

Due to administrative constraints, verification prior to the issuance of this notice of preliminary results was not conducted. The Department's

regulations stipulate, at section 351.307, that the Department will verify factual information upon which it relies in the final results of an administrative review or in a revocation under section 751(d) of the Act, prior to issuing final results in an administrative review.

Accordingly, the Department will verify the information to be used in the final results, after these preliminary results.

Product Comparison

In accordance with section 771(16) of the Act, we considered all WSSP products produced by Ta Chen, covered by the description in the "Scope of Review" section of this notice, *supra*, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to WSSP products sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, grade, size, schedule, and hot/cold rolled. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the February 12, 1999 antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate.

Date of Sale

In the home market and U.S. market, Ta Chen has reported the invoice date as the date of sale. However, the record is unclear as certain information reported in Ta Chen's questionnaire response appears to support the date of the order confirmation as the appropriate date of sale. For instance, for home market sales, Ta Chen reported that between the date of order confirmation and the date of invoice, "it is rare for the terms to change in that short a period, but sometimes the order quantity changes." See Ta Chen's Supplemental Response, at 20 (August 3, 1999). Further, Ta Chen reported that, for its export price ("EP") sales, it would not expect prices to change much between the time of the order and invoicing, and changes did not often occur. For constructed export price ("CEP") sales, Ta Chen reported that price usually does not change during this short period but that quantity might change, though that too is rare. As a result of the unclear record and the nature of marketing of these made-to-order products, on December 8, 1999, the Department requested Ta Chen to

provide additional data on its date of sale.

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to the Final Rules ("Preamble") provides an explanation of this policy, as well as examples of when the Department may choose to base the date of sale on a date other than the date of invoice. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348-49 (May 19, 1997). Ta Chen has reported invoice date, as it understands it to be the Department's preferred approach toward date of sale. See Ta Chen's Section A Response at 8 (March 12, 1999). In accordance with 19 CFR 351.401(i), where appropriate, we based date of sale on invoice dates recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise. However, we intend to fully verify information concerning Ta Chen's claims that invoice date is the appropriate date of sale. Based on the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider, among other things, whether, in fact, there were any changes to the material contract terms between the original order confirmation and the date of invoice and, if so, their frequency and relative affected volumes of subject merchandise. See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand, 63 FR 7392 at 7394-95 (February 13, 1998). However, we note that in past reviews, we have used Ta Chen's date of invoice as the date of sale. In adopting the date of sale regulation, we noted that, because of the risk of double-counting, or of omitting sales from our analysis, we would exercise particular care before switching date of sale methodologies between reviews. See 62 FR at 27351.

Export Price/Constructed Export Price

Ta Chen reported both EP and CEP sales of subject merchandise for the POR. See Ta Chen's Section A Response, at 3 (March 12, 1999). We analyzed Ta Chen's sales made to the United States and preliminarily determine that, as reported by Ta Chen, there are both EP and CEP sales in the United States during the POR, as there appears to be a distinction in the level of sales activity which Ta Chen's U.S. affiliate performs between the two types of sales, as described below. We will

carefully scrutinize each of the claimed differences at verification.

For certain sales to the United States, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, U.S. inland freight, foreign brokerage and handling, U.S. brokerage and handling, containerization expenses, marine insurance, harbor construction tax, international freight, U.S. customs duties, and warehousing expenses.

We preliminarily determined that the remaining sales were CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by Ta Chen's U.S. affiliate, Ta Chen International ("TCI"), after having been imported into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, U.S. inland freight, foreign brokerage and handling, U.S. brokerage and handling, containerization expenses, marine insurance, harbor construction tax, international freight, U.S. customs duties, and warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We recalculated credit expenses because the Department has determined that Ta Chen's submitted U.S. short-term interest rate was not based solely on short-term debt. For a further explanation, see Analysis Memo from Juanita Chen to The File, dated December 14, 1999.

With respect to its reported EP sales, Ta Chen states that it considers these sales as EP sales because: (1) The price and quantity are determined before the pipe is imported into the United States; (2) Ta Chen's U.S. subsidiary, TCI, performs no function with respect to the sales other than processing the paperwork and the pipe is shipped direct from Ta Chen to the U.S. customer, without entering a TCI warehouse; and (3) this has been Ta Chen's normal course of business for such sales and the Department has always treated such sales as EP sales.

Id.; see also, Ta Chen's Second Supplemental Response, at 6-8 (October 5, 1999). Petitioners argue that Ta Chen's EP sales should properly be classified as CEP sales due to TCI's various responsibilities, involvement and activities related to the sales. See Petitioners' letter to the Department, at 5-6 (August 12, 1999).

Where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the affiliate's involvement in making the sale is incidental or ancillary. See *Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Review* ("1995-1996 WSSP Final Results"), 63 FR 38382, 38385 (July 16, 1998), citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea* ("Steel Flat Product from Korea"), 63 FR 13170, 13177 (March 18, 1998). However, whenever sales are made prior to importation through an affiliated entity in the United States, the Department applies the following three-pronged test in order to determine whether to treat such sales at EP: (1) Whether the merchandise was shipped directly to the unaffiliated buyer, without first being introduced into the affiliated selling agent's inventory; (2) whether direct shipment from the manufacturer to the unaffiliated buyer was the customary channel for sales of this merchandise between the parties involved; and (3) whether the affiliated selling agent located in the United States acts only as a processor of sales-related documentation and communication link between the foreign producer and the unaffiliated purchaser. See *Steel Flat Products from Korea*, 63 FR at 13177; see also *PQ Corp. v. U.S.*, 652 F. Supp. 724, 731 (CIT 1987); *Outokumpu Copper Rolled Products v. U.S.*, 829 F. Supp. 1371, 1379 (CIT 1993). Where the requirements for all three prongs are met, the sales are treated as EP.

The first prong is whether the merchandise was shipped directly to the unaffiliated buyer, without first being introduced into the affiliated selling agent's inventory. As in the previous review, for the 1995-1996 administrative review period, no evidence has been presented on the record that contradicts Ta Chen's representation that, in this review, Ta Chen shipped the subject merchandise directly to the unaffiliated U.S. customer without subject merchandise entering a TCI warehouse in the United States. While we note that the verification for the previous review found no evidence to suggest that the merchandise was shipped in any other fashion, we shall nevertheless subject

this statement to verification for this review. Accordingly, the first prong of the EP test is met.

The second prong is whether direct shipment from the manufacturer to the unaffiliated buyer was the customary channel for sales of this merchandise between the parties involved. As with the first prong of the EP test, no evidence has been presented on the record to contradict Ta Chen's representation in this review that direct shipment to the U.S. customer has been its normal course of business with respect to its sales since before this dumping matter began. Accordingly, the second prong of the EP test is met.

The third prong is whether the affiliated selling agent located in the United States acts only as a processor of sales-related documentation and communication link between the foreign producer and the unaffiliated purchaser. The information submitted to the record suggests that TCI's involvement in the sales process remains largely unchanged from the previous administrative review. For the 1995–1996 review period, Ta Chen reported all of its U.S. sales as EP and we determined that “the evidence on record does not support a reclassification of Ta Chen's U.S. sales from EP to CEP transactions. Nothing in the statute, however, precludes the Department from doing so, where appropriate.” See 1995–1996 WSSP Final Results, 63 FR at 38385 (July 16, 1998). Ta Chen reports that, for its reported EP sales, TCI merely processes paperwork and serves as a communication link between Ta Chen and the U.S. customer, relaying U.S. customers' price requests to Ta Chen, and relaying the negotiations, acceptances or rejections that follow between the entities. See Ta Chen's Section A Response at 5, 9 (March 12, 1999); Ta Chen's Supplemental Response at 10 (August 3, 1999). Petitioners' argue that TCI issues acceptance or alternative pricing to the U.S. customer. See Petitioners' letter to the Department, at 5 (August 12, 1999). However, Ta Chen has indicated that TCI is merely communicating acceptance or alternative pricing as instructed by Ta Chen. Ta Chen continues to set the base, minimum acceptable price for subject merchandise. See Ta Chen's Supplemental Response at 10, 11 (August 3, 1999). Accordingly, the third prong of the EP test appears to be met for purposes of this preliminary determination, and subject to verification.

The Department takes note that TCI engages in various other functions in the selling process, such as, among others,

taking title to subject merchandise, clearing shipment through customs, invoicing the U.S. customer, receiving payment from the U.S. customer (after which TCI pays Ta Chen), paying for ocean shipping, U.S. customs broker charges, and international freight, and issuing credit for returns and errors. In the previous review, we found that three of these activities “were performed by TCI, but that these activities alone were not sufficient to warrant treatment of such sales as CEP transactions.” See 1995–1996 WSSP Final Results, 63 FR at 38386 (July 16, 1998). In this review, there is some record evidence that TCI may be performing additional activities. Accordingly, the Department intends to verify closely Ta Chen's description of TCI's activities with respect to its EP sales to evaluate whether TCI's activities rise to the level where they can no longer be considered merely ancillary or incidental to the sale, whereupon such sales should be considered CEP. For our preliminary results, however, the data on the record to date suggests that TCI's involvement in U.S. sales of subject merchandise continues to be minimal, and that the EP sales identified by Ta Chen should remain as such.

Normal Value

After testing home market viability, as discussed below, we calculated normal value (“NV”) as noted in the “Price-to-CV Comparisons” and “Price-to-Price Comparisons” sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production (“COP”), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we

deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (“COM”) of the U.S. product, we based NV on CV.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses (“SG&A”), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in our last administrative review, the most-recently completed segment of these proceedings, we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to section 773(b)(1) of the Act. See 1995–1996 WSSP Final Results, 63 FR 38382; see also section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ta Chen's cost of materials and fabrication

for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ta Chen's sales of a given product during the POI were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta

Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa; 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27371 (May 19, 1997).

In the home market, Ta Chen reported that it sold to distributors and end users. Ta Chen claimed that its two customer categories constituted a single LOT. Based upon our examination of information supplied by Ta Chen in its

original and supplemental questionnaire responses, we agree that only one LOT existed for Ta Chen in the home market. According to Ta Chen, it provided no strategic or economic planning services, market research, business system development assistance, personnel-training, engineering, advertising, procurement services, inventory maintenance, or post-sale warehousing for customers in either category. However, end-user customers did receive slightly higher levels of research and development and technical assistance than did distributors, but this one slight difference is not sufficient to establish discrete LOTs.

In order to determine whether there were different LOTs among sales in the U.S. market, we reviewed the selling activities associated with each channel of distribution. Ta Chen reported both EP and CEP sales in the U.S. market. However, Ta Chen reported for all of its U.S. sales a single customer category (i.e., distributor). Thus, according to Ta Chen, because all of Ta Chen's sales in the U.S. market were made through a distributor there was only one LOT. In determining whether, in fact, a single stage of marketing existed, we examined the selling functions as reflected in the EP and the CEP. In its questionnaire responses, Ta Chen reported it performed only two selling functions for both EP and CEP sales (i.e., packing, and freight and delivery). Ta Chen reported that it performed a small amount of packing for its U.S. sales and a moderate level of freight and delivery for its U.S. sales. We find preliminarily that there are no differences in selling activities for EP and CEP sales and, as a result, we preliminarily agree with Ta Chen that its EP and CEP sales constitute a single LOT. Once again, these issues will be subject to verification.

When we compared the LOT of Ta Chen's U.S. sales to its home market LOT, we found that Ta Chen provided no strategic or economic planning, market research, business system development assistance, personnel-training, engineering, advertising, procurement services, inventory maintenance, or post-sale warehousing at the EP, CEP, or home market LOT. Ta Chen reported that it provided moderate-to-low technical assistance at its home market LOT, while providing none at its EP or CEP level. Additionally, Ta Chen reported that it provided low after sales services at its home market LOT, while providing none at its EP or CEP level. The majority of packing activity at the home market LOT and EP or CEP level was performed by Ta Chen; however, some repacking occurred at the TCI Los Angeles

warehouse. Freight and delivery arrangements varied between the two markets in that U.S. movement expenses on certain U.S. sales were incurred by TCI, while other sales were made on an "F.O.B." basis. Our analysis of the selling functions performed by Ta Chen in both markets leads us to conclude that any differences in selling activities are not significant. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, we have not made a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate. Additionally, because we found that the LOT in the home market matched the LOT of the CEP transactions, we did not provide a CEP offset by adjusting normal value under section 773(a)(7)(B) of the Act.

Revocation

The Department's regulations provide for revocation of antidumping orders under section 351.222. On December 29, 1998, Ta Chen, in its capacity as a Taiwan producer and exporter of subject merchandise, requested that the Department revoke the antidumping duty order on WSSP from Taiwan with respect to Ta Chen. Ta Chen stated that it sold the subject merchandise at not less than normal value for a period of at least three consecutive years, including the current period under administrative review, and that it sold the subject merchandise in commercially significant quantities to the United States during each of these three years.¹ Ta Chen also stated that it would not sell the subject merchandise at less than normal value to the United States in the future and agreed to reinstatement of the order against Ta Chen, as long as any exporter or producer is subject to the order, if the Department concludes that Ta Chen sold the subject merchandise at less than normal value, subsequent to the revocation.

The three review periods on which Ta Chen is basing its request for revocation consist of: (1) The period for 12/1/95 through 11/30/96, for which the Department found a de minimis margin of 0.10 percent; (2) the period for 12/1/96 through 11/30/97, for which no administrative review was conducted;

and (3) the period for 12/1/97 through 11/30/98, for which the Department is currently conducting an administrative review. On July 27, 1999, Petitioners requested that the Department reject Ta Chen's request for revocation, arguing that: (1) The 12/1/96 through 11/30/97 period should not count towards the three successive years of no significant dumping necessary for revocation; and (2) public information indicates that Ta Chen will continue its dumping practices if granted revocation, and thus, the years of no dumping notwithstanding, application of the order to Ta Chen continues to be necessary to offset dumping.

First, Petitioners argue that while they did not request an administrative review for the 1996–1997 period, such lack of request was not meant to indicate an opinion that Ta Chen did not dump during that period. See also Petitioners' letter to the Department (March 4, 1998). Petitioners state that Ta Chen's past and current behavior indicates its willingness to sell below normal value. Petitioners provide as examples the results in the 1992–1993 and 1993–1994 administrative reviews of WSSP (wherein the Department found that Ta Chen impeded the reviews), as well as the results in administrative reviews of other Ta Chen products for which the Department issued margins ranging from 10.2–34.95 percent, such as stainless steel plate, and stainless steel sheet and strip (wherein Ta Chen provided incomplete information). Petitioners also assert that Ta Chen has continually restructured its selling practices of WSSP, effectively preventing Petitioners from obtaining the necessary information to estimate the extent of Ta Chen's dumping for the period. Accordingly, Petitioners assert that the Department cannot presume that there was no significant dumping during the unreviewed period.

Under § 351.222(d) of our regulations, the Department may revoke a company from an antidumping order based on three years of no dumping even if the middle year was not subject to administrative review. As noted, *supra*, Ta Chen has provided information indicating that it had sales in commercial quantities during the intervening year. Regarding Petitioners' citation of the margins issued for Ta Chen in stainless steel plate and in stainless steel sheet and strip, these determinations have little to do with the case at hand. Not only do those administrative reviews involve margins for products other than WSSP, they also involve review periods other than the 1996–1997 period. The Department cannot presume that Ta Chen engaged

in dumping of WSSP during the 1996–1997 period merely because it was found to have engaged in dumping for other products in other periods. In the immediately preceding review period of 1995–1996, the Department issued a de minimis margin of 0.10 percent. This margin has greater relevance because it is based on more recent data, and in this case there is no basis to consider older margins as being more relevant. The fact that the margin is subject to change from year to year is why the Department provides the opportunity to request administrative reviews. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR at 27325. Because no administrative review was conducted for the 1996–1997 period, the Department cannot presume a margin exists for that review period. To do so would result in unfairly penalizing the respondent where no review is requested or conducted. As for Petitioners' argument that Ta Chen has restructured its selling practices, Petitioners offer no evidence of how this restructuring has occurred, nor how such restructuring precluded Petitioners from learning about Ta Chen's activities. This is an insufficient basis for the Department to presume that Ta Chen engaged in dumping practices for the 1996–1997 period.

Second, Petitioners argue that trends in pricing, imports and economic factors, as well as Ta Chen's aggressive search for facilities in the United States, indicate that Ta Chen will continue to engage in significant dumping in the future if granted revocation. Petitioners provide three articles discussing the Asian financial crisis in relation to the steel industry. See Petitioners' letter to the Department, at Exhibit 2a (July 27, 1999). However, there is no direct discussion in these articles on the effect the crisis had on Ta Chen and its exports of WSSP. While the first article does discuss the impact of the Asian financial crisis on the Asia-Pacific area, the article focuses only on Japan and Korea; the impact on Taiwan is not discussed. The second article mentions Ta Chen only in the single statement that Ta Chen carries a 6.06 percent margin from the 1992 dumping orders. The third article states that U.S. prices for stainless steel pipe and tube are down after imports to the United States soared from a year earlier. The article Petitioners provide on Ta Chen's alleged search for facilities in the United States (see Petitioners' letter to the Department, at Exhibit 2b (July 27, 1999)) discusses talks between SouthStar Steel Corp. ("SouthStar"), a North Carolina company which imports

¹ On October 12, 1999, the Department requested that Ta Chen provide volume and value data on its exports and sales of subject merchandise for the three consecutive years. Ta Chen provided this data in an October 19, 1999 submission, which supported Ta Chen's statement that it sold subject merchandise in commercially significant quantities to the United States during these three years.

and distributes stainless steel bars, and an undisclosed company identified by industry sources as Ta Chen. The article focuses on SouthStar and how such a partnership would move SouthStar into the coil and sheet business. The article also quotes SouthStar's chairman and chief executive officer as stating that it could be from three weeks to three years before a deal is announced. Thus, the article is both remote and speculative. The remaining reasons Petitioners give to indicate a likelihood that Ta Chen will engage in future dumping are that: (1) The decline of the New Taiwan dollar demonstrates how dumping margins for Ta Chen have been masked due to fluctuations in the exchange rates (see Petitioners' letter to the Department, at Exhibit 2c (July 27, 1999)); and, (2) the pricing of WSSP has declined since 1996 (see Petitioners' letter to the Department, at Exhibit 1 (September 21, 1999)).

Based on the information submitted by Petitioners, there is insufficient support for Petitioners' argument that the Department should reject Ta Chen's request for revocation. The information provided by Petitioners does not indicate a sufficient link between the Asian economic crisis, SouthStar's actions, the decline of the New Taiwan dollar, and/or the pricing of WSSP, and potential future dumping by Ta Chen. We note that the Asian economic crisis reached its peak, and the New Taiwan dollar began its decline during the period covered by the instant review, a period during which our preliminary analysis shows de minimis dumping margins for Ta Chen. Accordingly, a finding by the Department that continued application of the order to Ta Chen is necessary to offset future dumping is too speculative (and effectively presumes dumping by all Asian exporters of stainless steel products), based on the information provided. Accordingly, the Department shall continue to consider Ta Chen's request for revocation, and review the relevant information. Since we preliminarily conclude that all criteria for revocation have been satisfied, we intend to revoke the order as to Ta Chen, subject to verification after this preliminary determination.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of

sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, e.g., *Certain Stainless Steel Wire Rods from France*; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96-1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

CERTAIN WELDED STAINLESS STEEL PIPE

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	0.04

The Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed (19 CFR 351.224). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise

covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

If the revocation is made final for Ta Chen, it will apply to all unliquidated entries of subject merchandise produced by Ta Chen, exported to the United States and entered, or withdrawn from warehouse, for consumption on or after December 1, 1998, the first day after the period under review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) For previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 19.84 percent. See Amended Final Determination and Antidumping Duty Order; *Certain Welded Stainless Steel Pipe From Taiwan*, 57 FR 62300 (December 30, 1992).

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with

sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 121499A]

Availability of an Environmental Assessment and Receipt of an Application for an Endangered Species Act Incidental Take Permit for the California Department of Fish and Game's Striped Bass Management Program Conservation Plan, for the Sacramento-San Joaquin Estuary, and Delta Rivers

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability for public comment and receipt of applications.

SUMMARY: This notice advises the public that the California Department of Fish and Game (CDFG) has applied to NMFS and FWS (the Services) for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The application requests that FWS authorize incidental take of the delta smelt (*Hypomesus transpacificus*), Sacramento splittail (*Pogonichthys macrolepidotus*), and the giant garter snake (*Thamnophis gigas*), all federally listed as threatened, during the implementation of the Striped Bass Management Program (SBMP). The application also requests that NMFS authorize incidental take of the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*), federally listed as endangered, Central Valley spring-run chinook salmon (*O. tshawytscha*), federally listed as threatened, and the Central Valley steelhead (*O. mykiss*), federally listed as threatened, during the implementation of the SBMP. The proposed NMFS permit also would authorize future incidental take of the Central Valley fall/late fall-run chinook salmon (*O. tshawytscha*) should this species

become listed under the Act. The permits would be in effect for 10 years.

The Services also announce the availability of an Environmental Assessment (EA) for the incidental take permit applications. The applications include the proposed Conservation Plan (Plan) fully describing the proposed project and mitigation, and the accompanying Implementing Agreement (Agreement). This notice is provided pursuant to section 10(a) of the ESA and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Plan, EA, and Agreement should be received on or before February 22, 2000.

ADDRESSES: Comments regarding the application, Plan, or adequacy of the EA and Agreement with respect to the delta smelt, Sacramento splittail, giant garter snake, or other species for which FWS has responsibility should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825. Comments regarding the application, Plan, or adequacy of the EA and Agreement with respect to the Sacramento River winter-run chinook salmon, Central Valley steelhead, Central Valley spring-run chinook salmon, Central Valley fall/late fall-run chinook salmon, or other species for which NMFS has responsibility should be addressed to the National Marine Fisheries Service, Southwest Region, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, Attn: Ms. Penny Ruvelas. General comments or comments applicable to both agencies can be sent to either or both of the above addresses. Individuals wishing copies of the application, Plan, EA, or Agreement for review should contact either of the above offices. Documents also will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Robert Pine, FWS, Sacramento Fish and Wildlife Office, telephone (916) 414-6620; Penny Ruvelas, NMFS, Long Beach Office, telephone (562) 980-4197.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened, respectively. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such

conduct. Harm may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. The Services, under limited circumstances, may issue permits to authorize "incidental take" of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). FWS regulations governing permits for threatened and endangered species, respectively, are found in 50 CFR 17.32 and 50 CFR 17.22. NMFS regulations governing permits for threatened and endangered species are found in 50 CFR Part 222.307.

Background

CDFG seeks coverage for take of the federally listed delta smelt, Sacramento splittail, giant garter snake, Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, and the unlisted Central Valley fall/late fall-run chinook salmon (collectively "covered species"), incidental to implementation of the SBMP. The actions proposed to be covered by the Plan and its associated incidental take permits are: (1) annual stocking of 1- and 2-year-old striped bass in the San Francisco Bay/Sacramento-San Joaquin Estuary at numbers sufficient to restore and maintain a striped bass population of 712,000 adults, which is equivalent to the 1994 striped bass population level; (2) possible changes in the striped bass fishing regulations to help reach and maintain the target population level; and (3) monitoring of the overall striped bass population and the success of the stocked fish. Each of these actions may result in take of one or more of the covered species or in circumstances leading to the take of one or more of the covered species. The Plan is designed to include flexibility in its implementation; a series of circumstances or "thresholds" are described which would require adjustments to the SBMP. Thresholds triggering adjustments to the Plan include a low delta smelt abundance index, a low cohort replacement rate for winter-run chinook salmon, unanticipated changes in the striped bass population, and, based on monitoring, estimates of striped bass predation on covered species that are higher than those anticipated in the development of the Plan.

As a part of the Plan, CDFG proposes to monitor the striped bass population, the striped bass diet (i.e., predation on

the covered species), and the populations of the six covered fish species. The Plan also includes measures to minimize the impact of the take, such as a schedule of stocking ratios including 2-year-old bass (as opposed to all yearlings), certain timing and location restrictions on stocking activities, and changes to some of the monitoring protocols to reduce the level of take of covered species. To offset the level of take which cannot be avoided, CDFG will install and maintain fish screens on selected water diversions in both the Bay-Delta (to offset impacts to delta smelt and Sacramento splittail) and the Sacramento River (to offset impacts to Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Central Valley fall/late fall-run chinook salmon, and Central Valley steelhead). The installation of fish screens is an action in the Delta Native Fishes Recovery Plan.

The EA considers the environmental consequences of four alternatives. Under Alternative 1, the No Action Alternative, the Services would not issue incidental take permits and CDFG would not stock striped bass or implement the associated monitoring. Without stocking striped bass, CDFG estimates that the striped bass population would decline from the 1994 level of 712,000 adults to about 515,000 adults on average over the next 5 years. Predation of the covered species would still occur under the No Action Alternative by the existing striped bass population. Under this alternative, CDFG would not modify trapping methods to reduce impacts to the covered species during striped bass monitoring.

Alternative 2, the proposed action, consists of the issuance of an incidental take permit to CDFG and implementation of the SBMP Plan. This is the proposed alternative, in part, because: (1) measures have been incorporated to minimize incidental take to the greatest extent practicable; and (2) unavoidable impacts are offset by the screening of water diversions on the Sacramento River and in the western Delta/Suisun Marsh.

Under Alternative 3, CDFG would stock 3 million yearling striped bass annually with the goal of restoring the striped bass population to 1.1 million adults. This alternative represents the initial proposal submitted to the Services by CDFG to implement the SBMP. This alternative is more consistent with the striped bass policy adopted by the California Fish and Game Commission in 1996 which establishes interim and long-term

striped bass restoration goals of 1.1 million and 3 million adults, respectively, than the proposed action (Alternative 2). However, Alternative 3 would result in greater levels of predation by striped bass on the covered species than the proposed action. Alternative 3 would include similar measures to minimize and mitigate the impacts of the SBMP on the covered species as proposed for Alternative 1 except that mitigation (i.e., providing fish screens) would be commensurately greater because of the greater predation impacts associated with stocking larger numbers of striped bass.

Under Alternative 4, three different scenarios of changes to existing fishing regulations to restore the striped bass population are analyzed: Total Fishery Closure, 26-inch Minimum Retention Size, and 30-inch Minimum Retention Size. All 3 scenarios achieve a striped bass adult population of 712,000 adults after 8 to 13 years without any stocking of juvenile striped bass; however, striped bass harvest would be severely restricted, or prohibited, during this recovery period with unavoidable economic impacts. Mitigation measures are described which mitigate for impacts to covered species by the increment of the striped bass population resulting from the changed fishing regulations.

This notice is provided pursuant to section 10(a) of the ESA and the FWS and NMFS regulations for implementing NEPA. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, permits will be issued for the incidental take of the covered species. The final permit decisions will be made no sooner than 60 days from the date of this notice.

Dated: November 24, 1999.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, U.S. Fish and Wildlife Service, Sacramento, California.

Dated: December 16, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-33199 Filed 12-21-99; 8:45 am]

BILLING CODES 3510-22-F, 4310-55-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

December 16, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 638/639 is being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 58369, published on October 30, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 22, 1999, you are directed to increase the current limit for Categories 638/639 to 2,296,224 dozen¹, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements 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,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-33224 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India; Correction

December 16, 1999.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 16, 1999 (64 FR 70220), Category 606 and its corresponding footnote were inadvertently left out, so please make the following corrections:

In the table on page 70220, Column 3, "Group II" and its corresponding footnotes should read as follows:

Category	Twelve-month restraint limit
Group II 200, 201, 220-227, 237, 239pt. ⁴ , 300, 301, 331-333, 350, 352, 359pt. ⁵ , 360-362, 600-604, 606 ⁶ , 607, 611-629, 631, 633, 638, 639, 643-646, 649, 650, 652, 659pt. ⁷ , 666, 669pt. ⁸ , 670, 831, 833-838, 840-858 and 859pt. ⁹ , as a group.	135,993,674 square meters equivalent.

⁴ Category 239pt.: only HTS number 6209.20.5040 (diapers).

⁵ Category 359pt.: all HTS numbers except 6406.99.1550.

⁶ Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

⁷ Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

¹ The limit has not been adjusted to account for any imports exported after December 31, 1998

Category	Twelve-month restraint limit

⁸ Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

⁹ Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-33225 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00-C0003]

Eoff Electric Company, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(b)(4). Published below is a provisionally-accepted Settlement Agreement with Eoff Electric Company, containing monetary payments totalling between \$205,000 and \$369,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 6, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00-C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626, 1382.

SUPPLEMENTARY INFORMATION: The test of the Agreement and Order appears below.

Dated: December 16, 1999.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer

Product Safety Commission, and Eoff Electric Company ("Eoff"), a domestic corporation, to settle the staff's allegations that Eoff distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company ("Cadet"), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The "staff" is the staff of the Consumer Product Safety Commission ("the CPSC" or "the Commission"), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2053, as amended.

2. Respondent Eoff is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at 131 Pine Street NE, Salem, OR 97303. Eoff is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names "Cadet" and "Encore." These include all models and variants within each model of the series FW (including models FW-051, FW-101, FW-122, FW-202, and FW-751), manufactured between 1978 and 1987; series FX (including models FX-051, FX-052, FX-071, FX-072, FX-101, FX-102, FX-122, FX-151, FX-152, FX-202, and FX-242), manufactured between 1985 and 1994; series LX (including models LX-242, LX-302, LX-402, and LX-482), manufactured between 1985 and 1994; series TK (including models TK-051, TK-071, TK-072, TK-101, TK-102, TK-151, and TK-152), manufactured between 1984 and 1998; series ZA (including models ZA-051, ZA-052, ZA-071, ZA-072, ZA-101, ZA-102, ZA-122, ZA-151, ZA-152, ZA-202, and ZA-242), manufactured between 1985 and 1994; series Z (including models Z-072, Z-101, Z-102, Z-151, Z-152, Z-202, and Z-208), manufactured between 1993 and 1999; and all series and models of the same or functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX-072, RX-101, RX-102, RX-151, RX-152, RX-202, and RX-242), manufactured between 1985 and 1994; series RLX (including models RLX-302, RLX-402, and RLX-482) manufactured between

1985 and 1994; series RK (including models RK-101 and RX-102), manufactured between 1984 and 1998; series RA (including models RA-101, RA-102, RA-151, RA-152, and RA-202), manufactured between 1985 and 1994; and series ZC (including models ZC-072, ZC-101, ZC-102, ZC-151, ZC-152, ZC-202, and ZC-208), manufactured between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1988, Eoff has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Section 15(c) and (d) of the CPSA, 15 U.S.C. §§ 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire; and/or allow lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. On July 30, 1999, the CPSC approved a Consent Agreement and Order ("the Cadet Order") between the Staff and Cadet which, *inter alia*, required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters ("the Cadet Corrective Action Plan" or "the Plan"), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the "Effective Date" of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of Eoff (and each of Eoff's predecessors, successors, assigns, parents, subsidiaries, affiliated entities, agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively "the Eoff Releasees") under Sections 15(c) and (d) of the CPSA, 15 U.S.C. §§ 2064(c) and (d), to give public notice of the alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the Heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Eoff Releasees for all other claims and causes of action which could have been alleged by the CPSC against the Eoff Releasees relating to the Heaters, based upon information in the CPSC's possession, at the time the CPSC staff signs this Consent Agreement. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 20 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Eoff for replacement heaters, and the staff has concluded that the Cadet Corrective Action Plan, and Eoff's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of consumers.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Eoff or as evidence: (a) of any violation of law or regulation by Eoff; (b) of other wrongdoing by Eoff; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Eoff or with respect to the Heaters.

9. The Heaters are "consumer products" within the meaning of

Section 3(a)(1) of the CPSA, 15 U.S.C. § 2052(a)(1).

10. Eoff is a "distributor" of "consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (5), and (11).

11. The CPSC has jurisdiction over Eoff and the Heaters under Sections 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. §§ 2052(a)(1), (5), and (11) and § 2064.

12. For purposes of this settlement only, Eoff agrees not to contest the staff's allegation, which Eoff denies, that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. § 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Eoff knowingly, voluntarily, and completely waives and relinquishes any past, present, and/or future right or rights in this matter: (a) to an administrative or judicial hearing and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (b) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (c) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21 and 24 of this Consent Agreement; (d) to the issuance of a proposed complaint in accordance with 16 CFR § 1115.20(b); and (e) to file any claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15(c) and (d) of the CPSA, 15 U.S.C. §§ 2064(c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Eoff to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070.

15. Eoff agrees to fulfill all requirements of this Consent Agreement and Order.

16. for all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power. Eoff acknowledges and agrees that this Consent Agreement and Order are pursuant to the CPSC's police and regulatory power to remedy the alleged risk created by the Heaters, and that,

once Eoff signs the Consent Agreement and Order, the Consent Agreement and Order will not be subject to an automatic stay in any bankruptcy proceeding involving Eoff.

17. Eoff acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSCA, 15 U.S.C. § 2073, in any United States District Court in which Eoff is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Eoff merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Eoff shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Eoff's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Eoff and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Eoff's assets, Eoff shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Eoff may disclose terms of this Consent Agreement and Order to the public.

20. The CPSC, at its sole discretion and upon reasonable notice to the staff and Eoff, may void, suspend, or rescind this Consent Agreement and Order if: (a) Eoff has made material misrepresentations regarding its financial condition as of the date of this Consent Agreement and Order; or (b) in Eoff's submissions to the staff dated May 12, 1999, July 7, 1999, July 9, 1999, and August 23, 1999, Eoff materially misrepresented the quantity of Heaters it sold.

21. If any provision of this Consent Agreement and Order is held to be

illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC determines, after providing Eoff with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

22. This Consent Agreement and Order have been negotiated by the parties. Eoff is not relying on the advice of the staff, nor anyone associated with the staff, as to legal, tax, or other consequences of any kind arising out of this Consent Agreement and Order, and Eoff specifically assumes the risk of all legal, tax, and other consequences.

23. Eoff acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated, and knowledgeable parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

24. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve potential claims by the CPSC against Eoff with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the issue for determination by the CPSC. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

25. The existence of a dispute between the staff and Eoff over any provision of this Consent Agreement and Order shall not excuse, toll, or

suspend any obligation or deadline imposed upon Eoff under this Consent Agreement and Order, other than the specific provision in dispute.

26. This Consent Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the parties and approved by the CPSC.

27. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

28. Eoff's obligations under this Consent Agreement and Order shall terminate when Eoff makes the final payment required under Paragraphs 4 and 5 of the Order.

29. Eoff makes the monetary payments described in Paragraphs 4 and 5 of the Order solely as restitution to find the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Eoff and the staff consent to the entry of the Order attached hereto.

31. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 C.F.R. § 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 C.F.R. § 1115.20(b)(5).

32. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Eoff.

33. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: November 12, 1999.

Howard N. Tarnoff,

Trial Attorney.

Margaret H. Plank,

Trial Attorney.

Eric L. Stone,

Director, Legal Division.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission.

Dated: November 12, 1999.

Victor L. Bartlett,

CEO, Eoff Electric Company.

Order

Upon consideration of the Consent Agreement entered into between Respondent Eoff Electric Company ("Eoff") and the staff of the Consumer Product Safety Commission ("the staff") (collectively "the parties"); and

The Consumer Product Safety Commission ("the CPSC" or "the Commission") having jurisdiction over the subject matter and Eoff;

It is hereby ordered that:

1. The Consent Agreement between Eoff and the staff is incorporated herein by reference and accepted, and Eoff shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet's series FW, FX, LX, TK, ZA, and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. Eoff shall immediately cease and desist offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Eoff-owned distribution centers, or any other persons or entities over whom Eoff has control.

4. Eoff shall pay into a staff-designated, interest-bearing escrow account ("the Escrow Account"), the sum of TWO HUNDRED AND FIVE THOUSAND DOLLARS (\$205,000), according to the following schedule:

a. FIFTY ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$51,250) on or before the later of December 15, 1999, or upon the CPSC's final acceptance of this Order.

b. FIFTY ONE THOUSAND AND TWO HUNDRED AND FIFTY DOLLARS (\$51,250) on or before June 15, 2000.

c. FIFTY ONE THOUSAND AND TWO HUNDRED AND FIFTY DOLLARS

(\$51,250) on or before December 15, 2000.

d. FIFTY ONE THOUSAND AND TWO HUNDRED AND FIFTY DOLLARS (\$51,250) on or before June 15, 2001.

5. Eoff shall pay into the Escrow Account contingent contribution(s) of an additional EIGHTY-TWO CENTS (\$0.82) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 ("the Cadet Order"); provided that the sum total of all of Eoff's contingent contribution(s) shall be capped at ONE HUNDRED AND SIXTY-FOUR THOUSAND DOLLARS (\$164,000), and in no event shall Eoff be required to make more than two contingent contribution payments. Eoff shall pay a contingent contribution within fifteen (15) days of Eoff's receipt of written notice from the staff: (a) that consumers have ordered at least 350,000 total replacement heaters under the Cadet Order; or (b) specifying the number of replacement heaters in excess of 250,000 ordered by consumers within twenty-four (24) months after the Effective Date of the Cadet Order.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above: (a) to offset expenses directly related to Cadet's CPSC-approved Corrective Action Plan; and/or (b) to otherwise remedy the alleged hazard posed by the Heaters.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Eoff fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Eoff shall be liable for additional contributions to the Escrow Account. Such additional contributions shall include the following:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the deposit is not made within thirty (30) days after the due date.

Provisionally accepted and Provisional Order issued on the 16th day of December, 1999.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99-33103 Filed 12-21-99; 8:45 am]

BILLING CODE 6355-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of AmeriCorps*State and National, Gayle Hilleke, (202) 606-5000, extension 431. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565-2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: State Administrative Standards Form.

OMB Number: None.

Agency Number: None.

Affected Public: State commissions of the Corporation for National Service.

Total Respondents: 43 state commissions.

Frequency: 14 state commissions annually.

Average Time Per Response: 340 hours per state commission.

Estimated Total Burden Hours: 4,760 hours per 14 state commissions.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The State Administrative Standards Form was developed in consultation with state commissions. State commissions collectively asked for clearly stated standards by which the Corporation would assess the adequacy of their administrative systems. The Corporation developed indicators of competency for each standard and a process for using these Standards for both self- and external assessment purposes. The Corporation seeks approval of its new State Administrative Standards Form. The information that is collected will help the Corporation determine the extent to which each state commission has in place the administrative systems for effective operation. The form will be used for both self- and external assessments of grantees. Assessment results will be used by grantees for continuous improvement and by the Corporation for guiding training and technical assistance resources, determining appropriate levels of grantee oversight, and determining eligibility for access to competitive funding and multi-year administrative awards.

Dated: December 17, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99-33172 Filed 12-21-99; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE-ZXI-RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department

of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 22, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Headquarters U.S. Army, ROTC Cadet Command, Marketing Directorate, Fort Monroe, Virginia 23651, ATTN: (CPT Eric Miller, Jr.). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614-0454.

Title, Associated Form, and OMB Number: ROTC Smart Book Creative Research Survey.

Needs and Uses: The Army ROTC Program produces approximately 75 percent of newly commissioned officers for the U.S. Army. To do that, Army ROTC employs the services of an advertising agency, under joint contract with USAREC and OCAR. The agency provides all advertising, from concept through creation and placement, under the supervision of the U.S. Army Cadet Command Directorate of Marketing and Public Affairs. To determine the best way to attract quality young people, the agency and Cadet Command need to evaluate the creative concepts prior to production and placement. This is done by gathering opinions from prospects in the form of a survey.

Affected Public: Individuals or Households.

Annual Burden Hours: 200.

Number of Respondents: 800.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Other (one time).

SUPPLEMENTARY INFORMATION: The response will be captured on a standard survey instrument which will be designed to comply with OMB guidance, and the responses will be entered into a contractor database for analysis. The purpose of the information (opinions) is to refine targeted advertising to meet ROTC recruiting needs.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99-33137 Filed 12-21-99; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Release of the Notice of Availability on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Military Ocean Terminal, Bayonne, NJ

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: This FEIS was prepared by the Army in compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality. The closure of the Military Ocean Terminal, Bayonne, New Jersey (MOTBY) was mandated in accordance with the recommendations of the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended (the "BRAC law").

DATES: The review period for the FEIS will end on or before January 21, 2000.

ADDRESSES: Questions and/or written comments regarding the FEIS, or a request for a copy of the document may be directed to: U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile, ATTN: CESAM-PD (Dr. Susan Ivester Rees), 109 St. Joseph Street, Mobile, AL 36602.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Ivester Rees at 334-694-4141 or by facsimile at 334-690-2727.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three alternative courses of action with respect to the disposal and subsequent reuse of the 676-acre (440 land acres and 236 submerged land acres) comprising the MOTBY: (1) The no action alternative, under which the property would be maintained in a caretaker status after closure; (2) the unencumbered alternative, under which the Army would transfer the property without encumbrances, such as environmental restrictions and

easements; and (3) the encumbered disposal alternative, under which the Army would transfer the property with various environmental restrictions and easements, limiting the future use of the property. Additionally, this FEIS analyzes the potential environmental and socioeconomic consequences of three community reuse alternative; (1) Low intensity reuse alternative; (2) low-medium intensity reuse alternative; and (3) medium intensity reuse alternative.

The FEIS concludes the no action alternative is not reasonable since the closure of MOTBY is mandated by BRAC law, and the Army has no requirement to retain the property. The FEIS also concludes that the unencumbered disposal alternative is not feasible given environmental conditions and legal requirements.

The Army's preferred alternative course of action is the encumbered disposal of excess property. Possible encumbrances include: covenants and restrictions pertaining to asbestos-containing material; lead-based paint; floodplains; future remedial activities after transfer, wetlands and easements; and rights-of-way.

Community reuse of the MOTBY property is analyzed in the FEIS as a secondary action resulting from closure and disposal by the Army. While the Army does not control the community's reuse of the property, under NEPA, the Army is required to analyze the reasonably foreseeable impacts of its disposal action. The local community has established the Bayonne Local Redevelopment Authority (BLRA) to develop and implemented a reuse plan for the installation. Approval and implementation of the reuse plan are within the discretion of the BLRA.

Comments on the FEIS, received during the public comment period, will be used in preparing the Army's Record of Decision.

Copies of the FEIS have been forwarded to the EPA, other federal, state, and local agencies; public officials; and organizations and individuals who previously provided substantive comments in the EIS scoping process. Copies of the FEIS are available for review at the following libraries. The Bayonne Free Public Library, 697 Avenue C, Bayonne, NJ 07002-2806; the Jersey City Public Library, 472 Jersey Avenue, Jersey City, NJ 07302; and the Newark Public Library, 5 Washington Street, Newark, NJ 07102.

Dated: December 14, 1999.

Raymond J. Fatz,

*Deputy Assistant Secretary of the Army,
(Environment, Safety and Occupational
Health) OASA (I&E).*

[FR Doc. 99-33112 Filed 12-21-99; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Reissuance of MTMC Freight Traffic Rules Publication (MFTRP) No. 1A as MFTRP No. 1B

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services, proposes canceling MFTRP No. 1A in its entirety and reissuing it as MFTRP No. 1B.

DATES: Comments must be submitted on or before February 22, 2000.

ADDRESSES: Comments may be sent as follows: by fax: 703-681-9871 attn: Jerome Colton; by e-mail: coltonj@mtmc.army.mil.; by mail or courier to: Headquarters, Military Traffic Management Command, ATTN: MTOP-JF (Jerome Colton), Room 606, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton at 703-681-1417.

SUPPLEMENTARY INFORMATION: The proposed effective date for the change would be April 1, 2000.

The proposed text of MFTRP No. 1B is available on the MTMC web site at www.mtmc.army.mil by clicking in succession on: (1) Transportation Services, (2) Freight Logistics, (3) Freight Traffic Rules Publications and then clicking on the appropriate button indicating the 1B. Individuals without access to the Internet may obtain a copy of the proposed text by sending a request (and including their full postal mailing address) to either the fax number or the e-mail or U.S. mailing addresses indicated earlier in this announcement under **ADDRESSES**. Requests for the proposed text will not be received telephonically.

Significant changes prompting the reissuance of the publication include but are not limited to:

1. Changes to Descriptors (e.g., use of 3-character ANSI accessorial codes vice 2-character DOD codes).

2. Substantive changes to some high-profile rules (e.g. Exclusive Use, Alteration).

3. Harmonization of some rules with MTMC Guaranteed Traffic Rules Publication (MGTRP No. 50) as a first step to merging all rules publications.

4. Standardizing inconsistencies in style, wording, and format as a result of piecemeal changes over the years, and extensive use of tables to display information vice older formats using tabs.

5. Deletion of items duplicated in other source documents, such as the Tender Instructions (MT Form 364), & Carrier Qualifications in 32 CFR.

6. Inclusion of new items (e.g. Electronic Commerce, PowerTrack).

Informal feedback has been sought from industry on numerous occasions; meetings were held with various motor carrier groups (e.g. NDTA, ATA, MCC, NMFTA) early in the reissuance process (August 1998) and more recently (June, July, & October 1999). Some of this informal feedback has been incorporated into the proposed text. Formal comments from the public are now invited.

Regulatory Flexibility Act: This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection requirement or recordskeeping responsibilities are imposed on offerors, contractors, or members of the public.

Walter Scullion,

Chief, Freight Services Division (Acting), Joint Traffic Management Office.

[FR Doc. 99-33136 Filed 12-21-99; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00-05: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. Applications should describe research projects in one of the following categories:

1. Research projects that address the scientific aims of individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics, Biomolecular Science and Engineering, and Assessment.

2. Research projects to be performed at a Field Research Center addressing field scale biostimulation of microbiological processes that immobilize metals and/or radionuclides. Interdisciplinary teams should include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

DOE has proposed to establish a Field Research Center (FRC) at one of two national laboratories, either the Y-12 site near Oak Ridge National Laboratory (ORNL) or the Hanford site at Pacific Northwest National Laboratory (PNNL). DOE is now preparing an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA) to determine whether to prepare an environmental impact statement or a finding of no significant impact for the establishment of an FRC at one of these alternative sites. As part of its assessment, the Department will also evaluate a "no-action" alternative under which it would preserve the status quo and establish no FRC. The Department has identified ORNL as its preferred alternative in the draft Environmental Assessment.

Any awards made to perform research at the FRC will be contingent upon the outcome of this NEPA review, and no awards will be made until the appropriate NEPA review is completed. All research applications that are bounded by the assumptions, impacts, and analysis of the Environmental Assessment will be presumed to be covered by the Assessment. All research applications that appear to exceed the assumptions, impacts, or analysis of the Assessment will be reviewed to determine what, if any additional NEPA review is required.

Applications for research in the Bacterial Transport (Acceleration) or System Integration Elements will not be considered at this time. Applications for research on Bioremediation and its Societal Implications and Concerns (BASIC) will be solicited under a separate announcement.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., February 28, 2000, to be accepted for merit review and to permit timely consideration for award late in Fiscal Year 2000 or in early Fiscal Year 2001. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preliminary application, referencing Program Notice 00-05, it should be sent by e-mail to anna.palmisano@science.doe.gov.

Formal applications referencing Program Notice 00-05 on the cover page must be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 00-05. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC-74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, telephone: (301) 903-9963, e-mail: anna.palmisano@science.doe.gov, fax: (301) 903-8519. The full text of Program Notice 00-05 is available via the Internet using the following web site address: <http://www.sc.doe.gov/production/grants/grants.html>.

SUPPLEMENTARY INFORMATION: The mission of the NABIR Program is to provide the fundamental science to serve as the basis for development of cost-effective bioremediation of radionuclides and metals in the subsurface at DOE sites. NABIR research encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of nutrient amendments (inorganic, organic or enzymatic) or microbial amendments. The program consists of seven interrelated scientific research elements (Biogeochemical Dynamics, Biotransformation, Community Dynamics and Microbial Ecology, Biomolecular Science and Engineering, Biotransformation and Biodegradation, Bacterial Transport, and Systems Integration/Data Management). The program also includes an element addressing ethical, legal and social issues of bioremediation called Bioremediation and its Societal Implications and Concerns (BASIC). The

NABIR program desires to integrate a field research capability with its existing research program. DOE has proposed to establish a Field Research Center (FRC) at one of two national laboratories, either the Y-12 site near Oak Ridge National Laboratory (ORNL) or the Hanford site at Pacific Northwest National Laboratory (PNNL). DOE is now preparing an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA) to determine whether to prepare an environmental impact statement or a finding of no significant impact for the establishment of an FRC at one of these alternative sites. As part of its assessment, the Department will also evaluate a "no-action" alternative under which it would preserve the status quo and establish no FRC. The Department has identified ORNL as its preferred alternative in the draft Environmental Assessment. Any awards made for research to be performed at the FRC will be contingent upon the outcome of this NEPA review, and no awards will be made until the appropriate NEPA review is completed. All research applications that are bounded by the assumptions, impacts, and analysis of the Environmental Assessment will be presumed to be covered by the Assessment. All research applications that appear to exceed the assumptions, impacts, or analysis of the Assessment will be reviewed to determine what, if any, additional NEPA review is required. Additional information about NABIR and the proposed Field Research Center can be accessed from the NABIR Homepage: <http://www.lbl.gov/NABIR/>.

Program Focus

The NABIR Program supports hypothesis-driven research that will help determine the potential for, and advance the field of, bioremediation as a cleanup option at the DOE sites. The focus of the NABIR Program is on field-scale research addressing metal and radionuclide contamination in subsurface environments at DOE sites. However, the research program will support laboratory, theoretical, modeling, and other non-field research projects, if they fill gaps that would be necessary to complete understanding for field-scale applications. Although the program is directed at specific goals, it supports research that is more fundamental in nature than demonstration projects. The NABIR program emphasizes the bioremediation of metals and radionuclides in the subsurface below the root zone, including both vadose and saturated zones. Typically, the bioremediation of metals and radionuclides involves, but

is not limited to, mobilization and immobilization scenarios. Investigators without access to laboratories licensed to work with radionuclides may propose research with non-radioactive surrogates of radionuclides, or collaborate with investigators working in a licensed laboratory. Research on bioremediation of organic contaminants, such as solvents and complexing agents will not be considered, except to the extent that they influence the primary goal of understanding the remediation of metals and radionuclides. The NABIR Program will not support research to evaluate the risk to humans or to the environment. Applicants are encouraged to review the NABIR Primer, available at <http://www.lbl.gov/NABIR/primer/primer.html>, for information on contaminants of DOE interest.

NABIR is a research program designed to serve as a foundation for developing microbial in situ bioremediation techniques. Although ancillary benefits of the research to other cleanup needs such as the use of bioreactors to process waste streams are anticipated, NABIR will not support research leading to ex situ treatments. NABIR research may, however, lead to the application of in situ bioremediation in conjunction with other cleanup methods, for example, using bioremediation to mobilize radionuclides so that pump-and-treat techniques could be more effective. Problems characterized by large areas with low-concentration of contaminants are emphasized over problems of localized, high concentrations. Research on phytoremediation will not be supported by NABIR.

Research plans that involve the potential release of nutrients, enzymes, and/or chemicals to the field (both at contaminated and non-contaminated control sites) should discuss the involvement of the public or stakeholders in their research, beginning with experimental design through completion of the project. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research.

A centrally-maintained database is being developed to provide appropriate data, such as site characterization and kinetics data, needed by a broad segment of investigators. Applications shall include a short discussion of the Quality Assurance and Quality Control (QA/QC) measures that will be applied in data gathering and analysis activities. Successful grantees will be expected to

coordinate their QA/QC measures with NABIR program personnel.

Current Request for Applications

Two kinds of projects are solicited in this request for applications:

1. Research projects that address the scientific aims of individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics, Biomolecular Science and Engineering, and Assessment.
2. Research projects to be performed at a Field Research Center addressing field scale biostimulation of microbiological processes that immobilize metals and/or radionuclides. Research would be conducted at the proposed NABIR Field Research Center near Oak Ridge National Laboratory, Oak Ridge, TN or the Hanford site at Pacific Northwest National Laboratory (PNNL). Interdisciplinary teams should include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

Applications for research on Bacterial Transport and Systems Integration will not be addressed at this time.

Applications for research on Bioremediation and its Societal Implications and Concerns (BASIC) will be solicited under a separate announcement.

Research Projects Addressing Individual Elements

Applicants for research projects within individual program elements should state which science element is most closely aligned with the proposed research. Although applicants may propose research that transcends more than one research element, a primary element should be specified for the purpose of merit review.

Biogeochemical Dynamics: Successful bioremediation of metals and radionuclides at DOE sites is closely linked to understanding the complex and dynamic interplay of hydrological, geochemical, and biological processes within geological media. Understanding the natural biogeochemical processes that control the mobility and form of radionuclides is one of the most challenging problems affecting the future viability of bioremediation at DOE sites, particularly within the thick vadose zones and saturated zones below the root zone where much of the contamination resides.

DOE cleanup problems are at the field scale; the immediate priority in biogeochemical dynamics is to understand the underlying mechanisms and processes governing metal and radionuclide behavior to the field.

Focus will be on understanding how natural biogeochemical processes control the mobility and stability of contaminants in waste mixtures, including the biogeochemical processes that modify the form and behavior of contaminants in mixtures. New and creative scientific approaches are sought that address the following fundamental research questions:

- What are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases?
- What are the thermodynamic and kinetic controls on these reactions?
- What are the major factors controlling the rate and extent of oxidation and reduction of multivalent radionuclides and naturally-occurring metals in various mineral phases? How can these factors be manipulated to enhance or limit the mobility of contaminants?
- What are the biogeochemical and transport processes that control biological availability, transformation, and movement of radionuclides and metals?

Biotransformation: Biotransformation of metals and radionuclides in subsurface environments is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. Knowledge of the metabolic pathways for transformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics. Research is needed to address questions such as:

- What are the metal-and radionuclide-transforming capabilities of indigenous microorganisms in deep vadose or saturated zones representative of DOE sites?
- What are the metabolic pathways for microbial transformation of metals and radionuclides, and can these biological processes be harnessed to sequester metals and/or radionuclides in the subsurface?
- What factors control the kinetics of desirable metal and radionuclide biotransformations in vadose and saturated zones?
- How important are microbial consortial interactions in the biotransformation of metals and radionuclides?

- How is the biotransformation of metals and radionuclides affected by chelators?

- *Community Dynamics and Microbial Ecology:* Fundamental research in Community Dynamics and Microbial Ecology at both the molecular and the microbial level is needed to understand the natural intrinsic processes of bioremediation at contaminated sites. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of transformation of radionuclides and metals. The influence of environmental factors on subsurface communities is important to determining the potential for metal and radionuclide biotransformation. Research should be directed toward the characterization of microbial communities at contaminated sites, and toward understanding microbial community dynamics in the presence of metals and radionuclides. Research is needed to address questions such as:

- Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?

- What are the effects of metals and radionuclides on microbial community activity and diversity, including both metabolic and genetic activity and diversity?

- Do different microbial species interact within communities in subsurface environments contaminated with metals and radionuclides? Such interactions might include competition for substrate, or consortial interactions for transformation of metals and radionuclides.

Biomolecular Science and Engineering: The overall goal of research in the Biomolecular Science and Engineering element is to use molecular and structural biology to enhance understanding of bioremediation of metals and radionuclides, and to genetically modify macro-molecules and microorganisms to improve their bioremedial activities. Using information and data gained from other program elements, the molecules, enzymes, and enzymatic pathways that are most effective for bioremediation of metals and radionuclides will be identified. DOE objectives and priorities for research in Biomolecular Science and Engineering are to: (i) Identify, clone, and sequence novel genes and promoters important to the bioremediation of metals and radionuclides; (ii) construct or enhance bioremedial enzymatic pathways; and (iii) transfer key genes for

bioremediation to microbes that can survive and compete effectively in a contaminated subsurface environment. Field release of genetically engineered microorganisms at the proposed FRC, however, will not be allowed. Research in these areas is encouraged that includes:

- How can we identify and characterize important genes, gene clusters, promoter elements, proteins, and protein pathways involved in the detoxification of metals and radionuclides or that affect the ability of organisms to live and survive under conditions in which metals and radionuclides are present in significant amounts?

- How can we identify and characterize genes, gene clusters, and promoter elements from different organisms that can work together to effect bioremediation?

- How can we identify and characterize the transfer or acquisition of genes, gene clusters, and promoter elements from one organism to another that can influence processes involved in bioremediation?

- What novel and innovative technologies for the identification and characterization of genes, gene clusters, promoters, and pathways involved in bioremediation can be explored and, on a field scale, used?

Assessment: The two primary objectives of research in the Assessment program element are to study innovative and effective methods for assessing or quantifying (i) bioremediation rate and activity, including microbial community structure and dynamics, biotransformation processes and rates, and electron flow; and (ii) bioremediation end points, including not only the concentration and speciation of the contaminants and byproducts but also the stability and bioavailability of residual end-products. NABIR will not, however, fund projects that examine human health risks of end points. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. Assessment research addressing bacterial transport will not be covered in this solicitation. Research is sought to answer questions such as:

- Can quantitative techniques be adapted or developed for measurement of microbial community structure, activity, and effectiveness during bioremediation?

- What are the geophysical, geochemical, and hydrologic properties critical to bioremediation effectiveness and how can they be quantitatively determined?

- Can bioremediation endpoints that accurately measure bioavailability be quantitatively established?

Field Scale Bioremediation Experiment

Although bioremediation of metals and radionuclides has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The availability of contaminated sites for NABIR research at the proposed Field Research Center would create an opportunity for such field scale experiments. The focus of the first set of field experiments at the proposed FRC would be on immobilization of metals or radionuclides in situ by microbiological processes.

Applicants should propose a testable hypothesis for field research, and they should describe a detailed technical approach that should include (1) Establishing an experimental and control plot within the proposed contaminated field site, and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize contaminants such as uranium. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research.

The applicants should propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry and hydrology. The Principal Investigator for the team must have prior experience in relevant field research. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The applicants should also describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. For further information on the proposed FRC, access the NABIR Homepage or contact Mr. Paul Bayer (paul.bayer@science.doe.gov).

It is anticipated that approximately \$5 million will be available for multiple awards to be made in late FY 2000 and early FY 2001 in the categories described above, contingent on availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for projects in the five scientific research element projects are expected to range from \$100,000 to \$400,000 total costs. Annual budgets for interdisciplinary field research projects at the proposed FRC are expected to range from \$300,000–\$1,000,000 for total costs. Costs for drilling at the proposed FRC should not be included in the applicant's budget. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: <http://www.sc.doe.gov/production/grants/grants.html>. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award

is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments should include short curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: <http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9>.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: <http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf>, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate, for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following web site: <http://www.lbl.gov/NABIR/>. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC-74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874-1290; phone: (301) 903-3338; fax: (301) 903-8519; E-mail: karen.carlson@science.doe.gov; for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 15, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99-33200 Filed 12-21-99; 8:45 am]

BILLING CODE 6450-01-U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00-07: New Programs in Fusion Energy Sciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science, U.S. Department of Energy (DOE) announces its interest in receiving grant applications for new research in fusion energy sciences. Programs planning to submit applications for renewal or continuation funding in FY 2000 should not submit to this Notice, but rather submit according to the procedures outlined in 10 CFR part 605.

The specific areas of interest are:

1. Magnetic Fusion Concept Exploration Experiments;
2. Inertial Fusion Energy Concept Exploration Research;
3. Inertial Fusion Energy Chamber and Target Research;
4. Magnetic Fusion Liquid Wall Experiments;
5. Fusion Materials Modeling.

More specific information on each area of interest is outlined in the general and program specific supplementary information sections below. Each grant application can be submitted to only one area of interest. Applicants must identify the area of interest in their formal submission.

DATES: To permit timely consideration for awards in Fiscal Year 2000, applications submitted in response to this notice must be received no later than 4:30 p.m., February 29, 2000. Electronic submissions of formal applications will not be accepted.

Applicants are requested to submit a letter-of-intent by January 31, 2000, which includes the title of the proposal, the name of the principal investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely manner. Electronic submissions of letters-of-intent are acceptable.

ADDRESSES: The completed formal applications referencing Program Notice 00-07 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64, 19901 Germantown Road, Germantown, Maryland 20874-1290, ATTN: Program Notice 00-07. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand-carried by the applicant.

Letters-of-intent referencing Program Notice 00-07 should be forwarded to: U.S. Department of Energy, Office of Science, Office of Fusion Energy Sciences, SC-50, 19901 Germantown Road, Germantown, Maryland 20874-1290, ATTN: John Sauter. Letters-of-intent can also be submitted via E-mail at the following E-mail address: john.sauter@science.doe.gov

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

Magnetic Fusion Concept Exploration Experiments: Ronald A. Blanken, Research Division, SC-55; Telephone: (301) 903-3306 or 4095, or by Internet address, ronald.blanken@science.doe.gov.

Inertial Fusion Energy Concept Exploration Research: Ronald McKnight, Research Division, SC-55; Telephone: (301) 903-4597 or 4095, or by Internet address, ronald.mcknight@science.doe.gov.

Inertial Fusion Energy Chamber and Target Research: Gene Nardella, Facilities and Enabling Technologies Division, SC-52; Telephone: (301) 903-4956 or 3068, or by Internet address, gene.nardella@science.doe.gov.

Magnetic Fusion Liquid Wall Experiments: Sam Berk, Facilities and Enabling Technologies Division, SC-52; Telephone: (301) 903-4171 or 3068, or by Internet address, sam.berk@science.doe.gov

Fusion Materials Modeling: Bill Wiffen, Facilities and Enabling Technologies Division, SC-52; Telephone: (301) 903-4963 or 3068, or by Internet address, fw.wiffen@science.doe.gov.

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of

Science Financial (SC) Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: <http://www.sc.doe.gov/production/grants/grants.html>. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Approximately \$1,900,000 of Fiscal Year 2000 funding divided by program element as outlined below will be available to start new projects from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant year effort (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications requiring annual funding as low as \$50,000 are welcomed and encouraged.

New research is herein defined as research which is not within the scope of work of existing programs. In cases where the new work assumes the availability of a facility, experimental apparatus or base group to perform the work, the funding source(s) for the base must be identified in the grant application.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement for DOE National Laboratories for some of the areas of interest will be available on the Office of Science Grants and Contracts Web Site. In the case of collaborative applications submitted from different institutions which are directed at a single research activity, each application must have a distinct scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. Further information on preparation of collaborative proposals may be accessed via the Internet at <http://www.sc.doe.gov/production/grants/Colab.html>.

To enable all reviewers in each category to read all applications in that category, the application must be limited to a maximum of twenty (20)

pages (including text and figures) plus no more than one page each of biographical information and publications of the principal investigator. Although it is not required, it would be helpful for each applicant to submit fifteen (15) copies of their application due to the anticipated number of reviewers; otherwise the standard number of copies must be received with each application as outlined in the Application Guide.

In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce results within the first project period after grant initiation (typically three years but as many as five years in the case of grants where construction of complex experimental apparatus is required). The detailed description of the proposed research in addition to the information required by 10 CFR part 605 should contain the following items: (1) A succinct statement of the goal of the research, (2) A detailed research plan, (3) The specific results or deliverables expected at the end of the project period, (4) A detailed analysis of the adequacy of the facilities and budget, (5) Discussion of how the research would elucidate the physics or engineering principles of the innovation, and (6) Discussion of why this research would have an important impact on the prospects for either magnetic or inertial fusion.

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

Program Specific Information

Magnetic Fusion Concept Exploration Experiments

Grant applications are desired for new innovative scientific experiments that have the possibility of leading to improved magnetic fusion systems (this includes tokamak based systems with improved performance). The research should be aimed at experimentally elucidating the physics principles of such improved systems. Experiments are sought which are unique, first of a kind and which provide new insights.

These funds are targeted toward the establishment of new experiments and are not meant to support collaborations on existing concept exploration or proof-of-principle experiments. Applications for research on existing large tokamaks, independent theory investigations and new diagnostic development should not be submitted in response to this notice. Applications for new programs based on the replacement of the cores of existing experimental facilities with cores designed to study new physics ideas are allowed. Approximately \$600,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Inertial Fusion Energy Concept Exploration Research

Grant applications are desired for new concept exploration scientific research that has the possibility of leading to improved inertial fusion energy systems. Such research may include, for example, expanding the scientific basis for concepts which could lead to significant increases in performance for more developed approaches. Efforts directed toward providing advances in physics understanding of problem areas, which have potentially high impact on inertial fusion energy science, are also of interest. Primary interest is in experimental programs, although it is recognized that part of a coordinated application may include theory and modeling in support of experiments. It is not anticipated that stand-alone theory applications will be supported. Approximately \$400,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Inertial Fusion Energy Chamber and Target Research

Grant applications are desired for new innovative research that will address the key critical issues in the chamber systems, target technology, and safety and environmental areas for both heavy ion and laser driven inertial fusion energy systems. Examples of critical issues in the chamber systems area for heavy ion drivers are liquid chamber clearing and final focus/chamber interface. Examples of critical issues in the chamber systems area for laser drivers are chamber material lifetime uncertainty and final optics design and survivability. Examples of critical issues in the target technology area are low-cost, high production rate target fabrication and accurate injection and tracking. Examples of critical issues in the safety and environmental area are minimization of accident consequences

and management of radioactive materials. The examples identified are not an inclusive list. This research can be either experimental and/or analytical in nature. Approximately \$200,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Magnetic Fusion Liquid Wall Experiments

Grant applications are sought for innovative experiments that can significantly advance the knowledge base for plasma chamber concepts using liquids in direct contact with plasmas for first walls, divertors, and/or limiters. Research on such liquid wall approaches should be aimed at providing fundamental data and at elucidating dominant phenomena for a more complete scientific understanding of the following key issues: (a) Effects of liquid surfaces on plasma edge and core performance, particularly with regard to influx of particles to the plasma and trapping/pumping of particles from the plasma, (b) effects of liquid surfaces on plasma stability and confinement, particularly with regard to influences from shells and flows of electrically conducting liquids, and (c) limits of power handling and operating temperature for candidate liquid coolants, particularly with regard to turbulence and MHD considerations in free surface flow thermal-hydraulics. Proposed experiments must be accompanied by supporting analysis and modeling activities that provide for an ability to interpret experimental data and support development of computational tools for predicting liquid wall behavior under fusion-relevant conditions. Background information about ongoing research related to liquid walls can be obtained through the Internet at the following web sites: <http://www.fusion.ucla.edu/APEX/> and <http://pentium.ep.anl.gov/alps/>. Approximately \$300,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

Fusion Materials Modeling

Applications are solicited for three-year grants for research on modeling and/or theory that will expand the knowledge base on understanding of the behavior of structural materials in the service environment of fusion systems. In particular, effects of the temperature, neutron flux, stress state, system fluids, dissimilar materials contact, or other components of the environment are of interest. Response to stresses arising from thermal, mechanical or other loading sources can be included.

Material composition, microstructure and/or macrostructure variables may also be relevant to particular modeling approaches. In a broader sense, proposed research should also contribute to advancing the science of the behavior of materials. While the focus must be on the fusion environment, importance of proposed work beyond the interests of fusion should be identified. A particular goal of proposed modeling and/or theoretical research should be to add value to the in-place experimental program of research on materials for fusion systems. Models are desired that can guide and help interpret costly and difficult-to-obtain experimental results and that can be applied to resolving key material feasibility issues. Applications that request funding for experimental work will not be considered. However, close collaboration with the currently in-place fusion and/or other experimental materials programs is expected and encouraged. Critical interfaces with experimental programs should be identified. Background information and definition of specific areas of interest are provided in two documents produced by the fusion materials community and available on the Internet at the Virtual Laboratory for Technology (VLT) web site, located at <http://vlt.ucsd.edu/>. The documents are "A Whitepaper Proposing an Integrated Program of Theoretical, Experimental, and Database Research for the Development of Advanced Fusion Materials" and "Advanced Materials Program", which is Appendix D of the VLT Roadmap. These documents should be used for background and guidance, but should not be considered as establishing absolute boundaries or scope for this solicitation. Relevance of proposed research to fusion materials, especially to the feasibility issues identified in the above two referenced documents, will be considered in the process of selecting grant applications for funding. Approximately \$400,000 of FY 2000 funding, depending on the quality of the applications, is targeted for applications received in this area.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on December 15, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99-33201 Filed 12-21-99; 8:45 am]

BILLING CODE 6450-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP00-135-000]

CNG Transmission Corporation; Notice
of Proposed Changes in FERC Gas
Tariff

December 16, 1999.

Take notice that on December 10, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 10, 2000:

Seventh Revised Sheet No. 251
Original Sheet No. 397A
Original Sheet No. 397B
Original Sheet No. 397C

CNG states that the purpose of this filing is to comply with the open tap condition for disposition of jurisdictional assets as approved by the Commission in Docket No. EC 99-81-000.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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. 99-33129 Filed 12-10-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. CP00-45-000]

Eastern Shore Natural Gas Company;
Notice of Application

December 16, 1999.

Take notice that on December 9, 1999, Eastern Shore Natural Gas Company, (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No. CP00-45-000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), for authorization to abandon certain facilities, and to construct and operate various facilities in Delaware, Pennsylvania and Maryland, in order to provide additional firm transportation capacity on Eastern Shore's system, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/htm> (call 202-208-2222 for assistance).

Specifically, Eastern Shore proposes to (1) construct and operate approximately two miles of 16-inch mainline looping in Pennsylvania, (2) abandon one mile of 2-inch lateral in Delaware and Maryland and replace this segment with a 4-inch lateral in Delaware and Maryland, (3) construct and operate approximately ten miles of 6-inch mainline extension in Delaware, (4) construct and operate five delivery points on the new 6-inch mainline extension in Delaware, and (5) install certain minor auxiliary facilities at the existing Daleville compressor station in Pennsylvania. Eastern Shore states that the facilities are required to provide additional firm transportation service of 7,065 dekatherms (dt) per day as requested by three of Eastern Shore's local distribution company customers, NUI Corporation (3,000 dt), Conectiv Power Delivery (1,200 dt), and Delaware Division of Chesapeake Utilities Corporation (2,865 dt).

Eastern Shore asserts that it conducted an open season between April 1 and May 7, 1999, and asserts that the result was that the three customers have fully subscribed the capacity to be made available to satisfy increased market demand. It is estimated that the cost of the proposed facilities would be \$4,215,200, to be financed from internally generated funds and short-term notes, with permanent financing to be arranged on completion of construction. Eastern Shore requests a preliminary determination that the total cost of the

project be given rolled-in rate treatment, stating that the project is in accordance with the Commission's recent policy statement issued in PL99-3-000.

Any questions regarding the application may be directed to Stephen C. Thompson, President, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 6, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein and if the Commission, on its own review of the matter, finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Eastern Shore to appear, or be represented, at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-33125 Filed 12-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP00-136-000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1999.

Take notice that on December 10, 1999, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheet to become effective February 1, 2000:

Seventh Revised Sheet No. 29

El Paso states that the tariff sheet revises the fuel charges applicable to transportation service on El Paso's system in compliance with the Commission's order issued November 10, 1999, at Docket No. RP95-363-002, et al.

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 Section 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 Reading 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. 99-33130 Filed 12-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP00-134-000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 16, 1999.

Take notice that on December 10, 1999, PG&E Gas Transmission,

Northwest Corporation (PG&E GT-NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Twenty-Seventh Revised Sheet No. 4, Fourteenth Revised Sheet No. 4A and Eleventh Revised Sheet No. 6C, with an effective date of January 1, 2000.

PG&E GT-NW states that these tariff sheets establish PG&E GT-NW's Gas Research Institute (GRI) surcharge for calendar year 2000.

PG&E GT-NW further states that a copy of this filing has been served on PG&E GT-NW's jurisdictional customers and interested 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. 99-33128 Filed 12-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER00-188-000, ER00-213-000, and EL00-22-000]

PSI Energy, Inc., Cincinnati Gas & Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

December 16, 1999.

Take notice that on December 15, 1999, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL00-22-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL00-22-00, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following

publication of this notice in the **Federal Register**.

David P. Boergers,*Secretary.*

[FR Doc. 99-33124 Filed 12-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. RP00-24-000 and RP00-24-001]

Transcontinental Gas Pipe Line Corporation; Notice of Technical Conference

December 16, 1999.

In the Commission's order issued on November 26, 1999,¹ the Commission directed that a technical conference be held.

Take notice that the technical conference will be held on Wednesday, January 19, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, to address issues raised by the filing, concerns raised by the protestors, and explore the possibility of settlement.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 99-33127 Filed 12-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 4718-011]

Cocheco Falls Associates; Notice of Availability of Draft Environmental Assessment

December 16, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA is for petitions to revise the license for the Cocheco Falls Project with respect to fish passage. The DEA recommends reasonable modifications to project structures and operation to benefit fish passage and that such modifications would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing,

¹ 89 FERC ¶ 61,240 (1999).

Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE, Washington, DC 20426. The DEA can also be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

Comments on the DEA are invited. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers for substance should be supported by appropriate documentation. Comments should be filed within 60 days from the date of this notice with David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, and should reference Project No. 4718.

For further information, please contact the project manager, Mr. Robert H. Grieve, at (202) 219-2655.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-33126 Filed 12-21-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6514-3]

State and Tribal Environmental Justice Grants Program—FY 2000

The State and Tribal Environmental Justice (STEJ) Grants Program was intended, from its inception, to be a pilot program for states and tribes to develop model environmental justice programs for the benefit of other states and tribes. As published in the **Federal Register**, November 1, 1999, Volume 64, Number 210, the Agency had initially planned to award STEJ grants in FY 2000. However, the STEJ grants program will not be funded in fiscal year 2000, but instead will be evaluated to determine whether the objectives of the program are being met.

Over the past two years, the Agency awarded ten STEJ grants. These grants will be the focus of the evaluation. If you have any questions about the STEJ Grants Program and/or the Agency's plan to conduct an evaluation of the program, please contact Daniel Gogal, STEJ Grants Program Manager, Office of Environmental Justice, at (202) 564-2576, or 1-800-962-6215.

Dated: December 16, 1999.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 99-33156 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6513-7]

Gulf of Mexico Program—Citizens Advisory Committee Meeting

AGENCY: U. S. Environmental Protection Agency (US EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The CAC meeting will be held on Thursday, January 20, 2000 from 3:00 p.m. to 5:30 p.m. and on Friday, January 21, 2000 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 101 South Adams Street, Tallahassee, Florida (850) 224-5000.

FOR FURTHER INFORMATION CONTACT:

Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529-6000 at (228) 688-2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Director's report on the status of the GMP with particular emphasis on place-based work within states; facilitated discussion of the role and functions of the CAC within the GMP as presently constituted; and CAC members will report on their representation on the Focus Teams and Operational Committees.

The meeting is open to the public.

Dated: December 14, 1999.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99-33153 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6514-2]

Draft Health Assessment Document for Diesel Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the extension of the public comment period for the draft Health Assessment Document for Diesel Emissions (EPA/600/8-90/057D, November 1999). The

document was prepared by the National Center for Environmental Assessment Office (NCEA) within EPA's Office of Research and Development.

DATES: In the November 15, 1999, **Federal Register** (64 FR 61875), EPA announced a limited public comment period through December 17, 1999. The Agency is now extending the public comment period to January 28, 2000. Comments must be in writing and must be postmarked by January 28, 2000.

ADDRESSES: The draft document is available on the Internet at <http://www.epa.gov/ncea> under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff, (telephone: 202-564-3261; facsimile: 202-565-0050). If you are requesting a paper copy, please provide your name, mailing address, and the title and number for the draft: "Health Assessment Document for Diesel Emissions" (EPA/600/8-90/057D, November 1999).

Comments may be mailed to: Diesel Comments, NCEA-W/TIS (8623D), USEPA, Washington, DC 20460. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. If sent via overnight delivery, please use the following address: 808 17th St., 5th Floor, N.W., Washington, DC 20006. Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commenters should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For information contact Charles Ris (202-564-3203); mailing address: NCEA-W (8623D), USEPA, Washington, DC 20460; facsimile: 202-565-0078.

SUPPLEMENTARY INFORMATION: This revised draft assessment updates two earlier drafts (1998 and 1994) and focuses on health hazards (hazard identification and dose-response analysis for the purpose of characterizing the risk of diesel exhaust exposure), and also provides background information about diesel engine emissions and exposure that is useful for putting the health information into context. EPA risk assessment methods and practices have been followed in identifying possible human chronic health hazards for adverse

noncancer effects as well as carcinogenicity hazards. The Diesel Review Panel of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board met on December 1, 1999, to review this draft Health Assessment Document for Diesel Emissions.

Dated: December 15, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99-33157 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30465A; FRL-6395-9]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Isomate - BAW Pheromone containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Judy Loranger, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-8056; and e-mail address: loranger.judy@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 codes	Examples of poten-tially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at <http://www.epa.gov/pesticides/>, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30465A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material

specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of (Z,E)-9,12-Tetradecadienyl acetate and (Z)-9-Tetradecen-1-ol, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of (Z,E)-9,12-Tetradecadienyl acetate and (Z)-9-Tetradecen-1-ol when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of December 16, 1998 (63 FR 69281) (FRL-6046-7), which announced that Biocontrol Limited, 400 East Evergreen Blvd., Suite 205, Vancouver, WA 98660, had submitted an application to register the pesticide product, Isomate - BAW Pheromone, a pheromone (EPA File Symbol 53575-ER), containing a mixture of 69% (Z,E)-9,12-Tetradecadienyl acetate and 26% (Z)-9-Tetradecen-1-ol. This product was not previously registered.

The application was approved on September 23, 1999, as Isomate BAW Pheromone (EPA Registration Number 53575-21) for use on alfalfa, asparagus, beans, beets, cabbage, celery, cole crops, cotton, cucumbers, ground nuts, lettuce, onions, peas, peppers, soybeans, strawberries, sweet potatoes, tomatoes and tobacco to control beet armyworm. It should be noted that since the publication of the **Federal Register** notice to announce the application to register the pesticide product, the address of the applicant has changed

and the amount of active ingredient listed in the product has changed. The applicant's current address is: 16010 NE 36th Avenue, Ridgefield, WA 98642. The product now contains 55% (Z,E)-9,12-Tetradecadienyl acetate and 24.8% (Z)-9-Tetradecen-1-ol.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 10, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99-33037 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30487; FRL-6399-3]

Plant-Pesticide Corn Rootworm Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP-30487, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-30487 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 9th floor, 1921 Jefferson Davis Hwy, CM #2, Arlington, VA, (703) 308-8715, mendelsohn.mike@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 codes	Examples of poten-tially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30487. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in

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

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-30487 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-30487. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or

all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

EPA File Symbol: 524-LRA.
Applicant: Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Mo 63198. Product name: Corn Rootworm Protected Corn Hybrids.

Active ingredient: *Bacillus thuringiensis* Cry3Bb protein and the genetic material necessary for its production (Vector ZMIR14L) in corn; Proposed classification/Use: None. For full commercial registration on corn.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 10, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99-33163 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34146B; FRL-6391-2]

Availability of Reregistration Eligibility Decision Document for Comment; Receipt of Requests for Voluntary Cancellation, Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60-day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient Sulfotepp. The RED represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

The companies that hold the pesticide registrations of pesticide products containing sulfotepp (0,0,0,0-tetraethyl dithiopyrophosphate) have asked EPA to cancel their registrations for these products. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these voluntary cancellation requests from the registrants. EPA intends to grant the requests for voluntary cancellation and intends to issue a cancellation order at the close of the comment period for this announcement. EPA is proposing that the voluntary cancellations shall be effective on September 30, 2002, unless EPA determines before September 30, 2002, that worker and bystander risks do not exceed the Agency's level of concern. After September 30, 2002, any

distribution, sale, or use of canceled sulfotepp products will only be permitted if such distribution, sale, or use is consistent with the terms of the cancellation order that the Agency intends to issue.

DATES: Comments, identified by docket control number OPP-34146B, must be received on or before February 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-34146B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Robbi Farrell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703-308-8065; and e-mail address: farrell.robbera@epa.gov.

SUPPLEMENTARY INFORMATION:

This announcement consists of four parts. The first part contains general information. The second part contains the announcement of the availability of the RED. The third part addresses the registrants' requests for voluntary cancellation of their registrations of pesticide products containing sulfotepp. The fourth part proposes a cancellation order, which includes requirements relating to the distribution, sale, and use of existing stocks of canceled sulfotepp products.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those persons who use these chemicals in agricultural production. You may be potentially affected by this action if you manufacture, sell, distribute, or use sulfotepp products. Potentially affected categories and entities may include, but are not limited to commercial greenhouses and certified pesticide applicators. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the people

listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>.

To access the RED documents and RED fact sheets electronically, go to the REDs table on the EPA Office of Pesticide Programs' home page, <http://www.epa.gov/REDs>. For related information, see <http://www.epa.gov/pesticides>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-34146B. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-34146B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-34146B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

F. What is the Agency's Authority for Taking these Actions?

The legal authority for these reregistration eligibility decisions falls under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, which directs that "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration" before calling in data on products and either reregistering products or taking "other appropriate regulatory action."

II. Notice of Availability of the Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticide active ingredient sulfotepp. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides initially registered before November 1984, to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical listed in this document is incomplete. Due to the high risks estimated with available information and their inability to fulfill the data requirements needed to refine the risk assessment, the registrants requested a voluntary cancellation of their registrations. The Agency intends to grant the requests for voluntary cancellation. In addition, the Agency intends to order that the registrations be canceled effective September 30, 2002, and that any distribution, sale, or use of canceled sulfotepp products will not be lawful after September 30, 2004. By December 1999, all sulfotepp products will bear amended labels designed to improve worker and bystander

protection. This RED document describes risks of concern to the Agency, outlines the label amendments required for all registered products, and sets forth the timeline for cancellation and phase-out of sulfotepp and sulfotepp products.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60-day comment period. The 60-day public comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

III. Receipt of Requests for Voluntary Cancellation

In a memorandum of agreement ("Agreement") effective September 30, 1999, EPA and all registrants of products containing sulfotepp agreed to take several steps to reduce the risks associated with the use of sulfotepp. Based on the limited data available, EPA estimated that risks of dermal and inhalation exposure to workers and bystanders were very high. Practical, effective options for mitigation were limited, and the registrants were unable to provide the data needed to refine the risk assessment. EPA reached this agreement with the registrants to reduce those risks. As part of the Agreement, the registrants, among other things, agreed to amend the labels of their end-use products to reduce applicator risk and to cap production of sulfotepp. The registrants also requested to voluntarily cancel their sulfotepp registrations. As a result, EPA agreed not to initiate any suspension or cancellation proceedings

under sections 3 or 6 of FIFRA to achieve the risk reduction measures set forth in the Agreement.

Prior to the effective date of the Agreement, each registrant submitted to EPA, pursuant to section 6(f) of FIFRA, a request for voluntary cancellation of all existing registrations held by the registrant of pesticide products containing sulfotepp. The registrations for which cancellations have been requested are identified in the table below. In the Agreement, the registrants conditioned their requests for voluntary cancellation on the following: (1) The cancellations shall be effective on September 30, 2002; (2) the cancellations shall not become effective if EPA determines prior to September 30, 2002, that worker and bystander risks do not exceed the Agency's level of concern based on the submission of new data deemed acceptable by the Agency; and (3) any resulting cancellation order will include the terms set forth in the Agreement.

Company	Reg. No	Product	SLNs
Fuller System Inc.	1327-38	Fulex Dithio Smoke Fumigant	N/A
.....	1327-39	Sulfotepp Technical	N/A
Plant Products Corporation	8241-10	Plantfume 103	CA89005900
.....	8241-11	Sulfotepp Technical	N/A

Section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. As part of the Agreement, the registrants requested that the Administrator waive any applicable public comment period under section 6(f) before taking action on their requests to cancel the registrations of the products identified in the table above. In light of this request, EPA is granting the request to waive the 180-day comment period but is nonetheless providing a 60-day public comment period before taking action on the requested cancellations. This 60-day comment period will coincide with that provided for comments on the RED document as discussed in Unit II of this Notice. EPA intends to grant the requested cancellations at the close of the comment period for this announcement. The requested cancellations shall be

effective on September 30, 2002, unless EPA determines before that date that worker and bystander risks do not exceed the Agency's level of concern.

IV. Proposed Cancellation Order

The registrants have requested voluntary cancellation of the registrations of the sulfotepp products identified in the table above. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary cancellation and intends to order that the registrations of the pesticide products identified in the table be canceled on September 30, 2002. This announcement proposes the provisions for that cancellation order, including requirements for existing stocks. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, pursuant to EPA's existing stocks policy (56 FR 29362, Wednesday, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of

the cancellation. Any distribution, sale, or use of existing stocks of the canceled sulfotepp products after September 30, 2002, that is not consistent with the terms of the cancellation order that the Agency intends to issue will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

A. Existing Stocks Provisions

1. *Distribution or sale by registrants.* The distribution or sale of existing stocks by registrants will not be lawful under FIFRA after September 30, 2004, except for the purpose of shipping such stocks for export consistent with the requirements of section 17 of FIFRA or for proper disposal.

2. *Distribution or sale by other persons.* The distribution or sale of existing stocks by persons other than registrants will not be lawful under FIFRA after September 30, 2004, except for the purpose of shipping such stocks for export consistent with the requirements of section 17 of FIFRA or for proper disposal.

3. *Use of existing stocks.* The use of existing stocks will not be lawful under FIFRA after September 30, 2004. Any

use of existing stocks of canceled product prior to October 1, 2004, must be in accordance with either the directions for use contained in the Agreement or the existing labeling of that product.

List of Subjects

Environmental protection, pesticides and pests, Memorandum of agreement.

Dated: December 15, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99-33160 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

OPP-30486; FRL-6397-1

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP-30486, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA. It is imperative that you identify docket control number OPP-30486 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Product Manager, Registration Division (7505C), listed in the table below:

Product Manager	Office address/telephone no.	E-mail address
Cynthia Giles-Parker, PM 22.	Rm. 249, CM #2, 1921 Jefferson Davis Highway, 703-305-7740	giles-parker.cynthia@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 codes	Examples of poten-tially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "T4Federal 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-30486. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy.,

Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703)-305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA. It is imperative that you identify docket control number OPP-30486 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703)-305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic

submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-30486. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any

previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. File Symbol: 70880-R. Applicant: GMJA Specialties, 1001 13th Avenue, West Bradenton, FL 34208. Product Name: Technical PT807-HCl Plant Growth Regulator. Active Ingredient: *N,N*-Diethyl-2(4-methylbenzyloxy)ethylamine hydrachloride at 50%. Proposed/Classification: None. Use Pattern: Foliarly applied to orange trees to accelerate maturation - Formulation use only.

2. File Symbol: 70880-E. Applicant: GMJA Specialties. Product Name: Ecolyst Plant Growth Regulator. Active Ingredient: *N,N*-Diethyl-2(4-methylbenzyloxy)ethylamine hydrachloride at 3.3%. Proposed/Classification: None. Use Pattern: Foliarly applied to orange trees to accelerate maturation.

3. File Symbol: 707-ETE. Applicant: Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. Product Name: Zoxium 80W Fungicide. Active Ingredient: 3,5-(Dichloro-*N*-(3-chloro-1-ethyl-methyl-2-oxopropyl-4-methylbenzamide at 80%. Proposed/Classification: None. Use Pattern: Control of downy mildew on grapes and late blight on potatoes.

4. File Symbol: 707-ETU. Applicant: Rohm and Haas Company. Product Name: Gavel 75DF Fungicide. Active Ingredient: 3,5-Dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide at 66.7%. Proposed/Classification: None. Use Pattern: Control of downy mildew on grapes and early and late blight on potatoes.

5. File Symbol: 707-ETG. Applicant: Rohm and Haas Company. Product Name: Zoxium 80 WSP Fungicide. Active Ingredient: 3,5-Dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl-4-methylbenzamide at 80%. Proposed/Classification: None. Use Pattern: Control of downy mildew on grapes and late blight on potatoes.

6. File Symbol: 707-ETR. Applicant: Rohm and Haas Company. Product Name: RH-117281 Technical Agricultural Fungicide. Active Ingredient: 3,5-Dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl-4-methylbenzamide at 95%. Proposed/Classification: None. Use Pattern: Control of downy mildew on grapes and late blight on potatoes. For formulation use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 6, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99-32870 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00627; FRL-6390-9]

Pesticides; Availability of Registration Division's Fiscal Year 2000 Work Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Prevention, Pesticides and Toxic Substances, Office of Pesticide Programs, Registration Division (RD) is announcing the availability of its interim Fiscal Year 2000 work plan. This work plan as well as the FY1999 work plan can be found at <http://www.epa.gov/opprd001/workplan>. Because the Office of Pesticide Programs' FY2000 Operating Plan has not been finalized, this work plan is only interim in nature. Once the Office's plan is finalized, RD will publish a second notice of availability making public the posting of our final FY2000 work plan. With the publication of each year's work plan the Registration Division intends to continue to improve the transparency of the registration process of new active ingredients and/or new tolerance petitions.

DATES: Comments, identified by docket control number OPP-00627, must be received on or before February 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00627 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Steve Robbins, Registration Division (7505 C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-6439; fax number: (703) 305-6920; e-mail address: robbins.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me? quit

This action is directed to the public in general. This action may, however, be of interest to any one who has interest in chemicals that are registered by the Registration Division in the Office of Pesticide Programs in the Environmental Protection Agency's Office of the Assistant Administrator for Prevention, Pesticides, and Toxic Substances. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. To access RD's FY2000 work plan, go directly to www.epa.gov/opprd001/workplan.

2. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

The Agency has established an official record for this action under docket control number OPP-00627. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information

and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00627 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-00627. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be

submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Office of Prevention, Pesticides and Toxic Substances, Office of Pesticide Programs, Registration Division (RD) is announcing the availability of its interim Fiscal Year 2000 work plan. This work plan as well as the FY 1999 work plan can be found at <http://www.epa.gov/opprd001/workplan>. Because the Office of Pesticide Programs' FY2000 Operating Plan has not been finalized, this work plan is only interim in nature. Once the Office's plan is finalized, RD will publish a second notice of availability making public the posting of our final FY2000 work plan.

Review of the registration process reveals a diversity of priority needs: there are statutory priorities such as minor use, me-too, and reduced risk actions; registrants frequently submit their top business priorities; USDA submits priorities on the basis of crop/pest combinations; priorities for grower groups are channeled directly to EPA or revealed by trends in Section 18 requests; and priorities for public

interest groups are frequently related to contemporary issues, such as identifying methyl bromide replacement chemicals and alternatives to certain organophosphate pesticides.

This work plan represents RD's attempts at balancing these numerous priorities. In no way, however will RD neglect the many other action (e.g., label amendments, me-toos and emergency exemption) requests that are currently pending or will be submitted to the Agency during FY2000. The Agency has constructed this work plan to include some flexibility to respond to emerging public health or environmental issues. While forecasting such issues can be difficult, the Agency is committed to working with all affected parties to address their needs on an expeditious basis. Any submission which creates a modification to the schedule will, of course, require the appropriate justification and scientific data which will allow the Agency to make a sound, health-based decision. Such adjustments, however, may result in the need to modify this work plan during the fiscal year.

With the publication of each year's work plan the Registration Division intends to continue to improve the transparency of the registration process of new active ingredients and/or new tolerance petitions.

List of Subjects

Environmental protection, Pests and pesticides.

Dated: October 29, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99-32873 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-899; FRL-6391-1]

E.I. du Pont de Nemours and Company; Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF-899, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION."

To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-899 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-5697; and e-mail address:

tompkins.james@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 poten-tially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from

the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PF-904. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-904 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF-899. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petition

The petitioner summary of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. PP 3F4268

EPA has received a pesticide petition (PP 3F4268) from E.I. de Nemours and Company (DuPont), DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880-0038 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing permanent tolerances for the combined residues of quizalofop-p-ester (ethyl (R)-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate) and its acid metabolite quizalofop-p [R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on the raw agricultural

commodities foliage of legumes vegetables (except soybeans) at 3.0 parts per million (ppm); legume vegetables (succulent or dried) group at 0.25 ppm; beet, sugar, molasses at 0.2 ppm; beet, sugar, root at 0.1 ppm, and beet, sugar, top at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The registrant has provided plant metabolism studies for soybeans, cotton, tomatoes, potatoes, and sugar beets. These studies have been previously reviewed in PP 3F4268.

In summary, quizalofop-p ethyl ester is metabolized by cleavage at three sites as follows:

- i. Primary pathway is hydrolysis of the ethyl ester linkage to form the quizalofop-p acid, then;
- ii. Cleavage of the enol ether linkage in the acid, between the phenyl and quinoxaliny rings, to form phenols, and
- iii. Cleavage of the ether between the isopropanoic group and the phenyl ring to form a phenol.

The plant metabolism data show that quizalofop-p ethyl ester does not translocate, but is rapidly hydrolyzed to the corresponding acid; then the phenols conjugate with the plant sugars. Metabolism studies in soybeans using the racemic mixture quizalofop ethyl ester and the resolved D+ isomer show nearly identical pathways.

The nature of the quizalofop-p ethyl ester residue in cottonseed, potatoes, tomatoes, soybeans, and sugar beets is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester.

2. *Analytical method.* An adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. Any secondary residues expected to occur in eggs, milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry from this use will be covered by existing tolerances.

Adequately validated residue analytical method, DuPont 2829 (Xenos Method XAM-38A, Determination of Quizalofop-P-Ethyl and its Metabolites in Canola, Flax, Lentils, Peas, Dry and Succulent Beans and Sugar Beet Tops and Roots, by Liquid Chromatography). This method determines residues of quizalofop-p-ethyl and its metabolites in oilseed and other crops. It measures levels of quizalofop-p-ethyl, quizalofop-p acid and conjugates as total residues in the form of 2-methoxy-6-chloroquinoxaline (MeCHQ). Quantitation was carried out using normal phase high pressure liquid chromatography with fluorescence detection. The residues were expressed as equivalents of quizalofop-p-ethyl.

A successful tolerance method validation (TMV) on DuPont 2829 (Xenos Method XAM-38A) is not a prerequisite for a tolerance on beans (succulent and dried) as well as sugar beets and sugar beet molasses as there is already an enforcement method in PAM II.

3. Magnitude of residues —i.

Magnitude of the residue in plants. The studies submitted include field trials in three regions for succulent beans, six additional sites for dry beans in four regions and five additional sites in three regions for sugar beets.

In conjunction with previously submitted data, an adequate amount of geographically representative crop field trial residue data were presented which show that the proposed tolerances should not be exceeded when quizalofop ethyl is formulated into Assure® and used as directed.

ii. *Magnitude of the residue in animals.* A ruminant feeding study has been submitted and reviewed by EPA. In summary, three groups of three lactating dairy cows (plus a control group) were fed 0.1, 0.5, and 5.0 ppm quizalofop ethyl ester (encapsulated) for 28 consecutive days. Milk was collected daily and a sub-sample was divided into skim milk and cream. Two cows were sacrificed after 28 days with samples of fat, skeletal muscle, liver, and kidney being collected and analyzed. The remaining cow in each test group was fed a regular diet without encapsulated quizalofop ethyl ester for 7 additional days before sacrifice. Whole milk, skim milk, and cream from the control, and the 0.1 and 0.5 ppm dose groups showed no quizalofop to < 0.02 ppm (0.05 ppm in cream). From the 5 ppm dose, quizalofop residues ranged from 0.01 to 0.02 ppm in whole, and when these samples were separated into cream and skim milk, the quizalofop partitioned into the cream with residues plateauing at 0.26 to 0.31 ppm. No

quizalofop to < 0.02 ppm was detected in skeletal muscle, and to < 0.05 ppm was detected in any liver or fat sample from any of the three doses. Quizalofop was detected in one kidney sample as 0.05 ppm from the 5 ppm dose.

From the feed items in this petition, all of the feed items in cattle diets can be treated with quizalofop ethyl ester. A theoretical beef cattle diet consisting of canola meal, bean and pea forage, pea hay, and sugar beet tops which none-the-less maximizes the potential quizalofop exposure of 2.1 ppm. A theoretical dairy cattle diet consisting of pea and bean forage would none-the-less maximize the potential quizalofop exposure at 2.4 ppm. Substitutions of other feed items and varying their percentages in the diets would give a lower dietary quizalofop burden.

The results of the quizalofop ethyl ester bovine feeding study show that finite residues will actually occur in milk and tissues from the feeding of quizalofop ethyl ester treated RACS or their processed feed items when Assure® II is used as directed. The established quizalofop and quizalofop ethyl ester tolerance in milk, and in fat, meat, and meat by-products of cattle, goats, hogs, horse, and sheep are adequate and need not be increased from these additional uses.

A poultry feeding study has been submitted and reviewed. In summary, 3 groups of 20 hens (plus 1 control group) were dosed with encapsulated quizalofop ethyl ester at 0.1, 0.5, and 5 ppm daily for 28 consecutive days. Eggs were collected daily, and after 28 days 3/4 of the hens in each test group were sacrificed, and samples of fat, liver, kidney, breast and thigh muscles were collected and analyzed. Tissues from each test group were pooled prior to analysis. The remaining five hens were fed a regular poultry diet without quizalofop ethyl ester for an additional 7 days before sacrifice. No quizalofop residues were detected in the liver to < 0.05 ppm, and in breast and thigh muscles to < 0.02 ppm for any dose administered. From the 5 ppm dose, one kidney sample showed 0.09 ppm quizalofop, two fat samples were 0.05 and 0.06 ppm quizalofop, and one egg sample was 0.02 ppm quizalofop.

The results of the quizalofop ethyl ester poultry feeding study show that while it is not possible to establish with certainty whether finite residues will actually occur in eggs and tissues from the feeding of quizalofop ethyl ester treated RACS or their processed feed items when Assure® II is used as directed, there is a reasonable expectation for such residues to occur. The established tolerance of quizalofop

and quizalofop ethyl ester in eggs, and in fat, meat, and meat by-products of poultry are adequate and need not be changed from these additional uses.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies were conducted and the overall results placed technical grade quizalofop ethyl in toxicity Category III. These include the following studies in Category III: acute oral toxicity (LD₅₀s 1,480 and 1,670 for female and male rats, respectively) and eye irritation (mild effects; reversible within 4 days). Dermal toxicity (LD₅₀s > 5,000 mg/kg; rabbit), inhalation toxicity (LC₅₀ > 5.8 mg/L; rat) and dermal irritation were classified within Category IV. Technical quizalofop ethyl was not a dermal sensitizer.

2. *Genotoxicity.* Technical quizalofop ethyl was negative in the following genotoxicity tests: bacterial gene mutation assays with *E. coli* and *S. typhimurium*; gene mutation assays in Chinese hamster ovary (CHO) cells; *in vitro* DNA damage assays with *B. subtilis* and in rat hepatocytes; and an *in vitro* chromosomal aberration test in CHO cells.

3. *Reproductive and developmental toxicity.* Studies supporting the registration include: A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 mg/kg/day highest dose tested (HDT). The maternal toxicity no observed adverse effect level (NOAEL) was 30 mg/kg/day and a developmental toxicity NOAEL was greater than 300 mg/kg/day (HDT). The maternal NOAEL was based on reduced food consumption and increased liver weights.

A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT). The maternal toxicity NOAEL was 20 mg/kg/day based on decreases in food consumption and body weight gain at 60 mg/kg/day (HDT).

A 2-generation reproduction study in rats fed diets containing 0, 25, 100, or 400 ppm (or approximately 1, 1.25, 5, and 20 mg/kg/day, respectively) with a developmental (systemic effects) NOAEL of 1.25 mg/kg/day for F_{2B} weanlings based on increased liver weights and increased incidence of eosinophilic changes in the livers at 5.0 mg/kg/day. These liver changes were considered to be physiological or adaptive changes to compound exposure among weanlings. When access to the mother's feed is available, it is a common observation that young rats will begin consuming chow prior to

complete weaning at 21 days of age. Consumption could not be quantified; therefore, the maternal consumption was assumed as the NOAEL (if normalized on a body weight basis, exposures to the weanling rats were likely higher). The parental NOAEL of 5.0 mg/kg/day was based on decreased body weight and preweaning weight gain in males at 20 mg/kg/day (HDT).

4. *Subchronic toxicity.* A 90-day study was conducted in rats fed diets containing 0, 40, 128, 1,280 ppm (or approximately 0, 2, 6.4, and 64 mg/kg/day, respectively). The NOAEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg.

A 90-day feeding study in mice was conducted with diets that contained 0, 100, 316, or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOAEL was < 15 mg/kg/day lowest dose tested (LDT) based on increased liver weights and reversible histopathological effects in the liver at the LDT.

A 6-month feeding study in dogs was conducted with diets that contained 0, 25, 100, or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOAEL was 2.5 mg/kg/day based on increased blood urea nitrogen at 10 mg/kg/day.

A 21-day dermal study was conducted in rabbits at doses of 0, 125, 500, or 2,000 mg/kg/day. The NOAEL was 2,000 mg/kg/day (HDT).

5. *Chronic toxicity.* An 18-month carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 2, 10, 80, or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day, the HDT, which exceeded the maximum tolerated dose (MTD). (See the discussion by the EPA HED Carcinogenicity Peer Review Committee below.)

A 2-year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100 or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT). The systemic NOAEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobular enlargement of the liver at 3.7 mg/kg/day.

A 1-year feeding study was conducted in dogs fed diets containing 0, 25, 100, or 400 ppm (or

approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOAEL was 10 mg/kg/day (HDT).

The Carcinogenicity Peer Review Committee (CPRC) of EPA HED has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short-term toxicity studies, mutagenicity studies, and structure activity relationships. The CPRC concluded, after three meetings and an evaluation by the OPP Science Advisory Panel (SAP), that the classification should be a Category D (not classifiable as to human cancer potential). No new cancer studies were required.

The first CPRC review tentatively concluded that quizalofop should be classified as a Category B2 (probable human carcinogen). That classification was based on liver tumors in female rats, ovarian tumors in female mice, and liver tumors in male mice. This classification was downgraded to a Category C (possible human carcinogen) at a second CPRC review. The change in classification was due to a reexamination of the liver tumors in female rats and ovarian tumors in female mice. The first peer review had found a statistically significant positive trend for liver carcinomas in female rats. Subsequent to this conclusion the tumor data was reevaluated, and the reevaluation showed a reduced number of carcinomas. Although there remained a statistically significant positive trend for carcinomas in the study, the CPRC concluded that the carcinomas were not biologically significant given the few carcinomas identified (one at the mid-dose and two at the high dose). Noting that this level of carcinomas was within historical levels, the CPRC concluded that administration of quizalofop did not appear to be associated with the liver carcinomas.

As to the ovarian tumors in female mice, the CPRC had first attached importance to the fact that these tumors were statistically significant at the high dose as compared to historical control values although statistically significant when compared to concurrent controls. However, review of further historical control data showed that the level of ovarian tumors in the quizalofop study was similar to the background rate in several other studies. Given this information and that the quizalofop study showed no hyperplasia of the ovary, no signs of endocrine activity related to ovarian function, and no dose response relationship, the CPRC concluded that the ovarian tumors were probably not compound-related.

The findings of the second CPRC review were presented to EPA's SAP. The SAP concurred with the CPRC

conclusion that the liver tumors in female rats and the ovary tumors in female mice showed no evidence of carcinogenicity. However, the SAP disagreed with CPRC's classification of quizalofop as a Category C based on the liver tumors in male mice. The SAP concluded that the mouse liver tumors did not support such a classification because the tumors occurred at a dose above the MTD and because they were not statistically significant if a "p" value of less than 0.05. The SAP believed that such greater statistical rigor was appropriate for variable tumor endpoints such as male mouse liver tumors.

Following the SAP review, the CPRC changed the classification for quizalofop to Category D. The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls and the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls; while the high dose control group was at the upper end of previous historical control-groups.

EPA has found the evidence on the carcinogenicity of quizalofop-p ethyl ester in animals to be equivocal and therefore concludes that quizalofop-p ethyl ester does not induce cancer in animals within the meaning of the Delaney clause. Important to this conclusion was the following evidence:

- i. The only statistically significant tumor response that appears compound-related was seen at a single dose in a single sex in a single species.
- ii. The response was only marginally statistically significant.
- iii. The response was only significant when benign and malignant tumors were combined.
- iv. The tumors were in the male mouse liver.
- v. The tumors were within historical controls.
- vi. The mutagenicity studies were negative.

Although in some circumstances a finding of animal carcinogenicity would be made despite any one, or even several, of the six factors noted, the combination of all of these factors here cast sufficient doubt on the reproducibility of the response in the high dose male mouse that EPA concludes the evidence on carcinogenicity is equivocal.

6. *Animal metabolism.* The metabolism of quizalofop ethyl in animals (rat, goat and poultry) is well understood. ^{14}C -phenyl and ^{14}C -quinoxaline quizalofop ethyl ester metabolism studies have been conducted in each species. There are similarities among these species with respect to metabolism. Quizalofop ethyl is rapidly and extensively metabolized and rapidly excreted by rats. The principal metabolites were the quizalofop-p acid and two dechlorinated hydroxylated forms of the acid. Tissue residues were minimal and there was no evidence of accumulation of quizalofop ethyl or its metabolites in the rat.

The primary pathway in ruminants is hydrolysis of the ethyl ester to form the quizalofop-p methyl ester. In poultry, the primary metabolic pathway is also the hydrolysis of the ethyl ester to form the quizalofop-p acid, then the methyl esterification to form the quizalofop methyl ester becomes a minor pathway.

The nature of the quizalofop ethyl ester residue in livestock is adequately understood. The residues of concern are quizalofop ethyl, quizalofop methyl, and quizalofop, all expressed as quizalofop ethyl.

7. *Metabolite toxicology.* There is no evidence that the metabolites of quizalofop ethyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of quizalofop p-ethyl have been conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that quizalofop p-ethyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* An analysis of chronic dietary risk was conducted to determine the total exposure from current and proposed final tolerances for quizalofop-p-ethyl. A Reference Dose (RfD) of 0.009 mg/kg/day was used in the analyses.

i. *Food.* The first step in the analysis was to run the TAS (Tolerance Assessment System) program using current tolerances with an RfD of 0.009 mg/kg/day. The Theoretical Maximum Residue Concentration (TMRC), based on the current tolerances, was 0.000318

mg/kg/day for the U.S. population (48 contiguous States) and 0.000814 mg/kg/day for the population subgroup with the highest estimated exposure (children 1–6 yrs. old). For the U.S. population subgroup this represents approximately 3.5% of the RfD while for the most exposed population this represents approximately 9.0% of the RfD. Based on the risk estimates arrived at in this analysis, chronic dietary risk from the current uses of Assure® is minimal.

ii. *Drinking water.* Another potential source of dietary exposure to pesticides is residues in drinking water. There is no established Maximum Concentration Level (MCL) for quizalofop ethyl in water. Based on the low use rate of quizalofop ethyl, and a use pattern that is not widespread (since the current and proposed uses are on minor crops), DuPont does not anticipate residues of quizalofop in drinking water and exposure from this route is unlikely.

2. *Non-dietary exposure.* Quizalofop ethyl is not registered for any use that could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no evidence to indicate or suggest that quizalofop p-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the most sensitive species chronic NOAEL of 0.9 mg/kg and a RfD of 0.009 mg/kg/day, the existing tolerances and proposed uses of quizalofop ethyl are expected to utilize 3.5% of the RfD for the general U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to quizalofop ethyl resulting from current and proposed agricultural uses.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of quizalofop ethyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. There were no developmental effects observed in the absence of maternal toxicity in the rat and rabbit developmental studies. Minimal adaptive or physiological effects were

observed in livers of weanlings in the 2-generation rat reproduction study described earlier. However, this effect was only observed at a dose that far exceeds any expected human exposure. Further, the NOAEL of 0.9 mg/kg/day from the 2-year rat study with quizalofop ethyl which was used to calculate the RfD (discussed above), is already lower than any of the NOAELs defined in the developmental and reproductive toxicity studies with quizalofop ethyl.

As indicated above, infants and children have a low potential for quizalofop ethyl exposure. The toxicology profile of quizalofop ethyl demonstrates low mammalian toxicity. Because there was no evidence that offspring were uniquely susceptible to the toxic effects of quizalofop ethyl, an additional 10-fold uncertainty factor should not be required to protect infants and children. Therefore, the RfD of 0.009 mg/kg/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to quizalofop ethyl.

F. International Tolerances

Since there are no Mexican or Codex MRLs/tolerances, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue type limit at 0.1 ppm at the USA use pattern, which had findings of real residues above 0.1 ppm.

2. PP 4F4278

EPA has received a pesticide petition (PP 4F4278) from E.I. DuPont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880-0038 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of triflurosulfuron methyl: Methyl 2 [[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate in or on the raw agricultural commodity [beet, sugar, root and beet, sugar, top at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism of triflurosulfuron methyl in sugar beets was

studied using triflurosulfuron methyl labeled separately with carbon-14 in the triazine ring and in the ester carbonyl group. Triflurosulfuron methyl was extensively metabolized by sugar beets treated at the 4-8-leaf growth stage with 100 grams active ingredient per half acre (g ai/ha). Triflurosulfuron methyl levels dropped rapidly from 3 ppm in the sample taken on the day of the treatment to < 0.01 ppm 14 days after treatment. The initial step in the metabolic breakdown of triflurosulfuron methyl involves cleavage of the sulfonylurea bridge, which is followed by further metabolism of the initial degradates. The levels of principal radiolabeled metabolites found in plant samples (*N*-desmethyl triazine amine, *N,N*-bis-desmethyl triazine amine, acid sulfonamide, and its glucose conjugate) dropped to < 0.01 ppm at maturity. No significant (> 0.01 ppm) residues of triflurosulfuron methyl or its radiolabeled metabolites were detected in mature roots or foliage.

2. *Analytical method.* A method for quantitation of triflurosulfuron methyl in sugar beets uses a high performance liquid chromatograph (HPLC) with eluent and column-switching and ultraviolet (UV) detection at 232 nm for the determination of triflurosulfuron methyl residues in sugar beet foliage and roots. Sample clean-up is achieved through reversed phase chromatography using eluent-switching. Column-switching provides the resolution required for quantitation of triflurosulfuron methyl. The method allows for quantitation of triflurosulfuron methyl in sugar beet foliage and roots at levels as low as 0.02 ppm based on a 10-gram sample. Triflurosulfuron methyl is detected at levels as low as 0.005 ppm. Triflurosulfuron methyl recoveries averaged 98% for forage and 101% for roots.

3. *Magnitude of residues.* Triflurosulfuron methyl degraded rapidly in sugar beets to produce the triazine amine which undergoes consecutive demethylations to yield *N*-desmethyl triazine amine and *N,N*-bis-desmethyl triazine amine. Residues of triflurosulfuron methyl at harvest were below the detection limits in sugar beet roots and foliage at all application levels. There is no reasonable expectation of residues of triflurosulfuron methyl occurring in sugar beet roots or foliage at harvest. The data supports a preharvest interval of 30 days.

Residues of the metabolite triazine amine and *N*-desmethyl triazine amine were at or below the detection limit of 0.02 ppm in sugar beet roots and foliage at all application levels at all test sites. Residues of *N,N*-bis-desmethyl triazine

amine were below the detection limit of 0.02 ppm in roots at all application levels at all locations; however, residues in foliage were detected in 7 out of 41 samples at up to 0.05 ppm in samples that were treated at exaggerated rates (70 g ai/ha/application). At the expected maximum seasonal use rate of 60 g ai/ha, residues of *N,N*-bis-desmethyl triazine amine are not expected above the 0.02 ppm detection limit.

The potential of triflurosulfuron methyl residues occurring during processing of sugar beet roots treated with triflurosulfuron methyl was also determined. Samples of sugar beet roots, harvested at maturity from plots treated with triflurosulfuron methyl at a rate of 420 g ai/ha, were processed. Triflurosulfuron methyl was below the 0.01 ppm detection limit in sugar beet root and all the processed fractions (sugar, molasses, and dried pulp). The lack of concentration of triflurosulfuron methyl even at the exaggerated dose used in this study confirms that at the proposed use rate of triflurosulfuron methyl, there is no reasonable expectation of residues in sugar beet roots or processed fractions.

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, technical triflurosulfuron methyl is in acute toxicity Category IV for oral and inhalation routes of exposure, and for dermal irritation. Triflurosulfuron methyl is in acute toxicity Category III for dermal toxicity and for eye irritation.

Acute oral toxicity in rats	LD ₅₀ > 5,000 mg/kg
Acute dermal toxicity in rabbits	LD ₅₀ > 2,000 mg/kg
Acute inhalation toxicity in rats	LC ₅₀ > 5.1 mg/L
Primary eye irritation in rabbits	Non-irritant
Primary dermal irritation in rabbits	Non-irritant
Dermal sensitization in guinea pigs	Non-sensitizer
Acute Neurotoxicity	(NOAEL) = 2,000 mg/kg/day highest dose tested (HDT)

2. *Genotoxicity.* Mutagenicity data technical triflurosulfuron methyl include a reverse mutation assay (Ames Test) which was negative at concentrations up to 1,000 µg/plate, the highest level tested; a *Salmonella typhimurium* plate incorporation assay which was negative at concentrations up to 3,000 µg/plate, the highest level tested; a Chinese hamster ovary/hypoxanthine-guanine (CHO/HPRT) assay which was negative

at concentrations up to 2,000 mg/kg/day, the highest level tested. A chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations greater than or equal to 1,500 µg/mL. A second chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations of 2,000 µg/mL. Results in the absence of metabolic activation were inconclusive for both chromosomal aberration studies. The mouse bone marrow micronucleus test was negative at doses up to 5,000 mg/kg, the highest dose level tested. In three *Salmonella typhimurium* plate incorporation assays, metabolites of triflurosulfuron methyl were negative up to 5,000 µg/plate, the highest level tested.

3. *Reproductive and developmental toxicity.* In a 2-generation rat reproduction study rats were fed dosages of 0, 0.588, 5.81, 44.0 and 89.5 mg/kg/day (males) and 0, 0.764, 7.75, 58.0, and 115 mg/kg/day (females) with a reproductive toxicity NOAEL equal to or greater than 89.5 and 115 mg/kg/day for males and females, respectively, based on the absence of reproductive effects in rats at the highest dose level. The NOAEL for systemic toxicity was 5.81 and 7.75 for males and females, respectively based on decreased body weight/body weight gain and food efficiency in males and females, and decreased weights of offspring from the F₀ generation on days 14 and 21 postpartum at 44.0 and 58.0 mg/kg/day in males and females, respectively.

Technical triflurosulfuron methyl was evaluated for developmental toxicity potential in rats and rabbits. Rats were fed dosages of 0, 30, 120, 350, and 1,000 mg/kg/day with a developmental NOAEL equal to or greater than 1,000 mg/kg/day (HDT) and a maternal toxicity NOAEL of 120 mg/kg/day with a lowest observed adverse effect level (LOAEL) of 350 mg/kg/day based on reduced body weight gain in the 350 and 1,000 mg/kg/day animals, reduced food consumption in the 1,000 mg/kg/day animals and lower food efficiency in the 350 and 1,000 mg/kg/day.

Rabbits were fed dosages of 0, 15, 90, 270, and 800 mg/kg/day with a NOAEL for developmental toxicity of 90 mg/kg/day with a LOAEL of 270 mg/kg/day based on the increase in abortions and a decrease in mean fetal body weight. The NOAEL for maternal toxicity is 90 mg/kg/day with a LOAEL of 270 mg/kg/day based on the maternal death and abortions, and increase in clinical signs noted in the mid-high and high dose groups, decreased food efficiency and

increased post mortem finding describing gastrointestinal effects.

4. *Subchronic toxicity.* The subchronic toxicity of technical triflusaluron methyl was evaluated in rabbits, rats, and dogs. In a 21-day dermal toxicity study with rabbits fed dosages of 50, 300, or 1,000 mg/kg/day, the systemic toxicity NOAEL was equal to or greater than 1,000 mg/kg/day for males and females. The dermal toxicity NOAEL was equal to or greater than 1,000 mg/kg/day for males and females.

Two 90-day studies were conducted in the rat. In one study, rats were fed dosages of 6.2, 127, 646, or 965 mg/kg/day (males) or 7.54, 150, 774, or 1,070 mg/kg/day (females). Triflusaluron methyl exhibited subchronic toxicity at dietary concentrations of 2,000 ppm (127 and 150 mg/kg/day for males and females) or greater in the form of decreased body weights, decreased body weight gains, decreased food efficiency, increased mean relative liver weights, and regenerative anemia. The NOAEL was 6.2 mg/kg/day (males) and 7.54 mg/kg/day (females). In another study, rats were fed dosages of 6.56, 133, 658, or 1,036 mg/kg/day (males) or 7.71, 153, 783, or 1,124 mg/kg/day (females). Triflusaluron methyl showed subchronic toxicity at dietary concentrations of 2,000 ppm (133 and 153 mg/kg/day for males and females) or greater in the form of decreased body weight, decreased body weight gain, decreased food efficiency, and increased mean liver weights. The NOAEL was 6.56 mg/kg/day (males) and 7.71 mg/kg/day (females).

A subchronic neurotoxicity study with rats fed dosages of 0, 6.1, 46.1, 92.7, or 186.2 mg/kg/day (males) or 7.1, 51.6, 104.1, or 205.2 mg/kg/day (females), resulted in a NOAEL of 92.7 (males) and 7.1 mg/kg/day (females). This was based on decreased body weight/body weight gain at the lowest observed effect level of 186.2 mg/kg/day (males) and 51.6 mg/kg/day (females).

In another 90-day subchronic study, dogs were fed dosages of 3.87, 146.1, or 267.6 mg/kg/day (males) or 3.72, 159.9, or 250.7 mg/kg/day (females). Triflusaluron methyl was found to be hepatotoxic at 4,000 ppm (146.1 mg/kg/day males and 159.9 mg/kg/day (females), and greater (elevated hepatic enzyme levels and postmortem evidence, including elevation in liver weights and microscopic evidence of bile stasis). Other microscopic findings considered to be treatment related were testicular atrophy and decreased testicular weights and hypercellularity of the sternal and femoral bone marrow, with a corresponding increase in reticulocyte and leukocyte counts seen

in the high-dose males and females. Based on the microscopic findings in the liver and testes of the 4,000 ppm and greater treated animals, the NOAEL was 3.87 mg/kg/day (males) and 3.72 mg/kg/day (females).

5. *Chronic toxicity.* The chronic toxicity of technical triflusaluron methyl was evaluated in dogs, mice, and rats. In a 1-year oral toxicity study with dogs fed dosages of 1.0, 26.9, 111.6 mg/kg/day (males) and 1.2, 27.7, and 95.5 mg/kg/day (females), the NOAEL for males was 26.9 mg/kg/day; this was based on increases in alkaline phosphatase, liver weight, and incidence of minimal centrilobular hypertrophy at the LOAEL of 111.6. For females, the NOAEL was 27.7 mg/kg/day; this was based on increased liver weight and increased incidence of minimal centrilobular hepatocellular hypertrophy at the LOAEL of 95.5 mg/kg/day.

In an 18-month carcinogenicity study, mice were fed dosages of 1.37, 20.9, 349, and 1,024 mg/kg/day (males) and 1.86, 27.7, 488, and 1,360 mg/kg/day (females). Male mice had statistically significant positive trends for hepatocellular adenomas and for combined adenoma/carcinoma (driven entirely by adenomas) at 349 and 1,024 mg/kg/day. These increases were not significant in pair-wise comparisons with control groups and were determined not to be carcinogenic effects by the Carcinogenicity Peer Review Committee (CPRC). The NOAEL was based on body and organ weight effects and was 20.9 mg/kg/day (males) and 27.7 mg/kg/day (females).

In the combined chronic toxicity/carcinogenicity study rats were fed dosages of 0, 0.406, 4.06, 30.6 and 64.5 mg/kg/day (males) and 0, 0.546, 5.47, 41.5, and 87.7 mg/kg/day (females). Male rats have a significant increasing trend and significant differences in pair-wise comparisons of the 30.6 and 64.5 mg/kg/day dose groups with controls for interstitial cell adenomas. This effect was determined to be a carcinogenic effect by the CPRC. No carcinogenic effects were noted in females up to and including 87.7 mg/kg/day (highest dose tested). The LOAEL for chronic toxicity is 30.6 mg/kg/day (males) and 41.5 (females) based on decreased body weight and body weight gain, alternations in the hematology parameters (males predominately) and an increased incidence of interstitial cell hyperplasia in males. The NOAEL for chronic toxicity is 4.06 mg/kg/day (males) and 5.47 mg/kg/day (females). This value is adjusted to the lowest concentration level of the chemical at this dosage (60%), resulting in NOAELs

of 2.44 mg/kg/day (males) and 3.28 mg/kg/day (females).

6. *Animal metabolism.* For triflusaluron methyl, in both the rat and the goat, a majority of the administered dose was excreted in feces and urine. The biotransformation pathway for triflusaluron methyl in the rat and the goat was similar. The major pathway was demethylation of the dimethylamino substituent on the triazine ring. The intermediate hydroxylated metabolite was also present. The secondary biotransformation pathway was cleavage of the sulfonylurea bridge to form methyl saccharin, *N*-desmethyl triazine amine and *N,N*-bis-desmethyl triazine amine. In the lactating goat, triflusaluron methyl was not excreted to any appreciable level in the milk. Levels of the ester carbonyl-derived residues were generally below the limit of reliable measurement ($< 0.0006 \mu\text{g}$ equivalent triflusaluron methyl/mL) and triazine-derived residues reached a daily level of about 0.001 ppm.

Therefore, the metabolic pathways in rats and lactating goats were very similar. There were no significant plant metabolites of triflusaluron methyl that were not found in the rat or goat metabolism studies. In the unlikely event that triflusaluron methyl were to enter the livestock diet, triflusaluron methyl and its metabolites would be rapidly excreted and would not accumulate in meat, meat by-products, or milk.

7. *Metabolite toxicology.* The approximate lethal dose (ALD) of the degradation product, *N,N*-bis-desmethyl triazine amine, in male rats was 450 mg/kg/day. Rats were fed dose rates of 200, 300, 450, 670, 1,000, and 2,300 mg/kg of triflusaluron methyl. Deaths occurred up to test day 7 in rats dosed at 450 mg/kg body weight and above. Clinical signs of toxicity were observed in lethally and nonlethally dosed rats. In an *in vitro* gene mutation study, *N,N*-bis-desmethyl triazine amine was not mutagenic in *Salmonella typhimurium* up to a dose of 5,000 μg /plate.

For the degradation product, triazine amine, the ALD in male rats was 670 mg/kg/day. The test substance dose was 200, 300, 450, 670, 1,000, or 2,300 mg/kg. Deaths occurred up to test day 4 in rats dosed at 670 mg/kg and above. Clinical signs of toxicity were observed in lethally and nonlethally dosed animals. In an *in vitro* gene mutation study, triazine amine was not mutagenic in *Salmonella typhimurium* up to a dose of 5,000 μg /plate.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of

triflurosulfuron methyl have been conducted. However, the standard battery of required toxicology studies have been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that triflurosulfuron methyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. The acute dietary exposure was estimated for triflurosulfuron methyl using the Dietary Exposure Evaluation Model (version 6.73) for a number of subpopulation groups. An acute Tier I dietary analysis was based upon the residues for sugar beet (root) at 0.05 ppm and sugar beet (top) at 0.05 ppm. The acute reference dose (aRfD) is 0.9 mg/kg bw/day (based upon a NOAEL of 90 mg/kg bw/day and a 100-fold safety factor). For triflurosulfuron methyl, the predicated exposure for the U.S. population was 0.00460 mg/kg bw/day (0.05 % of the aRfD) at the 95th percentile. The subpopulation with the highest predicted exposure was the non-nursing infants subgroup with an exposure of 0.00166 mg/kg bw/day (0.19% of the aRfD) at the 95th percentile. Because the predicted exposures, expressed as percentages of the aRfD, are well below 100%, there is reasonable certainty that no acute effects would result from dietary exposure to triflurosulfuron methyl.

The chronic dietary exposure was estimated for triflurosulfuron methyl using the Dietary Exposure Evaluation Model (version 6.74) for a number of subpopulation groups. A chronic Tier I dietary analysis was based upon residues for sugar beet (root) at 0.05 ppm and sugar beet (top) at 0.05 ppm. The chronic RfD is 0.024 mg/kg bw/day (based upon a NOAEL of 2.44 mg/kg bw/day and a safety factor of 100). The estimated exposure for the U.S. population was 0.000146 mg/kg bw/day (0.6% of the RfD). For the subpopulation with the highest level of exposure (non-nursing infants), the exposure was 0.000433 mg/kg bw/day (>1.8% of the chronic reference dose (cRfD)). Because the predicted exposures, expressed as percentages of the cRfD, are well below 100%, there is reasonable certainty that no chronic effects would result from dietary exposure to triflurosulfuron methyl.

Even though very conservative assumptions were made in predicting acute and chronic exposures to

triflurosulfuron methyl, the predicted exposures expressed as percentages of the cRfD and aRfD values were found to be well within the acceptable range.

ii. *Drinking water*. Another potential source of dietary exposure is residues in drinking water. Based on the available environmental studies conducted with triflurosulfuron methyl, DuPont concludes that there is no anticipated exposure to residues of triflurosulfuron methyl in drinking water. In addition, there is no established maximum concentration level (MCL) for residues of triflurosulfuron methyl in drinking water.

2. Non-dietary exposure.

Triflurosulfuron methyl is not registered for any use that could result in non-occupational or non-dietary exposure to the general population.

D. Cumulative Effects

Triflurosulfuron methyl belongs to the sulfonylurea class of crop protection chemicals. Other structurally similar compounds in this class are registered herbicides. However, the herbicidal activity of sulfonylureas is due to the inhibition of acetolactate synthase (ALS), an enzyme found only in plants. This enzyme is part of the biosynthesis pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the relatively low toxicity of sulfonylurea herbicides in animals. There is no reliable information that would indicate or suggest that triflurosulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population*. Based on the completeness and reliability of the toxicology data base and using the conservative assumptions presented earlier, EPA has established a chronic RfD of 0.024 mg/kg/day. This was based on the NOAEL for the 2-year chronic rat study (2.44 mg/kg/day) and a 100-fold safety factor. It has been concluded that the aggregate exposure was 0.6% of the cRfD. Generally, exposures below 100% of the cRfD are of no concern because it represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Thus, there is reasonable certainty that no harm will result from aggregate exposures to triflurosulfuron methyl residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of triflurosulfuron methyl, data from the previously discussed developmental

and multi-generation reproductive toxicity studies were considered.

Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from the prenatal and postnatal exposures to the pesticide. The studies with triflurosulfuron methyl demonstrated no evidence of developmental toxicity at exposures below those causing maternal toxicity. This indicates that developing animals are not more sensitive to the effects of triflurosulfuron methyl administration than adults.

FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for triflurosulfuron methyl relative to prenatal and postnatal effects for children is complete.

In addition, the NOAEL of 2.44 mg/kg/day in the chronic rat study (and upon which the cRfD is based) is much lower than the NOAELs defined in the reproduction and developmental toxicology studies. The sub-population with the highest level of exposure was non-nursing infants, where exposure was < 1.8% of the cRfD. Based on these conservative analyses, there is reasonable certainty that no harm will result to infants and children from aggregate exposures to triflurosulfuron methyl.

F. International Tolerances

There are no Codex Maximum Residue Levels established for triflurosulfuron methyl.

[FR Doc. 99-33159 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-903; FRL-6396-2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain

pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF-903, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-903 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Cat-egories	NAICS	Examples of poten-tially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PF-903. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-903 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF-903. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project Number 4 and BASF Corporation, Agricultural

9E6002 and 7F4881

EPA has received a pesticide petition (9E6002) from the Interregional Research Project Number 4 (IR-4), Center for Minor Crop Pest Management, Technology Center of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390. EPA has also received a pesticide petition (7F4881) from BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709. The petitions propose, pursuant to section

408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerances for residues of pyridaben 2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one in or on the raw agricultural commodities (RAC) cranberries (9E6002), and pistachio (7F4881) at 0.5 and 0.05 and parts per million (ppm). Registration for pyridaben on cranberries would be limited to areas along the eastern coast in the states of MA, NJ, ME, NY, CT, NH, VT, RI, and DE based on the geographical representation of the residue data submitted.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by, BASF Corporation, the registrant, P.O. Box 13528, Research Triangle Park, NC 27709.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in plants is adequately understood. The residue of concern is pyridaben *per se* as specified in 40 CFR 180.494.

2. *Analytical method.* The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (GC/ECD).

3. *Magnitude of residues.* Three cranberry residue trials were conducted in two states. Residues of pyridaben were measured by GC/ECD. The method of detection had a limit of detection of 0.05 ppm. Residues ranged from 0.172 to 0.447. Pistachio use rates will be the same as almond which have already received a tolerance of 0.05 ppm. Also, pending at EPA is a nut crop group tolerance petition including 6 residue trials of pecans showing all residues are below 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity—i. Subpopulation females 13+ years old.* The no observed adverse effect level (NOAEL) is 13 milligrams/kilograms (mg/kg). In a developmental toxicity study, Sprague-Dawley rats (22/group) from Charles River, U.K., received NC-129 Pyridaben, 98.0% active ingredient (a.i.) via gavage at dose levels of 0, 2.5, 5.7, 13.0, or 30.0 mg/kg/day from gestation day 6 through 15, inclusive. Natural mating was used.

Maternal toxicity, observed at 13.0 and 30.0 mg/kg/day, consisted of decreased body weight (bwt)/weight gain and food consumption during the dosing period. Based on these effects, the maternal toxicity lowest observed adverse effect level (LOAEL) is 13.0 mg/kg/day and the maternal toxicity NOAEL is 4.7 mg/kg/day (82% of 5.7 mg/kg/day based on concentration analysis). Developmental toxicity NOAEL is 13.0 mg/kg/day based on observed decreased fetal (bwt) and increased incomplete ossification in selected bones at 30.0 mg/kg/day LOAEL. With the 100 uncertainty factor (UF) (10x for interspecies extrapolation and 10x for intraspecies variability) the chronic population adjusted dose (cPAD) for females 13+ is 0.13 mg/kg/day.

ii. *General population including infants and children.* NOAEL = 50 mg/kg. In an acute neurotoxicity study, CD Rats (10/sex/group) were administered a single oral dose (gavage) of NC-129 in 1% aqueous carboxymethyl cellulose of 0 (vehicle), 50, 100, and 200 mg/kg (a.i. equivalents: 44.3, 79.6, and 190.0 mg/kg for males and 44.5, 99.7, and 190.0 mg/kg bwt for females). The animals were observed for mortality and clinical signs of toxicity for 14 days post-dosing. During the first 5 days, compound-related decreases in bwt gain were noted in mid-dose males (17%) and females (36%) and high-dose males (74%); the high-dose females lost weight (4 g) during the first 4 days of the observation period. Food consumption was low in all treated groups on the day of dosing with severe effects seen in the high-dose males (73% lower than controls). Dose-dependent increases in clinical signs (piloerection, hypoactivity, tremors, and partially closed eyes) were seen in mid-dose males and high-dose males and females. These effects were reversible by observation day 4. Treatment-related findings in the functional observational battery consisted of lower body temperature and reduced motor activity among the high-dose males. No treatment-related gross or microscopic neuropathologic findings were present. The NOAEL for systemic toxicity is 50 mg/kg for both sexes. The LOAEL of 100 mg/kg/day is based on systemic toxicity including clinical signs and decreased food consumption and bwt gain. With the 100 UF the aPAD for the general population is calculated to be 0.5 mg/kg/day.

2. *Subchronic toxicity.* The NOAEL is 100 mg/kg/day. In a 21-day dermal toxicity study, repeated doses of pyridaben were applied topically to approximately 10% of the body surface area of rats at doses of 0, 30, 100, 300, or 1,000 mg/kg/day for 21 days.

Increased squamous cell hyperplasia and/or surface accumulation of desquamated epithelial cells were noted sporadically in the 100, 300, and 1,000 mg/kg/day dose groups. These findings appear to be due to abrasions of the skin when the powdered substance was applied onto the skin, rather than a dose-related effect. No gross dermal irritation effects were noted. Based on the results of the study, the systemic dermal toxicity NOAEL is 100 mg/kg/day. The systemic dermal toxicity LOAEL is determined to be 300 mg/kg/day based on decreased bw in the females. The dermal irritation NOAEL is 100 mg/kg/day. Note: In agreement, a dermal equivalent dose of 94 mg/kg/day is derived if the maternal oral NOAEL of 4.7 mg/kg/day (based on decreased bw gain and food consumption) in the rat oral developmental toxicity study is adjusted by the proposed 5% dermal absorption rate.

3. *Chronic toxicity.* EPA has established the cPAD for pyridaben at 0.005 mg/kg/day. This cPAD is based on a 1 year feeding study in dogs with a NOAEL of 0.5 mg/kg/day and an uncertainty factor of 100 based on decreased bw, emesis, and ptialism.

4. *Animal metabolism.* The nature of the residue in animals is adequately understood. The residue of concern is pyridaben and its metabolites PB-7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2H)-one) and PB-9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3(2H)-one) as specified in 40 CFR 180.494.

C. Aggregate exposure

1. *Dietary exposure—i. Food.* From the acute dietary risk assessment, the calculated exposure yields dietary percentage of the aPAD for females 13+ years old ranging from 29% for females 13+ years old--not pregnant, non-nursing, to 42% for females 13+ years old--pregnant, not nursing. The calculated exposure yields dietary percentage of the aPAD for the remainder of the population ranging from 9% for males 13–19 years old to 77% for nursing infants > 1 year old. This risk estimate should be viewed as highly conservative; refinement using anticipated residue values and percent crop-treated data in conjunction with a Monte Carlo analysis will result in a lower acute dietary exposure estimate. In conducting the chronic dietary risk assessment, the registrant has made somewhat conservative assumptions--that 100% of cranberries will contain pyridaben residues and those residues will be at the level of the tolerance plus

the ratio of organosoluble residues to pyridaben, and all commodities having published and pending pyridaben tolerances will contain pyridaben regulable residues, those residues will be at the anticipated residue level for the commodity, no percent crop treated data were used, and plant anticipated residues will be adjusted using the ratio of organosoluble residues to pyridaben all of which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure estimate.

ii. *Drinking water.* Based on information currently available to EPA, pyridaben is immobile and thus unlikely to leach to ground water. There is no established maximum contaminant level for residues of pyridaben in drinking water. No health advisory levels for pyridaben in drinking water have been established. EPA uses the Generic expected environmental concentration (GENEEC) and SCI-GROW screening models to estimate surface and ground water concentrations for first-tier exposure assessments. As screening models designed to estimate the concentrations found in surface and ground water for use in ecological risk assessment, they provide upper-bound values on the concentrations that might be found in ecologically sensitive environments because of the use of a pesticide. The models predict that as much as 2.3 part per billion (ppb) and 0.0003 ppb of pyridaben may be found in surface and ground water, respectively. The modeling data were compared to the results from modeling equations used to calculate the acute and chronic drinking water levels of concern (DWLOC) for pyridaben in surface and ground water.

a. *Acute exposure and risk.* Acute DWLOCs have been calculated by EPA at the following amounts: U.S. population 14,000 g/L; adult male 20+ years old 15,000 g/L; adult female 13+, pregnant, non-nursing 2,200 g/L infant < 1g/L, nursing 1,100 g/L.

b. *Chronic exposure and risk.* Chronic DWLOCs have been calculated by EPA at the following amounts: U.S. population 140 g/L; adult male, 13–19 years old 160 g/L; adult female 13+, nursing 100 g/L; infant > 1, non-nursing 7 g/L.

2. *Non-dietary exposure.* Pyridaben is currently not registered for use on residential non-food sites.

D. Cumulative Effects

The registrant does not have, at this time, available data to determine whether pyridaben 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, pyridaben does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, the registrant has not assumed that pyridaben has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population—i. Acute risk.* Using the published and pending tolerances, the dietary percentage of the aPAD range from 9% for males 13–19 years old to 77% for nursing infants ≤ 1 year old, with the U.S. population at 18%. This risk estimate should be viewed as highly conservative; refinement using additional anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis will result in a lower acute dietary exposure estimate. The acute dietary exposure does not exceed EPA's level of concern. Pyridaben is immobile and thus, unlikely to leach to ground water. The modeling data for pyridaben in drinking water indicate levels less than EPA's DWLOC for acute exposure. Since a refined acute risk for food only would not exceed EPA's levels of concern for acute dietary exposures and the monitoring and modeling levels in water are less than the acute DWLOC, the registrant does not expect aggregate acute exposure to pyridaben will pose an unacceptable risk to human health.

ii. *Chronic risk.* Using the somewhat conservative anticipated residue contribution (ARC) exposure assumptions described in Unit III.B. of this preamble, EPA has concluded that aggregate exposure to pyridaben from food will utilize 20% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. 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. The residues of pyridaben in drinking water do not exceed EPA's DWLOC. Pyridaben does not have any residential uses. The registrant does not expect the aggregate exposure to exceed 100% of the cPAD.

iii. *Short-term and intermediate-term risk.* Short-term 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 uses. Since there are no residential uses, a short-term or intermediate-term aggregate risk assessment is not required.

iv. *Aggregate cancer risk for U.S. population.* Since pyridaben has been classified as a Group E carcinogen "no evidence of carcinogenicity to humans," a cancer risk assessment is not required.

v. *Endocrine disrupter effects.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inert) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years old from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this a.i and end use products for endocrine disrupter effects.

vi. *Determination of safety.* Based on these risk assessments, the registrant concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridaben residues.

2. *Infants and children—i. Safety factor for infants and children—a. In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyridaben, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat were considered. 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 prenatal and postnatal effects from exposure to pyridaben, effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that

poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and UF (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/UF 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—a. Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 4.7 mg/kg/day. The maternal LOAEL of 13 mg/kg/day was based on decreases in bwt, bwt gain, and food consumption during the dosing period (GD 6–15). The developmental (fetal) NOAEL was 13 mg/kg/day. The developmental LOAEL of 30 mg/kg/day was based on decreased fetal bwt and increased incomplete ossification in selected bones.

b. *Rabbits.* In an oral developmental toxicity study in rabbits, the maternal (systemic) NOAEL was not established. The maternal LOAEL of 1.5 mg/kg/day was based on decreases in bwt gain and food consumption. There was no developmental toxicity observed at any dose tested. Therefore, the developmental (fetal) NOAEL is 15 mg/kg/day at the highest dose tested (HDT).

iii. *Reproductive toxicity study—rats.* In the 2-generation reproductive toxicity study in rats, the prenatal (systemic) NOAEL was 2.3 mg/kg/day. The prenatal (systemic) LOAEL of 7 mg/kg/day was based on decreased bwt, decreased bwt gains, and decreased food efficiency. The reproductive (pup) NOAEL was 7 mg/kg/day and the LOAEL was 7 mg/kg/day at the HDT.

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for pyridaben is complete with respect to current data requirements. There are no prenatal or postnatal toxicity concerns for infants and children based on the results of the rat and rabbit developmental toxicity studies as well as the 2-generation rat reproductive toxicity study. According to the above, reliable data support removing the additional 10x safety factor for protection of infants and children.

v. *Conclusion.* There is a complete toxicity data base for pyridaben and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

a. *Acute risk.* Using the somewhat conservative exposure assumptions described above, the percentage of the

aPAD that will be utilized by dietary exposure to residues of pyridaben for infants and children range from 16% for children 7–12 years old to 77% for nursing infants ≤ 1 year old. The acute DWLOC does not exceed EPA's level of concern. Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from acute aggregate exposure to pyridaben residues.

b. *Chronic risk.* Using the somewhat conservative exposure assumptions described above, EPA has calculated that the percentage of the cPAD that will be utilized by dietary exposure to residues of pyridaben ranges from 27% for nursing infants less than 1 year old, up to 85% for non-nursing infants less than 1 year old. The chronic DWLOC does not exceed the level of concern. There are no residential uses for pyridaben. Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to pyridaben residues.

c. *Short-term or intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account chronic dietary food and water plus indoor and outdoor residential uses. Since the chronic food and chronic DWLOC do not exceed EPA's level of concern and there are currently no indoor or outdoor residential uses of pyridaben, the short-term and intermediate-term aggregate risk does not exceed EPA's level of concern.

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

F. International Tolerances

There are no CODEX, Canadian, or Mexican Maximum Residue Limits established for pyridaben on cranberries and pistachio.

2. Interregional Research Project Number 4

9E6016, 9E6030, 9E6031, and 9E6034

EPA has received pesticide petitions (9E6016, 9E6030, 9E6031, and 9E6034) from the Interregional Project Number 4 (IR-4) Rutgers University, New Brunswick, NJ, 08903-0231 proposing,

pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of [bifenthrin, ((2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the RAC as follows:

1. *PP 9E6016* proposes the establishment of a tolerance for grape at 0.2 ppm.

2. *PP 9E6030* proposes the establishment of a tolerance for peppers at 0.5 ppm.

3. *PP 9E6031* proposes the establishment of a tolerance for head lettuce at 2.0 ppm.

4. *PP 9E6034* proposes the establishment of a tolerance for the caneberry subgroup at 1.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on these petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of bifenthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled bifenthrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of bifenthrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances GC/ECD analytical method P-2132M.

3. *Magnitude of residues.* Field residue trials meeting EPA study requirements have been conducted at the maximum label rate for these crops. Results from these trials demonstrate that the proposed bifenthrin tolerances of 0.2 ppm for grape, 0.5 ppm for peppers, 2.0 ppm for head lettuce, and 1.0 ppm for the caneberry subgroup will not be exceeded when the product is applied following the proposed use directions.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the maternal NOEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats. The maternal LOEL of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of

dosing. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative: gene mutation in *Salmonella* (Ames); chromosomal aberrations in Chinese hamster ovary (CHO) and rat bone marrow cells; hypoxanthine guanine phosphoribosyl transferase (HGPRT) locus mutation in mouse lymphoma cells; and unscheduled DNA synthesis in rat hepatocytes.

3. *Reproductive and developmental toxicity.* In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day HDT.

4. *Subchronic toxicity.* The maternal NOEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats is also used for short-term and intermediate-term MOE calculations (as well as acute, discussed in paragraph (1) above). The maternal LOEL of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of dosing.

5. *Chronic toxicity*—i. The chronic population adjusted dose (cPAD) has been established at 0.015 mg/kg/day. This cPAD is based on a 1 year oral feeding study in dogs with a NOEL of 1.5 mg/kg/day, based on intermittent tremors observed at the LOEL of 3.0 mg/kg/day; an uncertainty factor of 100 is used.

ii. Bifenthrin is classified as a *Group C* chemical (possible human carcinogen) based upon urinary bladder tumors in mice; assignment of a *Q** has not been recommended.

6. *Animal metabolism.* The metabolism of bifenthrin in animals is adequately understood. Metabolism studies in rats with single doses demonstrated that about 90% of the parent compound and its hydroxylated metabolites are excreted.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of bifenthrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of bifenthrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that bifenthrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. Dietary exposure—i. Food.

Tolerances have been established for the residues of bifenthrin, in or on a variety of RACs. Tolerances, in support of registrations, currently exist for residues of bifenthrin on hops; strawberries; corn grain, forage, and fodder; cottonseed; artichokes, the crop group cucurbit vegetables, the crop group legume vegetables - subgroup edible-podded legume vegetables and subgroup succulent shelled pea and bean, eggplant, the subgroup head and stem brassica, and livestock commodities of cattle, goats, hogs, horses, sheep, poultry, eggs, and milk. Pending tolerances for citrus, raspberries and sweet corn also exist. For the purposes of assessing the potential dietary exposure for the existing and pending tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated.

ii. *Drinking water.* Laboratory and field data have demonstrated that bifenthrin is immobile in soil and will not leach into ground water. Other data show that bifenthrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero [< 0.001 parts per billion (ppb)]. Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

2. *Non-dietary exposure.* Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application

and chronic dietary aggregate exposures associated with bifenthrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet. In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e., lawn care) and receptor subpopulation (i.e., adults, children 1–6 years old and infants > 1 year old) are compared to the systemic absorbed dose NOAEL for bifenthrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for bifenthrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOAEL for estimating MOEs. In the case of potential aggregate health risks, the above mentioned conservative point estimates of inhalation and incidental ingestion non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1–6 years old and infants > 1 year old. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOAEL to provide estimates of aggregate MOEs.

The non-dietary and aggregate (non-dietary + chronic dietary) MOEs for bifenthrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion) MOEs for post-application exposure for the lawn care product evaluated was estimated to be > 194,000 for adults, 52,400 for children 1–6 years old and 56,700 for infants < 1 year old. The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 2,158 for adults, 579 for children 1–6 years old and 966 for infants (< 1 year old). It can be concluded that the potential non-dietary and aggregate exposures for bifenthrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of bifenthrin and

other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by bifenthrin would be cumulative with those of other chemical compounds; thus only the potential risks of bifenthrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for EPA to consider concerning potential cumulative effects of bifenthrin consistent with the schedule established by EPA pursuant to the Food Quality Protection Act (FQPA).

E. Safety Determination

1. *U.S. population*—i. *Chronic exposure and risk.* Based on a complete and reliable toxicology data base, the acceptable cPAD is 0.015 mg/kg/day, based on a NOAEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the anticipated residue contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000444 mg/kg bwt/day and utilize 3.0% of the cPAD for the overall U. S. population. The ARC for children 7–12 years old and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000650 mg/kg bwt/day and 0.001203 mg/kg bwt/day and utilizes 4.3% and 8.0% of the cPAD, respectively. Generally speaking, EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the cPAD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

ii. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. For the purposes of assessing acute dietary risk for bifenthrin, the maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats was used. The maternal LOAEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available

information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOEs are greater than the EPA standard of 100 for all subpopulations. The 99.9th percentile of exposure for the overall U. S. population was estimated to be 0.005932 mg/kg/day (MOE of 168). The 99.9th percentile of exposure for all infants < 1 year old was estimated to be 0.007331 mg/kg/day (MOE of 136). The 99.9th percentile of exposure for nursing infants < 1 year old was estimated to be 0.004599 mg/kg/day (MOE of 217). The 99.9th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.006974 mg/kg/day (MOE of 143). The 99.9th percentile of exposure for children 1 to 6 years old was estimated to be 0.009983 mg/kg/day (MOE of 100). Therefore, FMC concludes that the acute dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Infants and children*—i. *General.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base.

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOAEL of 4 mg/kg/day. In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL 2 mg/kg/day. There were 5/23 (22%) litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero

in the control, 1, and 0.5 mg/kg/day groups. According to recent historical data for this strain of rat, incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day HDT.

iv. *Prenatal and postnatal sensitivity*—a. *Prenatal.* Since there was not a dose-related finding of hydronephrosis in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydronephrosis in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Postnatal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

c. *Conclusion.* Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized less than 10% of the cPAD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of bifenthrin in or on grape, peppers (bell and non-bell), lettuce, and caneberry. [FR Doc. 99-33035 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-906; FRL-6398-6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF-906, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-906 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-5697; e-mail address: tompkins.jim@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 under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PF-906. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-906 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide

Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF-904. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Nippon Soda Co. Ltd with, BASF Corporation as Agent

PP 8F4945

EPA has received a pesticide petition (8F4945) from BASF Corporation, acting as Agent for Nippon Soda Company, Ltd, Agricultural Products, PO Box 13528, Research Triangle Park, NC 27709-3528 proposing, pursuant to section 408(d) of the Federal Food,

Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tepraloxymid [(EZ)-(RS)-2-1-[(2E)-3-chloroallyloxyimino]propyl-3-hydroxy-5-perhydropyran-4-ylcyclohex-2-en-1-one] and its metabolites containing the 3-tetrahydroxyran-1-pentane-1,5-dione (GP) and/or 5-(4-tetrahydroxyran-1-yl)-3-hydroxy-cyclohex-2-en-1-one (5-OH-DP) moiety (calculated as the herbicide) in or on the raw agricultural commodity (RAC) in cotton seed at 0.2 parts per million (ppm), cotton meal at 0.2 ppm, cotton hulls at 0.2 ppm, cotton gin trash at 3.0 ppm, soybean seed at 5.0 ppm, soybean meal at 5.0 ppm, soybean hulls, poultry meat at 0.5 ppm, poultry liver at 1.0 ppm, poultry fat at 0.5 ppm, and eggs at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues in plants is adequately understood for the purposes of registration. Analytical methods for detecting levels of tepraloxymid and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances was submitted to EPA.

2. *Analytical method.* The proposed analytical method involves extraction, concentration, precipitation, centrifugation/filtration, oxidation, partition, and clean-up. Samples are then analyzed by GC-MS (selected ion monitoring). The limit of quantitation (LOQ) is 0.4 ppm in soybean matrices and 0.1 ppm in cotton matrices.

3. *Magnitude of residues.* Soybean samples from 22 locations in 16 states were analyzed for residues of tepraloxymid. The highest average total of tepraloxymid residues detected in soybean seed samples collected 45 days after application was 4.93 ppm. The average total of tepraloxymid residues in other soybean seed samples collected 45 days after application for the remaining sites ranged from 0.65 to 4.81 ppm. Forage and hay were not analyzed and these commodities will be restricted from feeding to livestock. The tepraloxymid residues for 2 residue decline sites did not exhibit any clear trends from the range of -10 days to +10 days around the 45-day harvest target.

In addition, soybeans were processed after treatment at the proposed label rate into hulls, meal, and refined oil. There was little or no concentration of tepraloxym residues found in soybean meal or refined oil. Residues in the meal were roughly equal to those found in the seeds. Residues in the refined oil were less than 10% of the residues observed in the seeds. Residues concentrated slightly in the hull fractions. The average concentration factor in hulls was 1.45. Cotton samples from 13 locations in 8 States were analyzed for residues of tepraloxym. The highest average total of tepraloxym residues detected in cotton seed samples collected 40 days after application was 0.19 ppm. The average total of tepraloxym residues in cotton seed for the remaining sites ranged from < 0.10 to 0.18 ppm. In gin trash, the highest average total of tepraloxym residues detected was 2.10 ppm. The remaining sites contained tepraloxym residues that ranged from < 0.10 to 1.34 ppm. The tepraloxym residues for the residue decline site in North Carolina exhibited no clear trends from the -11 day harvest to the +10 day of the 41-day target. All 5-OH-DP residues were < 0.05 ppm level of quantification. Only the 36 and 51 days after last application (DALA) seed samples for tepraloxym were at or above 0.05 ppm (0.054 and 0.05 ppm, respectively). The gin trash samples contained tepraloxym residues ranging from < 0.05 ppm to 0.178 ppm at 36 and 46 DALA, respectively.

Available data support the proposed tolerances of poultry meat and fat at 0.5 ppm, poultry liver at 1.0 ppm, and eggs at 0.2 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data tepraloxym does not pose any acute toxicity risks. Acute toxicity studies place technical tepraloxym in toxicity category III and for acute oral, dermal, and inhalation and toxicity category IV for eye and dermal irritation. The technical material is not a positive skin sensitizer. Additionally, tepraloxym was not found to have a neurotoxic potential after acute exposure.

2. *Genotoxicity.* The following tests were conducted: An Ames Test (1 study; point mutation): negative; *in vitro* CHO cells/hypoxanthine-guanine phosphoribosyl transferase (CHO/HPRT) (1 study; point mutation): negative; *in vitro* cytogenetics - CHO Cells (1 study; chromosome aberrations): negative; *in vitro* unscheduled DNA synthesis (UDS) test using rat hepatocytes (1 study; DNA damage and repair): negative; mouse

micronucleus - *in vivo* (1 study; chromosome aberrations): negative based on the studies mentioned above, tepraloxym does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study was conducted with rats being fed dosages of 0, 11, 53, and 268 milligrams/kilograms/day (mg/kg/day) with a reproductive no observed adverse effect level (NOAEL) of 268 mg/kg/day, pup developmental NOAEL of 53 mg/kg/day, and maternal NOAEL of 11 mg/kg/day based on the following: (1) At the parental 268 mg/kg/day dose level, decreased food consumption, reduced body weights (bwts) and/or gains, increase in albumin and cholesterol, decrease in triglycerides and increase in white blood cell count were observed; (2) at the parental (F1 females) 53 mg/kg/day dose group only, increase in white blood cell count was observed; and (3) the only pup toxicity was observed at the 268 mg/kg/day dose group which consisted of reduced bwts and/or gains and delayed eye opening.

A developmental study in rats via oral gavage resulted in dosages of 0, 40, 120, and 360 mg/kg/day highest dose tested (HDT) with a developmental toxicity NOAEL of 40 mg/kg/day and a maternal toxicity of 120 mg/kg/day based on the following: (1) At the 360 mg/kg/day dose group, distinct maternal toxicity consisting of reduced food consumption, impairment in bwt gains, and reduced uterus weights; (2) at the 360 mg/kg/day dose group, increased resorptions and post implantation loss, lower mean percentage of live fetuses, and lower mean placental weights were observed; and (3) at the 360 and 120 mg/kg/day dose groups, slightly decreased mean fetal weights were observed with a progression of severity to the upper dose group, and, at the 360 mg/kg/day dose group, slightly increased malformation rates were observed.

A second developmental study was performed to clarify phenomena (skeletal retardations and variations) which were observed in the preceding test also at the lowest dose level of 40 mg/kg/day, but which were still within historical control data and, therefore, assessed as not being substance-related. The dose levels in this study were 0, 10, 20, and 40 mg/kg/day HDT with a developmental toxicity NOAEL of 40 mg/kg/day and a maternal NOAEL of 40 mg/kg/day. There were no substance-related effects for all parameters measured in this study.

A developmental toxicity study in rabbits via oral gavage resulted in dosages of 0, 20, 60, and 180 mg/kg/day HDT with a developmental toxicity

NOAEL of 180 mg/kg/day and a maternal toxicity NOAEL of 60 mg/kg/day based on the following: (1) At the HDT, reduced food consumption and impaired bwt gain were the only effects observed during the treatment period; and (2) no other signs of maternal toxicity were detected in this dose group or at the lower dose groups tested. No developmental or teratogenic effects were observed in this study.

4. *Subchronic toxicity.* A subchronic neurotoxicity study in rats fed dosages of 0, 28, 103, and 428 mg/kg/day (males) and 0, 33, 124, and 513 mg/kg/day (females) with a neurotoxicity NOAEL of 428 mg/kg/day (males) and 513 mg/kg/day (females) and a systemic NOAEL of ~28 mg/kg/day based on the following effects: (1) At the HDT, decreased food consumption and significantly reduced bwts and/or bwt changes were observed in both male and female rats; and (2) in the mid-dose level, reduced bwts and/or bwt changes were observed in female rats only. No signs of neurotoxicity and gross and microscopic pathology were observed at any dose level tested.

In an *in vivo* dermal absorption study, male Wistar rats were dosed with [¹⁴C]-tepraloxym. Dose levels of 0.005, 0.05, and 0.5 mg/cm² diluted in Solvesso 200 were administered to rats on a shaved area on the back. Groups of 4 rats per dose group were sacrificed at 8, 24, or 72 hours following application of the dose. Results indicated that after the 8-hour exposure, the total percent absorbed at all dose levels was 3-5%. Additionally, with increasing dose, the percentage of radioactivity absorbed tended to decrease indicating that saturation of skin with increasing dose occurred under the conditions tested. This effect was most striking at the high dose level (HDL).

5. *Chronic toxicity.* Based on review of the available data, BASF believes the reference dose (RfD) for tepraloxym will be based on the 2-year feeding study in rats with a threshold NOAEL of 6 mg/kg/day in male and female rats. Using an uncertainty factor of 100, the RfD is calculated to be 0.06 mg/kg/day. The following are summaries of the pertinent toxicity data supporting tepraloxym tolerances

Two 1 year feeding study in dogs fed dosages of 0, 3.0, 12.0, 58.0 (first study) and 257.0 mg/kg/day (second study) with a NOAEL of 12 mg/kg/day based on the following effects: (1) At the 257 mg/kg/day dose level a slight anemia was detected; (2) clinical chemistry revealed disturbances in lipid, protein, and carbohydrate metabolism in both sexes of the 257 mg/kg/day dose level and, to a minor extent, in males of the

58 mg/kg/day dose level; (3) the upper two dose levels caused reduced function of the epididymides, and degeneration and atrophy of the germinal epithelium in the testes were observed; (4) increased absolute and/or relative weights for the liver, kidney, and thyroid, and decreased absolute and/or relative weights (males only) of the testes and epididymides were observed in the 257 mg/kg/day dose group; (5) increased absolute and/or relative weight for the liver and thyroid, and decreased absolute and/or relative epididymides (males only) weights were observed in the 58 mg/kg/day dose group (these increases were not statistically significant); and (6) microscopic findings in the urinary bladder, liver, gall bladder, spleen, bone marrow, thyroid, testes (males), epididymides (male), and prostate (male) were seen in the 257 mg/kg/day dose group and, in the 58 mg/kg/day dose group, urinary bladder, epididymides (male), and prostate (male) microscopic findings were seen at a lesser degree than the 258 mg/kg/day dose group.

A chronic feeding study and carcinogenicity study resulted in rats being fed dosages of 0, 6.0, 33, and 154 (males) and 273 (females) mg/kg/day with a NOAEL of 6.0 mg/kg/day for males and females based on the following effects: (1) Decreased bwt, bwt change, and food consumption in both male and female rats at dose levels > 154 mg/kg/day; (2) clinical chemical changes were observed in the mid- and high-dose groups; and (3) in the 273 mg/kg/day dose group of the carcinogenicity study, there was a trend towards a slightly elevated incidence for hepatocellular adenomas and carcinomas. However, the incidence for adenomas is within the range of historical control, the incidence for carcinomas was slightly above the range of historical controls, and, in the 154 mg/kg/day male dose group of the

chronic study, a trend towards a slightly elevated increase of carcinomas was observed which was not considered to be statistically significant. The higher sensitivity of females may possibly be due to the higher dose that was fed to that sex, which clearly fulfilled the criteria for a Maximum Tolerated Dose (MTD).

A carcinogenicity study in mice fed dosages of 0, 37, 332, and 1,035 mg/kg/day (males) and 0, 52, 490, and 1,456 mg/kg/day (females) with a NOAEL of 37 mg/kg/day (males) and 52 mg/kg/day (females) based on the following effects: (1) Significantly decreased bwts/bwt changes were observed in both male and female mice at the mid-dose and high-dose levels with a progression of severity to the top dose which clearly fulfilled the criteria for a MTD for both dose levels; (2) in the 1,456 mg/kg/day female dose group, a slight increase in lymphocytes and decrease in polymorphonuclear neutrophils was seen; (3) relative liver weights were increased in both sexes of the high-dose group and in males of the 332 mg/kg/day dose group; (4) in females of the high-dose and mid-dose levels, hyalinization (sclerosis) of the endometrial stroma, muscularis, and/or perivascular areas were observed in the uterus; and (5) a very slightly increased incidence of neoplasms (adenomas and carcinomas) occurred at dose levels which fulfilled the criteria for a maximum tolerated dose in the liver of female mice. No substance-related neoplasms were observed in the top dose males or in both sexes at dose levels below the MTD.

i. *Mechanistic studies*—a. *Initiation potential study*. In order to determine if tepraloxydim will initiate the carcinogenic process, tepraloxydim was tested for its foci initiating potential after single oral administration of 2,000 mg/kg/day in 0.5% aqueous carboxymethyl-cellulose (CMC) solution to partially hepatectomized female

Wistar rats according to a protocol of Prof. Schulte-Hermann, University of Vienna, Austria. N-Nitrosomorpholine (NNM) is known to induce liver foci and was used as a positive control for initiation at a dose of 25 mg/kg/day. Phenobarbitone (PB) was used as a promoter. Three different groups (test substance, negative and positive controls) were each divided into two sub-groups, one being maintained for 8 weeks on basal diet, while the other sub-group was treated with 500 ppm PB in the diet for the same period. Each sub-group consisted of 15 male and 15 female animals. The rats were subjected to an adaptation period of at least 17 days. After this adaptation period, partial hepatectomy was performed. Fourteen hours after partial hepatectomy, the test and control substances were administered once by gavage to 2 groups each (initiation period) and the animals were held on basal diet ad libitum for a 14-day recovery period. Thereafter, the groups received either 500 ppm PB or basal diet for another 8 weeks (promotion period). The state of health of the animals was checked at least once a day. Body weight was determined in weekly intervals and food consumption was measured in weekly intervals during the promotion period. At the end of the study the animals were subjected to gross-pathological assessment, giving special attention to the liver. Histopathologic evaluation of the liver was performed on Hematoxylin and Eosin stained slides as well as on slides stained for Glutathione-S-Transferase P (GST-P). GST-P positive foci were evaluated quantitatively (foci/cm² of liver tissue). The initiating potential of a chemical is expressed in the increased number of foci relative to control.

The mean numbers of GST-P positive foci per cm², which were detected in the different study groups, are given in the following table.

TABLE 1: MEAN NUMBER OF GST-P POSITIVE FOCI PER CM²

Study group	Initiation	Promotion	Mean number of foci per cm ²
0	vehicle ¹	-	0.3
1	vehicle ¹	500 ppm PB ²	0.45
2	25 mg/kg/day NNM ³	-	7.78
3	25 mg/kg/day NNM ³	500 ppm PB ²	11.86
4	2,000 mg/kg/day tepraloxydim	-	0.08
5	2,000 mg/kg/day tepraloxydim	500 ppm PB ²	0.17

¹vehicle = 0.5% aqueous carboxymethyl cellulose

²PB = Phenobarbitone

³NNM = N-Nitrosomorpholine

The mean number of GST-P positive foci per cm² liver tissue was very low

in groups 4 and 5 which were treated with the test substance, and there were

no significant differences to the corresponding control groups 0 and 1.

As expected, the number of GST-P positive foci per cm² was significantly increased in groups 2 and 3, when compared with the corresponding control groups (group 0 or 1) demonstrating the known initiating capacity of NNM.

Therefore, tepraloxydim does not have an initiating potential.

A possible non-genotoxic mechanism, which could account for the increased incidence of liver tumors, is the induction of increased cell proliferation (S-phase response).

b. *S-Phase response.* In order to determine if tepraloxydim causes cell proliferation, tepraloxydim was administered to groups of 5 male and 5 female Wistar rats at dietary levels of 0, 100, 600, 3,000 (males only), and 4,000 (females only) ppm for different time periods: 1 week, 6 weeks, and 13 weeks. An additional group with a recovery period of 2 weeks was used after 1 week administration, and a 5-week recovery group was additionally used after 13-week administration. The influence of treatment on DNA-synthesis/cell proliferation (S-phase response) in the liver was determined using bromodeoxyuridine (BrdU), which is incorporated into the DNA if DNA-synthesis and cell proliferation is induced. One week prior to necropsy, osmotic minipumps containing BrdU were implanted subcutaneously. Food consumption and bwt were determined weekly. The state of health was checked each day. All animals were assessed by gross pathology. BrdU incorporated into the DNA of liver cells was detected by immunohistochemistry and evaluated microscopically.

Cell proliferation can be induced diffusely in all hepatocytes or it can be localized in a specific region of the lobule. Therefore, in each of the two liver lobes, five lobules were evaluated. In order to assess whether a localized liver cell proliferation occurs in the liver lobule, the lobule was subdivided into three zones (Rappaport) containing the portal tract (zone 1), the central vein (zone 3), and the zone in-between (zone 2). In total, more than 1,000 cells per zone and more than 3,000 hepatocytes per animal were recorded and the BrdU labeling index determined.

The results from the S-phase response study in the rat liver demonstrate that tepraloxydim can induce a selective increase in cell proliferation predominantly in zone 3 after 1, 6, and 13 weeks in females at 4,000 ppm and, to a minor degree, at 600 ppm. In the males, there was an increase in cell proliferation after 1 week treatment at 3,000 ppm and, to a minor degree, at 600 ppm. The enhanced cell

proliferation after 1 week of administration was reversible after 1 weeks of recovery in both sexes and appeared to be reversible in females after 5 weeks of recovery following 13 weeks of administration. The more pronounced S-phase response in female rats also explains why liver neoplasia was predominantly found in the females. These studies indicate that the mode of action by which an enhancement of liver neoplasia was induced is a chronic increase in liver cell proliferation. It is emphasized that this mechanism results in an increased incidence of liver tumors only at dose levels at the MTD. It is therefore concluded that tepraloxydim does not have an oncogenic potential of biological relevance.

6. *Animal metabolism.* The qualitative nature of the residues in animals is adequately understood for the purposes of registration. Analytical methods for detecting levels of tepraloxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances was submitted to EPA.

7. *Metabolite toxicology.* Available metabolism data indicate that the metabolites containing the GP and 5-OH-DP moiety should be included in the tolerance for expression for tepraloxydim.

8. *Endocrine disruption.* No specific tests have been performed with tepraloxydim to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally-occurring estrogen or other endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the proposed tolerances for tepraloxydim in or on the RAC cotton seed, meal, and hulls at 0.2 ppm; cotton gin trash at 3.0 ppm; soybean seed, meal, and hulls at 5.0 ppm; poultry meat and fat and 0.5 ppm; poultry liver at 1.0 ppm; and eggs at 0.2 ppm. The TMRC is a "worst-case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels. There are no established U.S. tolerances for tepraloxydim, and there are no currently registered uses for tepraloxydim on food or feed crops in the United States.

i. *Food.* Dietary exposure to residues of tepraloxydim in or on food from these proposed tolerances would account for

less than 4.0% of the RfD (0.06 mg/kg/day) for the overall U. S. population. BASF estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data. The most highly exposed group in the subpopulation groups would be non-nursing infants < 1 year old, which uses ~15.0% of the RfD. This exposure assessment relies on very conservative assumptions--100% of crops will contain tepraloxydim residues and those residues would be at the level of the tolerance--which results in an overestimate of human exposure.

Tepraloxydim was evaluated for its potential mutagenicity and genotoxicity *in vitro* using bacterial and mammalian cells as well as in a cytogenetics assay. The results of these studies demonstrated the absence of a mutagenic or genotoxic effect.

In vivo, the compound was assessed for the induction of micronuclei in mice. The result of this study showed that tepraloxydim has no chromosome-damaging potential.

It is therefore, concluded that tepraloxydim has no mutagenic or genotoxic properties either *in vitro* or *in vivo*.

The results of a 24-month chronic toxicity study and a carcinogenicity study in rats show that the HDL (154 mg/kg/day in males and 273 mg/kg/day in females) clearly fulfilled the criteria for a MTD based on distinctly reduced bwts or bwt changes and histopathological alterations in the liver. The test substance induced changes in clinico-chemical parameters, which are considered to be associated with liver toxicity. Histopathologically, the liver was found to be affected, therefore, this organ was identified as a target. In the carcinogenicity study, in female animals of the top dose, a slight trend towards an increased incidence of hepatocellular adenomas and carcinomas was observed which was virtually within the historical control range. In top dose males of the chronic toxicity study, a trend towards a slightly elevated increase of carcinomas was detected. As this increase was not evident in the carcinogenicity study, which involves a far greater number of animals, it is likely that this finding was incidental.

Additional mechanistical investigations have demonstrated that tepraloxydim does not possess an initiating potential for a liver carcinogenic process. Combined with the proven absence of a gene or chromosome damaging effect, it can be concluded that the increased incidence of rat liver neoplasia was not related to a genotoxic mode of action.

The results from an S-phase response study in the rat liver demonstrate that tepraloxydim can induce a selective increase in cell proliferation predominantly in zone 3 after 1, 6, and 13 weeks in females at 4,000 ppm and, to a minor degree, at 600 ppm. In the males, there was an increase in cell proliferation after 1 week treatment at 3,000 ppm and, to a degree, at 600 ppm. The enhanced cell proliferation after 1 week of administration was reversible after 2 weeks of recovery in both sexes and appeared to be reversible in females after 5 weeks of recovery following 13 weeks of administration. The more pronounced S-phase response in female rats also explains why liver neoplasia was predominantly found in the females. These studies indicate that the mode of action, by which an enhancement of liver neoplasia was induced, is a chronic increase in liver cell proliferation. It is emphasized that this mechanism results in an increased incidence of liver tumors only at dose levels at the MTD. It is therefore, concluded that tepraloxydim does not have an oncogenic potential of biological relevance. The result of the carcinogenicity study in mice demonstrates that the HDL of 1,035 mg/kg/day (males) and 1,456 mg/kg/day (females) by far exceeded the criteria of a MTD as evidenced by drastically reduced bwts or bwt changes. A trend towards an increased incidence of liver neoplasia occurred only in females exclusively at that dose level and therefore cannot be extrapolated to dose levels below the MTD. Relative liver weights were distinctly increased at the HDL associated with foci of cellular alteration and hypertrophy of hepatocytes.

In female animals of the HDLs, hyalinization of the uterus was found as well as reduced ovarian activity which may be a consequence of the reduced terminal bwts.

In conclusion, in long-term feeding studies in rats and mice, there was a slight trend towards increased incidences of liver neoplasia at the HDLs. These dose levels were at or exceeded the MTD. As the liver was shown to be the target organ, the increased cell proliferation, resulting in neoplasia is considered to have been due to the toxicity exerted on this organ.

The overall lowest NOAELs obtained in long-term feeding studies were:
Rats: 6 mg/kg/day
Mice:

Males: 37 mg/kg/day
Females: 52 mg/kg/day
Dogs: 12 mg/kg/day.

These chronic NOAELs demonstrate that the rat is the most sensitive species.

Tepaloxymid does not possess mutagenic or genotoxic properties. As discussed above, it can be concluded that the compound has no biologically relevant oncogenic potential.

Therefore, based on the results of the carcinogenicity study in mice, the results of genotoxicity testing, the results of the 24-month chronic feeding/oncogenicity study in rats, and auxiliary mechanistic data showing that tepaloxymid is not an initiator of the carcinogenic process, BASF believes that the threshold approach to regulating tepaloxymid is appropriate.

ii. *Drinking water.* Based on the available studies, BASF does not anticipate exposure to residues of tepaloxymid in drinking water. There is no established Maximum Concentration Level (MCL) for residues of tepaloxymid in drinking water under the Safe Drinking Water Act (SDWA).

2. *Non-dietary exposure.* Tepaloxymid is not currently registered for any nonagricultural use. The potential for non-occupational exposure to the general population is therefore, not significant.

D. Cumulative Effects

BASF has considered the potential for cumulative effects of tepaloxymid and other substances that have a common mechanism of toxicity. No evidence or information exists to suggest that toxic effects produced by tepaloxymid would be cumulative with those of any other chemical compound.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to tepaloxymid will utilize less than 4.0% of the RfD for the U.S. population. BASF concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of tepaloxymid, including anticipated dietary exposure and non-occupational exposures.

2. *Infants and children—i. Developmental toxicity.* The teratogenicity studies in rats resulted in a developmental toxicity NOAEL of 40 mg/kg/day and a maternal toxicity NOAEL of 40 mg/kg/day. These NOAEL values are 7x higher than the NOAEL from the 2-year feeding study in rats used to establish the RfD.

The teratogenicity study in rabbits resulted in a developmental toxicity NOAEL of 180 mg/kg/day and a maternal toxicity NOAEL of 60 mg/kg/day. These NOAEL values are 10x higher than the NOAEL from the 2-year

feeding study in rats used to establish the RfD.

ii. *Reproductive toxicity.* The 2-generation reproduction study with rats resulted in a reproductive NOAEL of 268 mg/kg/day ppm and a maternal NOAEL of 53 mg/kg/day. These NOAEL values are significantly higher than the NOAEL from the 2-year feeding study in rats used to establish the RfD.

iii. *Reference dose.* Since developmental and reproductive toxicity occurs at levels at or above the levels shown to exhibit parental toxicity and since these levels are significantly higher than those used to calculate the RfD, BASF believes the RfD of 0.06 mg/kg/day is an appropriate measure of safety for infants and children.

Using the conservative exposure assumptions described above, BASF has concluded that the portion of the RfD that will be utilized by aggregate exposure to residues of tepaloxymid resulting from the proposed tolerances will be less than 15% for all populations of infants and children. The most highly exposed group in the subpopulation groups would be non-nursing infant < 1 year old, which uses 15% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of tepaloxymid, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level has not been established for tepaloxymid by the Codex Alimentarius Commission. [FR Doc. 99-33036 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-907; FRL-6398-7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendment of pesticide petitions (PP 5F4469), and (PP 4F4336), proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF-907, must be received on or before January 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-907 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-5697; e-mail address: tompkins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Cat-egories	NAICS	Examples of poten-tially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>.

To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PF-907. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-907 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail

to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF-907. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Novartis Crop Protection, Inc.

PP 5F4469 and PP 4F4336

EPA has received pesticide petitions (PP 4F4336 and PP 5F4469) from Novartis Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.481 by establishing tolerances for residues of prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities cereal grains group (except rice and wild rice) grain at 0.01 parts per million (ppm); cereal grains group (except rice and wild rice) forage at 0.10 ppm; cereal grains group (except rice and wild rice) fodder at 0.01 ppm;

cereal grains group (except rice and wild rice) straw at 0.02 ppm; cereal grains group (except rice and wild rice) hay at 0.20 ppm; milk at 0.01 ppm; and meat, fat, kidney, liver and meat by-products of cattle, goats, hogs, horses, and sheep at 0.05 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

This is a revised notice of filing to amend a previous notice of filing published in the **Federal Register** of August 25, 1999 (64 FR 46382) (FRL-6093-7) to propose permanent tolerances, instead of time-limited, for prosulfuron. Refer to the August 25, 1999 notice for a detailed summary of available information to support this action.

[FR Doc. 99-32872 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-MN; FRL-6393-2]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Minnesota Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 29, 1999, the State of Minnesota submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Minnesota's application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Minnesota has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be

issued in the **Federal Register** and the Federal program will take effect in Minnesota.

DATES: Comments, identified by docket control number PB-402404-MN, must be received on or before February 7, 2000. In addition, a public hearing request may be submitted on or before February 7, 2000.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PB-402404-MN in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Emma Avant, State of Minnesota Project Officer, Pesticides and Toxic Substances Branch, Environmental Protection Agency, Region V, 77 West Jackson Blvd, DT-8J, Chicago, IL 60601; telephone: (312) 886-7899; e-mail address: avant.emma@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in Minnesota. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or 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 PB-402404-MN. The official record consists of the documents specifically referenced in this action, this notice, the State of

Minnesota's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region V Office, Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, Toxic Programs Section, DT-8J, 77 West Jackson Blvd, Chicago, IL.

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB-402404-MN in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, DT-8J, 77 West Jackson Blvd, Chicago, IL 60604.

2. *In person or by courier.* Deliver your comments and hearing requests to: Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, DT-8J, Chicago, IL 60601. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: "avant.emma@epamail.epa.gov" or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control

number PB-402404-MN. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

II. Background

A. What Action is the Agency Taking?

The State of Minnesota has provided a certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Minnesota lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., September 29, 1999). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the Minnesota application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the

application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA

approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Minnesota's proposed program has been provided by the applicant.

A. Background

The purpose of Minnesota's lead poisoning prevention program is to prevent or reduce lead poisoning in children and pregnant women. This is accomplished by surveillance of blood lead levels, provision of health education to the general public and to interested parties, and by regulation of lead hazard reduction in residences, child-occupied facilities, schools, and playgrounds.

B. Surveillance

Minnesota Statutes require that the results of all human blood lead analyses must be reported to the Minnesota Department of Health (MDH), along with associated demographic information. Information on individuals is private under Minnesota's Government Data Practices Act. Summary data are compiled annually and are public information.

Surveillance results in lead-related educational and environmental followup when analyses of venous blood samples identify: Children with blood lead levels of at least 20 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) of whole blood; children with blood lead levels of 15 to 20 $\mu\text{g}/\text{dL}$, that persist for 90 day; and pregnant women with blood lead levels of at least 10 $\mu\text{g}/\text{dL}$. Health education and environmental followup is conducted either by the MDH or by a city or county health department with jurisdiction. Statutes require the health departments serving Minneapolis, St. Paul, and Duluth to conduct followup. Eleven other city or county health departments have chosen to cede the program to MDH by notifying the commissioner of MDH by December 31, 1999. MDH is responsible for followup in 76 of Minnesota's 87 counties.

C. Health Education

MDH conducts lead-related health education activities for both primary

and secondary prevention of elevated blood lead levels. Educational materials include a variety of brochures and some videotapes. Topics include identification of possible lead sources, dealing with lead sources, preventing lead exposure to young children, remodeling older homes, disposal of lead waste, and disclosure of lead hazards to prospective buyers or renters of residences. Some of these materials are available in Spanish or Hmong.

Compliance assistance is provided as part of the health education activities. The Lead Link newsletter is targeted primarily to people with lead licenses. The newsletter provides updates on changes to rules or statutes and on new technology for lead testing or lead hazard reduction. Articles explain particular aspects of the rules or answers readers' questions. A renewal reminder is mailed to each licensee 2 to 3 months prior to the expiration of a license. In addition, staff routinely respond to inquiries from licensed lead professionals on an individual basis.

D. Regulation

In 1999, MDH amended its previous administrative rules to establish procedures for conducting environmental followup of children and pregnant women with blood lead levels for which followup is mandated. These rules establish criteria for identifying potential sources of lead exposure to children and pregnant women and requires that regulated lead work in affected property be performed by individuals who have obtained licenses from the commissioner after successfully completing permitted lead training courses and passing an examination administered by a permitted independent testing organization.

Regulated lead sources include lead-based paint; lead-contaminated dust; lead-contaminated bare soil; and lead-contaminated drinking water. Standards are set in rules for the lead content of each of these regulated lead sources.

Affected property includes: residences; child-occupied facilities; schools; and playgrounds within Minnesota. However, MDH does not claim jurisdiction on tribal lands for the purpose of implementing lead-related requirements.

Regulated lead work includes: lead hazard screens; lead inspections; lead risk assessments; lead hazard reduction, which includes lead abatement and swab team services.

Providers of initial and annual refresher training courses that are intended to qualify individuals for lead-related licenses must submit course

materials to MDH for review and obtain permits from MDH. The required course content and qualified personnel are described in the MDH rules.

The MDH rules apply to individuals and legal entities, including local health departments, who do regulated lead work in or for affected property. Except as provided under these rules, a person must obtain the appropriate license before doing regulated lead work. Any person doing regulated lead work who is required by these rules to have a license, must have the required license in personal possession and, on request, must show it to a representative of the commissioner or of the local health department with jurisdiction at the lead work site. A permit for a training course must be obtained by the course provider before representing the course as qualifying trainees for licensure under these rules.

An individual who does regulated lead work in a residence which is owned and occupied by the individual or by another adult individual who is related to the owner, must use the methods specified in the rules. The property owner, or an adult individual who is closely related to the owner, does not need a license to do lead hazard reduction for the owner's property. The MDH rules do not apply to:

1. Work that is performed for any purpose other than the express purpose of regulated lead work.
 2. Emergency shelter homes or emergency shelter services.
 3. Housing for the elderly or persons with disabilities unless at least one child, who is less than 72 months of age, resides or is expected to reside in such housing.
 4. Zero-bedroom residences, unless occupied by a child with an elevated blood lead level for which a lead risk assessment is required.
 5. Foster homes occupied by a child for no more than 90 days if the foster care is provided by an adult individual who is related, as defined in Minnesota Statutes.
 6. Foster homes occupied by a child for no more than 30 days if the foster care is not provided by an individual who is related, as defined in Minnesota Statutes.
 7. Any structure that is totally vacated within 30 days of the issuance of lead orders and that remains totally unoccupied until the structure is totally demolished which must be completed within 2 years of the date of the orders.
 8. Chemical test kits for the on-site, qualitative detection of lead.
- Individuals who have licenses or certificates that were issued under

previous rules for lead inspector, lead contractor, or lead worker remain licensed or certified until their annual expiration dates but must meet the requirements of the amended rules to remain licensed thereafter.

MDH has statutory authority and an administrative plan for monitoring compliance with its lead rules. MDH staff conduct on-site evaluations of lead training courses, lead inspections, lead hazard screens, lead risk assessments, and lead hazard reduction, which is defined to include lead abatement. The Minnesota Health enforcement Consolidation Act provides for penalties of up to \$10,000. The amount of administrative penalties depends on the severity of the violations and can be partly or entirely forgivable, if remedial actions are promptly implemented. In addition, licenses can be suspended or revoked.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the General Accounting Office

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

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 1, 1999.

Gary Gulezian,

Acting Administrator, Region V.

[FR Doc. 99-33162 Filed 12-21-99; 8:45 am]

BILLING CODE 5650-50-F

FEDERAL COMMUNICATIONS COMMISSION

[DA 99-2790]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92-463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fifth meeting of the Public Safety National Coordination Committee.

DATES: January 14, 2000 at 1:30 p.m.–5:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418-0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202-418-0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fifth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92-463, as amended, requires public notice of all meetings of the NCC.

Date: January 14, 2000.

Meeting Time: General Membership Meeting—1:30 p.m.–5:00 p.m.

Address: Federal Communications Commission, 445 12th Street, S.W., Commission Meeting Room, Washington, D.C. 20554.

The NCC Subcommittees will meet from 8:00 a.m. to 12:00 noon, continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 1:30 p.m. and continue until 5:00 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Remarks of Thomas Sugrue—Chief, Wireless Telecommunications Bureau.
5. Report from the Technology Subcommittee.

6. Report from the Implementation Subcommittee.

7. Public Discussion.

8. Other Business.

9. Upcoming Meeting Dates and Locations.

10. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, FCC 98-191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11-2-98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fifth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418-0680, by faxing (202) 418-2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this fifth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately.

at (202) 418-7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418-0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: <http://www.fcc.gov/wtb/publicsafety/ncc.html>.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99-33113 Filed 12-21-99; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99-2674]

Responsible Accounting Officer: Re: Auditor Independence and Objectivity

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document discusses the importance of independence and objectivity in the performance of audit work required by the Commission and adopts, as modified for Commission purposes, *Standard No. 1* of the Independence Standards Board, which requires auditors to disclose and discuss potential independence problems.

DATES: May 22, 2000.

ADDRESSES: Federal Communications Commission, 445-12th Street, SW, TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark Stone, Accounting Safeguards Division, Common Carrier Bureau, (202) 418-0816.

SUPPLEMENTARY INFORMATION: This Notice, was adopted and released on December 1, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street NW, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857-3800.

Summary of Responsible Accounting Officer Letter

I. Introduction

The Commission relies on outside auditors to verify carrier compliance with a variety of Commission rules. For this to be effective, the Commission needs to be confident that the auditors are acting independently and that the opinions expressed by the auditors are objective and unbiased. This Responsible Accounting Officer (RAO) letter discusses the importance of independence and objectivity in the performance of audit work required by the Commission and adopts, as modified for Commission purposes, *Standard No. 1* of the Independence Standards Board, which requires auditors to disclose and discuss potential independence problems.

II. Background

In the *Joint Cost Order*, adopted in 1988, 53 FR 49320 (December 7, 1988), the Commission required large local exchange carriers to obtain independent audits to verify that their systems for allocating costs between regulated and nonregulated activities accurately reflected the procedures set forth in their cost allocation manuals and application of the Commission's rules. The Commission expressed concern in the *Joint Cost Order* that independence problems might arise, but the Commission declined to choose the independent auditors for the carriers, instead relying on the auditors' standards of professional conduct to mitigate its concerns. The Commission stated that it would review the auditors' work and "take appropriate corrective action if [it had] reason to believe that a particular firm has not performed its task in an objective and competent manner." Since that initial requirement was adopted in 1988, the Commission has added many other instances in which independent audits are relied upon to assure compliance with its rules.

Auditors are governed by standards of professional conduct that require them to remain objective toward and independent of the audited company. Those standards emphasize independence and objectivity in both fact and appearance, reflecting the practical view that, even if independent in fact, auditors should avoid even the appearance of bias so that those who rely on the results of their audits can be confident in their work.

Consulting and advocacy by accounting firms has increased substantially in recent years. In many instances, carriers use the same

accounting firms to advocate positions on issues before the Commission that they engage to perform independent audits. Advocacy or support on behalf of a carrier concerning issues before the Commission, particularly with respect to auditing or accounting matters, could raise concerns and questions about the independence and objectivity of the auditors.

III. Discussion

To address the independence implications for the new consulting and advocacy services provided by auditors, the Securities and Exchange Commission and the American Institute of Certified Public Accountants recently established the Independence Standards Board (ISB). The initial standard of the ISB, *Standard No. 1—Independence Discussions with Audit Committees*, requires the following:

At least annually, independent auditors shall:

(a) Disclose to the audit committee (or the board of directors if there is no audit committee), in writing, all relationships between the auditor and its related entities and the company and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence;

(b) Confirm in writing that in its professional judgment it is independent of the company within the meaning of the Securities Acts; and

(c) Discuss the auditor's independence with the audit committee.

We believe that *Standard No. 1* can be adapted to address in part the Commission's concern about auditor independence. The Commission's concern that audits be performed with independence and objectivity mirror the concern of audit committees that are responsible for engaging independent auditors for corporations. Therefore we establish the following standard based on ISB's *Standard No. 1*. For independent audits performed pursuant to Part 32 and Sections 64.901 *et seq.* of the Commission's rules, the auditor shall at least annually:

(a) Disclose to the Accounting Safeguards Division (ASD) of the Common Carrier Bureau in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence;

(b) Confirm in writing to AS that in its professional judgment it is independent of the carrier; and

(c) Discuss the auditor's independence with ASD.

Creation of the Independence Standards Board is an encouraging sign

of the profession's desire to preserve the independence and objectivity of auditors. Although adoption of *Standard No. 1* alone may not be enough to satisfy the Commission's concerns, it should lead to a frank and open dialogue that will benefit both the Commission and the auditors.

Because items in this RAO letter pertain to the collection of information, Office of Management and Budget (OMB) approval of the proposed collection is required by the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, members of the public are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor a collection, unless the information collection contains a currently valid OMB control number. Accordingly, independent auditors will not be required to comply with this RAO until OMB has given such approval. ASD will notify the public when OMB has approved the proposed information collection.

This letter is issued pursuant to authority delegated under Section 0.291 of the Commission's rules, 47 CFR 0.291. Applications for review under Section 1.115 of the Commission's rules, 47 CFR 1.115, must be filed within 30 days of the date of this letter. See 47 CFR 1.4(b)(2).

Federal Communications Commission.

Kenneth P. Moran,

*Chief, Accounting Safeguards Division,
Common Carrier Bureau.*

[FR Doc. 99-33114 Filed 12-21-99; 8:45 am]

BILLING CODE 6701-12-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than January 6, 2000.

A. Federal Reserve Bank of Dallas
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Fellows Family Limited Partnership*, Ruidoso, New Mexico; to retain voting shares of First Alamogordo Bancorp., Nevada, Reno, Nevada, and thereby indirectly retain voting shares of First National Bank, Alamogordo, New Mexico, and First National Bank, Ruidoso, New Mexico.

Board of Governors of the Federal Reserve System, December 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-33193 Filed 12-21-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 14, 2000.

A. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Old National Bancorp.*, Evansville, Indiana; to acquire 100 percent of the voting shares of Heritage Financial Services, Inc., Clarksville, Tennessee, and thereby indirectly acquire Heritage Bank, Clarksville, Tennessee.

2. *Old National Bancorp.*, Evansville, Indiana; to acquire 100 percent of the voting shares of ANB Corporation, Muncie, Indiana, and thereby indirectly acquire American National Bank and Trust Company of Muncie, Muncie, Indiana; Peoples Loan & Trust Bank, Winchester, Indiana; and Farmers State Bank of Union City, Ohio, Union City, Ohio.

Board of Governors of the Federal Reserve System, December 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-33096 Filed 12-21-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2000.

A. Federal Reserve Bank of Atlanta
(Cynthia Goodwin, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *nBank, Corp., Inc.*, (formerly First Commerce Bancorp, Inc.); Commerce, Georgia; to acquire 100 percent of the voting shares of First Commerce Bank, N.A. (in organization), Commerce, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Northern Missouri Bancshares, Inc.*, Unionville, Missouri; to acquire 100 percent of the voting shares of First National Bancshares of Gallatin, Inc. Gallatin, Missouri, and thereby indirectly acquire First National Bank of Gallatin, Gallatin, Missouri.

Board of Governors of the Federal Reserve System, December 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-33194 Filed 12-21-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements associated with four current rules enforced by the Commission. Current clearances for this information collection expire on December 31, 1999. The FTC is requesting that OMB extend the paperwork clearances through December 31, 2002.

DATES: Comments must be filed by January 21, 2000.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to Carole Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, 202-326-3230. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to

Carole Reynolds at the address listed above.

SUPPLEMENTARY INFORMATION: The FTC has submitted a request to OMB to extend the existing clearances to collect information associated with the four rules described below. A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 1999 (64 FR 55937). No comments were received.

The four rules covered by this notice are:

(1) Regulations promulgated under the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* ("ECOA") ("Regulation B") (Control Number: 3084-0087);

(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* ("EFTA") ("Regulation E") (Control Number: 3084-0085);

(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.*, ("CLA") ("Regulation M") (Control Number: 3084-0086)

(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* ("TILA") ("Regulation Z") (Control Number: 3084-0088)

Each of these four rules impose certain PRA recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. All of these rules require covered entities to keep certain records. Staff believes that many of these entities would likely retain these records in the normal course of business even absent the recordkeeping requirement in the rules.¹ There is, however, some burden associated with ensuring that covered entities do not prematurely dispose of relevant records during the period of time required by the applicable rule.

Disclosure requirements involve both set-up and monitoring costs as well as certain transaction-specific costs. "Set-up" burden, incurred by new entrants only, includes identifying the applicable disclosure requirements, determining compliance obligations, and designing and developing compliance systems and procedures. "Monitoring" burden, incurred by all covered entities, includes reviewing revisions to regulatory requirements, revising compliance systems and procedures as necessary, and monitoring the ongoing operation of systems and procedures to ensure continued compliance.

"Transaction-related" burden refers to the effort associated with providing the

various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages. The actual range of compliance burden experienced by covered entities, and reflected in those averages, varies widely. Depending on the extent to which covered entities have developed automated systems and procedures for providing the required disclosures, and the efficacy of those systems and procedures, some entities may have little or no such burden, while others incur a higher burden.²

Calculating the burden associated with the four regulations' disclosure requirements is extremely difficult because of the highly diverse group of affected entities. The "respondents" included in the following burden calculations consist of all types of credit and lease advertisers, creditors (e.g., finance companies, mortgage companies, retailers, Internet businesses), financial institution (including new electronic commerce entities), service providers, certain government agencies and others involved in delivering electronic fund transfers of government benefits, and lessors (e.g., auto dealers, independent leasing companies, manufacturers' captive finance companies, furniture companies, computer dealers). The burden estimates represent staff's best assessment, based on its knowledge and expertise relating to the financial services industry. To derive these estimates, staff considered the wide variations in covered entities': (1) Size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) types of electronic fund transfers (EFTs) used; (4) types and occurrences of adverse actions; (5) types of appraisal reports utilized; and (6) automation with regard to compliance operations.

The estimated PRA burden associated with these rules, attributable to the Commission, is less today than in the past. Staff believes that as automation and expanded quality control become more pervasive in the financial services industry entities are able to comply more efficiently.

The cost estimates shown below relate solely to labor costs. The applicable PRA requirements impose minimal

¹ PRA "burden" does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

² For example, large retailers may use automated means to provide required disclosures, such as issuing, en masse, notices of changes in terms. Smaller retailers and certain types of creditors may have less automated compliance systems, and thus may issue disclosures on an individual transaction basis, resulting in higher burden.

capital or other non-labor costs, as affected entities generally have the necessary equipment for other business purposes. Similarly, staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business. The burden estimates shown below include the time necessary to train staff in compliance with the regulations.

The following paragraphs discuss each of these rules, their particular PRA requirements, and staff's best estimates of the related hour and cost burdens.

I. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B, 12 CFR part 202, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers in understanding their rights under the ECOA and to assist in detecting unlawful discrimination. The FTC enforces the ECOA as to all creditors except those that are subject to

the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 2,560,000 hours, rounded (1,150,000 recordkeeping hours + 1,409,499 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours. Staff also estimates that the requirement that creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each³ for approximately nine million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 150,000 hours. The total estimated recordkeeping burden is 1,150,000 hours.

Disclosure: Regulation B requires that creditors (i.e., entities that regularly participate in the decision whether or not to extend credit under Regulation B) provide notices whenever they take adverse action. The Regulations also requires entities that extend various types of mortgage credit to provide a copy of the appraisal report and to notify applicants of their right to a copy of the report.

As noted above, Regulation B applies to a highly diverse group of entities, including retailers, mortgage lenders, mortgage brokers, finance companies, Internet businesses, and others. In some instances where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring ¹ average			Transaction-related ²			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Adverse action notices	1,000,000	.5	500,000	200,000,000	.25	833,333	1,333,333
Appraisal notices	22,000	.5	11,000	6,500,000	.25	27,083	38,083
Appraisal reports	22,000	.5	11,000	6,500,000	.25	27,083	38,083
Total							1,409,499

¹With respect to appraisal notices and appraisal reports, the above figures assume that approximately half of applicable mortgage entities (.5×44,000, or 22,000 businesses) would not otherwise provide this information and thus would be affected.

²The above figures assume that half of applicable mortgage transactions (.5×13,000,000, or 6,500,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

Estimated annual cost burden: \$46,418,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$50 for managerial or professional time, \$20 for skilled technical time, and \$10 for clerical time) are averages.

Recordkeeping: Staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and ten percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled

technical time. As shown below, the total recordkeeping cost is \$14,666,666.

Disclosure: For each notice or information item listed, staff estimates that the burden hours consist of 10 percent managerial time and 90 percent skilled technical time. As shown below, the total disclosure cost is \$32,418,477.

Required task	Managerial		Skilled technical		Clerical		Total
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (\$10/hr.)	Cost (\$)
General Recordkeeping	0	0	100,000	\$2,000,000	900,000	\$9,000,000	\$11,000,000
Other Recordkeeping	0	0	150,000	3,000,000	0	0	3,000,000
Total Recordkeeping							14,666,666
Adverse action notices	133,333	\$6,666,665	1,200,000	23,999,994	0	0	30,666,659

³ Regulation B contains a model form that creditors may use to gather and retain the requirement information.

Required task	Managerial		Skilled technical		Clerical		Total
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (10/hr.)	Cost (\$)
Appraisal notices	3,808	190,415	34,275	685,494	0	0	875,909
Appraisal reports	3,808	190,415	34,275	685,494	0	0	875,909
Total Disclosure							32,418,477
Total Recordkeeping and Disclosure							46,418,477

2. Regulation E

The EFTA requires accurate disclosure of the costs, terms, and rights relating to electronic fund transfer (EFT) services to consumers. Regulation E, 12 CFR part 205, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements applicable to entities providing EFT services to consumers. The FTC enforces the EFTA as to all entities providing EFT services except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 3,579,000 hours (500,000 recordkeeping hours + approximately 3,079,000 disclosure hours).

Recordkeeping: Staff estimates that Regulation E's recordkeeping requirements affect 500,000 firms offering EFT services to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 500,000 hours.

Disclosure: As noted above, Regulation E applies to a highly diverse group of entities, including financial institutions (including certain retailers and electronic commerce entities),

service providers, various federal and state agencies offering electronic fund transfers (EFTs), and others. In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Initial terms	100,000	.5	50,000	1,000,000	.02	333	50,333
Change in terms	25,000	.5	12,500	33,000,000	.02	11,000	23,500
Periodic statements	100,000	.5	50,000	1,200,000,000	.02	400,000	450,000
Error resolution	100,000	.5	50,000	1,000,000	5	83,333	133,333
Transaction receipts	100,000	.5	50,000	5,000,000,000	.02	1,666,667	1,716,667
Preauthorized transfers	500,000	.5	250,000	1,000,000	.25	4167	254,167
Service provider notices	100,000	.25	25,000	1,000,000	.25	4167	29,167
Govt. benefit notices	10,000	.5	5,000	100,000,000	.25	416,667	421,667
Total							3,078,834

Estimated annual cost burden: \$76,313,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$50 for managerial or professional time, \$20 for skilled technical time, and \$10 for clerical time) are averages.

Recordkeeping: For the 500,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is \$5,500,000.

Disclosure: For each notice or information item listed, staff estimates

that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is \$70,813,182.

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (\$10/hr.)	
Recordkeeping	0	\$0	50,000	\$1,000,000	450,000	\$4,500,000	\$5,500,000
Disclosure:							
Initial terms	5,033	251,665	45,300	905,994	0	0	\$1,157,659
Change in terms	2,350	117,500	21,150	423,000	0	0	540,500
Periodic statements	45,000	2,250,000	405,000	8,100,000	0	0	10,350,000
Error resolution	13,333	666,665	120,000	2,399,994	0	0	3,066,659
Transaction receipts	171,667	8,583,335	1,540,000	30,900,000	0	0	39,483,34

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (\$10/hr.)	
Preauthorized transfers	25,417	1,270,835	228,750	4,575,006	0	0	5,845,84
Service provider notices	2,917	145,835	26,250	525,006	0	0	670,84
Govt. benefit notices	42,167	2,108,335	379,500	7,590,006	0	0	9,698,34
Total Disclosure							70,813,182
Total Recordkeeping and Disclosures							76,313,182

(Minor discrepancies in totals are due to rounding of the hours shown for skilled technical time.)

3. Regulation M

The CLA requires accurate disclosure of the costs and terms of leases to consumers. Regulation M, 12 CFR part 213, promulgated by the Board of Governors of the Federal Reserve System, establishes disclosure requirements that assist consumers in comparison shopping and in understanding the terms of leases and recordkeeping requirements that assist enforcement of the CLA. The FTC enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 387,500 hours, rounded (200,000 recordkeeping hours + 187,501 disclosure hours).

Recordkeeping: Staff estimates that Regulation M's recordkeeping requirements affect 200,000 firms leasing products to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 200,000 hours.

Disclosure: As noted above, Regulation M applies to a highly diverse group of entities, including automobile lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance

companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, and diverse types of lease advertisers, and others. In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Auto Leases ¹	100,000	.75	75,000	5,000,000	.50	41,667	116,667
Other Leases ²	100,000	.50	50,000	1,000,000	.25	4,167	54,167
Advertising	25,000	.50	12,500	1,000,000	.25	4,167	16,667
Total							187,501

¹ This category focuses on consumer vehicle leases. The number of such leases—the largest category of consumer leases—has increased considerably in recent years. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. § 1667(1); 12 C.F.R. § 213.2(e)(1).

² This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. § 1667(1); 12 C.F.R. § 213.2(e)(1).

Estimated annual cost burden: \$6,513,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$50 for managerial or professional time, \$20 for skilled technical time, and \$10 for clerical time) are averages.

Recordkeeping: For the 200,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is \$2,200,000.

Disclosure: For each notice or information item listed, staff estimates

that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is \$4,312,523.

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (\$10/hr.)	
Recordkeeping	0	0	20,000	400,000	1,280,000	1,800,000	2,200,000

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (10/hr.)	
Disclosures:							
Auto Leases	11,667	583,335	105,000	2,100,006	0	0	2,683,341
Other Leases	5,417	270,835	48,750	975,006	0	0	1,245,841
Advertising	1,667	83,335	15,000	300,000	0	0	383,341
Total Disclosures							4,312,523
Total Recordkeeping and Disclosures							6,512,523

(Minor discrepancies in totals are due to rounding of the hours shown for skilled technical time.)

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Regulation Z, 12 CFR part 226, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers and the enforcement of the TILA. The FTC enforces the TILA as to all creditors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 20,473,000 hours, rounded (1,000,000

recordkeeping hours + 19,472,916 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 1,000,000 firms offering credit and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours.

Disclosure: Regulation Z disclosure requirements pertain to open-end and closed-end credit. As noted above, the Regulation applies to a highly diverse group of entities, including retailers (such as department stores, appliance stores, discount retailers, medical-dental service providers, home improvement sellers, and newly-emerging electronic commerce retail operators); mortgage

companies; finance companies; credit advertisers; auto dealerships; student loan companies; home fuel or power services (for furnaces, stoves, microwaves, and other heating, cooling or residential power equipment); credit advertisers; and others. In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort. Thus, the following burden estimates are averages based on staff's best estimate of the burden incurred over an extremely broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Open-end credit:							
Initial terms	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Rescission notices	50,000	.5	25,000	100,000	.25	417	25,417
Change in terms	25,000	.5	12,500	136,000,000	.125	283,333	295,833
Periodic statements	200,000	.5	100,000	4,800,000,000	.0625	5,000,000	5,100,000
Error resolution	100,000	.5	50,000	10,000,000	5	833,333	883,333
Credit and charge card accounts	100,000	1	100,000	50,000,000	.25	208,333	308,333
Home equity lines of credit	100,000	1	100,000	5,000,000	.25	20,833	120,833
Advertising	250,000	.25	62,500	700,000	.5	5833	68,333
Closed-end credit:							
Credit disclosures	800,000	.50	400,000	330,000,000	2	11,000,000	11,400,000
Rescission notices	200,000	.50	100,000	34,000,000	1	566,667	666,667
Variable rate mortgages	100,000	.50	50,000	1,800,000	2	60,000	110,000
High rate/high fee mortgages	100,000	.50	50,000	500,000	2	16,667	66,667
Reverse mortgages	50,000	.50	25,000	150,000	1	2,500	27,500
Advertising	500,000	.25	125,000	1,000,000	1	16,667	141,667
Total open-end credit							7,060,415
Total closed-end credit							12,412,501
Total credit							19,472,916

Estimated annual cost burden: \$458,877,000, rounded.

Staff calculated labor costs by applying appropriate hourly cost figures

to the burden hours described above. The hourly rates used below (\$50 for

managerial or professional time, \$20 for skilled technical time, and \$10 for clerical time) are averages.

Recordkeeping: For the 1,000,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require

skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is \$11,000,000.

Disclosure: For each notice or information item listed, staff estimates

that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is \$447,877,068.

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$50/hr.)	Time (hours)	Cost (\$20/hr.)	Time (hours)	Cost (10/hr.)	
Recordkeeping	0	0	100,000	\$2,000,000	900,000	\$9,000,000	\$11,000,000
Open-end credit Disclosures:							
Initial terms	25,833	\$1,291,665	232,500	\$4,649,994	0	0	\$5,941,659
Rescission notices	2,542	127,085	22,875	457,506	0	0	584,491
Change in terms	29,583	1,479,165	266,250	5,324,994	0	0	6,804,159
Periodic statements	510,000	25,500,000	4,590,000	91,800,000	0	0	117,300,000
Error resolution	88,333	4,416,665	795,000	15,899,994	0	0	20,316,659
Credit and charge card accounts	30,833	1,541,665	277,500	5,549,994	0	0	7,091,659
Home equity lines of credit	12,083	604,165	108,750	2,174,994	0	0	2,779,159
Advertising	6,833	341,665	61,500	1,229,994	0	0	1,571,659
Total open-end credit							162,389,545
Closed-end credit Disclosures:							
Credit disclosures	1,140,000	57,000,000	10,260,000	205,200,000	0	0	262,200,000
Rescission notices	66,667	3,333,335	600,000	12,000,006	0	0	15,333,341
Variable rate mortgages	11,000	550,000	99,000	1,980,000	0	0	2,530,000
High rate/high fee mortgages	6,667	333,335	60,000	1,200,006	0	0	1,533,341
Reverse mortgages	2,750	137,500	24,750	495,000	0	0	632,500
Advertising	14,167	708,335	127,500	2,550,006	0	0	3,258,341
Total closed-end credit							285,487,523
Total Disclosures							447,877,068
Total Recordkeeping and Disclosures:							458,877,068

(Minor discrepancies in totals are due to rounding of the hours shown for skilled technical time.)

Debra A. Valentine,

General Counsel.

[FR Doc. 99-33206 Filed 12-21-99; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services
Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 9 a.m. to 4 p.m. on Tuesday, January 18, 2000, at the New York Public Library, 5th Avenue & 42 Street, New York, NY 10018.

PURPOSE: To hear testimony about the Year 2000 Celebration plans for Women's History Month and review current related activities.

Guest speakers will address the National Women's History Month celebration to be held in Washington on March 22 and review the status of the Commissions' recommendations for action for the year 2000.

Participants may wish to make a statement covering personal interests in the history of women in America or share thoughts on appropriate commemorative events.

FOR FURTHER INFORMATION CONTACT:

Martha Davis (202) 501-0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to martha.davis@gsa.gov.

Dated: December 14, 1999.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 99-33116 Filed 12-21-99; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F-5321]

United States Department of Agriculture, Food Safety and Inspection Service; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the United States Department of Agriculture, Food Safety and Inspection Service (USDA/FSIS) has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a 4.5 kiloGray (kGy) maximum dose of ionizing radiation to treat unrefrigerated (as well as refrigerated) uncooked meat, meat products, and certain meat food products to reduce levels of foodborne pathogens and extend shelf-life.

FOR FURTHER INFORMATION CONTACT:

Rudaina H. Alrefai, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3034.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4695) has been filed by the USDA/FSIS, 300 12th St. SW., rm. 112, Washington, DC 20250. The petition proposes that the food additive regulations in § 179.26(b) Ionizing radiation for the treatment of food (21 CFR 179.26(b)) be amended to provide for the safe use of a 4.5 kGy maximum dose of ionizing radiation to treat unrefrigerated (as well as refrigerated) uncooked meat, meat products, and certain meat food products to reduce levels of foodborne pathogens and extend shelf-life. The current regulations in § 179.26(b) provide for the use of a maximum dose of 4.5 kGy to treat refrigerated products only.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 3, 1999.

Alan M. Rulis,

*Director, Office of Premarket Approval,
Center for Food Safety and Applied Nutrition.*
[FR Doc. 99-33093 Filed 12-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA).

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and

recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 20, 2000, 9:45 a.m. to 6:30 p.m., and January 21, 2000, 8 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference rm. 020B, 9200 Corporate Blvd., Rockville, MD.

Contact: Freddie M. Poole, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-2096, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 20, 2000, the committee will discuss, make recommendations, and vote on six premarket approval applications (PMA's) for in vitro diagnostic qualitative devices to detect hepatitis B serological markers in human sera or plasma. The following hepatitis B serological marker assays, when used appropriately in combination, are indicated as an aid in the diagnosis and monitoring of disease and therapy in acute and chronic hepatitis B virus infection (HBV) in both low and high risk adult populations:

1. Hepatitis B surface antigen (HBsAg) (HBsAg assay may be used alone as an indicator of HBV infection when performing prenatal testing);
2. Antibodies to hepatitis B surface antigen (anti-HBs) (anti-HBs assay may be used alone to determine the immune status of HBV vaccine recipients);
3. Hepatitis B e antigen (HBeAg);
4. Antibodies to hepatitis B e antigen (anti-HBe);
5. Hepatitis B core antigen (anti-HBc); and
6. Immunoglobulin M antibodies to hepatitis B core antigen (IgM anti-HBc).

These tests are not intended for blood donor screening.

Also, on January 20, 2000, the committee will discuss and make recommendations on issues concerning the use of characterized hepatitis panels in assessing the performance of in vitro diagnostic devices for the determination of hepatitis infection as an alternative to conducting intensive prospective clinical trials.

The following draft questions are proposed for discussion and may be subject to changes prior to the committee meeting:

1. Will the use of characterized hepatitis panels provide assurance of the safety and effectiveness of the assay in various populations?

2. What criteria should be used to include specimens in these panels?

3. Will panels be sufficient to support claims for the diagnosis of HBV infection or immunity for all indicated populations?

4. Who should control panel distribution and evaluation, e.g., device manufacturers, FDA, or an independent third party?

FDA will consider these recommendations in the future development of review criteria for in vitro diagnostic devices, for the detection of hepatitis antigen or antibodies to hepatitis antigen, as valid scientific evidence to determine whether there is reasonable assurance that these devices are safe and effective.

On January 21, 2000, the committee will discuss, make recommendations, and vote on a PMA for an in vitro diagnostic qualitative device for the detection of antibody to hepatitis C virus in human serum or plasma. This device is not intended for use in blood or plasma donor screening.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 12, 2000. On January 20, 2000, oral presentations from the public will be scheduled between approximately 12 noon and 12:30 p.m., 3 p.m. and 3:30 p.m., and 5:30 p.m. and 6 p.m. On January 21, 2000, oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:15 p.m., and 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 12, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99-33122 Filed 12-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D-5424]

Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements." The guidance is based on the report of an FDA Food Advisory Committee (FAC) Working Group that was asked to advise the agency on interpretation of the scientific standard "significant scientific agreement," which FDA applies in its review of scientific data for health claims. This action is being taken to provide guidance to industry and to comply with a recent court decision that instructed FDA to clarify the meaning of the significant scientific agreement standard.

DATES: Written comments should be submitted by February 22, 2000, to ensure adequate consideration in the preparation of a revised guidance, if warranted. However, written comments may be submitted at anytime.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the guidance entitled "Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements" to the Office of Special Nutritionals (HFS-450), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-addressed adhesive label to assist that office in processing your request, or include a fax number to which the guidance may be sent. Alternatively, you may request a copy of the guidance by calling 202-205-4168, or you may fax your request to 202-205-5295. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

Sharon A. Ross, Center for Food Safety and Applied Nutrition (HFS-450), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4168.

I. Background

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (NLEA), which amended the Federal Food, Drug, and Cosmetic Act (the act), authorized FDA to allow food labels to carry statements that describe the relationship between a food substance and a disease or health-related condition ("health claims") (section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B))). To ensure the scientific validity of health claims, NLEA required that FDA authorize a health claim in the labeling of conventional foods only if the agency "determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence" (section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B)(i))). By regulation, FDA adopted the same standard for health claims in the labeling of dietary supplements (§ 101.14(c)(21 CFR 101.14(c)).

In 1996, FDA asked its FAC to convene a working group to develop a guide for preparing petitions for health claims. In response to the recent decision of the Court of Appeals for the District of Columbia Circuit in *Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999), which required FDA to clarify the meaning of "significant scientific agreement," the focus of the FAC Working Group shifted to the scientific review of data for health claims and the interpretation of the significant scientific agreement standard. The working group's final report entitled "Interpretation of Significant Scientific Agreement in the Review of Health Claims" was made public during the FAC meeting of June 24 and 25, 1999. FDA concurs with the conclusions of the working group and is issuing a guidance based on the working group's final report.

This guidance represents the agency's current thinking on the meaning of the significant scientific agreement standard in section 403(r)(3) of the act (21 U.S.C. 343(r)(3)) and § 101.14(c). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach

satisfies the requirements of the applicable statute, regulations, or both.

This guidance is a Level 1 guidance under FDA's good guidance practices (GGP's) (62 FR 8961, February 27, 1997). Consistent with GGP's, the agency is soliciting public comment, but is implementing the guidance immediately to promptly comply with the decision in *Pearson v. Shalala*.

II. Comments

Interested persons should submit written comments on the guidance to the Dockets Management Branch (address above), by February 22, 2000, to ensure adequate consideration in the preparation of a revised guidance, if warranted. However, written comments may be submitted at anytime. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of the guidance also is available on the Internet at <http://www.cfsan.fda.gov/~dms/guidance.html#lab>.

Dated: December 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99-33279 Filed 12-20-99; 1:04 pm]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D-4959]

Draft Guidance for Industry on Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related

to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000." This document is intended to provide guidance to sponsors of applications that are the subject of an open advisory committee meeting convened by the Center for Drug Evaluation and Research (CDER), beginning January 1, 2000. The draft guidance describes procedures that will be adopted by CDER for making information provided to advisory committee members in connection with such meetings publicly available. The draft guidance also describes how a sponsor should prepare its submission to an advisory committee.

DATES: Submit written comments on the draft guidance document by February 22, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at <http://www.fda.gov/cder/guidance/index.htm>. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD-2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5400.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000." This draft guidance is intended to provide guidance to sponsors of applications that are the subject of an open advisory committee meeting convened by CDER, beginning January 1, 2000. The draft guidance describes procedures that will be adopted by CDER for making information that is provided to advisory committee members in connection with such

meetings publicly available. The draft guidance also describes how a sponsor should prepare its submission to an advisory committee.

In the **Federal Register** of November 30, 1999 (64 FR 66920), FDA announced the availability of a guidance document entitled "Disclosure of Materials Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000" (the disclosure policy guidance). The disclosure policy guidance provided guidance on how FDA interprets the Federal Advisory Committee Act (the FACA) (5 U.S.C. app. 2) and § 314.430 (21 CFR 314.430) with respect to the disclosure of materials provided to advisory committees and how FDA will exercise its discretion under § 314.430(d)(1) in connection with open advisory committee meetings convened by CDER beginning on January 1, 2000. In the disclosure policy guidance, FDA stated that the agency construes the FACA to require that, with respect to any open advisory committee meeting convened pursuant to the FACA, whenever practicable and subject to any applicable exemptions of the Freedom of Information Act (the FOIA) (5 U.S.C. 552), those materials that are provided to the members of an advisory committee in connection with that meeting must be made available for public inspection and copying before or at the time of the advisory committee meeting. The agency also stated in the disclosure policy guidance that FDA interprets § 314.430 to be consistent with the FACA and therefore will exercise its discretion under § 314.430(d)(1) in a manner consistent with the FACA and the FOIA as described in the previous sentence to make available for public inspection and copying materials provided to the members of an advisory committee in connection with open advisory committee meetings convened by CDER, beginning on January 1, 2000. In the disclosure policy guidance, FDA stated its intention to provide further guidance on what sponsors may expect concerning the disclosure of this information.

The draft guidance entitled "Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000," that FDA is making available today, is intended to provide the procedural information referenced in

the disclosure policy guidance. The procedures in this guidance are intended to make the process of complying with the disclosure requirements of the FACA as efficient as possible. The procedures address: (1) The content and organization of a sponsor submission for an advisory committee; (2) the timing of the sponsor submission to CDER; (3) the process by which CDER will review and redact the sponsor submission and the related CDER submission; and (4) the effect this process may have on the time allotted to a review cycle in which an advisory committee meeting occurs.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the implementation by CDER of the disclosure provisions of the FACA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000.

Description: FDA is issuing a draft guidance on procedures that will be adopted by CDER for making information that is provided to advisory committee members in connection with open advisory committee meetings publicly available. The procedures address: (1) The content and organization of a sponsor submission for an advisory committee; (2) the timing of the sponsor submission to CDER; (3) the process by which CDER will review and redact the sponsor submission and the related CDER submission; and (4) the effect this process may have on the time allotted to a review cycle in which an advisory committee meeting occurs. Under existing regulations in 21 CFR 14.35(a), sponsors routinely submit information to the agency that will be provided to advisory committee members in connection with advisory committee meetings. A sponsor may submit a package that the sponsor states should be fully disclosed to the public or a package that contains information the sponsor asserts should be withheld from public disclosure under the FOIA. This draft guidance describes the submission of information to the agency that will be provided to the members of an advisory committee in connection with an open advisory committee meeting related to the testing or approval of a new drug and convened by CDER, beginning on January 1, 2000.

FDA construes the FACA to require that, with respect to any open advisory committee meeting convened pursuant to the FACA, whenever practicable and subject to any applicable exemptions of the FOIA, those materials that are

provided to the members of a CDER advisory committee in connection with that meeting must be made available for public inspection and copying before or at the time of the advisory committee meeting. Therefore, under the draft guidance, a sponsor may submit two types of packages of materials for an advisory committee in connection with an open advisory committee meeting convened by CDER: (1) A package that the sponsor states should be fully disclosed to the public because it does not contain information that should be withheld from public disclosure under an exemption under the FOIA; and (2) a package that contains information the sponsor asserts should be withheld from public disclosure under the FOIA and that, therefore, must be reviewed by the agency's Freedom of Information staff to ensure that the appropriate information is redacted. The procedures for submitting the two collections of information are described in the draft guidance.

A. Fully Releasable Submissions

In the guidance, sponsors are strongly encouraged to submit advisory committee packages that may be publicly disclosed in their entirety (i.e., that do not contain any information that the sponsor wishes to assert is exempt from disclosure under the FOIA because it is trade secret or confidential commercial information, or because it is information whose disclosure would constitute an unwarranted invasion of personal privacy, for example, by clearly identifying individual subjects). Sponsors are also encouraged to submit an electronic version of the package.

B. Submissions That Contain Material the Sponsor Asserts is Exempt From Disclosure

A sponsor may believe that it is necessary to include material in an advisory committee package that it believes is exempt from disclosure. As described in the guidance, the agency recommends in this circumstance that the sponsor segregate the material it believes is exempt from disclosure from the disclosable material, clearly designate the material that the sponsor believes is exempt from disclosure, and provide a detailed justification of both why that specific information is necessary for the advisory committee's consideration and why it is exempt from disclosure. Sponsors are also encouraged to submit an electronic version of the package.

1. Description of Respondents

A sponsor of an unapproved new drug application (NDA), NDA supplement,

abbreviated new drug application (ANDA), biological license application (BLA), or premarket approval application for a device (PMA) that is the subject of an open advisory committee convened by CDER, beginning January 1, 2000, to the extent permitted under applicable law and unless the unapproved BLA or PMA is being discussed at a segregable portion of a CDER advisory committee meeting (for example, during the afternoon session) and not in conjunction with an NDA, NDA supplement, or ANDA.

2. Burden Estimate

Table 1 of this document provides an estimate of the annual reporting burden for the submission under the guidance of information to CDER that will be provided to the members of an advisory committee in connection with an open advisory committee meeting related to the testing or approval of a new drug and convened by CDER, beginning on January 1, 2000.

a. Fully releasable submissions. In calendar year 1998, 30 different sponsors (respondents) submitted background information for open advisory committee meetings regarding the testing or approval of new drugs. CDER expects that annually, approximately the same total number of respondents (i.e., 30 respondents) will submit information for similar open advisory committee meetings. The procedures for submitting this information that are set forth in the draft guidance document were not in place in calendar year 1998. However, based on CDER's experience with the advisory committee process, and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately two-thirds of the total number of respondents (i.e., 20 respondents) will submit packages that may be disclosed in their entirety. In calendar year 1998, CDER received a total of 38 submissions from sponsors in connection with open advisory committee meetings. The agency expects that this number will remain the same. However, based on CDER's experience with the advisory committee process and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately two-thirds of the submissions it receives (i.e., 25 responses) will be fully releasable, averaging 1.25 responses per respondent. Therefore, FDA estimates that the total annual responses (i.e., the

total number of fully releasable sponsor submissions that will be provided to advisory committees) will be 25. The hours per response is the estimated number of hours that a respondent would spend under the guidance preparing a fully releasable submission in connection with an open advisory committee meeting, including submitting an electronic version of the package. Based on FDA experience and information provided to the agency by the Pharmaceutical Research and Manufacturing Association (PhRMA), FDA estimates that approximately 700 hours on average would be needed per response. Therefore, FDA estimates that 17,500 hours will be spent per year under the guidance by respondents submitting fully releasable information in connection with open advisory committee meetings.

b. *Submissions that contain material the sponsor asserts is exempt from disclosure.* In calendar year 1998, 30 different sponsors (respondents) submitted background information for open advisory committee meetings regarding the testing or approval of new drugs. CDER expects that annually, approximately the same total number of respondents (i.e., 30 respondents) will submit information for similar open advisory committee meetings. The

procedures for submitting this information that are set forth in the draft guidance document were not in place in calendar year 1998. However, based on CDER's experience with the advisory committee process, and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately one-third of the total number of respondents (i.e., 10 respondents) will submit packages that contain material that the sponsor asserts is exempt from disclosure. In calendar year 1998, CDER received a total of 38 submissions from sponsors in connection with open advisory committee meetings. The agency expects that this number will remain the same. However, based on CDER's experience with the advisory committee process, and given that the guidance document strongly encourages respondents to submit advisory committee packages that may be publicly disclosed in their entirety, CDER estimates that approximately one-third of the submissions it receives (i.e., 13 responses) will contain information that the sponsor asserts is exempt from disclosure, averaging 1.3 responses per respondent. Therefore, the total annual

response (i.e., the total number of sponsor submissions that will be provided to advisory committees and that the sponsors assert is exempt from disclosure) is estimated to be 1.3. The hours per response is the estimated number of hours under the guidance that a respondent would spend preparing a submission that contains information that the respondent asserts is exempt from disclosure, including the time FDA expects it will take a sponsor to submit an electronic version of the package and to work with the agency to redact any information that is appropriately exempt from disclosure under the FOIA. Based on FDA experience and information provided to the agency by PhRMA, FDA estimates that approximately 1,400 hours on average would be needed per response. Therefore, FDA estimates that under the guidance, 18,200 hours will be spent per year in connection with open advisory committee meetings by respondents submitting packages that contain information that the respondents assert is exempt from disclosure. The total estimated burden hours under the draft guidance are 35,700.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

Submissions	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Fully releasable submissions	20	1.25	25	700	17,500
Submissions that contain material that is claimed to be exempt from disclosure	10	1.3	13	1,400	18,200
Total	30		38		35,700

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this draft guidance to OMB for review. Interested persons are requested to send comments on this information collection by February 22, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

Dated: December 15, 1999.

Margaret M. Dotzel,
Acting Associate Commissioner for Policy.
[FR Doc. 99-33092 Filed 12-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-0588]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently Approved collection; *Title of Information Collection:* Authorization agreement for electronic forms transfer; *Form No.:* HCFA-0588 (OMB# 0938-0626); *Use:* The information is needed

to allow providers to receive funds electronically in their bank accounts; *Frequency*: On occasion; *Affected Public*: Business or other for-profit, not-for-profit institutions; *Number of Respondents*: 10,000; *Total Annual Responses*: 10,000; *Total Annual Hours*: 1,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: December 13, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-33185 Filed 12-21-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4442-N-15]

Notice of Proposed Information Collection for Public Comment: Assessment of the American Housing Survey Metropolitan Sample

AGENCY: Office of Policy Development and Research, 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*: February 22, 2000.

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:

Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Rm. 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT:

David A. Vandenbroucke, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8218, Washington, DC 20410, telephone (202) 708-1060 (Ext. 5890 (this is not a toll-free number)). A copy of the proposed forms and other available documents to be submitted to OMB may be obtained from Mr. Vandenbroucke.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

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 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 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: Assessment of the American Housing Survey Metropolitan Sample.

Description of the need for the information and proposed use: HUD is seeking to better understand how the American Housing Survey Metropolitan Sample (AHS-MS) data is used, and by whom. The information collected will enable the Office of Policy Development and Research to balance geographic coverage, timeliness, and cost considerations in designing the surveys, in order to develop an optimal data set for use by HUD, public agencies, education institutions, nonprofits, planners, and other interested organizations. The information collection intends to address these questions: (1) What is the current usefulness of the AHS-MS? (2) What potential additional uses does the AHS-MS have? (3) What steps can we take to achieve the survey's potential? (4) What

changes in the AHS-MS would make it more useful?

Agency Form Numbers, if Applicable: None.

Members of the affected public: Users and potential users of the AHS-MS, including academic researchers, local government workers, and private sector research workers.

Estimation of the total number 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 200. The frequency of response is 1 per respondent. The time per respondent is 10 minutes. The total hours to respond is 33.

Status of proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 3, 1999.

Lawrence L. Thompson,
Deputy Assistant, Secretary for Policy Development.

[FR Doc. 99-33109 Filed 12-21-99; 8:45 am]

BILLING CODE 4210-62-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4434-N-06]

Quality Housing and Work Responsibility Act of 1998; PIH Policy for Dealing With FY 1997 and Prior FY Unobligated Modernization Funds

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice of PIH Policy for dealing with FY 1997 and prior unobligated funds.

SUMMARY: This notice provides the public with information on how HUD will deal with public housing agencies (PHAs) with FY 1997 and prior unobligated modernization funds in violation of the Public Housing Reform Act.

FOR FURTHER INFORMATION CONTACT:

William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1-800-877-8339. Program specialists

for more specific HUD program areas are listed on the HUD web page at <http://hudweb.hud.gov/offices.html>.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461) (the “Public Housing Reform Act”) as part of the fiscal year (FY) 1999 HUD appropriations act. The Public Housing Reform Act makes extensive amendments to the United States Housing Act of 1937 (the “1937 Act”), which generally governs HUD’s public housing and tenant-based Section 8 housing assistance programs.

This notice announces what action HUD will take with respect to section 9(j)(4)(B) of the 1937 Act, established under section 519(a) of the Public Housing Reform Act, which states that:

Notwithstanding subparagraph (A), any funds appropriated to a public housing agency for fiscal year 1997 or prior fiscal year shall be fully obligated by the public housing agency not later than September 30, 1999.

There was no language in this paragraph that allowed HUD to grant exceptions to the provision. Based on the sanctions statement in a letter dated July 23, 1999 that provided notice to all PHAs affected by 9(j)(4)(B), after October 1, 1999, all PHAs with FY 1997 and prior unobligated public housing modernization funds will be subject to the following sanctions:

1. HUD will not release any FY 2000 funds for modernization activities to a PHA that has unobligated FY 1997 and prior FY modernization funds until all such unobligated funds are obligated by the PHA and HUD has reviewed and confirmed the obligation documents.

2. If these unobligated FY 1997 and prior FY funds are not fully obligated by March 30, 2000, an additional final sanction of the loss of all unobligated FY 1997 and prior FY public housing modernization funds, through notification of annual contributions contract (ACC) default and recapture of outstanding unobligated funds, shall be implemented.

PHAs are advised that they may use unobligated FY 1997 and prior FY public modernization funds for any eligible activity under section 9(d) of the 1937 Act, and are encouraged to do so to avoid the recapture of these funds.

This policy for dealing with section 9(j)(4)(B) provides PHAs a generous opportunity for compliance, given the strict language of the Congressional mandate. The Public Housing Reform Act, which enacted this provision, was

passed more than a year ago; more than nine months have passed since an initial communication on this subject in a February **Federal Register** Notice; and more than four months have passed since HUD’s letter of July 23, 1999, explaining there will be sanctions if funding were not obligated by September 30, 1999, as required.

Dated: December 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–33107 Filed 12–21–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4434–N–05]

Quality Housing and Work Responsibility Act of 1998; Status of Implementation; Guidance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (the “Public Housing Reform Act”). This statute embodies many of the reforms of the HUD 2020 Management Reform Plan that are directed at revitalizing and improving HUD’s public housing and Section 8 assistance programs. This notice updates the public on HUD’s overall implementation of the Public Housing Reform Act and identifies where existing implementation guidance may be found, with respect to the provisions regarding public housing and tenant-based assistance. This notice also provides further implementation guidance on those provisions of the Public Housing Reform Act that are effective on October 1, 1999 or on October 21, 1999.

FOR FURTHER INFORMATION CONTACT: For further information regarding public housing and the Section 8 certificate, voucher and moderate rehabilitation programs contact Stephen I. Holmquist, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC, 20410; telephone (202) 708–0713 (this is not a toll-free number).

Persons with hearing or speech impairments may access that number via TTY by calling the Federal

Information Relay Service at (800) 877–8339. Program specialists for more specific HUD program areas are listed on the HUD web page at <http://hudweb.hud.gov/offices.html>.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, 112 Stat. 2461) (the “Public Housing Reform Act”) as part of the fiscal year 1999 HUD appropriations act. The Public Housing Reform Act makes extensive amendments to the United States Housing Act of 1937 (the “1937 Act”), which generally governs HUD’s public housing and tenant-based Section 8 housing assistance programs. Certain provisions of the Public Housing Reform Act became effective immediately on enactment (October 21, 1998). Most provisions, however, became effective on October 1, 1999, although some provisions become effective on October 21, 1999 (one year from enactment) or on other specified dates.

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance on the Public Housing Reform Act to advise the public of those provisions that were effective immediately and of action that may or should be taken at that point. The Notice also provided guidance on certain other provisions in the fiscal year 1999 HUD appropriations act that affect the public housing and Section 8 programs. Since publication of the February 18, 1999 notice, HUD has published numerous other notices and proposed, interim, and final rules to implement the Public Housing Reform Act.

This notice updates the public on HUD’s overall implementation of the Public Housing Reform Act and identifies where existing implementation guidance may be found, with respect to the provisions regarding public housing and tenant-based assistance. The notice also provides further implementation guidance on those provisions of the Public Housing Reform Act that became effective on October 1, 1999, or on October 21, 1999.

Some of the Public Housing Reform Act provisions do not require HUD rulemaking, while others are the subject of rulemaking that is still in progress. For rulemaking that is still in progress, this notice provides guidance that Public Housing Agencies (PHAs) should follow until HUD completes rulemaking. Unless provided otherwise in this Notice published today, PHAs that follow HUD’s guidance will not be

penalized for any changes made later in the rulemaking process. If changes are made later in the rulemaking process, HUD will provide adequate time for PHAs to adjust their policies accordingly.

II. Summary of Rulemakings Undertaken Under the Public Housing Reform Act

In addition to the Notice of Initial Guidance, published on February 18, 1999, and an update to that Notice, published on April 30, 1999 (64 FR 23344), the following rulemaking has occurred under the Public Housing Reform Act. (The reference to public comments received on the rules refer to written comments received on the rules by the public comment deadline. The number of comments does not include the comments raised at the public forums held on the Public Housing Agency Plan rule and the Section 8 Certificate and Voucher Merger rule. Additionally, the number does not include late comments. Although comments were received late on several rules, HUD made every effort to look at all comments and consider all issues raised.)

Final Rules

1. *Public Housing Agency Plans.* The final rule was published on October 21, 1999 (64 FR 56844). HUD received 52 public comments on the interim rule published on February 18, 1999 (64 FR 8170); in addition, public forums were held in Atlanta, GA, Omaha, NE, Syracuse, NY, and Washington, DC.

2. *Statutory Merger of the Section 8 Certificate and Voucher Programs (Housing Choice Voucher Program).* The final rule was published on October 21, 1999 (64 FR 56894). An amendment to the final rule was published on November 3, 1999 (64 FR 59620). HUD received 93 public comments on the interim rule published on May 14, 1999 (64 FR 26632); in addition, public forums were held in Omaha, NE; Syracuse, NY; and Washington, DC.

3. *Renewals of Section 8 Tenant-Based Assistance Contracts.* The final rule for Renewals of Section 8 Tenant-Based Assistance Contracts, developed through negotiated rulemaking, was published on October 21, 1999 (64 FR 56882). (The preamble to the October 21, 1999 final rule includes a discussion of the negotiated rulemaking process, lists the committee members, and provides the twelve dates of the negotiated rulemaking committee meetings.) The notice for calendar year 1999 renewals was published on February 18, 1999 (64 FR 8188). This notice followed a direct notice issued by

HUD's Office of Public and Indian Housing on December 31, 1998, in accordance with the statute.

4. *Revised Restrictions on Assistance to Noncitizens.* The final rule was published on May 12, 1999 (64 FR 25726). HUD received 22 public comments on the interim rule published on November 29, 1996 (61 FR 60535).

5. *Comprehensive Improvement Assistance Program (CIAP).* The final rule was published on June 23, 1999 (64 FR 33636). This allowed HUD to distribute the funds by formula in fiscal year 1999, one year before the statute required the distribution of funds by formula. HUD received 18 public comments on the proposed rule published on April 30, 1999 (64 FR 23484). The final rule covers funding distribution for fiscal year 1999.

6. *Public Housing Drug Elimination Program (PHDEP) Formula Allocation.* The final rule was published on September 14, 1999 (64 FR 49900). This allowed HUD to distribute the funds by formula in fiscal year 1999, one year before the statute required distribution of funds by formula. HUD received 26 public comments on the proposed rule published on May 12, 1999 (64 FR 25736). HUD received 60 public comments on the Advance Notice of Proposed Rulemaking published on February 18, 1999 (64 FR 8210).

7. *Required Resident on the PHA Board of Commissioners or Similar Governing Body.* The final rule was published on October 21, 1999 (64 FR 56870). HUD received 71 public comments on the proposed rule published on June 23, 1999 (64 FR 33644).

Proposed Rules (Final Rule Not Yet Published)

1. *Changes to Admissions, Rents and Occupancy Requirements in the Public Housing and Section 8 Programs.* The proposed rule was published on April 30, 1999. HUD received 113 public comments on the proposed rule.

2. *Section 8 Homeownership Vouchers.* The proposed rule was published on April 30, 1999 (64 FR 23488). HUD received 93 public comments on this proposed rule.

3. *Amendments to the Public Housing Assessment System (PHAS).* The proposed rule was published on June 22, 1999 (64 FR 33348). HUD received 29 public comments on the proposed rule. On October 21, 1999 (64 FR 56676), HUD published a notice advising that HUD would provide transition assistance to the PHAS for PHAs with fiscal years ending September 30, 1999, or December 31, 1999. For these PHAs, no PHAS score

would be issued for fiscal years ending September 30, 1999, and December 31, 1999. Instead these PHAs would receive an assessment solely on the basis of their management operations in accordance with subpart D of the PHAS regulation (24 CFR part 902). PHAs with fiscal years ending after December 31, 1999, would be issued PHAS scores.

4. *Pet Ownership in Public Housing.* The proposed rule was published on June 23, 1999 (64 FR 33640). HUD received 3,777 public comments on the proposed rule. In addition to comments received by the public comment deadline, HUD continued to receive public comments on this rule several weeks after the deadline. These post-deadline comments numbered approximately 3,000.

5. *One Strike Screening and Eviction for Drug Abuse and Other Criminal Activity.* The proposed rule was published on July 23, 1999 (64 FR 40262). HUD received 29 public comments on the proposed rule.

6. *Required Conversion of Developments from Public Housing Stock.* The proposed rule was published on July 23, 1999 (64 FR 40232). HUD received 5 public comments on the proposed rule.

7. *Voluntary Conversion of Developments from Public Housing Stock.* The proposed rule was published on July 23, 1999 (64 FR 40240). HUD received 6 public comments on the proposed rule.

8. *Allocation of Funds Under the Capital Fund.* The proposed rule was developed through negotiated rulemaking and published on September 14, 1999 (64 FR 49924). (The preamble to the September 14, 1999 proposed rule includes a discussion of the negotiated rulemaking process, lists the committee members, and provides the sixteen dates of the negotiated rulemaking committee meetings.) HUD received 10 public comments on the proposed rule.

9. *Consortia of Public Housing Agencies and Joint Ventures.* The proposed rule was published on September 14, 1999 (64 FR 49940). The public comment period for this rule closed on November 15, 1999. HUD received 6 public comments on the proposed rule.

10. *Public Housing Homeownership Program.* The proposed rule was published on September 14, 1999 (64 FR 49932). The public comment period for this rule closed on November 15, 1999. HUD received 12 public comments on the proposed rule.

11. *Direct Funding of Resident Management Corporations.* The proposed rule was published on October

21, 1999 (64 FR 56890). The proposed rule provides for a 60-day public comment period.

Proposed Rules Under Development

The following proposed rules are under development and have not yet been published:

1. *Public Housing Capital Fund*. This rule will establish regulatory provisions concerning the Public Housing Capital Fund other than the formula.

2. *Public Housing Mixed Finance*. This rule will implement section 539 of

the Public Housing Reform Act, as further discussed below.

3. *Public Housing Demolition/Disposition*. This rule will implement more fully section 531 of the Public Housing Reform Act, as further discussed below.

4. *Allocation of Funds Under the Public Housing Operating Fund*. This is a proposed rule to be developed using negotiated rulemaking procedures.

In addition to these proposed rules, HUD also expects to publish a proposed rule on tenant participation in public housing, which will amend the existing

tenant participation regulations in 24 CFR part 964, and may determine that other rulemakings related to the Public Housing Reform Act are desirable.

III. Summary Chart of Status and Guidance

The following chart summarizes the HUD guidance issued to date on each section of the Public Housing Reform Act covered by this Notice. The chart should be read in conjunction with the narrative which follows in the next section.

Statutory section	Implemented by February 18, 1999— Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 503(c) Technical Recommendations.					Report containing proposals for technical and conforming legislative changes was submitted to the Congress on July 23, 1999.
Sec. 503(d) List of Obsolete Documents.					The required FEDERAL REGISTER notice was published on October 1, 1999 (64 FR 53400).
Sec. 505 Declaration of Policy and Public Housing Agency Organization.		June 23, 1999 (64 FR 33644).		October 21, 1999 (64 FR 56870).	Rulemaking implemented the statutory requirement that the governing board of each PHA, with certain exceptions, contain at least one member who is directly assisted by the PHA.
Sec. 506 Definitions					Statutory changes were incorporated in HUD rulemakings implementing the Public Housing Reform Act, as appropriate.
Sec. 507 Minimum Rent.	Yes	Part of Admissions and Occupancy proposed rule published on April 30, 1999 (64 FR 23459).		In development.	Section 507 was effective upon enactment.
Sec. 508 Determination of Adjusted Income and Median Income.		Part of Admissions and Occupancy rulemaking.		In development.	Partial implementation was required by August 6, 1999 Notice of Guidance on Public Housing Rent Policies (64 FR 42956).
Sec. 509 Family Self-Sufficiency Program.	Yes	Part of Admissions and Occupancy rulemaking.		In development.	
Sec. 510 Prohibition on Use of Funds.					Self-implementing; no rulemaking required.
Sec. 511 Public Housing Agency Plans.			February 18, 1999 (64 FR 8170).	October 21, 1999 (64 FR 56844).	Additional guidance provided in PIH Notices 99-33 and 99-51. HUD expects to provide further information and direction.
Sec. 512 Community Service and Family Self-Sufficiency Requirements.	Yes, as to changes to welfare-related programs requirements (see amended subsection 12(d) of the 1937 Act).	Part of Admissions and Occupancy rulemaking.		In development.	

Statutory section	Implemented by February 18, 1999— Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 513 Income Targeting for Public Housing and Tenant-Based Section 8 Assistance.	Yes	Part of Admissions and Occupancy rulemaking.	Part of PHA Plan rulemaking, with regard to deconcentration (see section 511). Part of Section 8 Merger Interim rule with regard to Section 8 vouchers. The interim rule was published on May 14, 1999 (64 FR 26632) (see section 545).	Admissions and Occupancy final rule in development. Part of PHA Plan rulemaking, with regard to deconcentration (see section 511). Final Section 8 Merger rule published on October 21, 1999 (64 FR 56894) (see section 545).	
Sec. 514 Repeal of Federal preferences.	Yes	Part of Admissions and Occupancy rulemaking (for public housing and Section 8 project based assistance).	Part of Section 8 Merger rulemaking (for Section 8 tenant-based vouchers) (See section 545).	Admissions and Occupancy final rule in development. Part of Section 8 Merger rulemaking (See section 545). In development.	
Sec. 515 Joint Ventures and Consortia of PHAs.		September 14, 1999 (64 FR 49940).			See specific additional guidance below.
Sec. 516 Public Housing Agency Mortgages and Security Interests.					Rulemaking in development. See specific additional guidance below.
Sec. 517 Mental Health Action Plan.					Development of action plan and compliance with other statutory requirements has begun.
Sec. 518(b) Local Notification.					No rulemaking necessary, but additional elaboration may be provided in Capital Fund program (non formula) rulemaking (see section 519).
Sec. 519:					
1. Capital Fund formula		September 14, 1999 (64 FR 49924).		In development.	See specific additional guidance below.
2. Capital Fund program (non-formula).		In development.			See specific additional guidance below.
Sec. 519 Operating Fund.	Yes (transition provisions).	Negotiated proposed rule in development.			See specific additional guidance below.
Sec. 519 Other Provisions.	Yes				See specific additional guidance below.
Sec. 520 Total Development Cost.		In development			Guidance also provided in PIH Notice 99-17.
Sec. 521 Sanctions for Improper Use of Amounts.					HUD will cross-reference this sanction authority in its program regulations, as appropriate.

Statutory section	Implemented by February 18, 1999— Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 522 Repeal of Modernization Fund.					Guidance provided in the March 23, 1999 HUD-CPD memorandum on the "Impacts of the 1999 Appropriations Act on HOME and SHOP", and the March 25, 1999 clarifying memorandum on the same subject. See specific additional guidance below.
Sec. 523 Family Choice of Rental Payment.	Discussed but not implemented.	Part of Admissions and Occupancy rulemaking.		In development.	Implementation required by the August 6, 1999 Notice of Guidance on Public Housing Rent Policies.
Sec. 524 Occupancy by Police Officers and Over-Income Families.	Yes	Part of Admissions and Occupancy rulemaking.		In development.	
Sec. 525 Site-Based Waiting Lists.			Part of PHA Plan rulemaking (see section 511).	Part of PHA Plan rulemaking (see section 511).	
Sec. 526 Pet Ownership.		June 23, 1999 (64 FR 33640).		In development.	
Sec. 529 Contract Provisions.					No rulemaking required; to be implemented through amendments to Annual Contributions Contracts (ACCs).
Sec. 530 Housing Quality Requirements.	Yes				No rulemaking required; to be implemented through ACC amendments.
Sec. 531 Demolition and Disposition of Public Housing.	Yes	In development.	Part of PHA Plan rulemaking (see section 511).	Part of the PHA Plan rulemaking (see section 511).	Additional guidance provided in PIH Notice 99-19.
Sec. 532 Resident Councils and Resident Management Corporations.		October 21, 1999 (64 FR 56890) (provides for the direct funding of RMCs); more comprehensive proposed rule in development.		Final rule for October 21, 1999 proposed rule in development.	
Sec. 533 Voluntary Conversion of Public Housing to Vouchers.		July 23, 1999 (64 FR 40240).		In development.	See specific additional guidance below.
Sec. 534 Transfer of Management of Certain Housing.					No rulemaking necessary or anticipated. See specific additional guidance below.
Sec. 535 Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance Grants for Projects (HOPE VI).					Substantially implemented by the FY 1999 notice of Funding Availability (NOFA) for the HOPE VI program; published on February 26, 1999 (64 FR 9618). HUD may undertake rulemaking in FY 2000.
Sec. 536 Public Housing Homeownership.		September 14, 1999 (64 FR 49932).		In development.	
Sec. 537 Required Conversion of Public Housing to Vouchers.		July 23, 1999 (64 FR 40232).		In development.	

Statutory section	Implemented by February 18, 1999— Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 538 Linking Services to Public Housing Residents.					Implemented through FY 1999 NOFA on the Resident Opportunities and Self-Sufficiency (ROSS) program; published on August 10, 1999 (64 FR 43530). HUD may undertake rulemaking in FY 2000.
Sec. 539 Mixed-Finance Public Housing.		In development.			
Sec. 545 Merger of Certificate and Voucher Programs.			May 14, 1999 (64 FR 26632).	October 21, 1999 (64 FR 56894). An amendment to the final rule was published on November 3, 1999 (64 FR 59620).	
Sec. 546 Public Housing Agencies.			Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 547 Administrative Fees.	Yes				Initial guidance will be supplemented by annual notices.
Sec. 548 Law Enforcement and Security Personnel in Assisted Housing.	Yes	Part of Admissions and Occupancy rulemaking.		In development.	
Sec. 549 Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Assistance Contracts.	Yes		Part of Section 8 merger rulemaking (see section 545)..	Part of Section 8 merger rulemaking (see section 545).	Additional guidance provided in PIH Notice 98-64.
Sec. 550 Technical and Conforming Amendments.					No rulemaking necessary or anticipated.
Sec. 551 Funding and Allocation.	Yes.				
Sec. 553 Portability			Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 554 Leasing to Voucher Holders.	Yes		Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 555 Home-ownership Option.		April 30, 1999 (64 FR 23488).		In development.	
Sec. 556 Renewals				Negotiated final rule published on October 21, 1999 (64 FR 56894).	Consistent with statutory requirement, the October 21, 1999 final rule was preceded by an implementing PIH Notice (98-65). For the convenience of the public, the PIH notice was also published in the FEDERAL REGISTER on February 18, 1999 (64 FR 8188).
Sec. 557 Manufactured Housing Demonstration Program.					Implemented by letter to the participating housing authorities.
Sec. 559 Rule-making and Implementation.			Part of Section 8 merger rulemaking (see section 545).	Part of Section 8 merger rulemaking (see section 545).	
Sec. 561 Home Rule Flexible Grant Demonstration.	Yes.				

Statutory section	Implemented by February 18, 1999— Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 563 Performance Evaluation Study.					HUD has entered into the statutorily required contract, with the National Academy of Public Administration (NAPA), and the study is proceeding.
Sec. 564 Public Housing Management Assessment Program.		June 22, 1999 (64 FR 33348).		In development.	Partial implementation (regarding independent assessment of small troubled PHAs) provided in the April 30, 1999 Initial Implementation Guidance Update Notice (64 FR 23344). Further details were also provided in a FEDERAL REGISTER notice published on October 21, 1999 (64 FR 33348).
Sec. 565 Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default.	Yes	Part of the PHAS rulemaking (see section 564).		In development.	
Sec. 566 Audits					To be implemented through ACC amendment.
Sec. 567 Advisory Council for Housing Authority of New Orleans.					No rulemaking is necessary or anticipated.
Sec. 568 Troubled PHAs and Consolidated Plans.					Effective on October 1, 1999. Will be implemented through rulemaking on Consolidated Plans.
Sec. 575 Provisions Applicable Only to Public Housing and Section 8 Assistance.	Yes (the provision regarding obtaining information from drug abuse treatment facilities).	The remaining provisions are part of the "One Strike" rulemaking (64 FR 40262, July 23, 1999).		In development.	
Sec. 576 Screening of Applicants for Federally Assisted Housing.		Part of the "One Strike" rulemaking.		In development.	
Sec. 577 Termination of Tenancy and Assistance.		Part of the "One Strike" rulemaking.		In development.	
Sec. 578 Ineligibility of Dangerous Sex Offenders for Public Housing.		Part of the "One Strike" rulemaking.		In development.	
Sec. 579 Definitions					These definitions are applicable to the requirements described in sections 575–578.
Sec. 581 Annual Report.					The first annual report was submitted to the Congress in accordance with the required schedule.
Sec. 582 Repeals ..					Effective on October 1, 1999. No rulemaking is necessary or anticipated.
Sec. 583 Consolidated Plans.					Effective October 1, 1999. Will be implemented through rulemaking on Consolidated Plans.
Sec. 584 Use of American Products.	Yes.				

Statutory section	Implemented by February 18, 1999— Notice of Initial Guidance	Proposed rule	Interim rule	Final rule	Additional information
Sec. 585 GAO Study on Housing Assistance Programs.					The study required by this section is under way.
Sec. 586 Drug Elimination Program.		May 12, 1999 (64 FR 25736).		September 14, 1999 (64 FR 49900).	Proposed rule was preceded by Advance Notice of Proposed Rulemaking published on February 18, 1999 (64 FR 8210). Report was submitted to Congress as required.
Sec. 587 Report on Drug Elimination Contracts.					
Sec. 589 Notice on Treatment of Occupancy Standards.					Required FEDERAL REGISTER notice published on December 18, 1998 (63 FR 70256). No further regulation is necessary.
Sec. 592 Use of Assisted Housing by Aliens.				May 12, 1999 (64 FR 25726).	
Sec. 595 Native American Housing Assistance.					Implemented by notice. No rulemaking is necessary or anticipated.
Sec. 596 Community Development Block Grant Public Services Cap.					No rulemaking is necessary or anticipated.
Sec. 597 Moderate Rehabilitation Terms for Contract Renewals.	Yes				Additional guidance provided in PIH Notice 98-62. No rulemaking is necessary or anticipated.
Sec. 599 Tenant participation.		June 17, 1999 (64 FR 32782).		In development.	
Sec. 599H Miscellaneous.					No rulemaking is necessary or anticipated.

IV. Section-by-Section Narrative of Status of Public Housing Reform Act Implementation and Guidance

The following narrative clarifies and elaborates upon the information provided in the preceding chart, and is organized by section number from the Public Housing Reform Act. Several statutory sections of the Public Housing Reform Act were effective upon enactment. HUD's February 18, 1999 Notice of Initial Guidance provided notification of those sections of the Public Housing Reform Act that were immediately effective and HUD provided guidance concerning the action, if any, that was required to be taken. Therefore, reference in this narrative to a statutory section being "implemented by the February 18, 1999 Notice of Initial Guidance" is a reference to the notification and guidance provided in this February 18, 1999 notice. Also, dates on which rules were published, and which were listed in Section II of this notice, are not always restated below.

Section 503(c)—Technical Recommendations. Section 503(c) requires HUD to submit to the

Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives recommended technical and conforming legislative changes necessary to carry out the Public Housing Reform Act. HUD submitted its recommendations to the appropriate committees on July 23, 1999. One of the important recommended sections, regarding income eligibility adjustment, was enacted in the HUD/VA Independent Appropriations Act for Fiscal Year 2000 (Pub.L. 106-74, approved October 20, 1999).

Section 503(d)—List of Obsolete Documents. Section 503(d) requires HUD to publish in the **Federal Register**, by October 1, 1999, a list of all rules, regulations, and orders (including all handbooks, notices, and related requirements) pertaining to public housing or Section 8 tenant-based programs issued or promulgated under the 1937 Act before enactment of the Public Housing Reform Act that are or will be obsolete because of the enactment of the Public Housing Reform Act or are otherwise obsolete. The

required list was published in the **Federal Register** on October 1, 1999 (64 FR 53400).

Section 505—Declaration of Policy and Public Housing Agency Organization. Section 505 of the Public Housing Reform Act, which became effective October 1, 1999, amends section 2(b) of the 1937 Act to require that the membership of the board of directors or similar governing body of each PHA, with certain exceptions, contain not less than one member who is directly assisted by the PHA. The resident board member may, if provided in the PHA plan, be elected by the residents directly assisted by the PHA. The final rule implementing section 505 of the Public Housing Reform Act was published on October 21, 1999.

Section 506—Definitions. Section 506 of the Public Housing Reform Act became effective October 1, 1999, and amends section 3(b) of the 1937 Act to modify definitions relating to the terms "public housing," "single persons," and "person with disabilities" (the latter definition is also included in the "One Strike" proposed rule). This section also adds definitions of the terms "drug-

related criminal activity," "mixed-finance project," "public housing agency plan," "Capital Fund," and "Operating Fund." Conforming amendments have been and will be made to applicable HUD regulations to reflect the statutory revisions to these terms.

Section 507—Minimum Rent. Section 507 of the Public Housing Reform Act became effective October 21, 1998, and was implemented by the February 18, 1999 Notice of Initial Guidance, which provided guidance on how PHAs should comply until publication of the Admissions and Occupancy final rule. Publication of this rule is expected within the next several weeks.

Section 508—Determination of Adjusted Income and Median Income. Section 508 of the Public Housing Reform Act amends section 3(b)(5) of the 1937 Act to provide the manner in which adjusted income and median income will be determined, and provides certain mandatory exclusions. This section was effective beginning on October 1, 1999 (except that the provision relating to income limits in Rockland County, New York was effective October 21, 1998). In anticipation of the final rule on Admissions and Occupancy, HUD published a Notice of Guidance on Public Housing Rent Policies in the **Federal Register** on August 6, 1999 (64 FR 42956), which made clear that the choice of rent and mandatory disregard of increased earned income provisions were to be implemented by PHAs on October 1, 1999. As the August 6, 1999 notice stated, any PHAs which followed that guidance will not be penalized for any changes made by HUD at the final rule stage.

Section 509—Family Self-Sufficiency Program. Section 509 of the Public Housing Reform Act amends section 23 of the 1937 Act, regarding the Family Self-Sufficiency program, and was effective beginning on October 21, 1998. This section was implemented by the February 18, 1999 Notice of Initial Guidance and will be elaborated on in the Admissions and Occupancy final rule.

Section 510—Prohibition on Use of Funds. Section 510 of the Public Housing Reform Act is effective beginning on October 1, 1999. Section 510 amends section 5 of the 1937 Act by adding a new subsection (l) that provides as follows:

None of the funds made available to the Department of Housing and Urban Development to carry out [the Public Housing Reform Act], which are obligated to State or local governments, public housing agencies, housing finance agencies, or other

public or quasi-public housing agencies, shall be used to indemnify contractors or subcontractors of the government or agency against costs associated with judgments of infringement of intellectual property rights.

No rulemaking is necessary to implement this section.

Section 511—Public Housing Agency Plan. Section 511 of the Public Housing Reform Act adds a new section 5A to the 1937 Act that requires each PHA, beginning with Federal Fiscal Year 2000 funds, to submit a PHA Plan consisting of a 5-Year Plan and an Annual Plan. Section 511 was implemented by the interim rule published on February 18, 1999. On July 30, 1999, HUD issued Notice PIH 99-33, which provides the electronic template for PHA Plan submissions. HUD published the final rule on the PHA Plan on October 21, 1999. On November 24, 1999 (64 FR 66106), HUD published a **Federal Register** notice announcing optional extensions for first PHA Plan due dates for PHAs with fiscal years beginning on January 1, 2000 and April 1, 2000. On December 14, 1999, HUD issued PIH Notice 99-51, which supplements the initial electronic template. HUD expects to provide further information and direction.

Section 512—Community Service and Family Self-Sufficiency Requirements. The portion of section 512 which prevents reductions in assisted housing rents where a family has had its welfare benefits reduced for fraud or failure to comply with self-sufficiency requirements was implemented in the February 18, 1999 Notice of Initial Guidance and will be elaborated on in the Admissions and Occupancy final rule. Those documents also implemented the requirement that PHAs use best efforts to enter into cooperation agreements with local agencies, both to target services which will help housing assistance recipients become self-sufficient and to provide information needed to administer the new rent and community service provisions.

The remainder of section 512 became effective beginning on October 1, 1999. Section 512 amends section 12 of the 1937 Act by adding a new subsection (c) that imposes a requirement on adult public housing residents, with important exceptions, to participate for at least 8 hours per month in a community service or economic self-sufficiency program. In some cases, PHAs must not renew a resident's 12-month lease for failure to satisfy this requirement. Each PHA must include in its PHA Plan a detailed description of the manner in which the agency intends to implement and administer the community service requirement.

Although section 12(c) was effective beginning on October 1, 1999, PHAs must have sufficient time to develop community service programs and include detailed descriptions in their PHA Plan as the law requires. Accordingly, PHAs that are required to submit their PHA Plans for the fiscal years commencing January 1, 2000 or April 1, 2000 are not required to include community service programs in those Plans. HUD's final rule on Admissions and Occupancy will assist PHAs with their planning of the community service programs.

Section 513—Income Targeting for Public Housing and Tenant-Based Section 8 Assistance. Section 513 of the Public Housing Reform Act, which was effective beginning on October 21, 1998, amends section 16 of the 1937 Act to establish, among other things, public housing deconcentration and income mixing requirements and income targeting requirements for public housing and tenant-based Section 8 assistance, including annual requirements for admitting families with incomes below 30% of area median income. The deconcentration and income mixing requirements were initially implemented by the February 18, 1999 Notice of Initial Guidance and the PHA Plan interim rule, and are included in the PHA Plan final rule (for which further direction will be provided as indicated above).

The income targeting requirements were implemented by the February 18, 1999 Notice of Initial Guidance and are contained in the final rule on the statutory merger of the Section 8 certificate and voucher programs (for Section 8 tenant-based assistance), and will be contained in the Admissions and Occupancy final rule (for public housing as well as section 8 project-based assistance).

Section 514—Repeal of Federal Preferences. Section 514 of the Public Housing Reform Act was effective as of October 21, 1998, and was initially implemented by the February 18, 1999 Notice of Initial Guidance. Final guidance is now provided in the final rule implementing the statutory merger of the Section 8 Certificate and Voucher programs (for Section 8 tenant-based assistance) and will be provided in the Admissions and Occupancy final rule (for public housing as well as section 8 project-based assistance).

Section 515—Joint Ventures and Consortia of PHAs. Section 515 of the Public Housing Reform Act creates a new section 13 of the 1937 Act, and was effective beginning on October 1, 1999. New section 13(a) authorizes PHAs to administer any or all of their housing

programs through a consortium of PHAs. New section 13(b) authorizes PHAs to use subsidiaries, joint ventures, partnerships or other business arrangements to administer their housing programs or to provide supportive or social services. As noted earlier in this notice, a proposed rule implementing section 515 was published on September 14, 1999 (64 FR 49940).

In the September 14, 1999 proposed rule, HUD noted that before enactment of section 13, some PHAs had established cooperative arrangements for carrying out some of their responsibilities. A principal difference between such arrangements and consortia as authorized under new section 13, is that under section 13 funding may be directed to a representative of the consortium on behalf of several PHAs instead of being paid to the PHAs separately. Another major difference is that under a section 13 consortium, a joint PHA plan is submitted on behalf of participating PHAs. Enactment of section 13, however, does not restrict the ability of PHAs to continue to establish cooperative arrangements under which they receive funding separately and submit separate PHA plans.

HUD also noted that with respect to joint ventures, partnerships, affiliates, subsidiaries, and other business arrangements, the September 14, 1999 proposed rule only covered the public housing program. PHAs engaged in Section 8 program administration have been and continue to be free to engage in such arrangements without any new regulatory restrictions.

HUD's final rule implementing section 515 is under development. PHAs that wish to form consortia may indicate this in PHA Plans that are submitted prior to the effective date of the final rule. PHAs then, after the final rule is effective, may propose consortia through "significant amendments" to their PHA Plans.

Section 516—Public Housing Agency Mortgages and Security Interests. Section 516 of the Public Housing Reform Act, which was effective beginning on October 1, 1999, provides that HUD may, upon such terms and conditions as HUD may prescribe, authorize a PHA to mortgage or otherwise grant a security interest in any public housing project or other property of the PHA. In making any such authorization, HUD may consider the ability of the PHA to use the proceeds of the mortgage or security interest for low-income housing uses; the ability of the PHA to make payments on the mortgage or security interest; and

other criteria. Section 516 also provides that no action taken under this provision shall result in any liability to the Federal government.

Until rulemaking is done, PHAs wishing to use the authority of section 516 may submit requests to HUD headquarters, Office of Public Housing Investments, Room 4130. HUD will review such requests and provide approvals on a case-by-case basis if appropriate. However, HUD's review of such requests will take into account the fact that rulemaking is pending and that these regulatory requirements, once established, will guide implementation of section 516. To minimize the risk of loss of public housing property, HUD also will encourage full collateralization of any debt secured by such a mortgage, independent of and at risk before the public housing property. In addition, until rulemaking is completed, the regulations in 24 CFR part 941, subpart F (mixed finance development) continue to govern.

Section 517—Mental Health Action Plan. Section 517 of the Public Housing Reform Act was effective beginning on October 1, 1999. Section 517 provides that HUD, in consultation with the Department of Health and Human Services, the Department of Labor, and State and local officials, shall develop an action plan and a list of recommendations for improving severe mental illness treatment to families and individuals receiving housing assistance under the 1937 Act. Additionally, HUD is required to develop and disseminate a list of current practices that serve to benefit persons in need of mental health care. HUD has met with the other Federal agencies involved and has begun the process of developing the action plan and fulfilling other requirements.

Section 518(b)—Local Notification. Section 518(b) of the Public Housing Reform Act was effective beginning on October 1, 1999. Section 518(b) amends section 5(e)(2) of the 1937 Act to provide, generally, that HUD shall require each local cooperation agreement to provide that, notwithstanding any order, judgment, or decree of any court (including any settlement order), before making any amounts available for use for the development of any housing or other property not previously used as public housing, the PHA shall: (1) notify the appropriate local government official of such use, and (2) pursuant to the request of such local government, provide such information as may reasonably be requested by the local government regarding the public housing to be so assisted (except to the extent otherwise

prohibited by law). PHAs must comply with the requirements of section 518(b) beginning on October 1, 1999, and should endeavor to have cooperation agreements amended accordingly. HUD may provide further elaboration on this provision in the forthcoming rulemaking on the Capital Fund program (the non-formula rulemaking) and eventually may make it an amendment to the Annual Contributions Contract (ACC).

Section 519—Public Housing Capital and Operating Funds. Section 519 of the Public Housing Reform Act amends section 9 of the 1937 Act to establish a Capital Fund and an Operating Fund for public housing. Section 519 also provides that HUD shall develop the formulas for allocating such funds through negotiated rulemaking procedures.

1. **Capital Fund.** As noted earlier in this notice, a final rule has been published allowing fiscal 1999 Comprehensive Improvement Assistance Program (CIAP) funds to be distributed by formula. In addition, negotiated rulemaking on the Capital Fund formula has been completed and the proposed rule, as also noted earlier in this notice, was published on September 14, 1999. Federal Fiscal Year 2000 Capital Funds will be distributed pursuant to the final rule on the Capital Fund formula. Upon the effective date of the final rule implementing the Capital Fund formula, PHAs may begin to undertake the eligible activities listed in section 9(d)(1) of the 1937 Act.

HUD intends soon to publish a proposed rule on all aspects of the Capital Fund program (other than the formula), with a final rule to follow in the first half of calendar year 2000. Until completion of that rulemaking, the regulations at 24 CFR part 968 continue to apply to assistance made available to PHAs through the Comprehensive Grant Program (CGP) or CIAP under section 14 of the 1937 Act for Federal fiscal year 1999 and prior years unless this Notice provides otherwise. In addition, the regulations at 24 CFR part 941 continue to apply to assistance made available under those provisions.

Effective October 21, 1998, new section 9(g)(2) of the 1937 Act allows PHAs with less than 250 dwelling units (small PHAs), to use capital or operating funds for any eligible capital or operating expense subject to certain conditions. This provision was implemented in the February 18, 1999 Notice of Initial Guidance. PHAs should follow that guidance until completion of rulemaking on the Capital Fund program.

Section 9(g)(3)(A) states that, with certain exceptions, a PHA may not use any of the amounts allocated for the PHA from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999, including any public housing units demolished as part of any revitalization effort. HUD's current regulations at 24 CFR part 941 require HUD authorization for such PHA activity. Until rulemaking on the new law is completed, HUD will provide the necessary authorization where consistent with the standards of the new law.

Section 9(m) allows the commitment of capital assistance only (as well as operating assistance only, as discussed later in this notice) to public housing units in appropriate circumstances. This will be the subject of rulemaking in the near future. Until that time, PHAs wishing to use this provision for the development of public housing must request HUD approval. Until rulemaking is completed, public housing units developed and operated using capital assistance only shall be subject to all public housing laws and regulations.

2. *Operating Fund.* Negotiated rulemaking on the Operating Fund formula is still underway, and the current operating formula may continue as section 519 permits. Upon the effective date of the final rule implementing the Operating Fund formula, PHAs may begin to undertake the eligible activities listed in section 9(e)(1) of the 1937 Act (except use of the Operating Fund for repayment of debt service incurred to finance rehabilitation or development of public housing, which the statute makes subject to reasonable requirements set by HUD; such requirements will be the subject of rulemaking).

Except as otherwise provided in this Notice, the Performance Funding System and current program rules at 24 CFR part 990 will continue to apply to operating subsidy provided to PHAs under section 9 of the 1937 Act, as in effect prior to October 21, 1998. Section 9(l), however, provides that income from nonrental sources (as determined by the Secretary) is to be retained by PHAs and used only for low-income housing or to benefit assisted residents. This subsection therefore will be put in effect for Federal Fiscal Year 2000, by the funding notice regarding fiscal year 2000 operating subsidy.

Sections 519(d) and (e) of the Public Housing Reform Act include provisions

relating to ceiling rents, transitional funding before implementation of the new Operating Fund formula, and the adoption of rental amounts other than ceiling rents or optional earned income disregards. These provisions were discussed in the February 18, 1999 Notice of Initial Guidance. PHAs should continue to follow that guidance until rulemaking on the Operating Fund or Admissions and Occupancy, as applicable, is completed.

Commencing October 1, 1999, PHAs are required to give residents a choice on an income-based rent or a flat rent. Until the new Operating Fund formula is implemented, flat rents set comparable to market (as provided by the August 6, 1999 **Federal Register** Notice of Guidance on Public Housing Rent Policies and as will be provided by the Admissions and Occupancy final rule) shall be treated in the same manner as ceiling rents were treated in the past. This will be elaborated on in the Federal Fiscal Year 2000 funding notice referenced above.

Section 9(m) allows for public housing assistance using operating assistance only. This will be the subject of rulemaking. Until rulemaking is completed, PHAs wishing to use this provision must request HUD approval and the housing assisted in this manner will be subject to all public housing laws and regulations.

3. *Other Provisions.* Section 9(h) of the 1937 Act, regarding technical assistance and related activities, is effective immediately and needs no regulations. Section 9(n)(2) and 9(n)(3), regarding New York City Housing Authority programs, were implemented by the Notice of Initial Guidance.

Section 520—Total Development Costs. Section 520 of the Public Housing Reform Act, effective October 1, 1999, amends sections 3(c)(1) and 6(b) of the 1937 Act, which govern Total Development Costs for the development of public housing. HUD expects to conduct rulemaking on section 520. Until rulemaking is completed, PHAs should follow PIH Notice 99-17, issued March 15, 1999, which is consistent with section 520.

Section 521—Sanctions for Improper Use of Amounts. Section 521 of the Public Housing Reform Act was effective beginning on October 1, 1999. Section 521 amends section 6(j) of the 1937 Act to provide for sanctions which HUD may impose on a PHA receiving amounts from the Capital Fund or Operating Fund for public housing if the PHA has failed to comply substantially with any provision of the 1937 Act relating to the public housing program. Section 521 also contains provisions

regarding the termination of such sanctions. Rulemaking is not necessary to implement this section. However, HUD will reference this sanction authority in appropriate program regulations.

Section 522—Repeal of Modernization Fund. Section 522(a) of the Public Housing Reform Act, which repeals section 14 of the 1937 Act, was effective beginning on October 1, 1999 (for guidance see the discussion of section 519 of the Public Housing Reform Act, above). Sections 522(b)(1) through 522(b)(4) of the Public Housing Reform Act contain conforming amendments which were effective October 1, 1999. Section 522(b)(5) contains a conforming amendment regarding the use of HOME program funds for public housing (see the HUD Office of Community Planning and Development memorandum on the "Impacts of the 1999 Appropriations Act on HOME and SHOP" dated November 23, 1998, and the clarifying memorandum on the same subject dated March 25, 1999). Section 522(c) was effective on October 21, 1998 and provides that, before implementation of the Capital Fund and Operating Fund formulas, PHAs may continue to use the authority in section 14(q) of the 1937 Act, as amended (including the amendment made by section 208 of the fiscal year 1999 HUD appropriations act), notwithstanding the repeal of the modernization fund by section 522(a).

Section 523—Family Choice of Rental Payment. Section 523 of the Public Housing Reform Act is effective October 1, 1999. Section 523 amends section 3(a) of the 1937 Act to provide that each family can elect annually whether the rent payment is a flat rate or income based. Guidance on how to implement this provision was discussed in the February 18, 1999 Notice of Initial Guidance and in the August 6, 1999 **Federal Register** Notice of Guidance on Public Housing Rent Policies.

Final guidance on section 523 will be contained in the Admissions and Occupancy final rule. The final guidance on flat rents may result in somewhat different flat rents from those PHAs have implemented if they followed the August 6, 1999 **Federal Register** guidance. If so, PHAs must change their flat rents accordingly, in time to include such flat rents in PHA Plans for fiscal years commencing on and after July 1, 2000.

Section 524—Occupancy by Police Officers and Over-Income Families. Section 524 of the Public Housing Reform Act became effective on October 21, 1998 and was originally implemented in the February 18, 1999

Notice of Initial Guidance. Section 524 allows PHAs, under certain conditions, to allow police officers who are not otherwise eligible for public housing, and over-income families, to occupy a public housing unit. Section 524 is being implemented by the final rule on Admissions and Occupancy.

Section 525—Site-Based Waiting Lists. Section 525 of the Public Housing Reform Act, effective October 1, 1999, amends section 6 of the 1937 Act to allow PHAs to establish a system of site-based waiting lists, subject to applicable civil rights laws. Section 525 was initially implemented in the PHA Plan interim rule published on February 18, 1999. Implementation of this provision is made final by the PHA Plan final rule published on October 21, 1999.

Section 526—Pet Ownership. Section 526 of the Public Housing Reform Act provides that public housing residents may have pets, subject to the reasonable requirements of PHAs and other conditions. This section will be effective on completion of the rulemaking that is now in progress.

Section 529—Contract Provisions. Section 529 of the Public housing Reform Act, effective October 1, 1999, amends section 6 of the 1937 Act to make technical and conforming changes to the contents of ACC for the public housing program. No rulemaking is necessary or anticipated.

Section 530—Housing Quality Requirements. Effective October 1, 1999, Section 530 amends section 6 of the 1937 Act to add a new subsection (f), which requires ACCs to include a requirement that a PHA maintain its public housing units in compliance with safety and habitability standards specified by HUD. For implementation guidance, PHAs should refer to the discussion of section 530 in the February 18, 1999 Notice of Initial Guidance. No rulemaking is necessary or anticipated. However, HUD will issue an amendment to the ACC to reflect this provision.

Section 531—Demolition and Disposition of Public Housing. Section 531 of the Public Housing Reform Act amends section 18 of the 1937 Act. Section 531 became effective on October 21, 1998 and was implemented by the February 18, 1999 Notice of Initial Guidance, the PHA Plan interim rule, and PIH Notice 99-19 issued on April 20, 1999. PHAs should rely on that guidance and on the PHA Plan final rule until HUD completes its rulemaking revising 24 CFR part 970. Until HUD completes rulemaking on section 531, PHAs also must comply with the regulations in 24 CFR part 970 except to the extent that these regulations have

been revised by section 531 and the revisions were implemented by the February 18, 1999 Notice of Initial Guidance and PIH Notice 99-19.

Section 532—Resident Councils and Resident Management Corporations. Section 532 of the Public Housing Reform Act revises section 20 of the 1937 Act and was effective October 1, 1999. HUD issued a proposed rule implementing section 532, published on October 21, 1999, which provides for the direct payment of operating and capital funds from HUD to Resident management Corporations (RMCs). HUD expects to conduct comprehensive rulemaking on resident participation during Federal Fiscal Year 2000.

Section 533—Voluntary Conversion of Public Housing to Vouchers. Section 533 of the Public Housing Reform Act became effective October 1, 1999. Section 533 amends section 22 of the 1937 Act to allow PHAs to convert public housing to tenant-based assistance under certain conditions. As noted earlier in this notice, HUD published a proposed rule to implement this section on July 23, 1999. The public comment period on this rule closed September 21, 1999. PHAs that wish to commence the conversion assessment of all their properties required by section 22(b) (2) and (3), may begin that assessment by following the process for certifications under § 972.207(b)(1) of the proposed rule. Because the “cost test” may change at the final rule stage, PHAs should not begin to apply that test with respect to assessments or possible voluntary conversions.

Section 534—Transfer of Management of Certain Housing. Section 534 which became effective October 1, 1999 amends section 25 of the 1937 Act to provide that HUD may transfer the management of public housing from a PHA to another management entity in accordance with certain requirements. Residents may use this authority by making a request to the HUD field office. No rulemaking is necessary or anticipated.

Section 535—Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance Grants for Projects (HOPE VI). Section 535 of the Public Housing Reform Act amends section 24 of the 1937 Act to provide continued authority for the HOPE VI program, and establishes application selection and grant requirements. This provision was effective beginning on October 21, 1998 and was substantially implemented by HUD’s Fiscal Year 1999 Notice of Funding Availability (NOFA) for the HOPE VI program (which was part of HUD’s Fiscal Year 1999 SuperNOFA, published in the **Federal**

Register on February 26, 1999 (64 FR 9618)). HUD may undertake rulemaking on section 535 in Federal Fiscal Year 2000.

Section 536—Public Housing Homeownership. Section 536 of the Public Housing Reform Act, which became effective October 1, 1999, adds section 32 to the 1937 Act, which authorizes a new public housing homeownership program that replaces, but is substantially based on, the former “Section 5(h) program.” As noted earlier in this notice, HUD published a proposed rule to implement section 536 on September 14, 1999. The public comment period for this rule closed November 15, 1999.

Until the final rule is published, HUD will process public housing homeownership proposals under its Section 5(h) program regulations at 24 CFR part 906. As noted, the Congress modeled section 32 on the Section 5(h) program, and there are many similarities between section 32 and the part 906 regulations. Accordingly, the use of 24 CFR part 906 until rulemaking on section 32 is completed is consistent with Congressional intent. Further, the use of the part 906 regulations will permit HUD to process homeownership proposals using well established regulatory requirements.

Section 537—Required Conversion of Public Housing to Vouchers. Section 537 of the Public Housing Reform Act, effective October 1, 1999, adds a new section 33 to the 1937 Act concerning the removal of public housing units identified as distressed from the public housing inventory and the ACC. As noted earlier in this notice, HUD published a proposed rule on section 537 on July 23, 1999. The public comment period on this rule closed on September 21, 1999. While the final rule is being completed, PHAs should prepare for required conversion by determining if the PHA has developments that would fail the vacancy rate test included in part 972.104(b) of the proposed rule and, if so, devoting appropriate attention to the situation of any such development.

Although section 202 of the fiscal year 1996 HUD Appropriations Act (the forerunner to section 537) is repealed, it continues to apply to public housing identified by HUD or a PHA prior to October 21, 1998 for conversion or for assessment of whether conversion is required under section 202.

Section 538—Linking Services to Public Housing Residents. Section 538 of the Public Housing Reform Act became effective October 21, 1998. Section 538 adds a new section 34 to the 1937 Act, which authorizes a program of

supportive services and resident empowerment activities to assist public housing residents in becoming self-sufficient. Section 34 was implemented through a Fiscal Year 1999 NOFA (Resident Opportunities and Self-Sufficiency (ROSS) Program) published on August 10, 1998 (64 FR 43530). HUD may undertake a rulemaking to codify its implementation of section 534 in Federal Fiscal Year 2000.

Section 539—Mixed-Finance Public Housing. Section 539 of the Public Housing Reform Act, effective October 1, 1999, authorizes PHAs to own, operate, assist or otherwise participate in one or more mixed-finance projects, in accordance with certain requirements. HUD will undertake a rulemaking to implement section 539 in Federal Fiscal Year 2000. Until this future rulemaking is completed, parties proposing to use these provisions must notify HUD. The existing regulations at 24 CFR part 941, subpart F will continue to apply to mixed-finance transactions to the extent they are consistent with section 539.

Section 545—Merger of Certificate and Voucher Programs. Section 545 of the Public Housing Reform Act amends section 8(o) of the 1937 Act to merge the Section 8 tenant-based Certificate and Voucher programs into a new Housing Choice Voucher Program. As noted earlier in this notice, HUD published an interim rule implementing section 545 on May 14, 1999. The May 14, 1998 interim rule provided for an effective date of August 14, 1999. By **Federal Register** notice published on August 11, 1999 (64 FR 43613), HUD extended the effective date to October 1, 1999. On September 14, 1999 (64 FR 49656), HUD published a technical correction to the May 14, 1999 interim rule. The final rule was published on October 21, 1999. Additionally, on November 3, 1999 (64 FR 59620), HUD published an amendment to the final rule concerning initial rent burden of certain voucher holders.

Section 546—Public Housing Agencies. Section 546 of the Public Housing Reform Act amends the definition of the term “public housing agency” and is implemented by the Housing Choice Voucher Program final rule.

Section 547—Administrative Fees. Section 547 of the Public Housing Reform Act amends section 8(q) of the 1937 Act relating to Section 8 administrative fees, and is effective for fiscal year 1999 and subsequent fiscal years. Section 547 was implemented by the February 18, 1999 Notice of Initial Guidance and will be supplemented by annual notices. As discussed in the

Notice of Initial Guidance, PHAs may propose fee adjustments where they incur additional expenses to serve persons with disabilities more fully.

Section 548—Law Enforcement and Security Personnel in Assisted Housing. Section 548 of the 1998, which became effective October 1, 1999, provides, that for purposes of increasing security, Section 8 project-based assistance may be provided to police officers and other security personnel who are not otherwise eligible for assistance. This section is addressed in HUD’s proposed rule on Admissions and Occupancy.

Section 549—Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Assistance Contract. Section 549 of the Public Housing Reform Act was effective as of October 21, 1998. This provision was implemented for the Section 8 tenant-based assistance program by the February 18, 1999 Notice of Initial Guidance and by PIH Notice 98–64, and is elaborated on in the Housing Choice Voucher Program interim and final rules.

Section 550—Technical and Conforming Amendments. Section 550 of the Public Housing Reform Act, which became effective beginning on October 1, 1999, contains various technical and conforming amendments relating to the statutory merger of the tenant-based Section 8 certificate and voucher programs. No rulemaking is necessary or anticipated.

Section 551—Funding and Allocation. Section 551 of the Public Housing Reform Act was implemented and made effective by the February 18, 1999 Notice of Initial Guidance, to which PHAs should refer for guidance. In general, section 551 provides that local government comments with respect to affected PHA applications for Section 8 and public housing funds are no longer required.

Section 553—Portability. Section 553 of the Public Housing Reform Act amends section 8(r) of the 1937 Act with respect to the portability of tenant-based Section 8 assistance. Section 553 is made effective by the Housing Choice Voucher Program interim and final rules.

Section 554—Leasing to Voucher Holders. Section 554 permanently repeals the so-called “take one, take all” provision in the Section 8 tenant-based assistance program as of October 21, 1998. Section 554 is also discussed in the February 18, 1999 Notice of Initial Guidance and in the Housing Choice Voucher Program interim and final rules.

Section 555—Homeownership Option. Section 555 of the Public Housing

Reform Act amends section 8(y) of the 1937 Act, effective October 21, 1998, to authorize a PHA to provide tenant-based Section 8 assistance for an eligible family that purchases a dwelling unit that will be occupied by the family. As noted earlier in this notice, HUD published a proposed rule to implement section 555 on April 30, 1999, and expects to issue a final rule within the next several months. HUD has demonstration authority under section 555 and has approved several demonstrations which are consistent with the proposed rule.

Section 556—Renewals. Section 556 of the Public Housing Reform Act amends the 1937 Act by adding subsection 8(dd), which directs HUD to establish an allocation baseline amount of assistance to cover the renewal of expiring tenant-based Section 8 ACCs, and to apply an inflation factor (based on local or regional factors) to the baseline. Section 556 also required HUD to implement this provision through notice not later than December 31, 1998, and to issue final regulations on the allocation of tenant-based Section 8 ACC renewal funding that are developed through negotiated rulemaking no later than October 21, 1999. Consistent with the statutory requirement, HUD issued PIH Notice 98–65 on December 30, 1999. This notice was published for the convenience of the public on February 18, 1999 (64 FR 8188). The required final rule was published on October 21, 1999.

Section 557—Manufactured Housing Demonstration Program. Section 557 of the Public Housing Reform Act became effective October 21, 1998 and requires HUD to carry out a program during Federal Fiscal Years 1999, 2000, and 2001 to demonstrate the effectiveness of providing tenant-based Section 8 assistance directly to eligible families that own manufactured homes and rent real property on which their homes are located. This demonstration program was implemented by letter to the participating housing authorities.

Section 559—Rulemaking and Implementation. Section 559 of the Public Housing Reform Act, effective October 21, 1998, requires HUD to issue any interim regulations necessary for the merger of tenant-based Section 8 certificate and voucher assistance. Section 559 also requires HUD to issue final regulations not later than one year after enactment of the Public Housing Reform Act. As discussed previously in this notice, HUD issued its interim rule on the Housing Choice Voucher Program on May 14, 1999. The final rule was published on October 21, 1999.

Section 561—Home Rule Flexible Grant Demonstration. Section 561 adds a demonstration program in which eligible jurisdictions, typically units of general local government, could receive public housing and tenant-based assistance for up to five years to meet specified performance goals. The demonstration became effective on October 21, 1998, and was implemented in the February 18, 1999 Notice of Initial Guidance.

As the February 18, 1999 Notice of Initial Guidance stated, any eligible jurisdiction wishing to participate in the demonstration may follow the statute's requirements and submit an application to HUD. HUD will not approve such an application, however, unless the application presents a compelling case that the eligible jurisdiction's participation and proposal would achieve the goals of the statute (which include the underlying program management and performance goals of the public housing and tenant-based assistance programs) in a superior manner to continuation of program management with the affected PHA.

Section 563—Performance Evaluation Study. Section 563 of the Public Housing Reform Act, effective October 21, 1998, directs HUD to provide for a study to be conducted to determine the effectiveness of various alternative methods of evaluating the performance of PHAs and other providers of federally assisted housing. Section 563 also requires HUD to request that the National Academy of Public Administration (NAPA) enter into a contract to conduct the study. HUD has entered into such a contract with NAPA and the study is proceeding.

Section 564—Public Housing Management Assessment Program. Section 564 of the Public Housing Reform Act, effective October 1, 1999, amends section 6(j) of the 1937 Act to modify and add to the indicators HUD uses to evaluate PHA management performance. These provisions are addressed in the June 22, 1999 PHAS proposed rule, and will be included in the final rule. Notification that the provisions amending requirements for independent assessment of newly troubled PHAs were in effect was provided by the Initial Guidance Update Notice, published on April 30, 1999 (64 FR 23344). As noted earlier in Section II of this Notice, further details regarding the phase-in of the Public Housing Assessment System (PHAS) were published in a **Federal Register** notice on October 21, 1999.

Section 565—Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default. Effective October

21, 1998, section 565 of the Public Housing Reform Act provides for an expansion of various powers to be exercised by HUD or receivers and requires HUD to petition for court-ordered receivership (or to implement an administrative receivership, in the case of PHAs with fewer than 1,250 public housing units), with respect to certain troubled PHAs where the PHA remains troubled longer than the specified time period. This provision was implemented in the February 18, 1999 Notice of Initial Guidance, was elaborated on in the June 22, 1999 PHAS proposed rule, and will be part of the PHAS final rule.

Section 566—Audits. Section 566 of the Public Housing Reform Act, which became effective October 1, 1999, adds section 5(h) to the 1937 Act to require each ACC to provide that HUD, the HUD Inspector General, and the Comptroller of the United States shall have access to PHA records, and that HUD may withhold assistance from PHAs to pay for audit costs in some circumstances. HUD will begin a process of amending such contracts accordingly.

Section 567—Advisory Council for Housing Authority of New Orleans. Section 567 of the Public Housing Reform Act requires appointment of such an Advisory Council. No regulation is necessary to implement this section.

Section 568—Troubled PHAs and Consolidated Plans. Section 568 of the Public Housing Reform Act requires local jurisdictions with troubled PHAs to describe in their Consolidated Plans the manner in which they will assist the PHA in improving its operations to remove the troubled designation. Section 568 became effective October 1, 1999, and will be addressed in rulemaking on Consolidated Plans.

Section 575—Provisions Applicable Only to Public Housing and Section 8 Assistance. Section 575 of the Public Housing Reform Act contains provisions regarding public housing grievance procedures, termination of tenancy in public housing, availability of criminal records in connection with project-based assisted housing and obtaining information from drug abuse treatment facilities. These provisions generally became effective October 1, 1999. The provision concerning obtaining information from drug abuse treatment facilities, however, was implemented in the February 18, 1999 Notice of Initial Guidance. The remaining provisions are found in HUD's July 23, 1999 "One Strike" proposed rule. The public comment period on this proposed rule closed September 21, 1999.

Section 576—Screening of Applicants for Federally Assisted Housing. Section 576 of the Public Housing Reform Act, effective October 1, 1999, is covered by HUD's July 23, 1999 "One Strike" proposed rule.

Section 577—Termination of Tenancy and Assistance. Section 577 of the Public Housing Reform Act, which became effective October 1, 1999, is covered by the "One Strike" proposed rule.

Section 578—Ineligibility of Dangerous Sex Offenders for Public Housing. Section 578 of the Public Housing Reform Act, which became effective October 1, 1999, is covered by HUD's July 23, 1999 "One Strike" proposed rule.

Section 579—Definitions. The definitions in Section 579 of the Public Housing Reform Act are applicable to the requirements described in section 575–578.

Section 581—Annual Report. Section 581 of the Public Housing Reform Act requires an annual report on the impact of the Public Housing Reform Act on the demographics of assistance recipients and the economic viability of PHAs, as well as the employment status and earned income of public housing residents. The first such annual report was submitted to the Congress in accordance with the required schedule.

Section 582—Repeals. No regulation is necessary to effectuate these repeals, which became effective October 1, 1999.

Section 583—Consolidated Plans. Section 583 of the Public Housing Reform Act, which became effective October 1, 1999, requires Consolidated Plans to describe the manner in which the plans will help address the needs of the jurisdiction's public housing. This section will be implemented through rulemaking on Consolidated Plans.

Section 584—Use of American Products. Section 584 of the Public Housing Reform Act was implemented in the February 18, 1999 Notice of Initial Guidance. No further regulation is necessary.

Section 585—GAO Study on Housing Assistance Programs. The study required by this section is under way.

Section 586—Drug Elimination Program. These amendments were implemented by the Public Housing Drug Elimination Program (PHDEP) final rule, published on September 14, 1999, which among other things, provides for formula funding commencing with fiscal year 1999 funding.

Section 587—Report on Drug Elimination Contracts. This report was submitted to Congress as required.

Section 589—Notice on Treatment of Occupancy Standards. This notice was developed and published in the **Federal Register** on December 18, 1998 (63 FR 70256) as required. No further regulation is necessary.

Section 592—Use of Assisted Housing by Aliens. Section 592 of the Public Housing Reform Act, which clarified the scope of PHA "opt outs" for determining alien status, was implemented by the final rule on "Revised Restriction on Assistance to Noncitizens," published on May 12, 1999.

Section 595—Native American Housing Assistance. Section 595 of the Public Housing Reform Act made various changes affecting public housing and other housing assistance for Native Americans. The provisions of this section have been implemented by notice. No regulations are necessary or anticipated.

Section 596—Community Development Block Grants Public Services Cap. Section 596 of the Public Housing Reform Act extends a waiver from the cap on public services spending for Los Angeles. No regulations are necessary.

Section 597—Moderate Rehabilitation Terms for Contract Renewals. These terms were implemented in the February 18, 1999 Notice of Initial Guidance and by Notice PIH 98-62. No regulations are necessary or anticipated.

Section 599—Tenant Participation. Section 599 of the Public Housing Reform Act largely covers project-based assisted housing tenant participation rules, but also covers moderate rehabilitation projects and certain projects which receive enhanced vouchers. A proposed rule was published on June 17, 1999 (64 FR 32782). HUD received 73 public comments on the proposed rule.

Section 599H—Miscellaneous. Section 599H of the Public Housing Reform Act covers various matters largely relating to particular communities. This section was effective October 21, 1998. None of the matters covered require further regulations.

Conclusion

Implementation of the Public Housing Reform Act has presented a challenge to HUD and its partners. HUD appreciates the comments submitted to date on its proposed and interim rules (over 600 apart from the proposed rule on pet policies), and those provided at the public forums. HUD also appreciates the hard work of the three negotiated rulemaking committees that were formed to assist in the development of three important formula rules. The

input of HUD's partners, program participants and other interested members of the public has greatly assisted HUD in the promulgation of the rules and notices issued to date under the Public Housing Reform Act.

HUD is committed to working closely with its public housing and Section 8 partners to make the changes in its public housing and Section 8 programs a success. HUD will continue to provide additional guidance and seek public involvement through all appropriate means, so that the purposes and promise of this important legislation may be fulfilled.

Dated: December 15, 1999.

Rod Solomon,

Deputy Assistant Secretary for Policy, Program and Legislative Initiatives.

[FR Doc. 99-33106 Filed 12-21-99; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Dates and Location for Public Scoping Meetings

AGENCY: Fish and Wildlife Service, Interior, New York State Department of Environmental Conservation; Vermont Fish and Wildlife Department.

ACTION: Notice of dates and locations for public scoping meetings on supplemental environmental impact statement for a sea lamprey control proposal in Lake Champlain.

SUMMARY: The U.S. Fish and Wildlife Service in cooperation with the Vermont Department of Fish and Wildlife and the New York State Department of Environmental Conservation announces its intention to hold four public scoping meetings on the Supplemental Environmental Impact Statement for sea lamprey control in Lake Champlain. The SEIS will evaluate a proposal to continue sea lamprey control in Lake Champlain, to maintain reduced levels of sea lamprey and achieve further reductions. The SEIS will be prepared pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, in accordance with the Council on environmental Quality regulations for implementing NEPA (40 CFR parts 1500-1508). The Service invites other Federal agencies, states, Indian tribes, local governments, and the general public to attend the meetings and submit comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be

addressed in the Draft Supplemental Environmental Impact Statement. Oral and written comments will be considered equally in preparation of the DSEIS. Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the DSEIS for review, should send a request to Mr. Dave Tilton at the address given below.

DATES AND LOCATIONS: All written comments related to the scope and content of the DSEIS should be submitted to the Service by February 4, 2000, to the address given below. The scoping meetings will be held at the following times and locations. All meetings will start at 7 p.m. and run until 9:30 p.m.

New York Locations

Date: January 5, 2000.

Location: Clinton County Government Center, Old Court House, 2nd Floor Meeting Room, 1333 Margaret Street, Plattsburgh, NY 12901.

Date: January 6, 2000.

Location: Ticonderoga High School, Calkins Place, Ticonderoga, NY 12883.

Vermont Locations

Date: January 10, 2000

Location: Middlebury Union High School, 73 Charles Avenue, Middlebury, VT 05753.

Date: January 11, 2000

Location: Milton High School, 17 Rebecca Lander Drive, Milton, VT 05468.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in receiving the DSEIS should be sent to Mr. Dave Tilton, Project Leader, U.S. Fish and Wildlife Service Lake Champlain Office, 11 Lincoln St., Essex Junction, Vermont 05452. Alternatively, comments may be submitted electronically to the following address: dave_tilton@fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Tilton, Project Leader, USFWS Lake Champlain Office, 11 Lincoln St., Essex Junction, Vermont 05452, 802-951-6313. FAX 802-951-6315. New York contact person is Mr. Lary Nashett, Supervising Aquatic Biologist, New York Department of Environmental Conservation, Region, 5, P.O. Box 296, Ray Brook, New York 12977, 518-897-1333. Vermont contact person is Mr. Tim Hess, Director of Fisheries, Vermont Department of Fish and Wildlife, 103 South Main Street, Waterbury, Vermont 05671, 802-241-3700.

SUPPLEMENTARY INFORMATION:

Background

Sea lamprey are primitive marine invaders to Lake Champlain. They are parasitic fish that feed on the body fluid of other fish resulting in reduced growth and often the death of host fish. A substantial body of information collected on Lake Champlain indicates sea lamprey have a profound negative impact upon the lake's fishery resources and have suppressed efforts to establish new and historical sportfisheries. In 1990, the Service, NYSDEC, and VTDFW initiated an eight-year experimental sea lamprey control program for Lake Champlain. The experiment program treated tributaries and deltas of Lake Champlain with the chemical lampricides TFM and Bayer 73, which substantially reduced larval sea lamprey numbers in treated waters. The program included monitoring and assessment of the effects of sea lamprey reduction on the characteristics of certain fish populations, the sport fishery and the area's growth and economy. A set of thirty evaluation standards were established. Overall, the experimental sea lamprey control program met or exceeded the majority of the standards. In addition to this evaluation, the cooperating agencies assessed the effects of the program on nontarget organisms.

Two rounds of treatments were planned for each significantly infested stream and delta. From 1990 through 1996 24 TFM treatments were conducted on 14 Lake Champlain tributaries, and 9 Bayer 73 (5% granular) treatments were conducted on five deltas. A cumulative total of approximately 141 miles and 1,220 delta acres were treated.

In summary, trap catches of spawning-phase sea lamprey declined by 80–90%; nest counts were reduced by 57%. Sixteen of twenty-two TFM treatments reduced ammocoetes at index stations to less than 10% of pre-treatment levels. Eight of the 9 Bayer treatments resulted in mean mortality rates over 85% among caged ammocoetes. Relatively small numbers of nontarget amphibian and fish species were killed. Adverse effects on nontarget species were higher for Bayer treatments than TFM. Native mussels, snails and some other macroinvertebrates were significantly affected after the 1991 Bayer 73 treatments of the Ausable and Little Ausable deltas in New York. However, they recovered to pre-treatment levels within 4 years. American brook lamprey also experienced substantial treatment-related mortality. Yet, the finding of dead American brook lamprey in

second-round treatments in each stream where they were negatively affected during the first-round suggested survival or immigration was adequate to maintain their populations. Wounding rates on lake trout and landlocked Atlantic salmon were reduced in the main lake basin, and catches of both species increased. A significant increase in survival of 3–4 year lake trout was noted; survival of older fish improved but did not change significantly. Returns of Atlantic salmon to tributaries increased significantly after treatment. Changes in wounding rates on brown and rainbow trout could not be evaluated, but angler catches increased since 1990. Catch per unit effort of rainbow smelt, the major forage species for salmonids, decreased significantly at 1 or 2 sampling stations in the main lake basin and in Malletts Bay, but not at other locations; length-at-age also decreased at most sites. Evaluation of angler responses to the program indicated a favorable, 3.5:1 economic benefit:cost ratio.

A comprehensive Evaluation of an Eight-Year Program of Sea Lamprey Control in Lake Champlain provides a detailed description of the results of the project. It is available on the FWS web-sites at—

www.fws.gov/r51cfwro/lamprey/lamprey.html, or from any of the contacts for further information listed above.

Decision To Be Made

The responsible officials in the FWS, NYSDEC, and VTDFW must decide whether to continue sea lamprey control for Lake Champlain. In addition, if sea lamprey control will continue, the agencies must also consider the following:

(1) Should the following list be established as the long-term program objectives?

(a) Maintain reduced levels of sea lamprey on Main Lake and South Lake portions of Lake Champlain and achieve further Main Lake-South Lake reductions by targeting new areas where sea lamprey infestations are found.

(b) Augment sea lamprey control activities in Malletts Bay and Inland Sea areas of Lake Champlain and reduce sea lamprey population levels and associated impacts there.

(c) Employ an integrated approach to continuing sea lamprey control using lampricides and nonchemical means.

(2) What mitigation and monitoring measures are required for sound resource management?

(3) Is sea lamprey control in the best interest for the resource and citizens of the states of New York and Vermont?

The Final Environmental Impact Statement and Record of Decision is expected to be released by April, 2001. The Responsible Officials will make a decision regarding this proposal after considering public comments, and the environmental consequences displayed in the Final Supplemental Environmental Impact Statement, applicable laws, regulations, and policies. The decision and supporting reason will be documented in the Record of Decision.

Dated: December 9, 1999.

Ronald E. Lambertson,

Acting Regional Director.

[FR Doc. 99–33186 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Yuchi Tribal Organization

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: Notice is hereby given that the Assistant Secretary—Indian Affairs declines to acknowledge that the Yuchi Tribal Organization, P.O. Box 1803, Sapulpa, Oklahoma 74067, exists as an Indian tribe within the meaning of Federal law. This notice is based on the determination that the group does not satisfy one of the criteria set forth in 25 CFR 83.7, namely 83.7(f), and therefore does not meet the requirements for a government-to-government relationship with the United States. Pursuant to 25 CFR 83.10(l)(2), this notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

DATES: This determination is final and will become effective 90 days after its publication in the **Federal Register**, unless a request for reconsideration is filed by the petitioner or any interested party with the Interior Board of Indian Appeals no later than 90 days after publication.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592. A request for a copy of the report which summarizes the evidence and analyses that are the basis for this Final Determination should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW, Mailstop 4660–MIB, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: A notice of the Proposed Finding to decline to acknowledge the Yuchi Tribal Organization (YTO) was published in the **Federal Register** on October 24, 1995 (60 FR 54506). The Proposed Finding concluded that the YTO did not meet criterion 83.7(f) of the acknowledgment regulations. The requirement of criterion 83.7(f) is that the membership of a petitioning group be composed "principally of persons who are not members of any acknowledged North American Indian tribe" (25 CFR 83.7(f)). The Proposed Finding concluded that the YTO failed to meet this criterion because almost all of its members are also enrolled members in a federally-recognized tribe, the Muscogee (Creek) Nation (MCN).

The acknowledgment regulations provide, however, for an exception in which a petitioner may be acknowledged even though its members are predominantly members of a federally-recognized tribe. In order to benefit from this exception, a petitioner must demonstrate that it satisfies three conditions: that it has functioned throughout history as an autonomous tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group (25 CFR 83.7(f)). The Proposed Finding concluded that the YTO did not meet any of these three conditions, and thus did not qualify for the exception to the basic requirement of criterion 83.7(f).

The YTO petition for Federal acknowledgment was evaluated under the section of the acknowledgment regulations (25 CFR 83.10(e)) which provides for an expedited Proposed Finding on a single criterion when the documented petition and the petitioner's response to the preliminary technical assistance review of the petition by the Bureau of Indian Affairs (BIA) indicates that there is little or no evidence that the petitioner can meet criterion 83.7(f). An expedited Proposed Finding is made after the petitioner has responded to the BIA's technical assistance review of the petition and before the petition is placed under "active consideration" (25 CFR 83.10(e)). Under the regulations (25 CFR 83.5(c), 83.6), the petitioner has the burden of establishing that it is entitled to be acknowledged as existing as an Indian tribe. The petitioner's failure to meet any one of the mandatory criteria in section 83.7 results in a finding against acknowledgment (25 CFR 83.10(m)). If the Assistant Secretary's review of the petition finds that the

evidence "clearly establishes" that the group does not meet one of the mandatory criteria in paragraphs 83.7(e), (f), or (g), the Assistant Secretary shall issue an expedited Proposed Finding denying acknowledgment (25 CFR 83.10(e)(1)).

Publication of the expedited Proposed Finding gives notice that the petition is now under "active consideration" (25 CFR 83.10(f)), and starts the process and time periods established in paragraphs 83.10(h) through (l). The expedited Proposed Finding limits the inquiry for the Final Determination to a single criterion. In response to an expedited Proposed Finding, the petitioner or third parties must provide evidence for the Final Determination that the petitioner meets the criterion in question under the "reasonable likelihood of the validity of the facts" standard (25 CFR 83.6(d)), the standard which applies to the evaluation of petitions under active consideration. The ultimate burden of establishing that the petitioner is entitled to be acknowledged as an Indian tribe always remains on the petitioner. This Final Determination on the YTO petition is issued based on the conclusion that neither the YTO nor the third parties have shown that the YTO meets criterion 83.7(f) under the "reasonable likelihood of the validity of the facts" standard. Because the petitioner and third parties did not provide sufficient evidence that the petitioner meets criterion 83.7(f) under this standard, it was not necessary for the BIA to undertake a full evaluation of the YTO petition under all seven of the mandatory criteria.

This Final Determination is based upon an evaluation of all the materials utilized for preparation of the Proposed Finding, the information submitted by the petitioner in response to the Proposed Finding and in response to third party comments, the public comments on the Proposed Finding, and the evidence collected by the BIA staff for evaluation purposes. The YTO and two members of the public submitted timely comments on the Proposed Finding. The YTO also submitted a timely response to the public comments. Neither the comments of the petitioner nor the public comments disputed the basic conclusion of the Proposed Finding that almost all YTO members are also enrolled members of a federally-recognized tribe. None of these comments demonstrated, or even attempted to demonstrate, that the petitioner satisfies all three conditions necessary to achieve an exception to the basic requirement of criterion 83.7(f). A review of the comments on the

Proposed Finding reveals that the YTO petitioner and the public commenters have offered no evidence and no arguments which refute or revise the Proposed Finding.

The YTO petitioner represents only a portion of a larger Yuchi ethnic group, and this Final Determination applies to this petitioner rather than to all the ethnic Yuchi. Independent scholars have estimated the current population of ethnic Yuchi at about 2,000 persons, while a 1956 list of the Yuchi included 1,299 names. The Proposed Finding was based on an evaluation of a membership list submitted by the YTO which contained 165 names. Neither the petitioner nor the public commenters disputed the conclusion of the Proposed Finding that 92 percent of these individuals were enrolled members of the MCN. This Final Determination is based on an evaluation of a revised membership list submitted by the YTO which contains 327 names. The BIA compared the names on the membership list of the YTO to the names in the citizenship database of the MCN. The evidence indicates that 278 of the 327 individuals on the YTO membership list, or 85 percent of them, are members of the MCN. The evidence also indicates that 93 percent of YTO adults are MCN members. These data reveal that the membership of the YTO petitioner is composed principally of members of a federally-recognized tribe.

The provisions of criterion 83.7(f) provide an exception to the basic requirement of the criterion if the petitioner can demonstrate that, despite the inclusion of its members on the MCN roll, it meets three conditions. The petitioner and commenters have not demonstrated that the YTO is a politically autonomous entity at present, as required by the first condition. The petitioner's leaders have conceded that the YTO is not the governing body of a Yuchi tribe. The petitioner and commenters have not challenged the conclusion of the Proposed Finding on the second condition that YTO members have a bilateral political relationship with the MCN because of the reciprocal consent involved in applying for MCN membership and being accepted as members by the MCN. Also, the evidence indicates that individual YTO members have participated extensively in the MCN political and judicial systems since 1962, which confirms the existence of a bilateral political relationship between YTO members and a recognized tribe. The petitioner and commenters have not claimed that the YTO has met the third condition of providing written confirmation from its members of their intention to belong to

the petitioning group. The evidence indicates that such confirmation can be implied for only a small minority of YTO members. Thus, the YTO petitioner does not meet any of the three conditions which provide an exception to the basic requirement of criterion 83.7(f).

The comments on the Proposed Finding have offered no basis for reversing the Proposed Finding on the petition for Federal acknowledgment of the YTO. The evidence reveals that the petitioner fails to meet the requirement of criterion 83.7(f) that it be composed principally of individuals who are not members of a federally-recognized tribe. The evidence does not show that the petitioner meets all three of the conditions necessary to achieve an exception to the essential requirement of criterion 83.7(f). Neither the petitioner nor the commenters have demonstrated, by the standard of a "reasonable likelihood of the validity of the facts," that the YTO meets the requirements of criterion 83.7(f). Therefore, the Proposed Finding is affirmed. Under 25 CFR 83.10(m), because the Yuchi Tribal Organization fails to meet criterion 83.7(f), a mandatory requirement for Federal acknowledgment, the Assistant Secretary—Indian Affairs declines to acknowledge that the YTO is an Indian tribe.

This determination is final and will become effective 90 days after the date of its publication in the **Federal Register** (25 CFR 83.10(l)(4)), unless a request for reconsideration of this determination is filed by the petitioner or any interested party with the Interior Board of Indian Appeals (IBIA) pursuant to 25 CFR 83.11. The request for reconsideration by the petitioner or interested party must be received by the IBIA no later than 90 days after publication of this determination in the **Federal Register** (25 CFR 83.11(a)(2)).

Dated: December 15, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99-33117 Filed 12-22-99; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Final Base Membership Roll of the Catawba Indian Nation (Formerly Known as the Catawba Tribe of South Carolina) and Appeal Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the proposed final base membership roll and membership appeal procedures of the Catawba Indian Nation of South Carolina (formerly known as the Catawba Tribe of South Carolina). This notice is published pursuant to Section 7 of the Act of October 27, 1993 (Pub. L. 103-116; 107 Stat. 1124).

FOR FURTHER INFORMATION CONTACT: Leann Bennett, Bureau of Indian Affairs, Tribal Relations Branch, Eastern Region, Mailstop 260-VA SQ, 3701 North Fairfax Drive, Arlington, VA 22203. Telephone number: (703) 235-3006.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Section 7 of the Act of October 27, 1993 (Act), Pub. L. 103-116, 107 Stat. 1124, directs the Secretary of the Department of the Interior (Secretary) to compile a proposed final base membership roll of members of the Catawba Indian Nation and to publish it in the **Federal Register** and in three newspapers of general circulation in the Catawba Indian Nation's service area. The purpose of the proposed final base membership roll is to identify individuals eligible for participation in the distribution of funds from the Per Capita Trust Fund established under Section 11(h) of the Act. To be eligible for inclusion on the proposed final base membership roll, individuals must have been living on October 27, 1993, must be listed on or be lineal descendants of persons listed on the membership roll published by the Secretary in the **Federal Register** on February 25, 1961, or the Catawba Executive Committee must have determined that a particular individual, or his or her lineal ancestors, should have been listed on the 1961 membership roll, but was not.

An appeal may be filed with the Catawba Executive Committee on or before February 22, 2000 under appeal procedures made by the Executive Committee in consultation with the Secretary. The Appeal Procedures are published below.

An appeal may be filed by a member with respect to the inclusion of any name on the proposed final base membership roll and by any person with respect to the exclusion of his or her name from the proposed final base membership roll. The Executive Committee shall review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final.

All appeals will be resolved on or before March 22, 2000 and the final base membership roll of the Catawba Indian Nation will subsequently be published in the **Federal Register**, and in three newspapers of general circulation in the Catawba Indian Nation's service area. Distribution of funds from the Per Capita Trust Fund will commence using the list of names on the Catawba Indian Nation's final base membership roll.

Following the Appeal Procedures, which are published below, is the proposed final base membership roll of the Catawba Indian Nation of South Carolina certified by resolution of the Catawba Executive Committee as a true and correct listing of all persons eligible for enrollment pursuant to the Act.

Appeal Procedures

Section 1. Who May Appeal

(a) Any member of the Catawba Indian Nation may appeal the inclusion of any name on the proposed final base membership roll;

(b) Any person may appeal the exclusion of his or her name from the final base membership roll; and

(c) Any parent, guardian or next of kin of any minor or incompetent individual may appeal the exclusion of the minor's or incompetent's name from the final base membership roll.

Section 2. Filing an Appeal

(a) Failure to file an appeal postmarked on or before February 22, 2000 shall be conclusive evidence of non-interest and the applicant has no further recourse.

(b) The appeal shall be in written form and addressed to the Catawba Indian Nation Executive Committee, Post Office Box 188, Catawba, South Carolina 29704.

(c) The burden of proof that an individual should have been listed on the proposed final base membership roll, but was not, lies with the appealing party. If an individual is listed on the proposed final base membership roll and an appeal is filed seeking to exclude the listed person, the burden of proof is on the party seeking to show grounds for exclusion.

(d) The appeal shall be supported by official documents and may be supported by other relevant documents. Such documents include, but are not limited to, birth certificates, death certificates, marriage licenses, probate records, conveyance records, notarized church records, and state and federal censuses.

(e) Where more than one person appeals the inclusion of a name, all appeals and the supporting

documentation will be consolidated for review and only one decision will be issued concerning that name.

Section 3. Executive Committee Action on Appeals

(a) The Executive Committee shall review and render a decision on all appeals from individuals seeking to be included on the final base membership roll as well as those seeking to exclude individuals listed on the proposed final base membership roll from the final base membership roll.

(b) As soon as the Executive Committee concludes an enrollment appeal determination, the Committee shall immediately forward its written decision to the appealing parties by certified mail, with notification that the appealing party may appeal to the Secretary within five (5) days of his or her receipt, by certified mail, of the Executive Committee's decision. All documents submitted by the appealing party will be returned with the Committee's decision. The Executive Committee shall conclude all enrollment appeal determinations no later than March 13, 2000.

(c) An individual who is denied eligibility for inclusion on the final base membership roll has a right to review all pertinent records, affidavits, and other written documents relied upon by the Executive Committee.

(d) The Executive Committee's decision on appeal shall be based on one or more of the following reasons:

(1) Failure to file an appeal within established time frames;

(2) The appealing party has or has not established that he or she is eligible for listing on the proposed final base membership roll;

(3) The appealing party has or has not established that he or she is the lineal descendant of a person or persons listed on the 1961 membership roll; and,

(4) The appealing party has or has not established that an individual listed on the proposed final base membership roll should be excluded from the final base membership roll.

(e) Upon completion of Executive Committee review and mailing of decision letters to the appealing parties, the Executive Committee shall forward copies of all unsuccessful appeal documents to the Secretary, or his authorized representative, along with all supporting documents relied upon by the Executive Committee in arriving at its decision.

Section 4. Secretarial Action on Appeal

(a) If an appealing party is dissatisfied with the Executive Committee's decision, he or she may write to the

Regional Director, Eastern Region, Bureau of Indian Affairs, 3701 North Fairfax Drive, Arlington, VA 22203, and request that the Secretary, or his authorized representative, review the Executive Committee's decision. The Secretary, or his authorized representative, shall complete such review and forward a written decision to the appealing party by certified mail.

(b) If the Executive Committee and the Secretary disagree, the Secretary's decision will be final.

Dated: December 16, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

Proposed Final Base Membership Roll of the Catawba Indian Nation of South Carolina

1. Adams, Aaron
2. Adams, Amanda Brooke
3. Adams, Andre Darris
4. Adams, Christina Elizabeth
5. Adams, Clarence Roddey
6. Adams, Dewey Lee
7. Adams, Franklin Douglas Jr.
8. Adams, Franklin Douglas Sr.
9. Adams, Glenda Naomi
10. Adams, Jaimie She
11. Adams, James Robert
12. Adams, Kimberly Denise
13. Adams, Laura Elizabeth
14. Adams, Mammie Blue
15. Adams, Nelson Judson (Judd)
16. Adams, Thomas Chadwick Jr.
17. Adams, Tyler Lee
18. Adams, Vicky Michelle
19. Adkins, Judy Gail
20. Adkins, Robert Alvin Jr.
21. Adkins, Sharon Gwen
22. Albertson, Brandon Lee
23. Aldridge, Charles Anthony
24. Aldridge, Christopher Lee
25. Alexander, Nona Medlin
26. Allen, Brittany
27. Allen, Devin Michael
28. Allen, Henry Lester Jr.
29. Allen, Kristin
30. Allen, Pheobia Lucinda
31. Anderson, Betty Jo
32. Aos, Angela Marie
33. Armenta, Ana Sopia
34. Armenta, Holly Diana
35. Armenta, Jose Javier
36. Atkinson, Aletta Michele
37. Austin, Hollie Leigh
38. Austin, Jason Eugene
39. Auten, Amy Carrie
40. Auten, Shirley Mae
41. Ayers, Alan Don
42. Ayers, Amy Lynn
43. Ayers, April Leigh
44. Ayers, Ashley Elizabeth
45. Ayers, Avery Stuart
46. Ayers, Claude Kenneth (J.C.)
47. Ayers, Dennis Ervin
48. Ayers, Ernest Wade Jr.

49. Ayers, Foxx E.
50. Ayers, Jacob Mitchell
51. Ayers, Jessica Lynne
52. Ayers, John
53. Ayers, Johnnie Nelson Jr.
54. Ayers, Johnnie Nelson Sr.
55. Ayers, Ralph Lewis
56. Ayers, Robert Heber
57. Ayers, Roger Dale
58. Ayers, Sara H.
59. Ayers, William Frell Jr.
60. Bagley, Doniece
61. Bagley, Jacqueline Diane
62. Bagley, John Wayne
63. Bailey, Amanda Marie
64. Bailey, Dain Adrain
65. Bailey, Fanchon Alicia
66. Bailey, Jan
67. Bailey, Jason Wade
68. Bailey, Karen Angela
69. Bailey, Michael LeRoy Jr.
70. Bailey, Robert Wayne
71. Bailey, Tamara Shannon Nicole
72. Baird, April Marie
73. Baird, Kimberly Denise
74. Baird, McRandall Laurance Jr.
75. Baker, Ashley Mechele
76. Baker, Cindy Renee
77. Baker, Jonathan Wayne
78. Baker, Kathy Evonne
79. Baker, Matthew Bradley
80. Baker, Robert Dale
81. Baker, Sally Elaine
82. Barber, David Kyle
83. Barber, Trina Kaye
84. Barker, Barbara Jean
85. Barker, Brandon Luke
86. Barnes, Cory Neil
87. Barnes, Justin Mark
88. Barnes, Sharon Jean
89. Barnes, Tiffany Michelle
90. Basha, Shelby Nicole
91. Bauer, JoAnn Carol Jean
92. Bauer, Lawrence Peter III
93. Baumgardner, Amanda Nicole
94. Baumgardner, Ashlie Kay
95. Baumgardner, Cheryl Ann
96. Baumgardner, Harlie Kristina
97. Baumgardner, Robert Dale
98. Baumgardner, Teresa Marie
99. Baumgardner, William Arthur Jr.
100. Beck, Calvin Trevor
101. Beck, Daniel Tyler
102. Beck, Donald Jeffery
103. Beck, Duane Early
104. Beck, Fletcher B.
105. Beck, Fletcher Calvin
106. Beck, Gerald Sr.
107. Beck, Gerald Leon III
108. Beck, Gerald Leon Jr.
109. Beck, Jason Roderick
110. Beck, Jennifer Ann
111. Beck, Jeremy Ryan
112. Beck, John C.
113. Beck, John Clarence Jr.
114. Beck, John Henry
115. Beck, Karen Beth
116. Beck, Kellon Taylor
117. Beck, Kimberly Lynn

118. Beck, Lula S.
119. Beck, Major H.
120. Beck, Margaret Helen
121. Beck, Matthew Kyle
122. Beck, Michael Trey
123. Beck, Mindy Sue
124. Beck, Randall Scott
125. Beck, Roderick Neil
126. Beck, Ronald Lee Jr.
127. Beck, Ronald Lee Sr.
128. Beck, Ronnie Lee
129. Beck, Samuel John
130. Beck, Samuel Michael
131. Beck, Samuel Mitchell
132. Beck, Steven Ryan
133. Beck, Tammy Rae
134. Beck, Tara Michele
135. Beck, Tiffanie Denise
136. Beck, Tony Leon
137. Bell, Amber Delora
138. Bell, Colette Williams
139. Bennett, Timothy Wade
140. Bibb, Garrett Spenser
141. Bibb, Patricia Dawn
142. Bibb, Sean Andrew
143. Bibb, Wanda Sue
144. Bickett, Mary Leigh Ann
145. Biggers, Lewis Steven
146. Biggerstaff, Alicia Beth
147. Bishop, Lillie
148. Bjorklund, Cheryl June
149. Black, Christopher Steven
150. Black, Dicy Anna
151. Black, Dustin Shane
152. Black, Jerry Kieth Jr.
153. Blackmon, Baer Brian
154. Blackmon, Donna Lynn
155. Blackmon, Marissa Ann
156. Blackwell, Brandon Dean
157. Blackwell, James Harold
158. Blackwell, Tammy Anise
159. Blackwell, Tammy Lynn
160. Blackwood, Elizabeth Cabaniss
161. Blue, Andrew Gene
162. Blue, Arnold Lee Jr.
163. Blue, Betty
164. Blue, Bobby Everette
165. Blue, Bobby Reid
166. Blue, Carson Taylor
167. Blue, Charles Patrick
168. Blue, Christopher Larson
169. Blue, Christy Shanon
170. Blue, Danna Lynn
171. Blue, Douglas Keith
172. Blue, Gilbert B.
173. Blue, Glenn Taylor
174. Blue, Gracia Kathleen
175. Blue, Harry Reid
176. Blue, Heather Ashley
177. Blue, Henry Leroy
178. Blue, Herbert Roosevelt
179. Blue, Jeffrey Travis
180. Blue, Jessica Leann
181. Blue, Jonathan Aaron
182. Blue, Kalah Danielle
183. Blue, Karen Denise
184. Blue, Kelly Labrian
185. Blue, Mildred Louise
186. Blue, Nathan Taylor
187. Blue, Nathan Timothy
188. Blue, Randall Lavon Jr.
189. Blue, Randall Lavon Sr.
190. Blue, Rebecca Dyann
191. Blue, Samuel Andrew Wheelock
192. Blue, Steven Shawn
193. Blue, Timothy Everett
194. Boatwright, Tanya Marie
195. Bodiford, Bruce Marvin
196. Bodiford, Donald Bruce
197. Bodiford, Hazel Dewey
198. Bodiford, Ted Dewey
199. Bodiford, Terriol James (Terry)
200. Bolick, Beronica Lynn
201. Bolick, Kimberly Michelle
202. Bolick, Robert Eugene III
203. Boone, Brandy LeShae
204. Boone, Cynthia Dawn
205. Boone, Jimmy David
206. Boone, Joshua Wayne
207. Boulter, Thomas Dean
208. Boulter, Tony Alan Jr.
209. Bowers, Melinda Lou
210. Boyd, Debora Darlene
211. Boyd, Shannon Nicole
212. Brackett, Tehra Jansen
213. Brackett, Tyson Wade
214. Brackett, Vicky Jane
215. Bradburn, Edwin Scott
216. Bradburn, Jamie Gayle
217. Braddy, Bryan Reid
218. Braddy, Shayne Michelle
219. Bradley, Clifford Dean Jr.
220. Bradley, Crystal Renee
221. Bradley, Desmon Ryan
222. Bradley, Louise Michele
223. Bradley, Robert Dwayne
224. Bradley, Susan D.
225. Brady, Michael Scott
226. Branham, Anna Maria
227. Branham, Charlotte Ann
228. Branham, Kristopher Lee
229. Branham, Oliver Lee
230. Branham, Rodney Holden
231. Branham, William Lamont
232. Brazell, Della Melissa
233. Brazell, Edward Howard Jr.
234. Brazell, Patsy Denise
235. Brazell, Patty Darnell
236. Breakfield, Laura Kay
237. Brezeale, Christy Lee
238. Bridges, Ellen
239. Brindle, Carl
240. Brindle, Frank Wayne
241. Brindle, Jason Carl
242. Brindle, Jennifer Lynn
243. Brindle, Lorinda Ann
244. Brindle, Melvin Lester
245. Brindle, Missouri Elizabeth
246. Brindle, Patrica Lucille
247. Brindle, Walter Andrew Jr.
248. Brindle, Walter Andrew Sr.
249. Brooks, Arthur Dale
250. Brooks, Christopher Thomas
251. Brooks, Janice Amelia
252. Brooks, Joseph Lee
253. Brown, Arnold Dean
254. Brown, Bobby Norman
255. Brown, Brandon Tyler
256. Brown, Chelsee Ann
257. Brown, Christopher Ethan
258. Brown, David Lee
259. Brown, David Warren
260. Brown, Donald Lester Jr.
261. Brown, Donald Lester Sr.
262. Brown, Donald Richard
263. Brown, Drequanna Marie
264. Brown, Eric Lee
265. Brown, Gary Wayne
266. Brown, Gary William
267. Brown, Harold Dean
268. Brown, Hazel Edward Jr.
269. Brown, Hazel Edward Sr.
270. Brown, James Vernon
271. Brown, Janet
272. Brown, Jessica Elizabeth
273. Brown, Jessica Wenonah
274. Brown, Jessie Thomas
275. Brown, Joel Lee
276. Brown, John Edward
277. Brown, John Jeffrey
278. Brown, John Samuel Jr.
279. Brown, Jonathan Richard
280. Brown, Joshua Wayne
281. Brown, Karen Diane
282. Brown, Kathleen Rogers
283. Brown, Kayla Michelle
284. Brown, Kelly Marie
285. Brown, Leola George
286. Brown, Lewis Herman II
287. Brown, Lewis Herman Sr.
288. Brown, Mandy Marie
289. Brown, Mary Lynn
290. Brown, Melissa Michelle
291. Brown, Michael Edward Jr.
292. Brown, Michael Edward Sr.
293. Brown, Michael Wayne
294. Brown, Mildred Leona
295. Brown, Morgan Ramsey
296. Brown, Myra Edith
297. Brown, Nancy Mae
298. Brown, Otis Roddey
299. Brown, Otis Wayne
300. Brown, Owen Keith
301. Brown, Patrick Neal
302. Brown, Paula Delores
303. Brown, Robbie Lee
304. Brown, Robert Stephen
305. Brown, Roddey Alan
306. Brown, Sally Edith
307. Brown, Sandy Michelle
308. Brown, Scotty Eugene
309. Brown, Stephanie Nicole
310. Brown, Tammy Ann
311. Brown, Teresa Diane
312. Brown, Tommy Clyde
313. Brown, Troy Dean
314. Brown, Troy Gene
315. Brown, Whitney Marie
316. Brown, William
317. Brown, William Clifford
318. Brown, William Larry
319. Brown-Gunderson, Sue
320. Bruce, Donna Jo
321. Bryson, Ina Mahovie
322. Bryson, Kevin Ray
323. Bryson, Myrtle Blanche
324. Bryson, Sanford Anzle Jr.

325. Bryson, Stanley Anzle
326. Bryson, Tasha Lynn
327. Bryson, Trisha Anzle
328. Bucca, Connie Patricia
329. Buckaloo, Eula Kay
330. Buckaloo, Mark Anthony Jr.
331. Buckaloo, Nicholas Cody
332. Buckley, Micheal Loraine
333. Bullin, Jai Anne
334. Burciago, Carol O.
335. Burgess, Angela Renee
336. Burgess, Tondia Carol
337. Burnett, Patricia Ann
338. Burnett, Teresa Mae
339. Burns, Andrew Scott
340. Burns, Christopher
341. Burns, Janie Rose
342. Burns, Kenneth Allen Jr.
343. Burns, Lizzie Jane
344. Burns, Scott Dennis
345. Burris, Brittany Susan
346. Burris, Kimberly Susan
347. Burris, Matthew Douglas
348. Burrows, Stephen Courtney Jr.
349. Burton, Angela Deniece
350. Burton, Jacqueline Louise
351. Burton, Matthew David
352. Byers, Daniel William
353. Byers, Roger James
354. Byrd, Marsha
355. Byrd, Timothy James
356. Cabaniss, Amanda Jo
357. Cabaniss, Courtney Paige
358. Cabaniss, Daniel Hargrove
359. Cabaniss, Jennifer Dawn
360. Cabaniss, Marcille
361. Cabaniss, Mary Cathryn
362. Cabaniss, Nicole Beth
363. Cabaniss Thomas
364. Cabaniss, William Forrest Jr.
365. Cabaniss, William Heath
366. Cabaniss, Zoe Marie
367. Cagle, Angela Delphine
368. Cameron, Jessica Ann
369. Cameron, Sandra K.
370. Cameron, Walter Joseph
371. Campbell, Damien Allen
372. Campbell, Edwin
373. Campbell, Edwin Alan
374. Campbell, Ella Ricky
375. Campbell, Nola
376. Campbell, Paul Edward
377. Campbell, Phillip Christopher
378. Campbell, Rita Fay
379. Campbell, Susan Juanita
380. Campbell, Zachery Lee
381. Canfield, Steven Terrivo
382. Canty, Alonzo George Jr.
383. Canty, Alva B.
384. Canty, Alvin Huey
385. Canty, Amelia Brooke
386. Canty, Angel Marie
387. Canty, Anthony Scott
388. Canty, April Denise
389. Canty, Billy Huey
390. Canty, Billy Jack
391. Canty, Bobby Dean
392. Canty, Carolyn Denise
393. Canty, Catherine
394. Canty, Cecil
395. Canty, Charles Ray
396. Canty, Cheyenne
397. Canty, Christopher Chad
398. Canty, Christopher Lance
399. Canty, Christopher Lee
400. Canty, Clifford Troy
401. Canty, Colond Lee George
402. Canty, Curtis Ray Jr.
403. Canty, Curtis Ray Sr.
404. Canty, Diane Renee
405. Canty, Eddie Henderson
406. Canty, Edwin Bruce
407. Canty, Emily Louise
408. Canty, Eric Jerome
409. Canty, Erica Rose
410. Canty, Erin Melissa
411. Canty, Heyward Jackson Jr.
412. Canty, Huey Columbus
413. Canty, James Eugene
414. Canty, James Henry
415. Canty, Jamie Dawn
416. Canty, Jared Scott
417. Canty, Jarom Dean
418. Canty, Jeffrey Neal
419. Canty, Jessica Lynn
420. Canty, Jessica Mishelle
421. Canty, Jessica Suzan
422. Canty, Johnathon Kyle
423. Canty, Jonathan Jered
424. Canty, Kathryn Ryan
425. Canty, Kathy Elizabeth
426. Canty, Lawrence Laverne Jr.
427. Canty, Lawrence Laverne Sr.
428. Canty, Leonard James
429. Canty, Leonard Taylor
430. Canty, Lisa Marie
431. Canty, Marcus LaCurt
432. Canty, Marion Thomas
433. Canty, Martha Nicole
434. Canty, Natalie Shawnte
435. Canty, Quinlan Russell Schutte
436. Canty, Rebecca Ann
437. Canty, Rhonda Renee
438. Canty, Robert Kirk
439. Canty, Roger B.
440. Canty, Ronald Vance
441. Canty, Scott Dell
442. Canty, Shaun Travis
443. Canty, Stephanie Britt
444. Canty, Steven Ray
445. Canty, Suzanne Marie
446. Canty, Teresa Diane
447. Canty, Timothy Dean
448. Canty, Timothy Joseph
449. Canty, Wallace Lee Jr.
450. Canty, Wallace Lee Sr.
451. Caponis, Jennifer Anne
452. Caponis, John Alvin
453. Caponis, Reina
454. Carlton, Johni Rae
455. Carnwath, Danielle Nicole
456. Carpenter, Christopher Sylvanus Jr.
457. Carpenter, Jane Dilling
458. Carpenter, Paul Michael
459. Carpenter, Timothy Joseph
460. Carroll, Amber Nichole
461. Carroll, Ernest Haskel III
462. Carroll, Karen Elaine
463. Carter, Janice Dorenda
464. Cartwright, Jeremy Shawn
465. Carver, Hailey Nicole
466. Carver, Jack Monroe Jr.
467. Carver, Jacqueline Delores
468. Carver, Kenneth Wayne
469. Carver, Kristen Danielle
470. Carver, Mary Delores
471. Carver, Tracy Lynn
472. Casler, Crystal
473. Castagna, Loren Naomi
474. Castagna, Matthew Joseph
475. Castagna, Rachel Loren
476. Castagna, Samuel Beck
477. Castagna, Zachary Michael
478. Catoe, Christopher Joseph
479. Catoe, Cierra LeAnn
480. Catoe, Donald Lloyd Jr.
481. Catoe, Herbert Pascal
482. Catoe, Leslee June
483. Catoe, Richard David Jr.
484. Catoe, Thomas Lee
485. Catoe, William Brad
486. Caudle, April Leann
487. Caudle, Cammie Lynn
488. Caudle, Daniel Lee
489. Caudle, Edward Chris
490. Caudle, Jason Christopher D.
491. Caudle, Jennifer Rebecca
492. Caudle, Kenneth Darrell
493. Caudle, Mickem James
494. Caudle, Suzanne Nicole
495. Caudle, Sylvia
496. Cauthen, Angela Michele
497. Cauthen, Buster Ray
498. Cauthen, Kandis Brooke
499. Charles, Lyda
500. Cherry, Alice Elaine
501. Cherry, Donald Ray
502. Cherry, Eula May
503. Cherry, Heather Rene
504. Cherry, James Columbus Jr.
505. Cherry, Jennifer Elaine
506. Cherry, Jimmy Dean
507. Cherry, Scotty Ray
508. Childers, Stacy Paige
509. Childers, Teresa Annette
510. Cinqmars, Beverly Francine
511. Cinqmars, Brian Matthew
512. Cinqmars, Ryan Daniel
513. Clark, Nathan Lee Jr.
514. Cline, Damaris Ruth
515. Cline, James Patrick Jr.
516. Cline, Michael Paul
517. Cline, Shirley Lynn
518. Colley, Andrew Steven
519. Colley, Jose Sandoval III
520. Colley, Kristine Elizabeth
521. Colley, Mary Elizabeth
522. Collins, Daniel Howard
523. Collins, James David
524. Colter, Jessica Rey
525. Cookson, Christene Lee
526. Cookson, Christian Darryl
527. Cookson, Corey A
528. Cookson, Jeremy R.
529. Cookson, Jewell Shirley
530. Cookson, Ricardo Harris
531. Cooper, David Lee

532. Cooper, Erica Shawta
533. Cooper, Lisa Maureen
534. Coppersmith, Amy Nadine
535. Corbridge, Nicole Leigh
536. Corbridge, Sandra Marlene
537. Corder, Audrianna Christine
538. Corder, Cecil Idus
539. Corder, Christopher W.
540. Corder, James Ralph Jr.
541. Corder, Joyce I.
542. Corder, Joyce M.
543. Cornwell, Hollis Jordan
544. Cornwell, Tonya Nichol
545. Crawford, Julia May
546. Crawford, Justin Bryant
547. Crawford, Tammy Renee
548. Creel, Mary-Jo Anne
549. Crisco, Deborah Mae
550. Croft, James Franklin
551. Croft, John Pearley
552. Crytser, James Oliver
553. Crytser, Melissa Dawn
554. Crytser, Randy Wayne
555. Crytser, Wayne Alexander
556. Culbertson, Jason Eric
557. Culbertson, Mark Warren Jr.
558. Curtis, Carl Nathan
559. Curtis, Derrick John
560. Curtis, Donna Beck
561. Curtis, Michael Shannon
562. Curtis, Naomi Christine
563. Dabney, Aaron John
564. Dabney, Alan Dwayne
565. Dabney, Jessica Danielle
566. Dabney, Meredith Lindsay
567. Davis, Andrew Wayne
568. Davis, Barry Joseph
569. Davis, Carlene Renee
570. Davis, Christina Renee
571. Davis, Danelle Hazel
572. Davis, Desiree Melinda
573. Davis, Frances L.
574. Davis, Freddie D. Horne
575. Davis, Jayson Lee
576. Davis, Kimberly Denise
577. Davis, Laura Mae
578. Davis, Lilly Ann
579. Davis, Ronald Lee Jacob
580. Davis, Shane Christopher
581. Davis, Sharon Melinda
582. Davis, Tiffany Nicole
583. Deal, Daylon Gene
584. Deal, Stephen Brian
585. Deal, Susan
586. Deal, Waylon Dean
587. Dietrich, Shana Nicole
588. Dietrich, Wanda Jean
589. Dixon, Olivia Grace
590. Dodrill, Tamara Lynn
591. Dorman, Valerie Francine
592. Dorsey-Beck, Eric Mitchell
593. Doster, Teresa Louise
594. Doster, Wanda Renee
595. Dresser, Seth Martin
596. Dresser, Victoria Yvonne
597. Driggers, Angela Marie
598. Driggers, Betty
599. Driggers, Judy Patricia
600. Driggers, Marvin Henry Jr.
601. Dunnells, Amanda Michelle
602. Dunnells, Jeffery Allan
603. Dunnells, Kenneth Wesley
604. Eagan, Tonya Marie Ensley
605. Edgar, Sandra
606. Edington, Patricia Lynn
607. Edwards, Amanda Lynne
608. Edwards, Cara Michelle
609. Edwards, Cindy Lee
610. Edwards, Robert Daniel
611. Edwards, Robert Tyler
612. Ehman, Dean Michael
613. Elkins, Mary Jane
614. Ellison, Elizabeth Leigh-Ann
615. Ellison, Richard William II
616. Esplin, Alice Kris
617. Esplin, Colton Harris
618. Esplin, Kelsey Caroline
619. Evans, David Dewayne Jr.
620. Evans, Holley Amanda
621. Evans, Kelly Wayne
622. Faile, Brittany Ann
623. Farmer, Clyde Eric
624. Farmer, Kathryn
625. Ferrell, Alberta Lavinia
626. Ferrell, Jerri Lee
627. Ferrell, Saleshia Zandora
628. Fincher, Annette Marie
629. Fincher, Sharon Dale
630. Fincher, Stephen Anthony Jr.
631. Fleming, Dana Meshelle
632. Ford, Branden Ray
633. Ford, Katura Ann
634. Fowler, Bobby Lee
635. Fowler, Candy Cleo
636. Fowler, Kathy Marie
637. Fowler, Nettie Jane
638. Fowler, Patrick Thorne
639. Fowler, Ricky Dean
640. Fowler, Robbie Colel
641. Fowler, Stacey Michelle
642. Fowler, Teresa Diane
643. Foxx, Antonio Basil III
644. Foxx, Antonio Basil Jr.
645. Foxx, Brittany Dawn
646. Foxx, Charles Winifred II
647. Foxx, Charles Winifred
648. Foxx, Danny Ray Jr.
649. Foxx, Danny Ray Sr.
650. Foxx, Ernest B.
651. Foxx, Ernest Ryan
652. Foxx, Jimmy Coy
653. Foxx, Joey Edward
654. Foxx, Kari Anne
655. Foxx, Kristen Michelle
656. Foxx, Leshea Breeon
657. Foxx, Lewis Angelo Basil
658. Foxx, Louis Russell
659. Foxx, Michael Wayne
660. Foxx, Nicole Cherise
661. Foxx, Steven Lewis
662. Foxx, Terrill Dwayne Jr.
663. Foxx, Terrill Dwayne Sr.
664. Foxx, Tiffany Jo
665. Foxx, William C Basil
666. Foxx, William Coon Basil Jr.
667. Foxx, William Edward Basil
668. Foxx, Willie Ray
669. Frances Hurn, Brian Jay Robert
670. Francisco, Shirley Ann
671. Franks, Tolani Rochelle
672. Frary, Christopher Paul
673. Frary, Dot Mirian
674. Funderburk, Melissa Shrake
675. Gable, Allen Wayne Jr.
676. Gaddy, Carol Ann
677. Gaillard, Angela Faye
678. Gaillard, Nancy Marie
679. Gantt, Alina Elvina
680. Gantt, Bobby Brian Jr.
681. Gantt, Jessica LeeAnn
682. Gantt, Stacy Renee
683. Garcia, Ben Jr.
684. Garcia, Betty Juanita
685. Garcia, Bonnie
686. Garcia, Edward Guy
687. Garcia, Irene Minerva
688. Garland, Steven E.
689. Garland, Vivian A.
690. Garris, Joan S.
691. Garris, Jonathan Hazel
692. Garris, Shana Louise
693. Gassert, Rita Faye
694. Gaston, Devon Michael
695. Geist, Betty Jean
696. Geist, Brian Keith
697. Geist, Nicole Lynn
698. George, Amanda Leigh
699. George, Amber Leslie
700. George, April Leigh
701. George, Audrey Dale
702. George, Brently Clark
703. George, Brooklyn Nicole
704. George, Bryan Wayne
705. George, Charles Edward
706. George, Charles Lewis
707. George, Christopher Evans
708. George, Claude Leonard
709. George, Courtney Elizabeth
710. George, Crystal Lee
711. George, Curtis Edward
712. George, Cynthia Amanda
713. George, Cynthia Annette
714. George, Eddie Mac
715. George, Elsie Blue
716. George, Emily Wycie
717. George, Evans M. (Buck) Jr.
718. George, Evelyn B.
719. George, Flonnie Evelyn
720. George, Fred Calvin
721. George, Gregory Tige
722. George, Hayley Danyale
723. George, Jennifer Annette
724. George, John Albert
725. George, John Christopher
726. George, John Earl
727. George, John Early
728. George, John Marvin
729. George, Jonathan Nikita
730. George, Joshua Edward
731. George, Kevin Wade Jr.
732. George, Kevin Wade Sr.
733. George, Kristen Nicole
734. George, Landrum L.
735. George, Laverne Randolph Jr.
736. George, Laverne Randolph
737. George, Lawrence Howard
738. George, Leonard Chadwick

739. George, Lewis Brently
740. George, Linda Faye
741. George, Lisa Michelle
742. George, Lynda DeAnn
743. George, Marion Phillip
744. George, Marvin Kelly
745. George, Matthew Asher
746. George, Megan Nicole
747. George, Michael Allen
748. George, Moroni Taylor
749. George, Nathan Charles
750. George, Nyeoka Iona
751. George, Phillip Anthony
752. George, Phillip Dekota Two Bears
753. George, Phillip Keith
754. George, Rachel Lee
755. George, Robert Neil
756. George, Roger Wayne
757. George, Sara Louise
758. George, Shannon Leigh
759. George, Summer Lyne
760. George, Susan M.
761. George, Susan Marie
762. George, Thomas Clark
763. George, Thomas Howard
764. George, Tina Ann
765. George, Tracy Alan
766. George, William Joseph Corrichee
767. George Warren, DeLesslin Evans
768. George Warren, K. C.
769. George Warren, Wanda
770. Gibson, Annette Maurice
771. Gibson, Fannie Lavina
772. Gibson, Frances Virginia
773. Gibson, Jason Matthew
774. Gibson, Joshua Dakota
775. Gibson, Mary
776. Gibson, Robert Reid
777. Giles, Catherine Renee
778. Giles, Christopher Ray
779. Giles, Shannon Leigh
780. Gillilan, John Strickland Jr.
781. Gillilan, Jon Allen
782. Gillilan, Matthew Ryan
783. Gillis, Dwana Menjon
784. Glenn, Tina Michelle
785. Gonzales, Donna Leola
786. Gonzales, Katrina Larae
787. Gonzales, Kimberly Dawn
788. Goodwin, Frances Inez
789. Gordon, Carson Matthew
790. Gordon, Sheryl
791. Gordon, Wesley Olin
792. Graham, Jason Gregory
793. Graham, Jillian Gayle
794. Graham, Jonathon Yates
795. Graham, Joseph Gartman
796. Graham, Joshua Garrison
797. Graham, Karen Rebecca
798. Graham, Karl Ray
799. Graham, Kevin Ross
800. Graham, Kimberly Rebecca
801. Graham, Kurtis Randall
802. Green, Aaryn Rae
803. Green, Caitlin Elizabeth
804. Green, Edwin Brian
805. Green, Emma Karie
806. Green, Frederick Dane.
807. Green, Hal Ephraim
808. Green, Joyce M.
809. Green, Justin Adam
810. Green, Kelli Katherine
811. Green, Lindsay Joyce
812. Green, Norah Nicole
813. Gregory, Beverly Nicole
814. Gregory, Karen Yvonne
815. Greiner, Hazel Faye
816. Grice, Melissa Dawn
817. Grice, Robert Caelum
818. Griggs, Bonita Sue
819. Griggs, Brandon Charles
820. Griggs, Brandy Michelle
821. Griggs, Christopher Charles
822. Griggs, Miranda Christian
823. Grobusky, Charles Christopher
824. Grobusky, Joseph Stanley
825. Guinn, James Dylan
826. Gunn, Andrew Paul
827. Gunn, Angela Denine
828. Gunn, David Howard III
829. Gunn, David Howard Jr.
830. Gunn, Floyd Lee Jr.
831. Gunn, Floyd Lee Sr.
832. Gunn, Lou Ella
833. Gunn, Mary Faye
834. Gunn, Nancy Jane
835. Gunn, Nellie Faye
836. Gunn, Patricia Lucille
837. Gunn, Richard A. Jr.
838. Gunn, Richard A.
839. Gunn, Susan
840. Gunn, Wanda Diane
841. Gunton, Fannie Ellen
842. Gunton, Geneva Geraldine
843. Hafner, Christian David
844. Hafner, Myra June
845. Haire, Chrystal Louisa
846. Haire, Wenonah Caitlin
847. Haire, Wenonah George
848. Hall, Victoria Shelle
849. Hamacher, Anna Marie
850. Hamacher, Heather Elizabeth
851. Hamacher, Jerry Wayne II
852. Hamm, Raymond Edward
853. Hamm, Robert Leroy
854. Hamm, Tabatha Avery
855. Hamm, Tad Allen Jr.
856. Hammond, Bobby Ray
857. Hammond, Christopher Ian
858. Hammond, David Kenneth
859. Hammond, Gerald James III
860. Hammond, Gerald James Jr.
861. Hammond, Nora Lee
862. Hanebrink, Adam Michael
863. Hanebrink, Erika Lynn
864. Hanebrink, Robyn Jolene
865. Hansen, Billie Jo
866. Harrell, Joseph Ryan
867. Harris, Adam Kenneth
868. Harris, Alfred Kenneth
869. Harris, Alfred Neal
870. Harris, Alice Loretta
871. Harris, Amanda Renee
872. Harris, Amanda Reola
873. Harris, April Lynn
874. Harris, Arzada Marie Itu'se
875. Harris, Barry Dean
876. Harris, Barry Dean James
877. Harris, Barry Phillip Jr.
878. Harris, Barry Phillip Sr.
879. Harris, Bertha
880. Harris, Bethany Michelle
881. Harris, Beulah
882. Harris, Billy Ray
883. Harris, Bradley Scott
884. Harris, Brandi Michelle
885. Harris, Brandon Beaumont
886. Harris, Brian Adam
887. Harris, Calvin Wayne
888. Harris, Carl Bazil
889. Harris, Carl Elbert Jr.
890. Harris, Charles Roger
891. Harris, Christopher Loran
892. Harris, Cleadous O'Neal
893. Harris, Cody Darryl
894. Harris, Curtis Douglas
895. Harris, Dale Wallace
896. Harris, Darryl Kent
897. Harris, David Adam
898. Harris, David Loran
899. Harris, David Steve
900. Harris, Dewey Wallace
901. Harris, Donald Brian
902. Harris, Donald Wilford
903. Harris, Donnie Ray
904. Harris, Donnie Ray Edward
905. Harris, Dwaine Gilbert
906. Harris, Dwaine Gregory
907. Harris, Dwayne Phillip
908. Harris, Elizabeth Lauren
909. Harris, Ellen Deloria
910. Harris, Emily Joann
911. Harris, Eric Loran
912. Harris, Ethan Lloyd William
913. Harris, Floyd William Jr.
914. Harris, Floyd William
915. Harris, Franklin Carlisle
916. Harris, Furman George
917. Harris, Garfield C.
918. Harris, Garland Wesley Jr.
919. Harris, Garland Wesley Sr.
920. Harris, Georgia H.
921. Harris, Glenda Diane
922. Harris, Grady Crawford
923. Harris, Heather Lynn
924. Harris, Heather Nicole
925. Harris, Holly Dawn
926. Harris, Homer Vernon
927. Harris, Jacob Kent
928. Harris, James Anthony
929. Harris, James Loren Jr.
930. Harris, James Michael
931. Harris, James Wade Jr.
932. Harris, James Wade Sr.
933. Harris, James Wesley
934. Harris, James William
935. Harris, Jason Matthew
936. Harris, Jason Maurice
937. Harris, Jefferson W. C.
938. Harris, Jeffrey Charles
939. Harris, Jessica Hope
940. Harris, Jodi Kay
941. Harris, John Rella Jr.
942. Harris, John Rella Sr.
943. Harris, Jonathon David
944. Harris, Joseph Dakota
945. Harris, Joseph Franklin

946. Harris, Joseph W.
947. Harris, Joshua Paul
948. Harris, Justin Bryant
949. Harris, Kalum Douglas Reed
950. Harris, Karen Ann
951. Harris, Kelly Aaron
952. Harris, Kelly Neal
953. Harris, Kevin Leonard
954. Harris, Kimberly Ann
955. Harris, Lester Nathaniel
956. Harris, Lester Neal
957. Harris, Linda Sue
958. Harris, Lorna F.
959. Harris, Luther Morgan
960. Harris, Lynda Annette
961. Harris, Martin Raymond
962. Harris, Melvin Howard
963. Harris, Michael Dwayne
964. Harris, Michael Shane
965. Harris, Michael Wayne Jr.
966. Harris, Michael Wayne Sr.
967. Harris, Michael William
968. Harris, Mitchell Oliver
969. Harris, Paul Christopher
970. Harris, Paul Kenneth Jr.
971. Harris, Paul Kenneth Sr.
972. Harris, Peggy Elizabeth
973. Harris, Philip Lee
974. Harris, Randolph Gerard
975. Harris, Reece O'Neil
976. Harris, Robert Curtis
977. Harris, Roger Bazil
978. Harris, Roger Curtis
979. Harris, Roger Gerard (Jerry)
980. Harris, Ronald Floyd
981. Harris, Shaun Mychal
982. Harris, Stanley Spencer
983. Harris, Tara Marie
984. Harris, Theresa Lee
985. Harris, Thomas Edward
986. Harris, Timmy Loran
987. Harris, Timothy Dale
988. Harris, Timothy Neal
989. Harris, Tina Oveda
990. Harris, Tracy Irene
991. Harris, Tracy Marie
992. Harris, Travis William
993. Harris, Victor Lee
994. Harris, Vonda Darlene
995. Harris, Walter Lloyd Jr.
996. Harris, Walter Lloyd Sr.
997. Harris, Wendell Loran II
998. Harris, Wendell Loran
999. Harris, Wilburn
1000. Harris, Wilford Phillip
1001. Harris, Willard Leon Jr.
1002. Harris, Willard Leon Sr.
1003. Harris, William Bryan
1004. Harris, Woodrow
1005. Harris-Adams, Teresa
1006. Harrison, Daniel Hutchinson
1007. Harrison, Marilyn Ann
1008. Harsey, Frances
1009. Harsey, Lacey Jaye
1010. Harsey, Samantha Renee
1011. Hawkins, Pamela Jean
1012. Haywood, Ryan Cheyene
1013. Hedgepath, Ashley Nicole
1014. Hedgepath, Cody Lee
1015. Hedgepath, Cora Paulette
1016. Hedgepath, Robert Daniel
1017. Hedgepath, Ronald Wayne Jr.
1018. Hedgepath, Ronald Wayne
1019. Hedgepath, Sherman Dale Jr.
1020. Hellewell, Shauna
1021. Hellewell, Tamara Nicole
1022. Helms, Jason Keith
1023. Helms, Rhonda Denine
1024. Hemby, Aaron Wade
1025. Henderson, Amy Michelle
1026. Henderson, Nicholas Shane
1027. Hendrix, Justin Derrick
1028. Hendrix, Robert Floyd Jr.
1029. Hendrix, Thelma Cauty
1030. Henson, Cynthia Lynn
1031. Henson, Emily Suzanne
1032. Herring, Andria Kristi
1033. Herring, Angel Rebecca
1034. Herring, Anthony David
1035. Herring, Belinda Faye
1036. Herring, Cathy Paulette
1037. Herring, Jamie Faye
1038. Herring, Katherine Suzanne
1039. Herring, Lenny Dwayne
1040. Herring, Victoria Kaye
1041. Hines, Autumn Lamareal
1042. Hines, Clayton Thomas
1043. Hines, Kevin Taylor Scott
1044. Hinson, Anita Cauty
1045. Hinson, Carrie Lynn
1046. Hodge, Hazel Elizabeth
1047. Hodge, Jeffrey Allen
1048. Hodge, Joshua David
1049. Hodge, Lisa Anne
1050. Hodge, Matthew Steven
1051. Hodge, Nicholas Blair
1052. Honaker, April Renee
1053. Honaker, Barbara Allen
1054. Honaker, Nicole Danielle
1055. Honeycutt, Ashley Brooke
1056. Honeycutt, Earl Henry III
1057. Honeycutt, Jacqueline Marie
1058. Honeycutt, John Timothy
1059. Honeycutt, Robert Wayne II
1060. Honeycutt, Roberta
1061. Honeycutt, Sandy Kay
1062. Honeycutt, Trisha Suzanne
1063. Honeycutt, Troy T
1064. Honeycutt, Troy Thomas Jr.
1065. Hooks, Constance V.
1066. Hooks, Wendy Leigh
1067. Hooper, Karen Tennille
1068. Horne, Melissa
1069. Hosmer, Allison Leigh
1070. Hosmer, Anthony Ryan
1071. Hosmer, Brian Phillip
1072. Hosmer, Ila Gail
1073. Houskeeper, Jay Dee
1074. Hovis, Kimberly Nicole
1075. Howard, Billy Joe
1076. Howard, Cassie Lynn
1077. Howard, Charles James
1078. Howard, David Wayne
1079. Howard, Debbie Ann
1080. Howard, James Moore Jr.
1081. Howard, James Travis Sr.
1082. Howard, Jessica Ann
1083. Howard, John Leslie Jr.
1084. Howard, Tom Williams
1085. Howard, Victoria Elizabeth
1086. Howard, William Paul
1087. Howe, Steven Wayne III
1088. Howington, Angela Talley
1089. Hubbard, Amanda Michelle
1090. Hubbard, Barbara Annette
1091. Hubbard, Brandon Edward
1092. Hubbard, Michael Tracy
1093. Hubbard, Richard Dustin
1094. Huddleston, Lori Anne
1095. Hudson, Jeffrey William Jr.
1096. Hudson, Mallory Paige
1097. Hudson, Rebecca Carleen
1098. Hueitt, Mark William II
1099. Hueitt, Richard Daniel
1100. Huffstetler, Kayce Douglas
1101. Huffstetler, Whitney Ayers
1102. Humphries, Corey Michael
1103. Humphries, Jennifer Alane
1104. Humphries, Rosa H.
1105. Hungate, Caitlyn Jayne
1106. Hungate, Caryn Louise
1107. Hungate, Lauren Ashley
1108. Hungate, Mederith Trimnal
1109. Hunter, Elizabeth Ashley
1110. Hunter, Jenna Camille.
1111. Hunter, Josephine
1112. Hunter, Jude Alan
1113. Hunter, Julius Calvin
1114. Hunter, Lillie Viola
1115. Hunter, Marsha Rene
1116. Hunter, Matthew Calvin
1117. Hunter, Paige
1118. Hunter, Raegan
1119. Hunter, Shelly Jeannine
1120. Hurn, Joseph Emery Darrell
1121. Hutchinson, Sandra Delores
1122. Hyatt, Cheryl Ann.
1123. Hyatt, David Wayne
1124. Hyatt, John Curtis
1125. Hyatt, Tiffany Marie
1126. Hyman, Aaron DuPree
1127. Hyman, Angela Paulette
1128. Hyman, Joshua Kenneth
1129. Jackson, Teresa Lynn
1130. James, Anthony Eugene
1131. James, Pamela Sue
1132. Johnson, Amber Courtney
1133. Johnson, Amber Shavon
1134. Johnson, Amy Ray
1135. Johnson, Courtney Amanda
1136. Johnson, Crystal Renee
1137. Johnson, Destiny Marie
1138. Johnson, Gary Brent
1139. Johnson, Hadden Delano
1140. Johnson, James Durrand
1141. Johnson, Jane A.
1142. Johnson, Jeccica Brooke
1143. Johnson, Jessica Brooke
1144. Johnson, Joseph Hadden
1145. Johnson, Kimberly Gay
1146. Johnson, Lanie India
1147. Johnson, Marty Adam
1148. Johnson, Pamela Sue
1149. Johnson, Priscilla Blue
1150. Johnson, Robert Lee
1151. Johnson, Ruthie Mae
1152. Johnson, Santana Danielle

1153. Johnson, Scott Leroy
1154. Johnson, Spencer Glenn
1155. Johnson, Trey Michael
1156. Joiner, Beverly Allyn
1157. Joiner, Jared Nathaniel
1158. Joiner, Jason Matthew
1159. Joiner, Justin Allen
1160. Jones, Angela Marie
1161. Jones, Angelica Sheree
1162. Jones, Daniel Jacob
1163. Jones, James Anthony (Tony)
1164. Jones, Kerri Elizabeth
1165. Jones, Stacy Marie
1166. Jordan, Debra Kay
1167. Jordan, Jody Shawn
1168. Jordan, Kevin James
1169. Jordan, Melanie Rose
1170. Jose, Andrew Reid
1171. Kaidbey, Naomi
1172. Keasler, Sabrina Dawn
1173. Keener, James Vester
1174. Keener, Marsha Diane
1175. Keesee, Amber Nicole
1176. Keesee, Charles Edward
1177. Keesee, Jennepher Michelle
1178. Keesee, Robert Lewis
1179. Keim, Shannon Marie
1180. Kekoolani, Henry Paakik Naumanuh III
1181. Kekoolani, Jenne Renee
1182. Kekoolani, Rene Noelani
1183. Kellam, Sonja N
1184. Kennedy, Anita Michele
1185. Kennington, Amanda Nicolle
1186. Kennington, Donald Wayne
1187. Kersey, Meagan Nicholle
1188. Kertzel, Carol Crytser
1189. Kertzel, Gordon Frederick IV
1190. Kertzel, Gregory Vernon
1191. Killian, Jessica Blaine
1192. Kimble, Bryan Kenneth
1193. Kimble, Michelle Veronica
1194. Kimbrell, Brandy Michelle
1195. Kimbrell, Cynthia Ann
1196. Kimbrell, Daniel Ray
1197. Kimbrell, Nettie Lou
1198. Kimbrell, Ronnie Lee
1199. Kimbrell, Shannon Nicole
1200. Kimbrell, Susan Darlene
1201. Kirk, Christopher Jacob
1202. Kirk, Clarence Grover III
1203. Kirk, Evelyn A.C.
1204. Kitchen, Elizabeth Ann
1205. Kitchen, Gary Eugene
1206. Kitchen, Wanda Kay
1207. Knight, Anthony Dakota
1208. Knight, Anthony Glenn
1209. Knight, Chasity Christine
1210. Knight, Dana Ivan
1211. Knight, Everett Dupree
1212. Knight, Leah Michele
1213. Knight, Melanie Denise
1214. Knight, Rodney Bill Logan
1215. Knight, Tammy Renee
1216. Knight, Thomas Wayne
1217. Knight, Tommy Seth
1218. Konsul, Pamela Antoinette
1219. Korver, Jonathan Tyler
1220. Korver, Ryan Tomas
1221. Korver, Tanya Michele
1222. Kuck, Alaina Justine
1223. Kuck, Amanda Mae
1224. Kuck, Jennifer Leigh
1225. Kuck, Lise Kristine
1226. Lail, Jeremy Allen
1227. Lail, Tanda Michelle
1228. Lail, Zachery James
1229. Lambiasi, Amanda Fern
1230. Lambiasi, Anthony Daniel Jr.
1231. Lambiasi, Elizabeth Joann
1232. Lambiasi, Olene Fern
1233. Largo, Jason Jermie
1234. Largo, Jeanette Guynell
1235. Largo, Lisa Jane
1236. Largo, Mark Anthony
1237. Lawson, Christopher Peyton
1238. Lawson, Kimberly Dawn
1239. Lawther, Tiffany Ayers
1240. Leach, Brandon Gene
1241. Leach, Maranda Kimberly
1242. Leach, Patricia Ann
1243. Lear, Margaret Faye
1244. Lewis, Laurie Ann
1245. Lloyd, Cynthia Wade
1246. Long, Cora Lee
1247. Long, Kimberly Dawn
1248. Love, Christopher Ray Carr
1249. Love, Darryl Lynn
1250. Love, Harley Desiree
1251. Love, Jonathan Todd
1252. Love, Joseph Nicholas Brady
1253. Love, Joshua Lewis Carr
1254. Love, Jutanna C
1255. Love, Jutanna Suzette
1256. Love, Kevin Ray
1257. Love, Melissa Faye
1258. Love, Sylvia Elizabeth
1259. Lovingood, Steven Tyler
1260. Lowder, Vivian
1261. Lowery, Jeremy William
1262. Lowery, Sharon Rose
1263. Lyda, Sandra Diahnne
1264. Lyell, Richard
1265. Lyell, Sylvia Margaret
1266. Lynch, Teresa Deloria
1267. Mackey, Christopher Lee
1268. Mackey, David Windell Jr.
1269. Mackey, Joshua
1270. Mackey, Windell David Sr.
1271. Mancill, Kenneth Earl
1272. Mancill, Mary Frances
1273. Maness, Buddy Ray
1274. Maness, Rebecca
1275. Maness, Robert Allen
1276. Maness, Roger Benton Jr.
1277. Maness, Winona Lee
1278. Manuma, Matthew L.
1279. Margiotta, Brittaney Dianne
1280. Marnach, Elizabeth Marie
1281. Marshall, Melissa Nicole
1282. Martin, Bryan Keith
1283. Martin, Cassandra Felice
1284. Martin, Daniel Earl
1285. Martin, Derrick Nicholas
1286. Martin, Heather Celeste
1287. Martin, Jackie Wesley
1288. Martin, Kimberlee Eula
1289. Martin, Louise Renee Honeycutt
1290. Martin, Malcome
1291. Martin, Melissa Kay
1292. Mason, Janet Renee
1293. Mason, Kristy Louise Odell
1294. Mason, Wanda Denise
1295. Mayfield, Ashley Michelle
1296. Mayfield, Kandice Alicia
1297. Mayfield, Kelly Cheri
1298. Mayne, Alyssa Nicole
1299. Mayne, Dawn Michelle
1300. Maynor, Briana Michelle
1301. Maynor, Rebecca Lynn
1302. Maynor, Rose Marie
1303. McAteer, Felicia Dawn
1304. McAteer, Jessica Lynn
1305. McCall, Jessica Leigh
1306. McCall, Kailen Paige
1307. McCall, Patricia Renee
1308. McCraw, Deborah Kay
1309. McCraw, Magan Elizabeth
1310. McCraw, Matthew David
1311. McDaniel, Daphene Delois
1312. McDaniel, Jannie Canty
1313. McDaniel, Jeremy Dean
1314. McDaniel, Rachel Celeste
1315. McGinnis, Elizabeth Jane
1316. McGinnis, Tammy Louise
1317. McGinnis, Tracy Ann
1318. McGraw, Amanda Kay
1319. McGraw, Daryl Owens Jr.
1320. McHugh, Kimberly Sue
1321. McHugh, Stephanie Lynn
1322. McKellar, Billie Anne
1323. McKellar, Jessica Lauren
1324. McKellar, Steve Eugene Jr.
1325. McKinney, Bryan Patrick
1326. McKinney, Evan Joel
1327. McKinney, Joyce Pamela
1328. McKinney, Justin Everett
1329. McKinney, Lauren Celeste
1330. McKinney, Seth Williamson
1331. McManus, Bryan Douglas Jr.
1332. McManus, Deborah Mae
1333. McManus, Edward Dron
1334. McManus, Eryn Celeste
1335. McManus, James Cory
1336. McManus, Karrie Celeste
1337. McManus, Timothy Daniel
1338. Medlin, Charles Robert
1339. Medlin, Jason Charles
1340. Medlin, Tonda Marjean
1341. Medlin, William Lamont
1342. Medlock, Alisa Kay
1343. Medlock, Doris Kay
1344. Medlock, Jared Ray
1345. Melech, Patricia Charlene
1346. Melton, Ashley
1347. Melton, Cynthia Denise
1348. Melton, Justin Kyle
1349. Melton, Kristina Janette
1350. Melton, Steven Andrew
1351. Mercer, Bryan Anthony
1352. Mercer, Leesa Louise
1353. Mercer, Mark Allen Jr.
1354. Merritt, Adrienne Marie
1355. Merritt, James Matthew
1356. Merritt, Patricia
1357. Miller, Ester
1358. Miller, Larry Timothy

1359. Miller, Shelly Renee
1360. Mills, Dorenda Michelle
1361. Mills, Howard Adam
1362. Mitchell, Heather Cecelia
1363. Mitchell, John
1364. Mitchell, Katherine Marie
1365. Mitchell, Misti Lynn
1366. Mixon, Shannon Janice
1367. Mock, Dustin Kyle
1368. Mock, Vickie Renee
1369. Molony, Audrey Leigh
1370. Molony, Melissa Lauren
1371. Molony, Tammy Kay
1372. Moore, Ashley
1373. Moore, Atuaque Ann
1374. Moore, Joann
1375. Moore, Kristy Denise
1376. Moore, Roger Dale Jr.
1377. Morgan, Jefferson Scott Jr.
1378. Morgan, Jennette
1379. Morgan, Laurie Lynette
1380. Morgan, Michelle Lu Raye
1381. Morgan, Timothy Scott
1382. Morris, Ann Garnet
1383. Morris, Ashley Brooke
1384. Morris, Bonnie Leverne Jr.
1385. Morris, Dalton Andrew
1386. Morris, Donald Jr.
1387. Morris, Donald D'Angelo
1388. Morris, Robert Lee
1389. Moser, Jennifer Michele
1390. Moss, Billy Odell Jr.
1391. Moss, Billy Odell
1392. Moss, Helen
1393. Moss, Matthew Dell
1394. Moss, Travis Steele
1395. Mullis, Nancy Elizabeth
1396. Mundy, Sandra Faye
1397. Murray, Toy
1398. Nash, Denise Rena
1399. Neely, Lisa Adell
1400. Neely, Steven Wayne
1401. Neely, Wesley Ryan
1402. Nichols, Anthony Wayne
1403. Nichols, Brooklyn Michele Lavinia
1404. Nichols, Haley Denise Michele
1405. Nichols, Karen Denise
1406. Norris, David LaFayette III
1407. Oates, Dorothy Elizabeth
1408. Oates, Nicholas Campbell
1409. Oglesbee, Natlie Nicole
1410. Oglesby, Candis Reagan
1411. Oglesby, Cassandra Leah
1412. Oglesby, Kari Morgan
1413. Oglesby, Rhonda Delores
1414. Oliver, Amanda Renee
1415. Oliver, Jessica Anne Alyssa
1416. Oliver, Justin Emory
1417. Oliver, Margaret Ann
1418. Oliver, Randy Lester
1419. Oliver, Sidney Jerome
1420. Osborn, Alex Todd
1421. Osborn, Clinton Berlin
1422. Osborn, David Todd
1423. Osborn, Dawn Renee
1424. Osborn, Jason Wade
1425. Osborn, Milton Gregg
1426. Osborn, Ruth Danielle
1427. Osborn, Sherry Geraldine
1428. Osborne, Sheila
1429. Osborne, Susan Marlene
1430. Osment, Glenn Ryan
1431. Oswald, Anthony Lee
1432. Oswald, Brittney April Leigh
1433. Oswald, Charles Michael
1434. Outen, Robert Edward Jr.
1435. Owens, Lula Annette
1436. Owens, Randall Chadwick
1437. Owens, Robin Rene
1438. Owens, Samuel Herbert III
1439. Oxendine, Aaron Blake
1440. Oxendine, Della Eleanor
1441. Oxendine, Phillip Drew
1442. Oxendine, Ralph Guy Jr.
1443. Oxendine, Stephen Daniel
1444. Oxendine, Waylon Keith
1445. Page, Kimberly Ann
1446. Parker, Ann
1447. Parker, Heather Nicole
1448. Parker, Jessica Rebecca
1449. Parker, Kelly Michelle
1450. Parker, Toni Kay
1451. Parks, Cody Great Bear
1452. Parks, Jack Big Bear
1453. Parks, Kris Littlebear
1454. Parks, Lauren Alyssa
1455. Parks, Paula Leigh
1456. Parnell, Rhonda Kimberly
1457. Patterson, Christine Leola
1458. Patterson, Salena Marie
1459. Payne, Evonne
1460. Perdue, Benjamin McClure
1461. Perdue, Billy James Jr.
1462. Perdue, Elizabeth Blair
1463. Perdue, Mary Frances
1464. Petrini, Caroline Dianne
1465. Petty, Buddy
1466. Petty, Christine
1467. Petty, Cory D'Wayne
1468. Petty, George Samuel
1469. Petty, Jackie Alton Jr.
1470. Petty, Jackie Alton
1471. Petty, Jackie Lynn
1472. Petty, John Wayne
1473. Petty, Johnnie William
1474. Petty, Le-Anne Nicole
1475. Petty, Patricia Ann
1476. Petty, Ronald Vance
1477. Petty, Ronald William
1478. Petty, Wanda Kay
1479. Phillips, Andrea Marie
1480. Phillips, Ashley Nicole
1481. Phillips, Catherine Denise
1482. Phillips, Crystal Nichole
1483. Phillips, Jonathan Corey
1484. Phillips, Robert Dean II
1485. Phillips, Ryan Heath
1486. Phillips, Wanda Kaye
1487. Pittman, Tommy Shane
1488. Pittman, Velma Marlene
1489. Plyler, Arthur Terrance Jr.
1490. Plyler, Arthur Terrance
1491. Plyler, Bruce Allen
1492. Plyler, Charles Martin
1493. Plyler, Donald Olin
1494. Plyler, Gerald Hubert Jr.
1495. Plyler, Gerald Hubert Sr.
1496. Plyler, Jennifer Jean
1497. Plyler, Jordan Violet
1498. Plyler, Joshua
1499. Plyler, Joshua Olin
1500. Plyler, Justin Allen
1501. Plyler, Kassidy Maeghan
1502. Plyler, Leonard
1503. Plyler, Linda Rebecca
1504. Plyler, Mark Jeffery
1505. Plyler, Matthew Joseph
1506. Plyler, Michael Dakota
1507. Plyler, Michael Wayne
1508. Plyler, Norman Lynn
1509. Plyler, Olin Flow Jr.
1510. Plyler, Phillip Keith
1511. Plyler, Sallie Elizabeth
1512. Porter, Frank Delano III
1513. Porter, Jennifer Lauren
1514. Porter, Joshua Wade
1515. Porter, Joy Maudine
1516. Porter, Kevin Christopher
1517. Porter, Lindsay Kimber
1518. Porter, Robin
1519. Poteet, Charlotte Yvonne
1520. Pottenger, Ashley May
1521. Pottenger, Kressent Monique
1522. Pottenger, Shelley Maxine
1523. Potts, Alisha Rae
1524. Potts, Alton Amos
1525. Potts, Alton Dwayne
1526. Potts, Bryant Neal
1527. Potts, Calvin Lee
1528. Potts, Christian Tess
1529. Potts, Johnny Ray
1530. Potts, Krista Leann
1531. Potts, Michael Aaron
1532. Potts, Noah Steven
1533. Potts, Renda
1534. Powell, Jennifer Ellis
1535. Preslar, Jarhett Wade
1536. Price, Cheryl Ann
1537. Price, Jessie Elaine
1538. Price, Jessie Lynn
1539. Price, John Gregory
1540. Price, Kristi Sierra
1541. Price, Kyle Chadwick
1542. Price, Linda Diane
1543. Price, Michael Kalib
1544. Price, Sandra
1545. Price, Timothy John
1546. Price, Valerie Lynn
1547. Privette, Jason Lee
1548. Privette, Jeremy James
1549. Pruitt, Jonathan Lee
1550. Pruitt, Lottie Juanita Vernell
1551. Pryor, Alan Mark
1552. Pryor, Wanda Sue
1553. Pryor, William Eric
1554. Puckett, Ashley Denise
1555. Puckett, Carrie Nicole
1556. Puckett, Constantine
1557. Puckett, James Albert II
1558. Rabon, Emily Elizabeth
1559. Railey, Ka-Laney Dee
1560. Ramey, Robin Crystal
1561. Ramey, Tiffany Dawn
1562. Ramsey, Amanda Lynn
1563. Ramsey, Brandon Lee
1564. Ramsey, Brenda Jean

1565. Ramsey, Christopher Thomas
1566. Ranucci, Susanne
1567. Ratterree, Audrey Bernice
1568. Ratterree, Audrey Reola
1569. Ratterree, Christy Gayle
1570. Ratterree, Kristie Caudle
1571. Ratterree, Tonya Michelle
1572. Ravan, Betty Ruth
1573. Ray, Audrie Christine
1574. Ray, Stacy Simmers
1575. Rayfield, Chanse Robert
1576. Rayfield, Lillian Ann
1577. Rayfield, Robert Dow
1578. Raymond, Zan Marie
1579. Reid, Katherine LeeAnne
1580. Reynders, John David
1581. Reynders, Pieter Benjamin Jr.
1582. Reynders, Ryan Scott
1583. Reynders, Spencer
1584. Reynders, Victoria Yvonne
1585. Rider, Anthony Micheal
1586. Ridley, Melina Sharee
1587. Ridley, Nina Marae
1588. Riley, Amanda Diana
1589. Riley, Jessica Michelle
1590. Riley, Jill Renee
1591. Riley, Kimberly Christina
1592. Riley, Tammy Renee
1593. Robbins, Barney C.
1594. Robbins, Bradley Earl
1595. Robbins, Bradley M.
1596. Robbins, Earl
1597. Robbins, Flint
1598. Robbins, Frank E.
1599. Robbins, Viola
1600. Roberts, Rosemary
1601. Robertson, Donna Marie
1602. Robertson, Wesley Adam
1603. Robinson, Russell Ramon
1604. Rochester, Cynthia Dianne
1605. Rochester, Jacob Lee
1606. Rochester, James Nicholas
1607. Rochester, Jessica Laine
1608. Rochester, Joseph Tyler
1609. Rodgers, Benjamin Joe
1610. Rodgers, Donald Wayne
1611. Rodgers, Freddie Grace
1612. Rodgers, John Alvin Jr.
1613. Rodgers, John Alvin Sr.
1614. Rodgers, Kim Lee
1615. Rodgers, Marcie Lynn
1616. Rodgers, Timothy Lee
1617. Rogers, Amy Nicole
1618. Rogers, Autumn Nicole
1619. Rogers, Beau Dallas
1620. Rogers, Brooke Elizabeth
1621. Rogers, Dakota Preston
1622. Rogers, Daniel Wayne
1623. Rogers, Ernest D. III
1624. Rogers, Fred Kelly
1625. Rogers, Hannah Danielle
1626. Rogers, James Kelly
1627. Rogers, Jason Daniel
1628. Rogers, Jerry Daniel
1629. Rogers, Jimmie
1630. Rogers, Kaitlyn Miranda
1631. Rogers, Keith Preston
1632. Rogers, Kelly Elizabeth
1633. Rogers, Larry Dwayne II
1634. Rogers, Larry Dwayne
1635. Rogers, Mary Katherine
1636. Rogers, Ronnie
1637. Rogers, Sharon Marie
1638. Rogers, Steven Jarrett
1639. Rogers, Steven Otho
1640. Rogers, Tod Loren
1641. Rogers, William Bradford
1642. Rollins, Amy Michelle
1643. Rollins, Eric Dwayne
1644. Rowe, Adam Thomas
1645. Rowe, Merri
1646. Rowe, Wyatt Dale
1647. Rowley, James Michael II
1648. Rowley, Lisa Ann
1649. Rutland, Kristen Nicole
1650. Sanders, Ada
1651. Sanders, Adrienne Lucretia
1652. Sanders, Albert H. Sr.
1653. Sanders, Albert Henderson III
1654. Sanders, Albert Henderson Jr.
1655. Sanders, Alexis Irene
1656. Sanders, Amanda Brooke
1657. Sanders, Andrew Clark Jr.
1658. Sanders, Andrew Clark Sr.
1659. Sanders, Angela Lea
1660. Sanders, Brenda Cornelia
1661. Sanders, Brooke Lyn
1662. Sanders, Calvin Ray
1663. Sanders, Cecil Glenn
1664. Sanders, Charles Richard
1665. Sanders, Cheryl Darlene
1666. Sanders, Christopher Louis
1667. Sanders, Christy Lee
1668. Sanders, Curtis Allen
1669. Sanders, David Neal
1670. Sanders, Deborah Jean
1671. Sanders, Delta Dawn
1672. Sanders, Donald Wayne
1673. Sanders, Early Fred
1674. Sanders, Elizabeth Denise
1675. Sanders, Franklin Thomas
1676. Sanders, Fred Eugene
1677. Sanders, Jackie Scott
1678. Sanders, John Jack Jr.
1679. Sanders, John Patrick
1680. Sanders, Johnny Shaleko
1681. Sanders, Joshua Derek
1682. Sanders, Justin Charles
1683. Sanders, Kelly Renee
1684. Sanders, Kriston Elaine
1685. Sanders, Lacey Rhea
1686. Sanders, Marcus Emory Jr.
1687. Sanders, Marcus Emory
1688. Sanders, Marilyn
1689. Sanders, Mary Caroleen
1690. Sanders, Michael Glenn
1691. Sanders, Misty Dawn
1692. Sanders, Nikkita Danielle
1693. Sanders, Rachel Nichole
1694. Sanders, Randall Dean
1695. Sanders, Randolph Edward II
1696. Sanders, Randolph Edward Sr.
1697. Sanders, Rikki D.
1698. Sanders, Rodney Wayne
1699. Sanders, Ronald William
1700. Sanders, Scotty Dewayne
1701. Sanders, Shannon Wayne
1702. Sanders, Thomas Burton
1703. Sanders, Thomas Cornelius
1704. Sanders, Thomas Lester
1705. Sanders, Thomas McCloud
1706. Sanders, Tracy Michelle
1707. Sanders, Verdie
1708. Sanders, Warren Brian
1709. Sanders, William Ashley
1710. Sanders, William Louie
1711. Sanders, William Max
1712. Sanders, William Scott
1713. Sanders, Willie Mack
1714. Santillon, Melanie Louise
1715. Schutte, Dawn Wahilani
1716. Schutte, Garth Kaleikini
1717. Scott, Colleen
1718. Scruggs, Jonathan Bradley
1719. Scruggs, Tammy Renee
1720. Shankle, Patricia Ann
1721. Sharpe, Angela
1722. Sharpe, Christopher Wayne
1723. Sharpe, Melissa Renee
1724. Shealy, Barbara Lynn
1725. Shealy, Britanie Margaret
1726. Shealy, Kailyn Marie
1727. Shehan, Lynette
1728. Shehan, Shawn Wesley
1729. Shingler, Anna Danielle
1730. Shingler, Dustin Ashley
1731. Shingler, Sheila
1732. Shirah, Christopher Lee
1733. Shirah, Jamie Allen
1734. Shirah, Reba Louise
1735. Shrake, Freida Marilyn
1736. Shugart, Bethany Rhiannon
1737. Shugart, Helen Louise
1738. Shugart, Jeffery Adams
1739. Shugart, Jennifer Michelle
1740. Shugart, Kenneth Eugene Jr.
1741. Shugart, Rita Shown
1742. Shugart, Steven
1743. Shugart, William Dean II
1744. Shuler, Daniel Scott
1745. Shuler, Joel Christopher
1746. Sigmon, Reba Maxine
1747. Simmers, Brittany Nashea
1748. Simmers, Daniel Ray
1749. Simmers, Daniel Taylor
1750. Simmers, Erika Nicole
1751. Simmers, Garrett Jason
1752. Simmers, James Leon
1753. Simmers, Jason Edward
1754. Simmers, Lisa Louise Marie
1755. Simmers, Rocky Vernon
1756. Simmers, Shelly Jeanette
1757. Sims, Linda Gail
1758. Skar, Eric Tyler
1759. Skar, Letha
1760. Sloat, Patsy Blue
1761. Smeltzer, Katrina Carol
1762. Smith, Anthony Glenn
1763. Smith, Brandon Chaz
1764. Smith, Brandy Michelle
1765. Smith, Candace Natasha
1766. Smith, Cheryl Melissa
1767. Smith, Cinda Darnell
1768. Smith, Dana Marlene
1769. Smith, Deborah Ann
1770. Smith, Doris Jean
1771. Smith, Jonathan Blade

1772. Smith, Joshua Shane
1773. Smith, Kristen Nicole
1774. Smith, Margaret Rebecca
1775. Smith, Robert Earl Jr.
1776. Smith, Robert Earl Sr.
1777. Smith, Sandra Darnell
1778. Smith, Shari Wilson
1779. Smith, Sherri Lynn
1780. Smith, Thomas Franklin Jr.
1781. Smith, Tiffany Lynn
1782. Sotolongo, Amber Mechelle
1783. Sotolongo, Miranda Lynn
1784. Sox, Paul Samuel
1785. Sox, Robert Wesley
1786. Spell, Mary Beth
1787. Spinks, Christopher Allen
1788. Spinks, Debra Lee
1789. Spinks, Thomas Dale Jr.
1790. Spivey, Alisha Danielle
1791. Spivey, Juanita Marie
1792. Spivey, Samantha Victoria
1793. Spivey, Timothy Joe
1794. Stargel, Brittany Michele
1795. Stargel, Shannon Terriol
1796. Starnes, Cynthia
1797. Steiniger, Shirley
1798. Stephenson, Lacey Michelle
1799. Stevens, Barbara Ann
1800. Stevens, Dawn Michelle
1801. Stevens, Melinda Lynn
1802. Stewart, Mary Evelyn
1803. Stewart, Randall Matthew
1804. Stewart, Steven Andrew
1805. Stokes, Barry Dean
1806. Stokes, Billy Joe Jr.
1807. Stokes, Billy Joe
1808. Stokes, Curtis Wayne
1809. Stokes, Daniel Leroy
1810. Stokes, Glenn Edward Jr.
1811. Stokes, Glenn Edward Sr.
1812. Stokes, James Allen
1813. Stokes, Jonathon Coland
1814. Stokes, Joseph Coland Jr.
1815. Stokes, Kenneth R
1816. Stokes, Lisa Nicole
1817. Stokes, Michael Shane
1818. Stokes, Robert Lee Sr.
1819. Stokes, Stella B.
1820. Stokes, Stella Marie
1821. Stokes, Windy Faye
1822. Strickland, Pearl
1823. Stroud, Brittany Amanda
1824. Stroud, Christopher Dale Jr.
1825. Stroud, Kimberly H.
1826. Sutphin, Iris Lucinda
1827. Sutton, Teresa Diane
1828. Sutton, William Curtis Ayers
1829. Swett, Malinda Darlene
1830. Tadlock, Michael Jason
1831. Talley, Amber Renea
1832. Talley, Barbara Annette
1833. Talley, Curtis Brent Sr.
1834. Talley, Dessa Darlene
1835. Talley, James Heyward II
1836. Talley, Michael Warren
1837. Talley, Myleah Breanne
1838. Talley, Tabitha Darlene
1839. Talley, Warren Edward
1840. Tanner, Brooke Michele
1841. Tanner, Kacey Danielle
1842. Tanner, William Travis
1843. Taylor, Amber Nichole
1844. Teaster, Carrie Christine
1845. Teaster, Etta D.
1846. Teaster, Jimmy Eugene Jr.
1847. Teaster, Jimmy Eugene Sr.
1848. Teaster, Justin Ransom
1849. Teaster, Ransom
1850. Teaster, William Glenn
1851. Teaster, William Harry
1852. Terry, Michelle Lynn
1853. Tessner, Ruth Robbins
1854. Thatcher, Harold Lloyd
1855. Thatcher, Jason Lloyd
1856. Thatcher, Matthew Tyler
1857. Thatcher, Megan Elaine
1858. Thatcher, Rebecca Leigh Ann
1859. Thatcher, Stephen Keith
1860. Therrell, Joyce Ann
1861. Thomas, Amber Lennette
1862. Thomas, Angela Marie
1863. Thomas, Anica Nicole
1864. Thomas, Ashley Nicole
1865. Thomas, Brian Andrew
1866. Thomas, Chrissy Alene
1867. Thomas, Christopher Dwayne
1868. Thomas, Emory Randolph
1869. Thomas, Ericka Leigh
1870. Thomas, Jeffery McDonald
1871. Thomas, Jeremy David
1872. Thomas, Jessica Elaine
1873. Thomas, Kaitlyn Victoria
1874. Thomas, Kristine Elizabeth
1875. Thomas, Larry Allen
1876. Thomas, Louis Scott
1877. Thomas, Marvin Donald III
1878. Thomas, Michael Shannon
1879. Thomas, Michael Steven
1880. Thomas, Ollie Mae
1881. Thomas, Pamela Michelle
1882. Thomas, Peggy
1883. Thomas, Taylor Renee
1884. Thomas, Tiffany Marie
1885. Thomas, Timothy Dale Jr.
1886. Thomas, Timothy Randolph
1887. Thomas, William Byron
1888. Thomas, William Michael
1889. Thompson, Adam Quintin
1890. Thompson, Anna Leigh
1891. Thompson, Clyde Samuel
1892. Thompson, Jessica Lynn
1893. Thompson, Latasha Ann
1894. Thompson, Lois Elvina
1895. Thompson, Rose Maria
1896. Thompson, Scotty Alexander Jr.
1897. Thompson, Scotty Alexander Sr.
1898. Thompson, Stephanie Michelle
1899. Thompson, Virginia Claudette
1900. Thrash, Rita Shawn
1901. Threatt, Josephine Branham
1902. Thurman, Kimberly Dawn
1903. Tinker, Geraldine
1904. Tinker, Matthew David
1905. Tinker, Rebecca Kathryn
1906. Tinker, Stuart Jason
1907. Totherow, Ernest Randall
1908. Totherow, Richard C
1909. Totherow, Shannon Leslie
1910. Townsend, Casey Daniel
1911. Trimnal, Ashley Carol
1912. Trimnal, Becky Christine
1913. Trimnal, Bob Kenneth
1914. Trimnal, Heather Elizabeth
1915. Trimnal, Kathrin Gloria
1916. Trimnal, Samuel Taylor
1917. Trimnal, Thomas Woodrow
1918. Troublefield, Christopher Lee
1919. Troublefield, Joseph Martin
1920. Troublefield, Vanessa Lee
1921. Troxel, David Trent
1922. Troxel, Samuel Neil
1923. Troxel, Shasta Ilene
1924. Troxel, Suzette Michele
1925. Tucker, Margaret Robbins
1926. Tucker, Matthew Earl
1927. Tucker, William Shane
1928. Turney, Carol Lynn
1929. Usher, Jerry Dell
1930. Usher, Norma Jean
1931. Valkenburgh, Rachel Eleanora
1932. Varnadore, Brandon Trent
1933. Varnadore, Brandy Leigh
1934. Varnadore, Christopher Lee
1935. Varnadore, Cory West
1936. Varnadore, Edward Glenn
1937. Varnadore, James Dustin
1938. Varnadore, James Ronald
1939. Varnadore, Jennifer Renea
1940. Varnadore, Kenneth Charles
1941. Varnadore, Laura Merrill
1942. Varnadore, Mathew Chantz
1943. Vincent, Ruby Ayers
1944. Vinson, Elic Wheeler
1945. Wade, Audrea Lynn
1946. Wade, Baxter Bruce
1947. Wade, Beauford,
1948. Wade, Brandon Paul
1949. Wade, Christopher Steve
1950. Wade, Cleave Harrison
1951. Wade, Connie Steve Jr.
1952. Wade, Connie Steve Sr.
1953. Wade, Daniel Benjamin
1954. Wade, Dara Danielle
1955. Wade, Edith Frances
1956. Wade, Florence R.
1957. Wade, Glenn Hampton
1958. Wade, Heather Suzanne
1959. Wade, Horace Gary Jr.
1960. Wade, Horace Gary Sr.
1961. Wade, Jason Blair
1962. Wade, Justin Heath
1963. Wade, Krissi Maree
1964. Wade, Michael Gregg
1965. Wade, Michael Lee
1966. Wade, Natalie Renee
1967. Wade, Regina Suzanne
1968. Wade, William Christopher
1969. Wade, William Eric
1970. Wade, William Perry Jr.
1971. Wade, William Perry Sr.
1972. Walker, Darien Matthew
1973. Walker, Lora Anne
1974. Wall, Corey Allen
1975. Wall, Stephanie Nicole
1976. Wall, Winona Lyne
1977. Walsh, Bessie Valoy
1978. Ward, Katelyn Paige

1979. Ward, Kathryn Evonne
 1980. Ward, Lisa Michelle
 1981. Warner, Brian Dale
 1982. Warner, Cora Ethel
 1983. Warner, Jason Lee
 1984. Warner, Oliver Dale
 1985. Watts, Brent William
 1986. Watts, Caitlyn Eve
 1987. Watts, Clifford O'Dell Jr.
 1988. Watts, Clifford O'Dell Sr.
 1989. Watts, Davin Blue
 1990. Watts, Edwin Larsen
 1991. Watts, Jenelle Sunshine
 1992. Watts, Matthew Todacheeni
 1993. Watts, Milton Everett
 1994. Watts, Nellie Leone
 1995. Watts, Paul Bradley
 1996. Watts, Rodney Allan
 1997. Watts, Sarita Janine
 1998. Watts, Tristan Wade
 1999. Watts, William D. Jr.
 2000. Weathers, Mendy Jo
 2001. Weaver, Sheryl Lynn
 2002. Webb, Elizabeth Ashley
 2003. Webb, Sharon Marlene
 2004. Webster, Krista Marie
 2005. Webster, Morgan Alyshia
 2006. Wells, Kenneth Chad Varnadore
 2007. Wells, Lou Gene
 2008. Wheeler, Ashlin Nicole
 2009. Wheeler, Bobbie Jean
 2010. Wheeler, Chase Russell
 2011. Wheeler, Tyson Robert
 2012. White, Angela Dionne
 2013. White, Deena Ann
 2014. White, Eber Walter II
 2015. White, Eber Walter
 2016. White, Gail Blue
 2017. White, Rocky Anthony II
 2018. White, Rocky Anthony
 2019. White, Sarah Elizabeth
 2020. Whitesides, Keith Bernard
 2021. Whitesides, Robert Charles
 2022. Whitesides, Velma
 2023. Whitlock, Sadie
 2024. Wilburn, Amber Suzanne
 2025. Wilburn, Brittany Paige
 2026. Wilburn, Cecil Jr.
 2027. Wilburn, Christopher Douglas
 2028. Wilburn, David Adam Jr.
 2029. Wilburn, David Adam Sr.
 2030. Wilburn, Herman Franklin Jr.
 2031. Wilburn, Jacqueline Nicole
 2032. Wilburn, Ryan Anthony
 2033. Wilburn, Stephanie Lauren
 2034. Wilkinson, Benjamin Bruce
 2035. Wilkinson, Kristin Lynn
 2036. Wilkinson, Neil Gordon
 2037. Wilkinson, Tarah Jean
 2038. Wilkinson, Theresa J.
 2039. Williams, Amy Carol
 2040. Williams, Brent Lee
 2041. Williams, Keith Eloit
 2042. Williams, Mae Carol
 2043. Williams, Phyllis DeLora
 2044. Williams, Randy Alan
 2045. Williams, Russell Shane
 2046. Williford, Cecily Nicole
 2047. Williford, David Cecil Jr.

2048. Williford, John Timothy
 2049. Willis, Alice Grace
 2050. Wilson, Billy Oliver
 2051. Wilson, Brandy Jenny Rebecca
 2052. Wilson, Brittany Morena
 2053. Wilson, Christin Nicole
 2054. Wilson, Claire
 2055. Wilson, David Wayne
 2056. Wilson, Donald Wayne Jr.
 2057. Wilson, Donald Wayne Sr.
 2058. Wilson, Edwin Keith
 2059. Wilson, Heather Ann
 2060. Wilson, Jeffrey Randall
 2061. Wilson, Joseph Matthew
 2062. Wilson, Joshua Michael
 2063. Wilson, Kim Lyle
 2064. Wilson, Kristy Nicole
 2065. Wilson, Matthew David
 2066. Wilson, Roy O'Dell Jr.
 2067. Wilson, Roy O'Dell III
 2068. Wilson, Stephanie Nicole
 2069. Wilson, Steve Randall
 2070. Wilson, Tanaja Carol
 2071. Wilson, Todd L.
 2072. Wilson, Travis Ronald
 2073. Wilson, Violet
 2074. Windham, Edd Leilon III
 2075. Windham-Forbis, Shana Marie
 2076. Woodell, Jennifer Kaitlyn
 2077. Woolsey, Amber Jewell
 2078. Wright, Carolyn Marie
 2079. Wright, Christopher Allen
 2080. Wright, Lewis Allen Jr.
 2081. Wright, Nancy Deandrea
 2082. Wright, Rose Mary
 2083. Wright, Stephanie Brooke
 2084. Wurdemann, Aaron Cole
 2085. Wurdemann, Heyward Stone
 2086. Wurdemann, John David Jr.
 2087. Wurdemann, John David Sr.
 2088. Wurdemann, Kenneth Wayne Jr.
 2089. Wurdemann, Linda Ann
 2090. Wurdemann, Lynn Canty
 2091. Wurdemann, Natalie Ann
 2092. Yates, Christopher Michael
 2093. Yates, Courtney Michelle
 2094. Yates, Rachel Beck
 2095. Yonce, Michael Brandon
 2096. Yonce, Patricia Groff
 2097. Young, Amanda Elizabeth
 2098. Young, Benjamin Michael
 2099. Young, Jacob Yates
 2100. Young, Jesse Alexander
 2101. Young, Jonathan Howard
 2102. Young, Kathryn Rachel
 2103. Young, Kathryn Valerie
 2104. Young, Laurie Michele
 2105. Young, Pamela Jean
 2106. Young, Peter William
 2107. Young, Susan Gayle

[FR Doc. 99-33118 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-910-00-0777-30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the January 20 and 21, 2000 meeting includes: Field Manager reports, approval of minutes of the previous meetings, Standards and Guidelines for wild horses, clean water action plan, 3809 Regulations, sage grouse, identification of additional issues to be resolved and determination of the subject matter for future meetings. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the Field Office Manager at the Battle Mountain District Office, 50 Bastion Road, Battle Mountain, Nevada, 89820, telephone (775) 635-4000.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Battle Mountain District Office, 50 Bastion Road, Battle Mountain, Nevada, 89820; January 20, starting at 10 a.m.; public comments will be at 11 a.m. and 3 p.m.; January 21, starting at 8 a.m.; public comments will be at 11 a.m.; tentative adjournment for the day at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301-9408, telephone 775-289-1841.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: December 10, 1999.

Helen Hankins,

Field Manager, Elko.

[FR Doc. 99-33187 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-01; GP0-0012; OR-53486]

Public Land Order No. 7413; Withdrawal of Public Lands for the Protection of Four Recreation Sites; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7413, 64 FR 54637-38, published February 20, 1997, as FR Doc. 99-26186, make the following corrections:

On page 54638, paragraph 1, "T. 31 N., R. 7 W., Sec. 4, NE $\frac{1}{4}$ NE $\frac{1}{4}$," is hereby corrected to read, "T. 31 S., R. 7 W., Sec. 4, NE $\frac{1}{4}$ SE $\frac{1}{4}$ ". "Revested Oregon and California Railroad Grant Lands Island Creek Recreation Site, T. 31 N., R. 7 W.," is hereby corrected to read, "Island Creek Recreation Site, T. 31 S., R. 7 W.". "T. 32 N., R. 7 W.," is hereby corrected to read, "T. 32 S., R. 7 W.". "T. 30 S., R. 7 W., Sec. 5, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$," is hereby corrected to read, "T. 30 S., R. 7 W., Sec. 5, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ".

On page 54638, paragraph 2, "T. 30 N., R. 7 W.," is hereby corrected to read, "T. 30 S., R. 7 W.". Also, "T. 31 S., R. 7 W., Sec. 4, that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ ", is hereby corrected to read, "Iron Mountain Gold Panning Area, T. 31 S., R. 7 W., Sec. 4, that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ ".

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 99-33202 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Final Cooperative Management Plan/ Environmental Impact Statement, Vancouver National Historic Reserve, Washington

AGENCY: National Park Service, DOI.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The final Cooperative Management Plan/Environmental Impact Statement (CMP/EIS) is a description of a vision, shared by four public agencies and their partners, for the coordinated management of the Vancouver National Historic Reserve. The plan analyzes three possible alternatives for future management and recommends a proposed action. The proposed action can be summarized in three broad goals: Preservation of historic structures, physical assets, and cultural landscapes, Education and interpretation of the significance and history of the area, and Public Use of and accessibility to the Historic Reserve. These overlapping goals will be reached through public and private involvement and funding to ensure economic balance and sustainability for all new endeavors.

The CMP/EIS is composed of three parts: the revised abstract/cover sheet, revisions to the plan, and comments and responses on the draft CMP/EIS. The revised abstract outlines the status of the document, briefly describes the alternatives, and lists the responsible agencies and contact persons. The "Revisions" section shows changes made in the draft document. The most significant changes are (1) a revision of the "U.S. Army Reserve" paragraph in the "Issues beyond the Scope of this Planning Process" section, (2) the rewording of three primary interpretive themes, and (3) the incorporation of more recent development cost information in alternative A.

This document is presented in an abbreviated format. It must be integrated with a copy of the draft CMP/EIS issued in July 1999 to be considered a complete document reflecting the full proposal, alternatives, and all significant environmental impacts. The abbreviated format has been used because the changes to the draft document were minor and confined primarily to factual corrections.

Approximately 350 copies of the draft CMP/EIS were distributed to the public. It was also available on the Internet, at local libraries, and at the office of the Reserve Partners. Four public meetings were held. The review and comment period began on July 23, 1999, and ended September 21, 1999. All comments received were reviewed and considered by the NPS in the preparation of the final CMP/EIS.

SUPPLEMENTARY INFORMATION: The no-action period on this final CMP/EIS will expire 30 days after the Environmental Protection Agency has accepted the

document and published a notice of availability in the **Federal Register**. Following the no-action period, a record of decision to implement the proposed action will be signed by the National Park Service. The Vancouver National Historic Reserve Partners will then distribute a final Comprehensive Management Plan that integrates all of the changes to the document based on public review and comment but will not include alternatives B and C or the "Environmental Consequences" section.

All who submitted substantive comments on the draft CMP/EIS will receive a copy of the final. Public reading copies of the final CMP/EIS will be available for review at the following locations: Office of Public Affairs, National Park Service, 1849 C St., NW, Washington, DC 20240; Fort Vancouver National Historic Site, 612 E. Reserve Street, Vancouver, WA 98661-3811; General O.O. Howard House, 750 Anderson Street, Vancouver, WA 98661; Vancouver Barracks Headquarters, 638 Hathaway Road, Vancouver, WA 98433-9500; and Washington State Office of Archaeology and Historic Preservation, 420 Golf Club Road SE, Suite 201, Lacey, WA 98503. For further information, contact Superintendent, Fort Vancouver National Historic Site, (360) 696-7655, ext. 13, or Historic Reserve Manager for the City of Vancouver, (360) 992-1832.

Dated: November 29, 1999.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 99-33110 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 11, 1999.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC

20240. Written comments should be submitted by January 6, 2000.

Carol D. Shull,

Keeper of the National Register.

Colorado

Routt County

Howelsen Hill, 845 Howelsen Parkway,
Steamboat Springs, 99001634

Florida

Brevard County

Central Instrumentation Facility (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001635

Crawlerway (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001641

Headquarters Building (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001644

Launch Complex 39—Pad A (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001638

Launch Complex 39—Pad B (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001639

Launch Control Center (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001645

Missile Crawler Transporter Facilities (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001643

Operations and Checkout Building (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001636

Press Site—Clock and Flag Pole (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001637

Vehicle Assembly Building—High Bay and Low Bay (John F. Kennedy Space Center MPS), NASA, John F. Kennedy Space Center, Kennedy Space Center, 99001642

Orange County

All Saints Episcopal Church, 338 E. Lyman Ave., Winter Park, 99001647

Volusia County

City Island, 108 E. Orange Ave., Daytona Beach, 99001646

Georgia

Richmond County

United States Post Office and Courthouse, 500 E. Ford St., Augusta, 99001648

Kansas

Pratt County

Rice, J.R., Farmstead, NE4, SE4, SE4, NE4, 3–28–15, Cullison vicinity, 99001649

Michigan

Eaton County

Powers Highway—Battle Creek Bridge (Highway Bridges of Michigan MPS),

Powers Hwy. over Battle Cr., Brookfield Township, 99001653

Residential Drive—Townline Brook Bridge (Highway Bridges of Michigan MPS), Residential Drive over Townline Br., Walton Township, 99001652

Grand Traverse County

American Legion Memorial Bridge (Highway Bridges of Michigan MPS), S. Cass St. over Boardman R., Traverse City, 99001650

South Union Street—Boardman River Bridge (Highway Bridges of Michigan MPS), S. Union St. over Boardman R., Traverse City, 99001651

Minnesota

Goodhue County

Cannon Falls Commerical Historic District, Fourth St. bet. Mill St. and Main St., Cannon Falls, 99001654

New York

Broome County

Goodwill Theatre, 36 Willow St., Johnson City, 99001655

Greene County

Weldon House, NY 145, East Durham, 99001658

New York County

New York Savings Bank, 81 Eighth Ave., New York, 99001657

Westchester County

First United Methodist Church, 226 E. Lincoln Ave., Mount Vernon, 99001656

South Dakota

Pennington County

Calumet Hotel, Ash and B Ave., Wasta, 99001659

Wisconsin

Door County

Clafin Point Site (Graves Stone Buildings TR), Address Restricted, Gardner vicinity, 99001660

Eau Claire County

Hoover, James Stephen and Borland, Elizabeth, Memorial Chapel (Eau Claire MRA), Lakeview Cemetery, Buffington Dr., Eau Claire, 99001662

Putnam, Jane E., Memorial Chapel (Eau Claire MRA), Forest Hill Cemetery, Emery St., Eau Claire, 99001663

Saint Edward's Chapel (Eau Claire MRA), 1129 Bellevue Ave., Eau Claire, 99001661

Second Ward School (Eau Claire MRA), 1105 Main St., Eau Claire, 99001664

[FR Doc. 99–33098 Filed 12–21–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Issues Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable Issues Subcommittee will meet on January 10, 1999 to discuss the long-term water acquisition framework and revisions to next year's proposal solicitation package. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12 p.m. on Monday, January 10, 2000.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1118, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program),

is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: December 13, 1999.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 99-32835 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-94-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These information collection activities were

previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029-0061 and -0110, respectively.

DATES: Comments on the proposed information collection activities must be received by February 22, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210-SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208-2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for renewed approval. These collection are contained in (1) 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (1029-0061); and (2) OSM's Technical Training Program Course Effectiveness Evaluations (1029-0110). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029-0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95-87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS-6.

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Total Annual Responses: 160.

Total Annual Burden Hours: 10,635 hours.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029-0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 650.

Total Annual Burden Hours: 110 hours.

Dated: December 17, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99-33195 Filed 12-21-99; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-308-310 and 520-521 (Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on butt-weld pipe fittings from Brazil, China,

¹ The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission instituted these reviews on May 3, 1999 (64 FR 23672, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 FR 44536, August 16, 1999).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 22, 1999. The views of the Commission are contained in USITC Publication 3263 (December 1999), entitled Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand: Investigations Nos. 731-TA-308-310 and 520-521 (Review).

Issued: December 16, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-33191 Filed 12-21-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-863 (Preliminary)]

Citric Acid and Sodium Citrate From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-863 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of citric acid and sodium citrate, provided for in subheadings 2918.14.00 and 2918.15.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of

Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 31, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by February 7, 2000.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT:

Joanna Bonarriva (202-708-4083), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on December 15, 1999, by Archer Daniels Midland Co., Decatur, IL, Cargill, Inc., Naperville, IL, and Tate & Lyle Citric Acid, Decatur, IL.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 5, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Joanna Bonarriva (202-708-4083) not later than December 30, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 10, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

²Commissioner Crawford dissenting with respect to Brazil, Taiwan, and Thailand and Commissioner Askey dissenting with respect to Brazil.

pursuant to § 207.12 of the Commission's rules.

Issued: December 17, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-33192 Filed 12-21-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; National Administrative Office, National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open teleconference
January 25, 2000.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94-463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on January 25, 2000 from 3 p.m. to 5 p.m.

ADDRESS: U.S. Department of Labor, 200 Constitution Avenue NW., Conference Room 2 at C-5515, Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C-4327, Washington, DC 20210. Telephone 202-501-6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC, on December 15, 1999.

Lewis Karesh,

*Deputy Secretary, U.S. National
Administrative Office.*

[FR Doc. 99-33138 Filed 12-21-99; 8:45 am]

BILLING CODE 4510-28-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99-162]

NASA Advisory Council (NAC), Aero- Space Technology Advisory Committee (ASTAC); Flight Research 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 forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Monday, January 24, 2000, 2:00 p.m. to 5:00 p.m., Tuesday, January 25, 2000, 8:00 a.m. to 5:00 p.m., and Wednesday, January 26, 2000, 8:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Conference Room 2100, Edwards, CA 93535.

FOR FURTHER INFORMATION CONTACT: Ms. Dennie Gonia, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA, 93523, 661/258-2380.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda topics for the meeting are as follows:

- Review of Flight Research Base R&T Program
- Review of the Costs Associated with Varying Types of Flight Research
- High Altitude, Long Endurance Aircraft
- Advanced Systems Concepts
- Revolutionary Concepts (REVCON)
- Atmospheric Flight of Space Systems
- Innovative Transport and Testbed Experiments
- Flight Research Productivity

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 16, 1999.

Matthew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 99-33111 Filed 12-21-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the addition of the following item to the previously announced closed meeting (Federal Register, Vol. 64, No. 239, page 69802, Tuesday, December 14, 1999) scheduled for Thursday, December 16, 1999.

5. Delegation of Authority. Closed pursuant to exemptions (2), (6) and (7).

The Board voted unanimously that agency business required that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items were:

1. Field of Membership Appeal. Closed pursuant to exemption (8).
2. Insurance Appeal. Closed pursuant to exemptions (6) and (8).
3. Proposed Modification to NCUA's Indemnification Policy. Closed pursuant to exemptions (2), (6) and (7).
4. Two (2) Personnel Matters. Closed pursuant to exemptions (2), (5), (6) and (7).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99-33387 Filed 12-20-99; 3:42 pm]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-443]

In the Matter of North Atlantic Energy Service Corporation, et al. (Seabrook Station, Unit 1); Order Approving Application Regarding Merger of New England Electric System and the National Grid Group PLC

I

North Atlantic Energy Service Corporation is authorized to act as agent for the joint owners of the Seabrook

Station, Unit 1 (Seabrook), and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License No. NPF-86. New England Power Company (NEP), one of the joint owners, holds a 9.9-percent possessory interest in Seabrook. The U.S. Nuclear Regulatory Commission issued Operating License NPF-86 on March 15, 1990, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Seabrook Township, Rockingham County, on the southeast coast of the State of New Hampshire.

II

Under cover of a letter dated March 15, 1999, NEP, a subsidiary of New England Electric System (NEES), and National Grid Group plc (National Grid) submitted an application requesting approval of the transfer of control of the license, to the extent held by NEP in connection with its 9.9-percent ownership interest in Seabrook, regarding a change in the economic ownership of NEES. The application was supplemented May 20 and June 17, 1999 (collectively hereinafter "the application").

NEP is incorporated in the Commonwealth of Massachusetts. NEES owns all of NEP's common stock and 99.71 percent of its voting securities, with the other 0.29 percent being owned by the public in the form of preferred stock with common voting rights. The requested transfer approval relates to a proposed merger in which NEES is to be acquired by National Grid, a British company. NEES and National Grid entered into a merger agreement on December 11, 1998.

National Grid is a public limited company incorporated under the laws of England and Wales. It is the only transmission company in England and Wales and is an independent company created as a result of the privatization and restructuring of the British electric system in 1990. The application states that National Grid, with its United Kingdom assets and through interconnections with Scotland and France and through its acquisitions of interests in transmission systems in other nations, is the largest privately owned transmission company in the world.

National Grid has formed NGG Holdings LLC (NGG Holdings), a U.S. entity that is a limited liability company organized in Massachusetts and a wholly owned subsidiary of National Grid. NGG Holdings will merge with and into NEES, with NEES being the

surviving entity from that transaction and maintaining its status as a U.S. entity subject to all applicable U.S. laws and regulations. The application states that, for tax purposes, immediately after the merger, NEES will be converted from a Massachusetts business trust into a corporation; specifically, NEES will be merged into a Massachusetts corporation to be named NEES Holdings, Inc., which will then be the surviving entity. The post-acquisition capital structure of NEES Holdings, Inc., will be identical to the capital structure of NEES, and NEES Holdings, Inc., will become a wholly owned indirect subsidiary of National Grid, with NEP being a subsidiary of NEES Holdings, Inc., and thus also becoming a subsidiary of National Grid. The application also provides details regarding several companies that will be created for various business reasons as intermediates between National Grid and NEES Holdings, Inc., after the merger is approved, and all of these companies will be either directly or indirectly wholly owned by National Grid. National Grid will register as a public utility holding company under the Public Utility Holding Company Act of 1935.

Approval of the indirect license transfer that would result from the foregoing transactions was requested pursuant to 10 CFR 50.80. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on June 30, 1999 (64 FR 35190). Pursuant to such notice, joint Seabrook owners Connecticut Light and Power Company (CL&P) and North Atlantic Energy Corporation (NAEC) filed a timely intervention petition and hearing request. Following the submission of further pleadings by the applicants and petitioners, the Commission found that the petitioners had demonstrated standing and proffered two admissible issues (regarding foreign ownership and financial qualifications). The Commission set the case for hearing and issued a schedule for the proceeding. Subsequently, on November 4, 1999, the petitioners filed a notice of withdrawal of their petitions to intervene, and the petitioners and the applicants jointly moved for termination of the proceeding due to a settlement reached between the parties. The Commission granted the motion on November 19, 1999. In doing so, it noted that the staff, in its review of transfer applications, examines financial qualifications and foreign ownership issues, and should consider concerns specifically raised in the proceeding relating to those matters

when it takes action on the transfer application. North Atlantic Energy Service Corp., et al. (Seabrook, Unit 1 and Millstone Station, Unit 3), CLI-99-28, 50 NRC ____, slip op. (Nov. 19, 1999). The staff has considered those concerns, which are addressed in the safety evaluation supporting this Order.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the proposed merger of National Grid and NEES will not affect the qualifications of NEP as a holder of Facility Operating License NPF-86, and that the indirect transfer of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The foregoing findings are supported by a safety evaluation dated December 10, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954 (AEA), as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the indirect license transfer referenced above is approved, subject to the following conditions:

(1) No later than the time the proposed merger with National Grid is consummated, NEP shall establish and make operational a Special Nuclear Committee, as described in the application, having the composition, authority, responsibilities, and obligations specified in the application, provided, however, the Special Nuclear Committee may also have exclusive authority on behalf of NEP over taking any action which is ordered by the NRC or any other agency or court of competent jurisdiction. No material changes with respect to the Special Nuclear Committee may be made without the prior written consent of the Director, Office of Nuclear Reactor Regulation. The foregoing provisions may be modified by the Commission upon application and for good cause shown.

(2) The Special Nuclear Committee shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of NEP with respect to the Seabrook license are at all times conducted in a manner consistent with the protection

of the public health and safety and common defense and security of the United States.

(3) NEP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from NEP to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10 percent) of NEP's consolidated net utility plant, as recorded on its books of account.

(4) Should the proposed merger not be completed by December 30, 2000, this Order shall become null and void, provided however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated March 15, 1999, and the supplements dated May 20 and June 17, 1999, and the safety evaluation dated December 10, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov>.

Dated at Rockville, Maryland, this 10th day of December 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99-33143 Filed 12-21-99; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Notice extending comment period.

SUMMARY: On October 20, 1999, OMB published a Notice (64 FR 56628-56644) requesting comments on recommendations that it had received from the Metropolitan Area Standards Review Committee (MASRC) for

changes to OMB's metropolitan area standards. By this Notice, OMB is extending the time period for public comment from December 20, 1999 to December 30, 1999.

DATES: To ensure consideration during the final decision making process, written comments must be received no later than December 30, 1999.

ADDRESSES: Written comments on the recommendations should be submitted to James D. Fitzsimmons, U.S. Bureau of the Census, IPC-Population Division, Washington, DC 20233-8860; fax (301) 457-3034.

Electronic Data Availability: This **Federal Register** Notice and the October 20, 1999 Notice are available electronically from the OMB home page: <<<http://www.whitehouse.gov/OMB/fedreg/index.html>>>. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>>.

FOR FURTHER INFORMATION CONTACT: James D. Fitzsimmons, Chair, Metropolitan Area Standards Review Committee, (301) 457-2419; or E-mail <<pop.frquestion@ccmail.census.gov>>.

SUPPLEMENTARY INFORMATION: On October 20, 1999, OMB published a Notice (64 FR 56628-56644) requesting comments on recommendations that it had received from the Metropolitan Area Standards Review Committee (MASRC) for changes to OMB's metropolitan area standards. MASRC's report and recommendations were published in their entirety in that Notice. To allow additional time for public comment, OMB is extending the comment period on the recommended standards from December 20, 1999 to December 30, 1999. The final standards will be published prior to Census 2000.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 99-33219 Filed 12-21-99; 8:45 am]

BILLING CODE 3110-01-P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, January 10, 2000; 8:30 a.m., Tuesday, January 11, 2000.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: January 10 (Closed); January 11 (Open).

MATTERS TO BE CONSIDERED:

Monday, January 10—1 p.m. (Closed)

1. Rate Case Briefing.
2. Financial Performance—FY 2000, Accounting Period 3 Results.
3. Personnel Matters.
4. Compensation Issues.

Tuesday, January 11—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 6-7, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Board Resolution on Capital Funding.
4. Annual Report on Government in the Sunshine Act Compliance.
5. Capital Investment.
 - a. Singulate, Scan, Induction Units.
6. Election of Chairman and Vice Chairman of the Board of Governors.
7. Tentative Agenda for the February 7-8, 2000, meeting in Miami, Florida.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99-33338 Filed 12-20-99; 2:50 pm]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Employee's Certification.
- (2) *Form(s) submitted:* G-346.
- (3) *OMB Number:* 3220-0140.
- (4) *Expiration date of current OMB clearance:* 2/29/2000.
- (5) *Type of request:* Extension of a currently approved collection.
- (6) *Respondents:* Program planning or management.
- (7) *Estimated annual number of respondents:* 5,400.
- (8) *Total annual responses:* 5,400.
- (9) *Total annual reporting hours:* 450.
- (10) *Collection description:* Under Section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains

information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Lori Schack (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99-33189 Filed 12-21-99; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42239; File No. SR-CHX-99-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Minimum Net Capital and Excess Net Capital Requirements for Members

December 15, 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 September 24, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On December 8, 1999, the CHX submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing the notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XI, Rule 3 of the Exchange's rules to modify the minimum net capital and excess net capital requirements applicable to members of the Exchange who are specialists or who carry accounts of specialists. Below in the text of the proposed rule change, Proposed new language is italicized; proposed deletions are in brackets.

Article XI—Financial Responsibility and Reporting Requirements

* * * * *

Net Capital and Aggregate Indebtedness

Rule 3. (a)(1) Except as otherwise provided below, a member or member organization shall at all times—

(i) maintain net capital not less than that prescribed by SEC 15c3-1 (17 CFR 240.15c3-1) and

(ii) maintain subordinated cash borrowing and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

* * * * *

(3) a member or member organization that is registered as a specialist on the Exchange [in less than 200 securities] and that clears its own specialist account(s) shall at all time—

(i) maintain[,] (A) at a minimum, net capital that is *equal to* the greater of (1)[a] \$100,000 [\$250,000, subject to the phase-in period set forth in Interpretation and Policy .01, below] or (2)[(b)] the amount prescribed by SEC 15c3-1 (17 CFR 240.15c3-1); and (B) *excess net capital equal to the greater of (1) \$500,000 (or the minimum amount required by National Securities Clearing Corporation ("NSCC") for such direct participants), subject to the phase-in-period set forth in Interpretation and Policy .01, below or (2) the amount prescribed by SEC 15c3-1.*

* * * * *

[(4) A member or member organization that is registered as a specialist on the Exchange in 200 or more securities and that clears its own specialist account(s) shall at all times—

(i) maintain, at a minimum, net capital that is the greater of (a) \$350,000, subject to the phase-in period set forth in Interpretation and Policy .01, below, or (b) the amount prescribed by SEC 15c3-1 (17 CFR 240.15c3-1); and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent

that these subordinated borrowing are part of the debt equity total.]

(4) [5] A member or member organization that clears the specialist accounts of another member or member organization registered as a specialist on the Exchange shall, at all times—

(i) maintain[,] (A) at a minimum, net capital that is *equal to* the greater of (1)[a] \$250,000 [\$500,000, subject to the phase-in period set forth in Interpretation and Policy .01, below] or (2)[(b)] the amount prescribed by SEC 15c3-1 (17 CFR 240.15c3-1); and (B) *excess net capital equal to the greater of (1) \$1,000,000 (or the minimum amount required by NSCC for such direct participants), subject to the phase-in period set forth in Interpretation and Policy .01, below or (2) the amount prescribed by SEC 15c3-1.*

* * * * *

(5) [6] * * *

(6) [7] * * *

Interpretations and Policies

.01 Phase-In Periods for Minimum Capital Standards for Self-Clearing Specialists and Firms Clearing Specialist Accounts.

On [May 31, 1999] (*insert date 30 days after date of SEC approval order*), the Exchange adopted separate minimum net capital *and excess net capital* standards for self-clearing specialists and firms clearing other specialist accounts, as specified in subsections (a)(3) and (a)(4) [and (a)(5) above. These minimum capital standards are to be phased in over a 12 month (*or other time period based on date of SEC approval order*) period.

Self-Clearing Specialists [Registered as Specialist in Less Than 200 Securities: \$250,000 Standard]

The amount specified in Rule 3(a)(3)(i)(B)(1) above shall be [\$150,000 effective on May 31, 1999; \$200,000 effective on November 30, 1999; [and \$250,000] \$350,000 effective on May 31, 2000; and \$500,000 effective on June 30, 2000.

[Registered as a Specialist in 200 or More Securities: \$350,000 Standard].

The amount specified in Rule 3(a)(4)(i)(a) above shall be \$200,000 effective on May 31, 1999; \$275,000 effective on November 30, 1999; and \$350,000 effective on May 31, 2000.]

Firms Clearing Other Specialist Accounts: [\$500,000 Standard].

The amount specified in Rule 3(a)(4)(i)(B)(1) above shall be [\$350,000 effective on May 31, 1999; \$425,000 effective on November 30, 1999; [and] \$500,000 effective on May 31, 2000; and \$1,000,000 effective on June 30, 2000.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ In Amendment No. 1, the CHX clarified Interpretation .01 to Rule 3 of Article XI and made technical amendments to the proposed rule language. See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, dated December 7, 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose rule change is intended to ensure that the Exchange's members who are specialists or who carry accounts of specialists meet the financial responsibility requirements imposed by qualified clearing agencies⁴ as well as the Commission. The Exchange's current rules, and the rules of the MCC, permit floor members of the Exchange to establish "sponsored accounts" pursuant to which the MCC provides sponsored participants with access to clearance, settlement and delivery via a qualified clearing agency such as the National Securities Clearing Corporation ("NSCC"). The Exchange in turn provides a guaranty to the NSCC (and through the NSCC to the Depository Trust Company ("DTC")) from time to time to guarantee the obligations of the MCC with respect to liabilities that could be generated in sponsored accounts.⁵ In order to minimize the Exchange's exposure through sponsored accounts and in keeping with capital requirements imposed by the Act, the Exchange's rules governing members' financial responsibility and reporting requirements contain provisions establishing minimum net capital requirements for specialists and those who carry accounts of specialists.⁶

The Exchange and the MCC have determined to discontinue the sponsored account program, effective June 30, 2000, after which time the MCC will be dissolved and the Exchange will no longer guarantee the MCC's obligations to qualified clearing agencies. Accordingly, it will be

necessary for all current sponsored participants to become direct participants in qualified clearing agencies such as NSCC and DTC. The Exchange thus proposes to amend Article XI, Rule 3 to incorporate the minimum net capital and excess net capital requirements currently required for direct participation in NSCC, subject to the amended phase-in periods set forth in Interpretation and Policy .01 to the amended rule. It is anticipated that the proposed phase-in periods will ameliorate any financial burden that might otherwise be placed on members who are specialists or who carry accounts of specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)⁷ of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is

consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-99-20 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-33177 Filed 12-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42238; File No. SR-NASD-99-63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. to Allow NASD Members to Give Proxies in the Absence of Written Instructions from Beneficial Owners

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 22, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASDR" or "NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On November 15, 1999, NASDR filed Amendment No. 1 to the proposal with the Commission.³ The

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NASDR withdrew its request that the proposal be reviewed and approved

⁴ See Midwest Clearing Corporation ("MCC") Rules, Art. XI, Rule 1.

⁵ See CHX Rules, Art. XXI, Rule 14.

⁶ See CHX Rule, Art. XI, Rule 3.

⁷ 15 U.S.C. 78f(b)(5).

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

NASDR seeks to amend Rule 2260 of the Conduct Rules of the Association to permit NASD members to give proxies in the absence of written instructions from beneficial owners, provided that certain requirements are satisfied.

The text of NASD Rule 2260, as modified by the proposal, appears below. Proposed additions are *italicized* and proposed deletions are [bracketed].

Rule of the Association Conduct Rules

2260. Forwarding of Proxy and Other Materials

(a)–(b) No change.

(c)(1) Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(A) sufficient copies of all soliciting material which such person is sending to registered holders, and

(B) satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member in connection with such solicitation.

such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) which is in its possession or control and registered in a name other than the name of the beneficial owner, *the material furnished.*

(2) Such member shall transmit with such material either:

(A) a request for voting instructions and, as to matters which may be voted without instructions under paragraph(d)(4), a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(B) a signed proxy indicating the number of shares held for such beneficial owner and

bearing a symbol identifying the proxy with proxy records of such member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols of the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEC Rule 17a–4 under the Act.

(2)(3) Notwithstanding the provisions of subparagraph (1), a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

(3)(4) This paragraph shall not apply to beneficial owners residing outside of the United States of America, although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(d)(1)–(3) No Change.

(4) A member which has transmitted proxy soliciting material to the beneficial owner of stock or the beneficial owner's designated investment adviser and solicited voting instructions in accordance with subparagraph (c) of this Rule, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided that:

(A) the person in the member firm giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting; and

(B) such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

(e)–(g) No Change.

* * * * *

IM–2260–2 Giving a Proxy To Vote Stock

(a) A member may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock or from the beneficial owner's designated investment adviser, in accordance with Rule 2260(c), and

(2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation of any matter which may affect substantially the rights or privileges of such stock.

(b) Generally speaking, a member may not give a proxy to vote without instructions from

beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14–A of the Securities Exchange Act;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (e.g., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal;

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding;

(13) authorizes:

(A) a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or

(B) the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exceptions may be made in cases of

(A) retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and

(B) any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the

under Section 19(b)(3)(A) of the Act. Instead, NASDR has requested that the Commission review the proposal under Section 19(b)(2) of the Act. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 10, 1999 ("Amendment No. 1").

consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and statutory 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. NASDR 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

NASD Rule 2260 specifies when NASD members must furnish proxy and other materials to beneficial owners, and governs when NASD members may vote proxies on behalf of beneficial owners. Rule 2260 differs in certain respects from the proxy rules of the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). Most notably, the NYSE and Amex proxy rules permit exchange members to give proxies on behalf of beneficial owners without written instructions from the beneficial owners, so long as certain requirements are satisfied.⁴ NASDR believes that the differences in the proxy rules maintained by the NASD, NYSE, and Amex may cause confusion for some members and issuers. The purpose of the proposed amendments is to conform the NASD rule to the NYSE and Amex rules.

a. Summary of Current NASD Rules

NASD Rule 2260 requires NASD members to forward proxy and other materials to beneficial owners of stock held in "street name" by the member

when certain conditions are met. Proxy materials must be accompanied by signed proxies and information regarding when the proxies must be returned to the issuer. NASD Rule 2260 currently provides that NASD members may give proxies on beneficial owners when the member holds the stock in a fiduciary capacity. Rule 2260 also provides that a NASD member may give proxies to vote pursuant to the rules of any exchange to which the member is also responsible, provided that the records of the member clearly indicate which procedure it is following.

The NYSE and Amex proxy rules likewise require exchange members to forward proxy materials to beneficial owners. Unlike the NASD's rules, however, the NYSE and Amex proxy rules state that an exchange member may accompany the materials with either: (a) Signed proxies and information specifying when the proxies must be returned to the issuer, or (b) A request for voting instructions. The NYSE and Amex proxy rules also allow exchange members to vote the proxies in certain circumstances if the beneficial owner fails to respond to the request for written instructions. Specifically, an exchange member may vote the shares without instruction if, to the knowledge of the member, the action in question is not contested and the action does not involve authorization for a merger, change of control, or other that could substantially affect the rights and privileges of the stock. With respect to matters not satisfying those requirements, the member may not vote the proxies absent written instructions from the beneficial owner. Supplemental materials to the NYSE and Amex proxy rules list corporate matters that may not be voted on without written instruction (e.g., matters involving changes of control, mergers, voting rights, and mortgaging of property).

Under the NYSE and Amex proxy rules, if an exchange member chooses to send a request for written instructions with the proxies and the proxies involve matters that may be voted on without written instruction, the member must inform the beneficial owner that proxies may be given at the member's discretion unless written instructions are received within a specified time.

b. Summary of Proposed Rule Change

NASDR believes that the current NASD proxy rule, in conjunction with the existing NYSE and Amex proxy rules, has caused confusion among some members and issuers regarding when proxies can be voted by members without instruction from beneficial

owners, particularly by a broker who is only a member of the NASD. NASDR believes that this confusion would be eliminated if the NASD's rules were amended to conform to the NYSE and Amex proxy rules.

Conforming NASD Rule 2260 to the NYSE and Amex proxy rules would require amending the NASD rule to: (a) give NASD members the option of requesting voting instructions instead of simply sending signed proxies to beneficial owners; and (b) in certain circumstances, permit NASD members to vote proxies if the beneficial owner fails to provide written instructions, as long as the member notifies the beneficial owner of that possibility.

Under the proposal, NASD Rule 2260(c)(2) would be amended to provide that, when an issuer satisfies the requirements in the rule that obligate NASD members to forward proxy material to the issuer's beneficial owners, each NASD member shall transmit with the proxy material either: (a) a request for voting instructions and, where the rule would permit the member to give the proxy without written instructions, notice to that effect; or (b) a signed proxy. In addition, a new subparagraph (d)(4) would specify the criteria governing when NASD members could vote proxies without written instructions from beneficial owners. Specifically, the new language would state that NASD members may give proxies without written instructions, provided that the person in the member firm giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting; and such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation, or any other matter which may affect substantially the rights or privileges of such stock.

The proposed rule change would not alter the current obligations of NASD members to give and send proxies, because under the proposal, NASD members would have the option of continuing to treat proxy materials as currently required under rule 2260. NASDR believes that the proposal will eliminate confusion by clarifying that NASD members may give proxies without written instructions from beneficial owners in the same manner they are permitted to do so under NYSE and Amex proxy rules.

c. Adoption of IM-2260-2

Supplemental materials to the NYSE and Amex proxy rules provide specific guidance to exchange members regarding application of the proxy rules.

⁴ See NYSE Rule 452, "Giving Proxies by Member Organization," and Amex Rule 577, "Giving Proxies by Member Organization."

The supplemental materials summarize the NYSE and Amex proxy rules, and enumerate specific instances where exchange members may not give proxies without instructions from the beneficial owner. Under the proposal, that same guidance would be incorporated into the rules of the NASD in the form of a new IM-2260-2. The text of proposed IM-2260-2 is substantially identical to the language in the supplemental materials to the NYSE and Amex proxy rules.

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which require that the rules of a registered securities association must be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. NASDR also believes that the proposed change eliminates confusing and potentially conflicting requirements that affect investors, issuers, and the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR believes that the proposed rule change will not result in 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

NASDR did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice 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 NASDR consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-63 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-33175 Filed 12-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42235; File No. SR-PCX-99-33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Composition of the PCX Board of Governors

December 14, 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 27, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 19, 1999, the Exchange submitted Amendment No. 1 to the

proposed rule change.³ On December 2, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is issuing this order approving the amended proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its Constitution to provide that fifty percent of the Exchange's Board will be representatives of the public. The text of the proposed rule change, as amended, follows. Additions are italicized; deletions are bracketed.

PCX CONSTITUTION

* * * * *

Article II

GOVERNMENT

Board of Governors

Sec. 1(a). The government of the Exchange shall be vested in a Board of Governors (herein sometimes called "the Board") consisting of twenty-one elected Governors, *and* the Chairman of the Board [and the President of the Exchange], provided that [seven] *eleven* of the elected Governors shall be representatives of the public and shall

³ Letter from Michael D. Pierson, Director Regulatory Policy, PCX, to Sharon M. Lawson, Division of Market Regulation ("Division"), SEC, dated November 18, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange defined the terms "office member" and "office allied member," which are used in Article III, Section 2(b) of the Exchange Constitution. The Exchange stated that it intends to codify these definitions in the PCX Constitution by the summer of 2000. In addition, the Exchange explained that it intends to stagger the implementation of the revised structure of the Board of Governors ("Board"). As a result, two new public governors will be added in the 2000 term. In addition two additional public governors will attend meetings of the PCX Board in a non-voting advisory capacity during the 2000 term. The Exchange explained that this should enable them to familiarize themselves with the business of the Exchange. Finally, the Exchange clarified the use and composition of three classes of governors elected to the Board and clarified that full implementation of the changes shall be reflected on the PCX's 2001 Board.

⁴ Letter from Robert Pacileo, Staff Attorney, PCX to Sharon M. Lawson, Division, SEC, dated December 1, 1999. In Amendment No. 2, the Exchange added Commentary .01 to Article III, Section 2(b) to explain the staggered implementation of the fifty percent public governor requirement. In addition, the Exchange deleted its proposal to require a minimum of five floor members on the Board at all times. Finally, Amendment No. 2 corrected an incorrect statement in Amendment No. 1, which provided that the Board will have nine non-public elected members under the proposal when in fact it will consist of ten.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 700-3(b)(6).

not be, or be affiliated with, a broker or dealer in securities. If at any time the position of the Chairman [or President] is unfilled by a person duly appointed to such position by the Board of Governors, the number of members of the Board of Governors shall be deemed to be reduced accordingly until such position or positions are filled. The Board shall hold regular and special meetings at such times and at such places as it may determine. Notice of meetings of the Board shall be given as provided in Section 8 of this Article II. The Board may act on any matter affecting or concerning this Exchange, except as otherwise provided by the Certificate of Incorporation or this Constitution. Except where a larger vote is required under any provisions of the Certificate of Incorporation or this Constitution, the Board may act on any matter within its jurisdiction by vote of not less than a majority of the Governors voting at a meeting at which a quorum is present or by written consent of a majority of all Governors.

* * * * *

Chairman of the Board of Governors and President

Sec. 2(a). The Chairman of the Board of Governors and the President of the Exchange shall be appointed by the Board of Governors to serve at its pleasure and for such compensation as it may from time to time fix. Neither the Chairman of the Board nor the President shall engage in any other business during his or her incumbency except with approval of the Board, and acceptance of the office shall be deemed to be agreement to uphold the Constitution and Rules of the Exchange. The Chairman of the Board and the President of the Exchange shall be members, ex officio, of all committees of the Exchange except the Nominating Committee. [The President shall be a member of the Board of Governors.]

* * * * *

Article III

ELECTIONS, MEETINGS, TERMS OF OFFICE, PROXIES

Annual Election of Governors

Sec. 2(a). The elected Governors shall be divided into three classes, each [two] of which shall be composed of seven Governors. [, and one of which shall be composed of six Governors.] The seven [six] Governors composing Class I shall have terms expiring at the Annual Meeting in 2002 [1993], and the terms of Governors in Class I shall expire each three years thereafter. The seven Governors composing Class II shall have

terms expiring at the Annual Meeting in 2003 [1994], and the terms of Governors in Class II shall expire each three years thereafter. The seven Governors composing Class III shall have terms expiring at the Annual Meeting in 2004 [1995], and the terms of Governors in Class III shall expire each three years thereafter. Also at each Annual Meeting, the Vice Chairman elect shall become Vice Chairman and a Vice Chairman elect shall be elected to serve for one year from the date of election, and until his or her successor is elected and qualified. The Vice Chairman elect shall be one of the Governors presently in office with at least two years remaining in his or her term, or one of the newly elected Governors.

Eligibility of Governors

Sec. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm or any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors. Of the Governors in each of the classes specified in Sec. 2(a) above, at least one shall be a member of the Exchange, at least [two] one shall be an office member[s] or office allied member[s] of the Exchange, and [one] at least three shall be [a] representatives of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the Board at all times.

Commentary

.01 Pursuant to a letter from the Commission's director of Market Regulation dated June 10, 1999, the Exchange will stagger implementation of the fifty-percent public governors over a two-year period. The Exchange will add two new public governors, for a total of nine public governors, in the year 2000. The Exchange will add two new governors, for a total of eleven public governors, in the year 2001. Beginning in year 2001, there will be 11 representatives of the public on the Board at all times.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A. Introduction

The PCX⁵ proposes to amend Article II, Sections 1(a) and 2(a), and Article III, Sections 2(a) and 2(b) of the PCX Constitution to increase the number of public representatives on the PCX Board of Governors ("Board") to fifty percent.⁶ The Exchange believes that this change will make the Board more balanced, fair and effective.⁷ The Exchange is also proposing to remove the President of the Exchange from the Board.

B. Number of Public Governors

Pursuant to Article II, section 1(a) of the PCX Constitution, the current Board

⁵ The PCX is a non-stock membership corporation registered in the State of Delaware. Its corporate structure and the general parameters of its corporate governance are defined in the PCX Certificate of Incorporation. The Exchange's By-laws, composed of the PCS Constitution and PCX Rules, contain the specific requirements for the composition of the Board, PCX Committees and the daily operations of the Exchange.

⁶ The Exchange will partially implement this rule change in January 2000 at the annual election of PCX Governors, as prescribed by proposed Commentary .01 to Article III, Section 2(b), of the PCX Constitution. Full implementation will conclude with the January 2001 Board elections.

⁷ The Exchange notes that in 1997, it took an initial step towards a more balanced Board composition by increasing, from six to seven, the number of public representatives on the Board, and also by increasing, from one to two, the number of public governors permitted to serve on the Exchange's Executive Committee. See Exchange Act Release No. 38945 (August 18, 1997), 62 FR 44999 (August 25, 1997). In its approval order, the Commission stated that "significant representation by public governors on the Board is desirable and should ensure better protection of public investors and the public interest. Public governors are likely to have little or no stake in internal Exchange politics, and, if carefully selected, public governors should bring diverse experience and increased ethical sensitivity to the Board, thus enhancing the confidence of members and of the public in the Exchange's ability to govern its members appropriately."

consist of twenty elected Governors, the Chairman of the Board and the President of the Exchange. The twenty elected Governors currently include seven representatives of the public.⁸

The Exchange proposes to modify Article II, sections 1(a) to increase the total number of governors on the Board to twenty-one elected governors, of which at least eleven shall be representatives of the public. The eleven public governors will equal fifty percent of the twenty-two governors ("Governors"), who include twenty-one governors elected by PCX members plus the Chairman of the Board, who is appointed by the Board.⁹

C. President of the Exchange

The Exchange proposes to change Article II, sections 1(a) and 2(a) of the Constitution by removing the President of the Exchange from the Board. The Exchange proposes this change to accommodate the increase in the number of public governors. The Exchange notes that the Exchange's President can attend Board meetings and participate without being a voting member of the Board.

D. Eligibility of Governors

The Exchange proposes to amend Article III, section 2(b) of the PCX Constitution, relating to the eligibility of Governors. As amended, this provision will require that, of the Governors in each of the classes specified in Section 2(a),¹⁰ at least one shall be a member of the Exchange, at least one shall be an office member or office allied member of the Exchange,¹¹ and at least three shall

be representatives of the public.¹² The Exchange proposes this rule change to make Article II, section 1(a) consistent with Article III, section 2(b), which sets minimum requirements for the composition of the Board.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹³ of the Act, in general, and furthers the objectives of Section 6(b)(3)¹⁴ in particular, because it is designed to assure a fair representation of its members in the selection of its directors and administration of its affairs and to assure that one or more directors shall be representatives of issuers and investors and not be associated with a member of the Exchange, broker, or dealer.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Exchange on behalf of the member organization. See *supra* note 3.

¹² This provision currently states, in relevant part, that "at least one shall be a member of the Exchange, at least two shall be office members or office allied members of the Exchange, and one shall be a representative of the public."

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(3).

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-33 and should be submitted by January 12, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposal is consistent with the requirements of Sections 6(b)(1), 6(b)(3) and 6(b)(5) of the Act.¹⁶

Section 6(b)(3) of the Act provides, among other things, that one or more directors of an exchange shall be representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. The Commission believes that representation of the public on exchange governing bodies that have decision-making authority is critical to ensuring that the exchange works to protect the public interest.¹⁷ Further, public representation helps to ensure that no single group of investors has the ability to systematically disadvantage other market participants through the exchange governance process.

The proposed change amends the composition of the PCX Board by increasing the number of public directors from seven to eleven. As a result, public governors will comprise fifty percent of the Board. The Commission believes that increasing the number of public governors should substantially further the public's interest and voice on the Board, consistent with Section 6(b)(3). Public governors should bring knowledge of the interests of investors to the governance of the Exchange and should balance the composition of the Board. The Commission further believes that public governors possess a unique perspective, which should enhance the ability of the Board to address Exchange issues in a non-discriminatory fashion. In this way, the public governors may help to prevent unfair discrimination between customers, issuers, brokers, or

¹⁵ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f(b)(1), 78f(b)(3) and 15 U.S.C. 78f(b)(5), respectively.

¹⁷ See Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70884 (December 22, 1998).

⁸ A representative of the public is an individual who is not affiliated with a broker or dealer in securities. PCX Const., Art. II, Section 1(a). The Exchange notes that it considers "public representatives" to be persons who are not employed in the securities industry, and that in the recent past, the Exchange's appointments of public representatives to the Board has been generally consistent with this meaning. See *infra* note 16.

⁹ As described above, the revised structure including eleven public representatives will be staggered so that in 2000 the PCX Board will consist of nine public governors and in 2001 the PCX Board will consist of the required eleven public governors. During the 2000 Board term, there will be nine elected public governors and two non-elected, non-voting advisory public governors who will stand for election in 2001.

¹⁰ PCX Constitution, Article III, Section 2(a) currently states that "[t]he elected Governors shall be divided into three classes, two of which shall be composed of seven Governors, and one of which shall be composed of six Governors."

¹¹ In Amendment No. 1, the Exchange defined an office member as a natural person in whose name a membership is held and who does not exercise trading privileges on a floor of the Exchange on behalf of the member organization and defined an office allied member as an allied member (as defined in PCX Constitution, Article V, Section 6) who does not conduct business while on a floor of

dealers in the administration of the Exchange, and protect investors and the public interest, consistent with Section 6(b)(5).

Section 6(b)(1) of the Act requires that an exchange be so organized and have the capacity to carry out the purposes of the Act. The Commission believes that increasing public representation on the PCX Board will also further Section 6(b)(1) of the Act by enabling the Exchange to discharge its regulatory responsibilities and fairly enforce compliance by its members with its rules, the Act and the rules thereunder.

The proposed composition of the Board also furthers Section 6(b)(1) and 6(b)(3) of the Act because it helps to ensure that each member constituency is adequately represented in the governing process of the Exchange.¹⁸ A national securities exchange has many self-regulatory functions, such as, among other things, the discipline of members. Recognizing and providing each member community with representation on the governing Board should protect the members' interests from unfair or uneven assertions of regulatory authority. Further fifty-percent public representation should ensure that the interests of one group of members will not dominate the Exchange and that investor interests will be represented on the Board.

The Commission further believes that the PCX's current application of its definition of public representative is consistent with the requirements of the Act. The current definition, which is not amended by this proposal, states that a public representative is a person who is not a broker-dealer in securities or affiliated with a broker-dealer in securities. This definition, however, permits other securities industry participants to be public governors. The Exchange stated that the recent past appointments of public representatives have usually not included persons employed in the securities industry.¹⁹ The Commission encourages the Exchange to codify this practice by amending its definition of public representatives to exclude those persons that may have an affiliation with the securities industry.²⁰

¹⁸ Each class of governors provides for a minimum of one upstairs firm and one floor member. The Exchange should consider codifying a maximum number of member representation on the Board so that no member constituency can dominate the Board.

¹⁹ Conversation between Kathryn Beck, General Counsel, Exchange, and Mandy S. Cohen, Special Counsel, Division of Market Regulation, Commission on November 23, 1999. See *supra* note 7.

²⁰ The Commission notes that the National Association of Securities Dealers ("NASD") and the

To assist in the transition to eleven public representatives of the Board, the Exchange proposes to have only 9 public governors on the Board in 2000. Two additional public governors will be nominated in 2000 who will stand for election in 2001. During 2000, these governors will attend Board meetings in a non-voting, advisory capacity. The Commission believes that this proposed change should help to ensure a smooth transition to the amended Board composition. This should provide the new public governors with exposure to the unique issues of the securities industry in general, as well as the specific issues that the PCX faces before they are expected to participate in the governance of the Exchange.

The Commission notes that the requirement to have eleven public representatives on the Board will not be fully implemented until 2001 as a result of PCX's desire to implement the change in two steps. Nevertheless, the Exchange is required, pursuant to its Constitution, to ensure that there are eleven public governors on its Board beginning in the year 2001. The Commission therefore expects PCX to have fifty-percent public representation on its Board as of 2001.

In summary, for the reasons discussed above, the Commission believes that the change to fifty-percent public governors should further improve oversight of the Exchange, which should benefit all investors. The Commission continues to urge the PCX to codify its application of the definition of public governor.

The Commission finds good cause to accelerate approval of the proposed rule change as amended prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that the proposed rule change provides significant benefits to investors and the members of the Exchange, as discussed above. By increasing the number of public governors on the PCX Board, the PCX should be governed by a more balanced corporate body.

The Commission notes that the PCX is required to begin its election process for the 2000 election to be held during the annual meeting in January. The Commission believes that it is in the public interest to have the first phase of the staggered implementation of the proposed changes in place for the next election. Further, since the first phase of

Chicago Stock Exchange ("CHX") currently classify their board members as industry/member, non-industry—which would be comparable to the PCX definition of public, and public—which is defined as persons that have no material business relationship with a broker or dealer or the Association or the Exchange, as the case may be. See NASD By-laws Article I; CHX Constitution, Sections 2 and 10.

the implementation has a direct correlation to the full implementation of the proposed rule change by 2001, the Commission believes that it is in the public interest to approve the entire proposed rule change on an accelerated basis. The two non-voting advisory public governors will be nominated in 2000 and will then stand for election to the 2001 Board. Therefore, the Commission believes that good cause exists, consistent with Sections 6(b)(1), (b)(3), and (b)(5)²¹ and 19(b)²² of the Act, to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act²³ that the proposed rule change, as amended, (SR-PCX-99-33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-33176 Filed 12-21-99; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TA covers the Office of the Deputy Commissioner for Disability and Income Security Programs. Notice is hereby given that Subchapter TAH, Office of Hearings and Appeals, is being amended to reflect changes in the organization designations in the Office of Hearings and Appeals, Office of Policy, Planning and Evaluation and functional responsibilities in the Office of Hearings and Appeals, Special Counsel Staff. The changes are as follows: Section TAH.10 *The Office of Hearings and Appeals—(Organization)*:

G. The Office of Policy, Planning and Evaluation (TAHC). Delete:

1. Division of Litigation Analysis and Implementation (TAHC1).

Renumber:

"2" to "1" and "3" to "2".

Section TAH.20 *The Office of Hearings and Appeals—(Functions)*:

²¹ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78f(b)(93); 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

C. The immediate Office of the Associate Commissioner for Hearings and Appeals (TAH).

2. The Special Counsel Staff (TAH-2). Amend as follows:

The Special Counsel Staff (SCS) (TAH-2) consists of attorneys and appropriate support staff. The attorneys serve as professional advisors to the Associate Commissioner for Hearings and Appeals, and to other members of the Office of Hearings and Appeals (OHA) Executive Staff on matters pertaining to the legislative process; labor and employee relations; ethics; and administrative procedures, with special emphasis on administrative issues raised by the Administrative Procedure Act (APA), Freedom of Information Act and Privacy Act. SCS, in consultation with the Office of General Counsel (OGC), evaluates any potential disciplinary action involving Administrative Law Judges (ALJs). This responsibility includes interviewing all witnesses and compiling and weighing other evidence and recommending a course of action to the Associate Commissioner for Hearings and Appeals. Based on the SCS recommendation, the Associate Commissioner for Hearings and Appeals will decide the appropriate action and undertake action administratively, or if warranted, direct the filing of a complaint against an ALJ with the Merit Systems Protection Board (MSPB). The SCS assists OGC in trying administrative disciplinary proceedings against ALJs before the MSPB. The SCS also functions as agency representative in actions against attorney and non-attorney representatives of claimants before Social Security Administration (SSA) ALJs and the Appeals Council. SCS will investigate potential violations of the law and regulations governing the qualifications and conduct of such representatives. SCS will present its recommendations to the Deputy Commissioner for Disability and Income Security Programs (DCDISP). If the DCDISP agrees with the recommendation, SCS will present such matters in administrative hearings conducted by ALJs selected by the Associate Commissioner for Hearings and Appeals. SCS is responsible for any appeals on such cases taken to the Appeals Council. Conducts or coordinates investigations of allegations of misconduct, waste, fraud or abuse by OHA headquarters and field employees. Maintains records of, provides advice on the handling of and, upon request, investigates allegations of bias or misconduct against ALJs. Serves as liaison with the Office of Inspector General in matters of a criminal nature.

Reviews regulations and procedures for conformity to SSA/OHA policy and provides recommendations for modifications of prospective legislation which could adversely affect the hearings and appeals process. When requested, represents OHA as liaison with the Congress, American Bar Association, and other governmental and private organizations, with special emphasis on pending, proposed, and prospective legislation pertaining to the APA. Develops, in conjunction with other OHA components, a recommended appeals strategy that identifies the issues and types of cases which OHA believes should be appealed. With OGC clearance, develops and maintains a compendium of circuit court case law and court trend data, with systems-based access. Tracks pending class actions and makes recommendations regarding potential workload impact. Advises OHA officials of significant cases and trends and of litigation issues which may require revision of operating instructions, and assists with the preparation of the instructions. Coordinates OHA's views on proposed Social Security Acquiescence Rulings. In response to OHA-identified cases and to requests for appeal recommendations, obtains the views of affected OHA components and formulates an OHA position regarding the viability of an appeal. Acts as liaison with the Department of Health and Human Services' Departmental Appeals Board and SSA OGC and Litigation Staff, Office of the Deputy Commissioner for Disability and Income Security Programs (ODCDISP), to coordinate OHA's involvement in class action litigation, settlements and implementation; and when requested, with other governmental agencies. In coordination with other OHA components, develops instructions for OHA implementation of class action orders, monitors implementation and serves as a focal point for questions from OHA adjudicators. Responds to requests from OGC and ODCDISP regarding information about OHA operations requested in the course of litigation and drafts affidavits and declarations to be signed by OHA officials. Coordinates OHA's response to discovery requests.

G. The Office of Policy, Planning and Evaluation (TAHC).

Amend first sentence as follows:

The Office of Policy, Planning and Evaluation (TAHC) plans, analyzes and develops OHA-wide policy for the hearings and appeals process.

Delete last two sentences.

Add as last sentence:

Administers and coordinates the Freedom of Information Act and Privacy Act provisions for OHA.

Delete:

1. Division of Litigation Analysis and Implementation (TAHC).

Renummer:

"2" to "1" and "3" to "2".

Dated: December 14, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99-33132 Filed 12-21-99; 8:45 am]

BILLING CODE 4191-02-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8-99-067]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its two Subcommittees (Waterways and Navigation) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Friday, January 28, 2000 from 9 a.m. to approximately 1 p.m. The meeting of the Navigation Subcommittee will be held on Thursday, January 13, 2000 at 9 a.m. and immediately following, the Waterways Subcommittee will meet. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots' Office, 8150 South Loop East, Houston, Texas. The subcommittee meetings will be held at the Houston Port Authority, 111 East Loop South, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671-5199, or Commander Peter Simons, Executive Secretary of HOGANSAC, telephone (713) 671-5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Pluta) (or the Committee Sponsor's representative), Executive Director (CAPT Gusman) and Chairman (Tim Leitzell).

(2) Approval of the November 23, 1999 minutes.

(3) Report from the Waterways Subcommittee.

(4) Report from the Navigation Subcommittee.

(5) Status reports on Baytown Tunnel removal, Army Corps of Engineers' dredging projects and pipeline safety, and comments and discussions from the floor.

(6) New business.

Subcommittee on Waterways. The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Subcommittee on Navigation. The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: December 10, 1999.

Paul J. Pluta,

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

[FR Doc. 99-33211 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION**Communications/Surveillance Operational Implementation Team (C/SOIT); Cancellation of Meeting**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Communications/Surveillance Operational Implementation Team (C/SOIT); Cancellation of Meeting.

SUMMARY: Notice is hereby given of the cancellation of the Communications/Surveillance Operational Implementation Team (C/SOIT) meeting.

DATES: January 11-13, 2000, 8:30 a.m. to 5 p.m.

ADDRESSES: Holiday Inn Rosslyn WestPark Hotel, 1900 Fort Myer Drive, Arlington, VA, (703) 807-2000.

FOR FURTHER INFORMATION: E-mail Don Streeter at donald.w.streeter@faa.gov. Notification will be published regarding future C/SOIT activities.

Issued in Washington, DC, on December 16, 1999.

Donald W. Streeter,
C/SOIT Co-Chairman.

[FR Doc. 99-33218 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

[FRA Emergency Order No. 22, Notice No. 1]

Oregon Pacific Railroad; Emergency Order To Prevent Operation of Trains on the Railroad Bridge Crossing Johnson Creek in the City of Milwaukie, Oregon

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Oregon Pacific Railroad Company (OPR) to discontinue operation of trains or any railroad on-track equipment on a railroad bridge it owns spanning Johnson Creek (hereinafter designated as the "Johnson Creek Bridge") in the City of Milwaukie, Oregon. The bridge shall remain out of service until it has been properly repaired and its capacity determined by a registered professional engineer licensed to practice in the State of Oregon and who is technically proficient in the field of timber railroad bridge engineering.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe

condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. Sec. 20104. These orders may impose such "restrictions and prohibitions * * * that may be necessary to abate the situation." (Ibid.)

Background

The Oregon Pacific Railroad Company, a common carrier, is a part of the general railroad system of transportation and operates two principal segments of track. The segment in which the Johnson Creek Bridge is located consists of 4.28 miles of main track and 2.11 miles of secondary or yard trackage, or a total trackage of 6.39 miles, extending from milepost 0.26 (at its connection with Union Pacific Railroad Company's Portland-Eugene mainline at UP MP 769) at or near East Portland, Oregon, to milepost 4.54 at Milwaukie, all of which is located in Clackamas County, Oregon. The Oregon Pacific Railroad acquired this segment from East Portland Traction Company on January 1, 1997, and commenced railroad operation on that date.

The other segment of railroad operated by the Oregon Pacific Railroad is not contiguous with the first. It extends 9.93 miles from Canby to Molalla, Oregon, and includes a total of 11.38 miles of trackage. The Oregon Pacific Railroad likewise commenced railroad operations on that segment on January 1, 1997.

The President, Chief Executive Officer and General Manager of the Oregon Pacific Railroad is Mr. Richard A. Samuels, whose office mailing address is Oregon Pacific Railroad Company, P.O. Box 22548, Portland, Oregon 97269. Mr. Samuels is also the principal stockholder of the company.

The Oregon Pacific Railroad crosses Johnson Creek in Milwaukie, Oregon, on a timber trestle bridge not identified by number and located approximately one-half mile upstream from the point where Johnson Creek empties into the Willamette River. The location is also approximately 300 feet west of S.E. McLoughlin Boulevard (Oregon State Highway 99E) between its intersections with S.E. Harrison Street and S.E. Jackson Street. Geographic coordinates are 45°26'41" North latitude and 122°38'38" West longitude. There is no commercial water traffic on Johnson Creek.

The Oregon Pacific Railroad crosses the bridge to serve one shipper, AmeriCold Logistics, located south of the bridge. AmeriCold Logistics transports frozen food products in mechanical refrigerator cars at a rate of

about two cars per week, typically hauled in one train. Each refrigerator car has a gross weight of 220,000 pounds. The Oregon Pacific Railroad uses a small locomotive whose weight is undetermined.

Condition of the Bridge

The bridge is 127 feet long and consists of a nine-span open-deck timber trestle carrying a single track in a twelve-degree curve to the west. For reference in this emergency order and other documents relating to this emergency order, the bridge components are numbered from north to south and from east to west, with the north dump bent or abutment numbered as 0.

Intermediate bents one through seven nominally consist of four driven timber piles. Bent 8 is framed on a mud sill. Caps measure 14 inches by 14 inches by 12 feet on bents 1 through 5, and bent 8. Caps in bents 6 and 7 are 14 inches by 13 inches by 12 feet, with the large side horizontal. Each span has eight stringers, with four stringers essentially centered under each rail, 8 inches by 18 inches by 32 feet, with stringer joints alternating between bents. The clear space under the bridge is approximately six feet above the water level of the stream.

Track ties of 7 inches by 9 inches by 9 feet rest directly on top of the stringers, and support in turn tie plates and the two running rails, 75 pounds per yard, one 75-pound-per-yard guard rail connected to the west running rail, and two 55-pound-per-yard inner guard rails. The track is of conventional bolted rail construction.

Bent 5 is missing piles 1 and 2, and is supported by only piles 3 and 4, both under its west side. An outrigger beam has been placed under span 5, under the stringers and directly against the north face of the cap of bent 5. This beam consists of several timbers, 8 inches by 16 inches in cross section, placed vertically. These timbers are packed in four plies. Plies 1 and 3 each consist of two 16-foot timbers butt joined at the center of the beam. Plies 2 and 4 each consist of one 30-foot timber and one 2-foot timber, butt joined two feet from the west end of the beam, nearest the bridge. The beam is oriented with its individual plies placed on their short edges.

The outrigger beam is supported on its east end by a track tie resting on the ground on the south bank of Johnson Creek where the creek makes a sharp bend to the north on the east side of the bridge. The outrigger beam is supported on its west end by a $\frac{3}{8}$ -inch diameter chain wrapped once around two track

ties. Wooden blocks and wedges are placed between the bottoms of the stringers and the top of the outrigger beam. The east, or "free" end of the cap of bent 5 has settled approximately five inches from the bottoms of stringers 1 through 4.

Stringer 1 over spans 5 and 6 has essentially failed, with a deep shear crack near its neutral axis for its full length. The cap of bent 6 is demonstrating severe crushing over piles 3 and 4. The bridge shows signs of heavy vertical deflection under load on the east side.

On December 1, 1999, a track safety inspector and a bridge inspector from the Oregon Department of Transportation (ODOT), and a track safety specialist from FRA inspected the bridge. On December 2, 1999, they advised Mr. Samuels of the unsafe condition of the bridge. Mr. Samuels verbally agreed to immediately remove the bridge from service until it could be properly repaired. This discussion and agreement were memorialized in a letter dated December 6, 1999, to Mr. Samuels from FRA's regional administrator for Region 8, Dick L. Clairmont. Subsequent investigation by FRA has revealed, however, that the Oregon Pacific Railroad did not take the bridge out of service, but instead placed more blocking and wedges between the stringers and the top of the outrigger beam and continued to operate railroad rolling stock over the bridge.

The ODOT inspectors, along with an FRA inspector who has received specialized training in timber bridge inspection, then performed a more detailed measurement of the components of the bridge which are summarized in the paragraphs above. Using those measurements, FRA has determined that the Johnson Creek Bridge is in danger of imminent, catastrophic failure at any time that a railroad load passes over the bridge. The configuration of the outrigger beam arrangement overly stresses the stringers, caps, and piles of piers 4, 5 and 6 far beyond their normal capacity, and even the outrigger beam itself could fail at any time. Depending on the amount and direction of deflection of the bridge components, the $\frac{3}{8}$ -inch diameter chain which secures the west end of the outrigger beam also may become stressed far beyond its ultimate capacity. Merely replacing or reinforcing the chain would not correct the unstable condition created by the lack of piles 1 and 2 in bent 5.

Failure of the bridge under load could have very serious consequences. The bridge failure could cause the train to fall into Johnson Creek, killing or

injuring any railroad crew members operating rolling stock, killing or injuring any innocent bystanders using Johnson Creek or its banks, and possibly blocking the creek resulting in widespread flooding in the immediate area. Locomotive diesel fuel and/or fuel and contents of a mechanical refrigerator car could cause severe environmental damage to Johnson Creek and the nearby Willamette River.

Finding and Order

FRA has concluded that any future railroad use of the Johnson Creek Bridge on the Oregon Pacific Railroad poses an imminent and unacceptable threat to public and employee safety. The past failure of the Oregon Pacific Railroad to voluntarily remove the bridge from service and perform proper repairs persuades FRA that the agency cannot rely upon the cooperation of the railroad to protect public safety in relation to the Johnson Creek Bridge. I find that these unsafe conditions create an emergency situation involving a hazard of death or injury to persons.

Accordingly, pursuant to the authority of 49 U.S.C. 20104 delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered that the Oregon Pacific Railroad Company shall discontinue, and shall not permit, the operation of trains or any railroad on-track equipment over the Johnson Creek Bridge while this Emergency Order remains in effect.

Relief

The Oregon Pacific Railroad Company may obtain relief from this Emergency Order by providing the Federal Railroad Administrator with a report of inspection and evaluation of repairs, indicating to FRA's satisfaction that the Johnson Creek Bridge has been acceptably repaired. The report shall be prepared and sealed by a registered professional engineer who is licensed to practice in the State of Oregon and is technically proficient in the field of timber railroad bridge engineering. The report shall state that the capacity of the bridge to carry safely railroad cars and locomotives has been restored. The configuration and weights of the loads for which the determination has been made shall be stated in the report, together with all calculations upon which that determination is based. The original of the engineer's report, bearing the embossed imprint of the seal of the engineer, shall be provided to the regional administrator of FRA's Region 8 before the report will be considered by FRA. Upon FRA's approval of the engineer's assessment of the bridge restoration, and following an inspection

by FRA in which the agency finds the bridge properly repaired to safe condition, the Administrator will rescind this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to \$22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. Sec. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 12:01 a.m. (PST) on December 17, 1999 and apply to all operations of trains or railroad on-track equipment on the Johnson Creek Bridge on or after that time. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to Mr. Richard A. Samuels, President, Chief Executive Officer and General Manager, Oregon Pacific Railroad Company, P.O. Box 22548, Portland, Oregon 97269; the Union Pacific Railroad Company; the City of Milwaukie, Oregon; AmeriCold Logistics; Oregon Department of Transportation; the Association of American Railroads; and the American Short Line and Regional Railroad Association.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on December 16, 1999.

Jolene M. Molitoris,
Administrator.

[FR Doc. 99-33209 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-1999-5756]

Canadian National Railway; Public Hearing

Canadian National Railway (CN) has petitioned the Federal Railroad Administration (FRA) seeking a permanent waiver of compliance with the Locomotive Safety Standards, Title 49, Code of Federal Regulations,

§ 229.47(a), which requires each car body type road locomotive be equipped with an emergency brake valve attached to the wall adjacent to the end exit door. CN seeks this waiver for 178 car body locomotives built between 1985 and 1990 and used to haul freight that have never been equipped with an emergency brake valve at the rear exit door.

This proceeding is identified as FRA-1999-5756. FRA issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal, letters of protest, and field report, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on Thursday, January 27, 2000, at FRA headquarters located at 1120 Vermont Avenue, NW, Washington, DC, 7th floor, Conference Room 1. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of FRA's rules of practice (49 CFR 211.25) by a representative designated by FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. FRA's representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99-33208 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-1999-6404]

Extension of Comment Period; Petition for Grandfathering of Non-compliant Equipment National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant

passenger equipment for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

On December 2, 1999, FRA extended the comment period in this proceeding until December 15, 1999, following a Freedom of Information Act request that certain items in FRA files referenced in Amtrak's petition be made available for review (see 64 FR 68195, Dec. 6, 1999). FRA is currently processing this request, and has provided, in part, such information to the requestor in accordance with the provisions of the Freedom of Information Act. FRA has also submitted to the public docket in this proceeding such information provided to the requestor, and FRA will further submit to the public docket any such additional information that may be provided to the requestor pursuant its request.

FRA's processing of the request is not complete, however, and FRA is further extending the comment period in this proceeding until 10 a.m. on December 27, 1999 in order to provide the requestor, and other interested parties, an opportunity to review any additional information that may be submitted to the public docket in this proceeding. Comments received after that date will be considered to the extent possible. Amtrak's petition and all written communications concerning this proceeding are available for examination during regular business hours (9 a.m. to 5 p.m.) at DOT Central Docket Management Facility, Room PL-401 (Plaza Level), 400 Seventh, SW, Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Issued in Washington, D.C. on December 16, 1999.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 99-33210 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption**

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite

docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 6, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7765-M		Carleton Technologies, Inc., Orchard Park, NY (See Footnote 1).	7765
8995-M		BASF Corporation, Mount Olive, NJ (See Footnote 2)	8995
9001-M		UEF Chesterfield Cylinders, Chesterfield, Derbyshire, EN (See Footnote 3).	9001
9894-M		Luxfer Gas Cylinders, Riverside, CA (See Footnote 4)	9894
10684-M		MVE, Inc., New Prague, MN (See Footnote 5)	10684
10938-M		Westvaco, Richmond, VA (See Footnote 6)	10938
12098-M	RSPA-1998-3994	Carleton Technologies, Inc., Orchard Park, NY (See Footnote 7).	12098
12263-M	RSPA-1999-5597	Orbital Sciences Corporation, Dulles, VA (See Footnote 8)	12263
12376-M	RSPA-1999-6573	BBI-Biotech Research Laboratories, Inc., Gaithersburg, MD (See Footnote 9).	12376

¹ To modify the exemption to allow a design change to increase the rated service pressure to 8,900 psig for non-DOT specification cylinders transporting Division 2.2 hazardous materials.

² To modify the exemption to eliminate special provisions regarding driver instruction and display of exemption number on the transport vehicle or freight container.

³ To modify the exemption to allow for an additional Division 2.1 material in non-DOT specification cylinders.

⁴ To modify the exemption to allow passenger-carrying aircraft as an authorized mode for the transportation of certain Division 2.2 hazardous materials.

⁵ To modify the exemption to allow for vacuum readings to determine leakage and the use of nitrogen as a test medium for non-DOT specification insulated portable tanks.

⁶ To modify the exemption to authorize the transportation of an additional Class 9 material in DOT specification tank cars.

⁷ To modify the exemption to authorize an increased volume to 180 cubic inches for the non-DOT specification welded sphere.

[FR Doc. 99-33214 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****Office of Hazardous Materials Safety; Notice of Applications for Exemptions**

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 21, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipts of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL-401, at the U.S. Department of

Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at <http://dms.dot.gov>.

This notice of receipt of applications for new exemptions is published in

accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12377-N	RSPA-1999-6567	Essex Cryogenics of MO, Inc., St. Louis, MO.	49 CFR 178.47	To authorize the manufacture, marking and sale of 4DS cylinder that are exempt from third party inspection to be used for air sampling. (modes 1, 2, 3, 4)
12378-N	RSPA-1999-6568	Federal Express Corp. (FedEx), Memphis, TN.	49 CFR 175.33	To authorize the transportation in commerce of dry ice not meeting the exceptions identified in 175.10. (mode 4)
12379-N	RSPA-1999-6563	Western Farm Service, Inc., Walnut Grove, CA.	49 CFR 174.67(j)	To authorize tank cars to remain standing with transfer fitting from the bottom discharge valve attached to remain standing without the physical presence of an unloader. (mode 2)
12380-N	RSPA-1999-6562	Sullivan & Guldin, Inc., Athens, OH.	49 CFR 173.186	To authorize the transportation in commerce of specially designed device equipped with limited quantities of strike anywhere matches rolled within 2.5" cylinders intended for personal use to be classified as ORM-D products. (mode 1)
12381-N	RSPA-1999-6564	Ideal Chemical & Supply Co., Memphis, TN.	49 CFR 172.203(a), 172.302(c), 177.834(h).	To authorize the unloading of combustible liquid, n.o.s., from UN31A intermediate bulk containers without removal from the transport vehicle on which it is transported. (mode 1)
12382-N	RSPA-1999-6565	Air Transport International, L.L.C., Little Rock, AR.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities presently authorized. (mode 4)
12383-N	RSPA-1999-6566	Sealift Inc., Oyster Bay, NY.	49 CFR 176	To authorize the transportation in commerce of Class 1 explosives on board cargo vessel to be exempt from stowage requirements. (mode 3)
12385-N	RSPA-1999-6570	Maine Yankee Atomic Power Co., Wiscasset, ME.	49 CFR 173.403, 173.427(b)(1).	To authorize the transportation in commerce of steam generators and pressurizer packages containing radioactive components. (modes 1, 3)
12386-N	RSPA-1999-6571	Maine Yankee Atomic Power Co., Wiscasset, ME.	49 CFR 173.427(a)(1), 173.465.	To authorize the transportation in commerce of an atomic power station reactor pressure vessel. (modes 1, 2)
12388-N	RSPA-1999-6618	Mountain Safety Research, Seattle, WA.	49 CFR 173.304(d)(3)(ii), 178.33.	To authorize the transportation in commerce of a non-DOT specification container conforming to DOT specification 2P, except for size, testing requirements, and markings, for use in transporting Division 2.1 material. (modes 1, 2, 3, 4)
12390-N	RSPA-1999-6619	Industrial Metals, Beaumont, TX.	49 CFR 178.270-11(b)(i)	To authorize the transportation in commerce of IM-101 portable tanks equipped with alternative relief valve for use in transporting Class 3 material. (modes 1, 3)
12391-N	RSPA-1999-6617	Airgas Mgmt., Inc., Cheyenne, WY.	49 CFR 172.203(a), 173.34(e)(16), 173.34(e)(16)(i)(A).	To authorize the transportation in commerce of certain Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA, and ICC 3, 3A or 3AA cylinders manufactured on or before December 31, 1945, and which have been retested at least every 10 years. (modes 1, 2, 3, 4, 5)
12392-N	RSPA-1999-6621	Consani Engineering, Elsie's River, SA.	49 CFR 178.245	To authorize the transportation in commerce of non-DOT specification steel portable tanks permanently fixed within ISO frames, which are similar to DOT 51 portable tanks for use in transporting all hazardous materials presently authorized. (modes 1, 2, 3)
12395-N	RSPA-1999-6674	Pennzoil-Quaker State Company, Houston, TX.	49 CFR 173.306	To authorize the transportation in commerce of overpressurized 2P cans improperly filled with tire inflator product. (mode 1)

[FR Doc. 99-33215 Filed 12-21-99; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

December 14, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

**Departmental Offices/International
Trade Data System Project Office**

OMB Number: 1505-0162.

Form Number: CF-3461, CF-3461 ALT, CF-7501, CF-7512, CF-7533 ad FDA701.

Type of Review: Extension Title: International Trade Data System (formerly North American Trade Automation Prototype Data).

Description: The requested data is from volunteer trading community participants in the pilot test to improve the electronic exchange of data among traders and to the Federal Government for international commercial trade transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Burden Hours Per

Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Lois K. Holland (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99-33144 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

December 14, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

**Departmental Offices/International
Portfolio Investment Data Systems/
Office of Program Services**

OMB Number: 1505-0016.

Form Number: International Capital Form BQ-1, Parts 1 and 2.

Type of Review: Extension.

Title: Treasury International Capital Form BQ-1, Part 1: Reporting Banks' Own Claims, and Selected Claims of Broker or Dealer, on Foreigners; and Part 2: Domestic Customers' Claims on Foreigners Held by Reporting Bank, Broker or Dealer, Denominated in Dollars.

Description: Form BQ-1 is required by law and is designed to collect timely information on international portfolio capital movements, including claims of U.S. persons on foreigners. This information is necessary for compiling the U.S. balance of payments, for calculating the U.S. international investment position, and for formulating U.S. financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per

Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 9,600 hours.

Clearance Officer: Lois K. Holland (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99-33145 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

December 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510-0067.

Form Number: FMS 5902 and 5903.

Type of Review: Extension.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement (FMS 5902); and, Depositary, Financial Agency, and Collateral Agreement (FMS 5903).

Description: Financial Institutions are required to complete an Agreement and Resolution to become a depositary of the Government. The approved applications designate the depositary as an authorized recipient of deposits of public money and to perform other services.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Burden Hours Per

Respondent: 30 minutes.

Frequency of Response: Other (one-time application).

Estimated Total Reporting Burden: 7 hours.

OMB Number: 1510-0073.

Form Number: FMS-111.

Type of Review: Extension.

Title: Financial Agency Agreement.

Description: This information collection is necessary to acquire data from financial institutions on the number of accounts Electronic Transfer Accounts (ETAsSM) on a month basis.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 36,000 hours.

Clearance Officer: Jacqueline R. Perry (301) 344-8577, Financial Management Service 3361-L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99-33146 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-35-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 14, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.

Form Number: PD F 5410.

Type of Review: New collection.

Title: Application for Refund of Purchase Price of United States Savings Bonds for Organizations.

Description: PD F 5410 is used by an organization to request refund of purchase price of United States Savings Bonds.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 500 hours.

Clearance Officer: Vicki S. Thorpe (304) 480-6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106-1328.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99-33147 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-40-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 21, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1356.

Regulation Project Number: REG-248770-96 Final.

Type of Review: Extension.

Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Description: The regulations provide guidance with respect to the recovery of administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Procedures that must be followed to recover such costs are set forth.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.

Estimated Number of Respondents: 38.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 86 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244,

1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99-33148 Filed 12-21-99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[ATF Order 1130.15]

Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275 and 296

1. *Purpose.* This order delegates certain of the authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents. Specifically, this order specifies the appropriate ATF officers that are designated in Treasury Decision ATF____, which revised sections of Parts 270, 275 and 296 of Title 27 of the Code of Federal Regulations (CFR).

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to tobacco products and cigarette papers and tubes. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120-1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701-9, this ATF order delegates certain authorities to take final action prescribed in certain sections of Parts 270, 275 and 296 of Title 27 CFR to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom documents required by certain sections of Parts 270, 275 and 296 of Title 27 CFR, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates and the positions involved in this delegation order has been attached.

John W. Magaw,

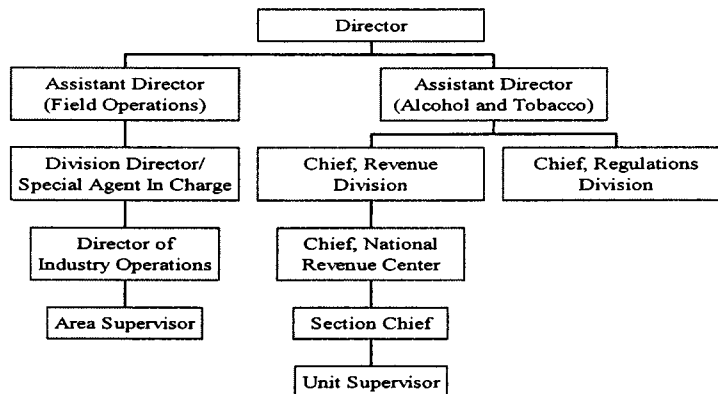
Director.

Attachment—Table and Chart

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
§ 270.22(b)(1)	Chief, Regulations Division.
§ 270.22(b)(2)(C)	Unit Supervisor, National Revenue Center.
§ 275.181(d)	Area Supervisor.
§ 296.77	Unit Supervisor, National Revenue Center.

ATF Organization



This is not a complete organizational chart of ATF.

[FR Doc. 99-33173 Filed 12-21-99; 8:45 am]
BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Fiscal Service

**Renegotiation Board Interest Rate;
Prompt Payment Interest Rate;
Contract Disputes Act**

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

ACTION: Notice.

SUMMARY: For the period beginning
January 1, 2000 and ending on June 30,
2000 the prompt payment interest rate
is 6.75 per centum per annum.

ADDRESSES: Comments or inquiries may
be mailed to Eleanor Farrar, Team
Leader, Debt Accounting Branch, Office
of Public Debt Accounting, Bureau of
the Public Debt, Parkersburg, West
Virginia, 26106-1328. A copy of this
Notice will be available to download

from the [http://
www.publicdebt.treas.gov](http://www.publicdebt.treas.gov).

DATES: This notice announces the
applicable interest rate for the January 1,
2000 to June 30, 2000 period.

FOR FURTHER INFORMATION CONTACT:
Stephanie Brown, Debt Accounting
Branch Manager, Office of Public Debt
Accounting, Bureau of the Public Debt,
Parkersburg, West Virginia, 26106-1328,
(304) 480-5181, Eleanor Farrar, Team
Leader, Debt Accounting Branch, Office
of Public Debt Accounting, Bureau of
the Public Debt, (304) 480-5166,
Edward C. Gronseth, Deputy Chief
Counsel, Office of the Chief Counsel,
Bureau of the Public Debt, (304) 480-
3692, or Robin E. Dunlop, Attorney-
Adviser, Office of the Chief Counsel,
Bureau of the Public Debt, (304) 480-
3698.

SUPPLEMENTARY INFORMATION: Although
the Renegotiation Board is no longer in
existence, other Federal Agencies are
required to use interest rates computed
under the criteria established by the

Renegotiation Act of 1971 Sec. 2, Pub.L.
92-41, 85 Stat. 97. For example, the
Contract Disputes Act of 1978 Sec. 12,
Pub.L. 95-563, 92 Stat. 2389 and the
Prompt Payment Act of 1982 Sec. 2,
Pub.L. 97-177, 96 Stat. 85 provide for
the calculation of interest due on claims
at a rate established by the Secretary of
the Treasury pursuant to 31 U.S.C.
3902(a).

Therefore, notice is given that, the
Secretary of the Treasury has
determined that the rate of interest
applicable, for the period beginning
January 1, 2000 and ending on June 30,
2000, is 6.75 per centum per annum.
This rate is determined pursuant to the
above mentioned sections for the
purpose of said sections.

Dated: December 17, 1999.

Donald V. Hammond,
Fiscal Assistant Secretary.

[FR Doc. 99-33135 Filed 12-17-99; 12:30
pm]

BILLING CODE 4810-39-P

Corrections

Federal Register

Vol. 64, No. 245

Wednesday, December 22, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00-6-000]

Gulfstream Natural Gas System, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Gulfstream Pipeline Project, Request for comments on Environmental issues, and Notice of Public Scoping Meetings and Site Visit

Correction

In notice document 99-32008 beginning on page 69253 in the issue of Friday, December 10, 1999, make the following corrections:

1. On page 69253, in the first column, the subagency name should appear as noted above.

2. On the same page, in the same column, the docket line should appear as noted above.

[FR Doc. C9-32008 Filed 12-21-99; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6478-8]

RIN 2060-AG91

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT)

Correction

In rule document 99-30229, beginning on page 63702, in the issue of Monday, November 22, 1999, make the following correction:

Table 5. To § 63.1103(d)-[Corrected]

On page 63707, in Table 5 to § 63.1103(d), in the second column, in the first line "≥5" should be added after "contacts".

[FR Doc. C9-30229 Filed 12-21-99; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42189; File No. SR-CHX-99-12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. To Modify the Recommended Fine Schedule for the Submission of Late Financial and Operational Reports

Correction

In notice document 99-31786, beginning on page 68709, in the issue of

Wednesday, December 8, 1999, make the following correction:

On page 68710, in the first column, under the heading **III Discussion**, in the first line, remove the number "1" before the word "After".

[FR Doc. C9-31786 Filed 12-21-99; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42195; File No. SR-OCC-99-09]

Self-Regulatory Organizations the Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend OCC's By-Laws and Rules to Merge the Currently Separated Equity and Non-Equity Elements of the OCC's Clearing Fund

December 1, 1999.

Correction

In notice document 99-31785, beginning on page 68712, in the issue of Wednesday, December 8, 1999, make the following correction:

On page 68712, in the first column, the date line is added to read as set forth above.

[FR Doc. C9-31785 Filed 12-21-99; 8:45 am]

BILLING CODE 1505-01-D

Registered
Patent
Lawyer

Wednesday
December 22, 1999

Part II

Consumer Product Safety Commission

16 CFR Parts 1145 and 1212

Safety Standard for Multi-Purpose
Lighters; Final Rule

Rule to Regulate Under the Consumer
Product Safety Act Risks of Injury
Associated With Multi-Purpose Lighters
That Can Be Operated by Children; Final
Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues performance requirements for the child resistance of multi-purpose lighters. These requirements address unreasonable risks of injury and death associated with multi-purpose lighters that can be operated by children under age 5. Multi-purpose lighters are hand-held flame-producing products that operate on fuel and have an ignition mechanism. They typically are used to light devices such as charcoal and gas grills and fireplaces. Devices intended primarily for igniting smoking materials are excluded; many such products are already subject to a child-resistance standard at 16 CFR Part 1210.

DATES: The rule will become effective December 22, 2000 and apply to multi-purpose lighters manufactured in the United States or imported on or after that date.

ADDRESSES: Copies of documents relevant to this rulemaking can be obtained from the Commission's Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207-0001, Telephone (301) 504-0800, fax (301) 504-504-0127, e-mail cpssc os@cpssc.gov.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0477, ext. 1368; e-mail mbogumill@cpssc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. *The product.* Multi-purpose lighters are defined in § 1212.2(a)(1) of the rule issued below as follows:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, etc.) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

Most multi-purpose lighters have an extended nozzle from which the flame is emitted. The nozzle is typically four to eight inches in length, but can be longer or shorter. Some multi-purpose lighters include a burner that operates at a higher flame temperature than other multi-purpose lighters. These lighters are sometimes referred to as micro-torches. Most micro-torches do not have extended nozzles, but have relatively long, thin, and steady flames that can be directed to their targets. Some micro-torches may have a control that allows the lighter to remain lit after the user lets go of the lighter. This, in conjunction with a stable base or stand, allows hands-free operation of the lighter during operations such as soldering.

Most multi-purpose lighters use butane fuel. The more expensive multi-purpose lighters are refillable. Many of the less expensive Asian imports are also refillable.

Multi-purpose lighters are operated by applying pressure to a trigger, button, or sliding mechanism. This action releases the fuel and activates a spark at the end of the nozzle that ignites the fuel. Because the fuel must travel from the reservoir, usually located in the handle, to the end of the nozzle, the spark is sometimes activated before the fuel reaches the end of the nozzle. When this happens, the fuel will not be ignited. Users of multi-purpose lighters sometimes have to make more than one ignition attempt before successfully producing a flame. Some higher-priced multi-purpose lighters overcome this problem by using a battery that causes a spark to be continuously generated. This is less of a problem with micro-torch lighters because they do not have a long nozzle.

Most multi-purpose lighters now sold include some type of on/off switch. Usually, this is a two-position slider-type switch that must be in the "on," or unlocked, position before the lighter can be activated.

2. *Procedural background.* On July 12, 1993, the Commission published a consumer product safety standard that requires disposable and novelty cigarette lighters to have a child-resistant mechanism that makes the

lighters difficult for children under 5 years old to operate.¹ 16 CFR 1210. The cigarette lighter standard excludes lighters that are primarily intended for igniting materials other than cigarettes, cigars, and pipes.

In February 1996, Judy L. Carr petitioned the Commission to "initiate Rulemaking Proceedings to amend 16 CFR 1210 *Safety Standard for Cigarette Lighters* to include the Scripto® Tokai Aim 'n Flame™ disposable butane 'multi-purpose' lighter within the scope of that standard and its child resistant performance requirements."

On May 7, 1996, the Commission published a **Federal Register** notice soliciting comments on topics related to issues raised by the petition. 61 FR 20503. After considering the comments received in response to that notice and the other available information, the Commission granted the petition.

On January 16, 1997, the Commission commenced a rulemaking proceeding by publishing an advance notice of proposed rulemaking (ANPR) in the **Federal Register**: 62 FR 2327. The ANPR solicited comments on the risks of injury and death associated with multi-purpose lighters, the regulatory alternatives, and the economic impacts of the regulatory alternatives. The Commission also invited interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the identified risks.

On January 8, 1998, the Commission published a **Federal Register** notice extending the period for issuing a notice of proposed rulemaking until September 30, 1998. 63 FR 1077. This extension was required so the staff could complete the technical work necessary for a Commission decision on whether to issue a proposed rule.

On September 30, 1998, the Commission published a notice of proposed rulemaking (NPR) that proposed a safety standard to address the risk of death and injury associated with multi-purpose lighters that could be operated by children under age 5. 63 FR 52397. This notice extended the period for issuing a final rule or withdrawing the NPR until June 30, 1999.

Also on September 30, 1998, the Commission published a **Federal Register** notice proposing a rule finding that it is in the public interest to issue a standard, or take other regulatory action on multi-purpose lighters, under the Consumer Product Safety Act (CPSA). Elsewhere in today's issue of

¹ 58 FR 37554. The standard became effective July 12, 1994.

the **Federal Register**, the Commission issues a final rule, under Section 30(d) of the CPSA, making this determination.

On October 29, 1998, the staff sent a copy of the proposed safety standard, with a cover letter outlining the Commission's action, to small importers and manufacturers that could be subject to the standard. The letter invited interested parties to submit comments during the comment period.

On January 20, 1999, the Commission met so interested parties could present oral comments. Mr. Don Cooke, Attorney at Law; Dr. Carol Pollack-Nelson, President, Independent Safety Consulting; and Mr. David Baker, General Counsel of the Lighter Association, Inc. presented oral comments at that meeting.

On August 4, 1999, the Commission published a **Federal Register** notice proposing that the child-panel tests be conducted with the lighter on/off switch in the "on," or unlocked, position, instead of in the "off," or locked, position as originally proposed. 64 FR 42302. This change in the test procedure would protect children in situations where the users of the lighters do not return the switch to the "off" position after use. The comment period closed on October 18, 1999. The notice provided an opportunity for oral comments on the proposed change to be presented on September 15, 1999. The Commission received one written comment and no requests for presentation of oral comments. The notice also extended the time for issuing a final rule or withdrawing the NPR until December 31, 1999.

B. Incident Data

Overall, the Commission's staff has identified a total of 340 fires occurring from January 1, 1988, through October 15, 1999, that were reportedly started by children playing with multi-purpose lighters. These fires caused 65 deaths and 138 injuries. For the incidents where the age of the fire starter was known, children under age 5 ignited 237 of these fires, which resulted in 45 deaths and 103 injuries. Twenty-eight of the 45 fatalities were children younger than age 5.

In addition to the fatalities, these fires resulted in severe injuries. Among the fires caused by children younger than age 5, four surviving children received burns over 70% or more of their bodies. These burns will require extensive long-term treatment.

The high proportion of fatalities that were children younger than age 5, and the severity of the injuries, illustrate the hazard associated with children playing with multi-purpose lighters. Because the

data are incidents reported to CPSC rather than national estimates, the full extent of the problem may be greater.

Many of the children found the multi-purpose lighters in easily accessible locations, such as on kitchen counters or furniture tops. Others, however, obtained the lighters from more inaccessible locations, such as high shelves or cabinets, where parents tried to hide them.

C. Description of the Final Standard

1. Scope and Definition

Multi-purpose lighters subject to the standard are also known as grill lighters, fireplace lighters, utility lighters, micro-torches, or gas matches. The rule's definition of multi-purpose lighters is given in Section A of this notice. Both refillable and non-refillable lighters are covered, regardless of their cost.

2. Requirements

Most of the provisions of the standard are essentially the same as the Safety Standard for Cigarette Lighters, including a required child resistance of 85%. The child resistance of a multi-purpose lighter would be determined by tests using panels of children. To avoid harming the children in the test panels, the lighters used for the tests are modified so they will not produce a flame when operated. Rather, the lighters are modified (if necessary) to produce a signal that can be seen or heard when the lighter is operated in a manner that would produce a flame in a production lighter. The child-resistant mechanism would be required to: operate safely when used in a normal and convenient manner, comply with the rule's requirements for the reasonably expected life of the lighter, and not be easily deactivated or prevented from complying with the rule's requirements.

The child-resistant mechanisms in multi-purpose lighters must reset automatically, either (1) after each operation of the lighter or (2) after multiple operations but when or before the user lets go of the lighter. This differs from the Safety Standard for Cigarette Lighters, which requires the child-resistant mechanism to reset after each operation. Some multi-purpose lighters, however, allow the lighter to remain lit after it is released by the user. This can allow hands-free operation during operations such as soldering. To address the child-resistance issue with respect to lighters that have this hands-free feature, the rule contains two requirements that are not in the cigarette lighter standard.

The first additional requirement (§ 1212.3(b)(2)) will help prevent the dangerous situation where a child who operates the child-resistant mechanism and lights the lighter could create a flame that would not go out when the lighter is released, even if it is dropped. The rule specifies that, after the lighter is lit, an additional manual operation must be performed to activate any feature that allows the lighter to burn without being held by the user.

The second additional requirement is that a lighter that remains lit after it is released need not return automatically to the child-resistant condition when it is released. It must automatically reset, however, when or before the user lets go of the lighter after turning off the flame.

3. Recordkeeping and Reporting Requirements

The final standard has recordkeeping and reporting requirements that will allow the staff to ensure that lighters comply. The standard also requires manufacturers and importers to provide a certificate of compliance to any distributor or retailer to whom the lighters are delivered.

4. Anti-Stockpiling Provisions

The final rule contains anti-stockpiling provisions to prohibit excessive production or importation of noncomplying lighters during the 12-month period between the final rule's publication and its effective date. The provision limits the production or importation of noncomplying products to 120% of the amount produced or imported in the 1-year period before the publication of the rule. To help assure compliance, manufacturers or importers must provide supporting information to CPSC to establish the number of lighters made or imported during the base period. They must also report shipments of non-child-resistant lighters to CPSC within 10 days after the end of each calendar month during the anti-stockpiling period.

5. Effective Date

The final rule will become effective [insert date that is 12 months after publication] (12 months after it is published), and will apply to all multi-purpose lighters manufactured in, or imported into, the United States on or after that date. Based on its experience with the Safety Standard for Cigarette Lighters, the Commission concludes that this will provide firms with sufficient time to design child-resistant multi-purpose lighters and bring them to market. The Commission is aware of one such lighter already on the market,

and additional lighters are in the final stages of development and testing.

D. Statutory Authority for This Proceeding

Three of the statutes administered by the Commission have at least some relevance to the risk posed by non-child-resistant multi-purpose lighters. These are the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084; the Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–1476; and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278. The Commission has decided to use the authority of the CPSA to issue the standard for the child resistance of multi-purpose lighters. A full explanation of the Commission's reasons for that decision is published in this issue of the **Federal Register** in a notice, under Section 30(d) of the CPSA, that issues a rule determining that it is in the public interest to regulate this risk under the CPSA, rather than the FHSA or the PPPA. 15 U.S.C. 2079(d).

E. Discussion of Comments on the Proposed Standard

The Commission received 23 written comments on the proposed standard. Three individuals presented oral comments to the Commission on January 20, 1999. Copies of all comments and a transcript of the January 20, 1999, public hearing are available from the Office of the Secretary. The major issues raised in the comments and the Commission's responses are discussed in this section.

Overall Description of Comments

The American Academy of Pediatrics wrote in support of the Commission's action to require multi-purpose lighters to be child-resistant, stating that in addition to the quantitative benefits, the rule will reduce the pain and heartache that result from the death and injury caused by children playing with multi-purpose lighters.

The Executive Director of the National Fire Protection Association Center for High-Risk Outreach wrote in support of CPSC's efforts to reduce the number of deaths and injuries associated with children playing with fires. She stated that preschool age children are at more than twice the risk of fire death than the population at large. She also commented on the August 4, 1999, **Federal Register** notice that proposed a change to the test protocol.

Douglas Lant, Chairman of the British Standards Institute Technical Committee on Matches and Lighters, wrote in support of the Commission's action. He stated that the European

Standards Organization (CEN) was considering improvements to the Lighter Standard for Europe, including requirements for child-resistance.

The Chairman of the Coalition for Consumer Health & Safety wrote to urge the Commission to publish a final rule on multi-purpose lighters. This organization is a partnership of consumer, health, and insurer groups working to educate the public and to identify and promote policy solutions to a broad range of health and safety threats.

The Lighter Association, Inc. (Lighter Association), and several member firms, BIC Corporation (BIC), The Colibri Group, Scripto-Tokai Corporation (Scripto), Zippo Manufacturing Company (Zippo), and Swedish Match, wrote in general support of child-resistance for multi-purpose lighters but requested that the Commission address certain concerns about the definition and requirements for multi-purpose lighters (discussed below).

Several small firms, Donel, Inc. (Donel), SNC Group, and Zelco Industries, Inc. (Zelco), commented that a standard for multi-purpose lighters would have adverse impacts on small businesses because of the expense of developing and certifying a child-resistant design and because some manufacturers have already applied for, or obtained, broad patents that limit the number of design options. These firms asked the Commission for relief, either in the form of funding to offset their development and testing expenses or in the form of an extension of the effective date of the rule.

Blazer Corporation, a company that specializes in the distribution of micro-torches, wrote that it agrees in principle that lighters likely to be handled by children should be child-resistant. It also expressed concern that the definition of multi-purpose lighters would include micro-torches used by professionals.

Vinson & Elkins, the law firm that filed the original petition on behalf of Judy L. Carr, and four other law firms, Joseph P. Moschetta and Associates, McDermott and Hansen, Don Cooke, and Sugarman and Sugarman, P.C., provided information on incidents involving multi-purpose lighters. Mr. Cooke appeared before the Commission at the January 20, 1999, meeting to present information about a fire started by a two-year-old boy with a multi-purpose lighter that resulted in the death of the child and his mother. Another 4-year-old child was severely injured in the fire.

Independent Safety Consulting presented comments about children's

fire knowledge and attraction to fire and lighters, parental perceptions regarding the hazard and storage of lighters, parental supervision, and the appropriateness of a warning label as a hazard avoidance strategy.

Ms. Lorraine Daly and Ms. Eve Mallett, both consumers, questioned the need for child resistance for products in homes without small children.

Milford Consulting Associates, a testing agency with experience testing child-resistant packaging, cigarette lighters, and multi-purpose lighters, requested certain changes to the procedures for evaluating the child-resistance of multi-purpose lighters.

Particular issues that the comments raised are discussed below.

1. Issue: Effectiveness of the Cigarette Lighter Standard

Scripto stated that there are insufficient data to conclude that the Cigarette Lighter Standard has proven effective in reducing the number of child-play fire losses associated with lighters.

Response: National fire loss estimates show a reduction in the number of estimated residential structure fires caused by children playing with all types of lighters. This reduction is occurring in spite of the fact that these estimates include fires started with multi-purpose lighters (which are not subject to a standard) and fires started by children 5 years old and older (who are older than the children addressed by child-resistant features). The estimated number of lighter child-play fires decreased from 10,600 in 1994, the year the cigarette lighter standard took effect, to 7,200 in 1996. During the same period, estimated deaths decreased from 230 to 130 and estimated injuries decreased from 1,560 to 1,090 (Ault, K., Singh, H., & Smith, L., "1996 Residential Fire Loss Estimates," 10/15/98). Comparing 1996 to 1994, there was a greater percentage reduction in child-play lighter fires (32%) than the reduction in residential structure fires overall (5%). The Commission believes this reduction indicates that child-resistant cigarette lighters are preventing child-play fires. Because there was also a reduction in child-play fires started with matches, other factors, such as fire safety education or general improvements in fire safety (e.g., use of smoke detectors), are also likely to have contributed to the decrease. However, the reduction for child-play lighter fires (32%) is greater than the reduction for child-play match fires (21%). The Commission believes that the available information supports the conclusion that the Safety Standard for Cigarette

Lighters is effective in reducing child-play fires started by children under age 5 with lighters. The Commission expects child-play lighter fires to continue to decline.

Even if these data were not available, the Commission would be justified in issuing the standard. The Commission has estimated the effectiveness of the standard based on test results with children, as it did in issuing the cigarette lighter standard. As discussed in Section H of this notice, the rule is expected to reduce the number of child-play fires associated with multi-purpose lighters by at least 75%.

2. Issue: Relative Risk of Injury

Swedish Match commented that the Commission provided no data to show relative risk rates between matches and non-child-resistant multi-purpose lighters. Zelco commented that the number of fires resulting from matches is surely higher than those from multi-purpose lighters, yet matches are specifically excluded from the rule. Scripto recommended that the CPSC vigorously pursue regulatory action on matches. It stated that the societal benefits of regulating matches would far exceed those of regulating multi-purpose lighters.

Response: Comparisons between child-play fires with matches and with multi-purpose lighters are not valid, because they largely involve children of different age groups. A study of 551 juvenile fire setters conducted in Portland, Oregon, found that use of matches by children younger than age 5 was rare, but was relatively common among children of ages 6 to 11 (Porth, 1999). This is consistent with the differences in motor development for the two age groups. Using a match requires two-hand coordination, a combination of force and precision, and the control to maintain a flame long enough to light something. These factors make it a challenging task for a 3- or 4-year-old child, but much less so for older children. In short, regulating matches would have little impact on child-play fires involving children under 5. Further, the overlap in the abilities of elementary school children and adults makes it impractical to modify the design of matches so they cannot be used by older children.

In contrast, based on CPSC incident data for the period January 1, 1988, through October 15, 1999, about 70 percent of the fires started with multi-purpose lighters were started by children under 5. These fires could be effectively reduced by a requirement that multi-purpose lighters be child-resistant. In baseline testing with

children 42 to 51 months of age, the child-resistance of current multi-purpose lighters ranged from 4 to 41 percent. The standard would increase the level of child-resistance to a minimum of 85 percent. The feasibility of making lighters child-resistant, yet acceptable to adults, has been demonstrated by the experience with the Safety Standard for Cigarette Lighters.

In any event, the fact that the Commission might investigate or regulate other products, which present their own feasibility and cost-benefit issues, does not counsel against action on multi-purpose lighters.

3. Issue: Definition of Multi-Purpose Lighters

a. *Exclude high-end multi-purpose lighters.* Zelco commented that the scope should be narrowed to exclude higher-end multi-purpose lighters.

Response: The Safety Standard for Cigarette Lighters excluded luxury lighters (customs or ex-factory value greater than \$2.00) because they differed from disposable cigarette lighters in certain characteristics affecting risk. The staff stated that because of their cost, consumers would be less likely to leave luxury cigarette lighters in household locations accessible to young children.

Unlike luxury cigarette lighters, the more expensive multi-purpose lighters are as likely to be involved in child-play fires as the less expensive models because they are stored and used in the same manner. In fact, some of the more expensive multi-purpose lighters are relatively large and may be more difficult to store out of the reach of children. At least one expensive multi-purpose lighter is appropriate for display near the fireplace.

In addition, luxury cigarette lighters often have unusual ignition mechanisms that may be difficult for young children to operate. In the case of multi-purpose lighters, most ignition mechanisms are similar and easy for young children to operate. Multi-purpose lighters are activated by applying pressure to a trigger or button, which initiates fuel flow and causes a spark. Baseline testing indicates that one expensive lighter is as easy for children to operate as less expensive models.

Therefore, the Commission concludes that excluding the more expensive lighters would reduce the benefits of a rule for multi-purpose lighters.

b. *Exclude micro-torch lighters.* Both the Lighter Association and Swedish Match question the inclusion of micro-torch lighters within the scope of the rule because they do not consider micro-torches to be comparable to the

grill-type or "utility" multi-purpose lighters. The commenters argued that micro-torches are more suited for use in activities such as soldering, welding, heat shrinking, and household repairs.

The Lighter Association, Swedish Match, and The Colibri Group suggested that the term "micro-torch" be deleted in order to prevent lighters primarily intended for igniting smoking materials from being incorrectly identified as multi-purpose lighters.

Blazer Corporation, a company that specializes in the distribution of micro-torches, expressed concerns that the broad definition of multi-purpose lighter in the proposed rule may be interpreted to apply to micro-torch products used by professional tradesmen or in industrial settings.

Response: The Commission considers micro-torches comparable to other types of multi-purpose lighters. As stated in the proposal, "micro-torches" are marketed for multiple purposes that overlap those of "grill" or "utility" lighters (e.g., lighting fireplaces, camp fires, barbecues, camp stoves, etc.). All types of multi-purpose lighters are likely to be used and stored in the home in locations accessible to young children. For example, there is an incident where a child under the age of 5 started a fire with a micro-torch. It appears the child found the lighter near a gas furnace where it was used to light the pilot light.

The Commission clarified the definition of multi-purpose lighters to specifically exclude devices intended primarily for igniting smoking materials, whether or not they are subject to the requirements of the Safety Standard for Cigarette Lighters.

Regarding Blazer Corporation's concern about the application of a safety standard for micro-torch lighters to products used by professional tradesmen or in industrial settings, products intended and sold only for professional or industrial use would not be subject to a rule promulgated under the CPSA. 15 U.S.C. 2052(a)(1). If, however, a particular micro-torch model was advertised in general-circulation media (e.g., consumer magazines, catalogs, newspapers, television programs, consumer-oriented Internet web sites, etc.), or was sold in hardware or other stores open to the general public, it would be considered a consumer product subject to the standard. Therefore, if Blazer's products are available to consumers, they will need to comply with the rule.

c. *Define multi-purpose lighters on the basis of length.* The Lighter Association recommended alternative language that would define multi-purpose lighters as

"a hand-held, flame producing device, * * * four inches or greater in length when in the fully extended position * * *." It maintained that the obvious distinguishing characteristic of a grill lighter is the length of the product, which is designed to "reach over fire or into inaccessible places." Zippo also supported a dimensional limitation.

Response: The Commission did not use length to define multi-purpose lighters. There are micro-torch designs that are less than 4 inches long. The hotter, directional flame of a micro-torch compensates to an extent for its shorter nozzle, making it useful for many of the same purposes as "grill" lighters. CPSC staff members found micro-torches convenient to use for lighting a gas grill, a gas stove burner, candles, and a water heater pilot light. Other types of multi-purpose lighters could also be designed to be under 4 inches in length and still be functionally equivalent to longer lighters.

d. *Specify the type of fuel used by multi-purpose lighters.* The Lighter Association and Zippo supported including only those lighters that use a gaseous fuel. Both indicated that it is not technologically or commercially feasible to create a utility lighter that uses liquid fuel. The Lighter Association states that they believe no liquid-fuel utility lighters are produced anywhere in the world and question the Commission's authority to regulate products that do not exist.

Response: As proposed, a multi-purpose lighter was defined as a "flame-producing product that operates on fuel." There is no reference to any specific type of fuel, liquid or otherwise. The Commission concludes that any lighter that is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, and the like should be required to be child-resistant, regardless of the type of fuel, since these lighters would all present the same risk.

e. *Change the words "self-igniting" to "manually operated."* The Lighter Association recommended changing "self-igniting" in the definition of multi-purpose lighter to "manually operated ignition mechanism" since the term "self-igniting" is not accurate because some action is required to ignite a lighter.

Response: The Commission agrees that the term "self-igniting" is imprecise. Therefore, the Commission revised the definition of multi-purpose lighters in the final rule to read "A hand-held, flame-producing product that operates on fuel [and] incorporates an ignition mechanism. * * *"

f. *Delete the exclusion for lighters with more than 10 ounces of fuel.* The Lighter Association, BIC, and Scripto objected to the exclusion of multi-purpose lighters that contain more than 10 ounces of fuel. They question the basis for this exclusion and express concern that an arbitrary cut-off invites the introduction of products that will fall outside of the scope of the rule. The Lighter Association and BIC state that there should be no limit on the amount of fuel because there are lighter attachments sold without any fuel or fuel reservoir that work with any quantity of fuel. In support of this argument, they provided a lighter attachment, with an ignition mechanism, that accommodates a 14.1 ounce propane cylinder.

Response: The final rule continues to exclude lighters that contain more than 10 ounces of fuel. As the Lighter Association recognized in its comments, this provision's purpose is to distinguish multi-purpose lighters from large propane torches, which are also used for soldering and brazing. Most multi-purpose lighters contain less than 2 ounces of fuel. A lighter with a fuel capacity of more than 10 ounces would be quite large—on the order of 3 inches in diameter by 7 inches high. Such a lighter would not be convenient for the typical uses of the lighters within the scope of the final rule. Therefore, such lighters would not likely be stored in the same locations as the smaller lighters that have been involved in child-play fires, and thus may not present the same risks.

A lighter mechanism designed to accommodate a fuel cylinder with a capacity of 10 ounces or less would clearly be subject to the requirements of the final rule. The mechanism cannot function as a multi-purpose lighter without a fuel source being attached. This is true whether the attachment is sold with or without a fuel cylinder. For example, there are currently micro-torch multi-purpose lighters that utilize disposable butane cigarette lighters as the fuel source. Some of these micro-torches are sold with the cigarette lighter and some are sold without the cigarette lighter. Both products would be subject to the requirements for child-resistance.

4. *Issue: The Proposal to Require Multiple Operation Capability is Design-Restrictive*

The Lighter Association, BIC, Scripto, Zippo, Swedish Match, and SNC Group strongly opposed the requirement that a multi-purpose lighter must allow multiple operations of the ignition mechanism (§ 1212.3 (b)). They

characterize this provision as a design requirement that would reduce competition by narrowing the scope of complying designs and would result in wasteful patent disputes. The Lighter Association and SNC Group indicate that, as proposed, this requirement essentially mandates a design that is currently marketed by a single company. BIC reported that they have patent applications pending in the United States and in countries around the world for a multi-purpose lighter that allows for multiple operations of the ignition mechanism. BIC commented that finalizing the requirement as proposed would invite multiple patent infringement suits and severely hinder the design and implementation of creative child-resistant mechanisms. Scripto provided a test method for evaluating the lighting reliability of a lighter. The Lighter Association proposed alternative language that they believe would not limit design options.

Response: The Commission acknowledges that the multiple-operation requirement is design restrictive. For example, designs for child-resistant lighters that did not increase the risk of flashback hazard because they had a high degree of lighting efficiency and would light on the first try, but did not allow for multiple operations of the ignition mechanism, would not have been allowed.

The Commission proposed the requirement for multiple operations in response to a concern raised by Scripto and the Lighter Association that adding a child-resistant feature that resets after each operation of the ignition mechanism would create the potential for flashback in situations such as igniting a gas grill. Flashback in this context is the sudden ignition of excess fuel that has accumulated while the user is trying to light the device to be used to ignite the fuel. This is largely due to the inherent unreliability of some multi-purpose lighters to ignite with each operation of the ignition mechanism. With designs that allow multiple operation attempts before the child-resistant mechanism resets, the lighting efficiency of a child-resistant multi-purpose lighter should be essentially the same as that of the non-child-resistant lighters currently in use. Scripto's suggested lighting efficiency test was rejected because of insufficient data to show that the test represented the conditions under which consumers would use the lighters.

The central issues concerning this risk of flashback are:

1. Would a child-resistant mechanism that resets after each operation, and thus must be manipulated again before another ignition attempt can be made, delay successful ignition of a gas appliance to the extent that a flashback would result when the lighter finally ignites?

2. And if so, would the flashback have the potential to produce a serious burn injury?

The Directorate for Laboratory Sciences (lab), Division of Engineering (LSE), conducted a number of tests using gas-fired grills. The testing was conducted to determine the duration of "delayed ignition" that could be permitted without resulting in a "flashback" that could cause a serious burn injury.

Preliminary tests were conducted with three sizes of grills. The lab found that the smallest grill presented the worst-case condition. When the accumulated propane gas was ignited in the shallow well of the smallest grill, the resulting flashback reached the highest level above the cooking surface of the three grills tested. The lab used cheesecloth sleeves to determine whether clothing would ignite as a result of the flashback. The lab found that allowing the propane gas to accumulate for 20 seconds could result in a flashback that would ignite the cheesecloth sleeve. The sleeve did not ignite with a 15-second accumulation of gas.

The lab conducted 15 additional tests using the smallest grill. The gas was turned on and allowed to accumulate for 15 seconds before ignition. The tests were conducted with the cheesecloth sleeves touching the cooking surface of the grill directly above the ignition point. The cheesecloth sleeves did not ignite. Videotapes of the testing showed that the duration of the flashback events ranged from 0.6 to 1.1 seconds.

The Directorate for Health Sciences used the laboratory test results and information from the published literature on flash fires to evaluate the potential for serious burn injury. Health Sciences concluded that exposure to a very short duration flashback from propane fuel is unlikely to cause serious injury (i.e., second- or third-degree burns). Furthermore, the Division of Human Factors concluded that the actual exposure to the flashback would be even shorter than the measured duration because of the user's normal reflex to withdraw from the flashback. A shorter period of exposure would further reduce the potential for injury.

The Directorate for Engineering Sciences, Division of Mechanical Engineering (ESME), tested six brands of

non-child-resistant multi-purpose lighters to determine the number of times a consumer might need to operate the ignition mechanism to produce a flame. In 50 of 53 trials, a flame was obtained in 5 or fewer attempts and, in 47 of 53 trials, in 3 or fewer attempts. The number of attempts averaged less than 3 for all brands of lighters.

The Division of Human Factors conducted a study to determine if users are capable of operating child-resistant lighters that reset after each operation at least 5 times within 15 seconds. Disposable child-resistant cigarette lighters were used for this study because, at that time, the staff was not aware of any multi-purpose lighters with child-resistant mechanisms that reset after each operation attempt. For the 7 lighters tested, the minimum number of operations achieved in 15 seconds ranged from 4 to 8. The maximum ranged from 14 to 24 operations. In most of the trials (195/209), the subjects operated the lighters 6 or more times.

The Directorate for Epidemiology, Division of Hazard Analysis, reviewed the incident data on flashback incidents associated with igniting gas appliances such as ranges, grills, water heaters, etc. The NEISS data from 1996–1998 indicated that, of the estimated 1,500 victims treated each year for burn injuries related to flashback, the majority were treated and released. About 8% of the injuries required hospitalization. Malfunction of the products being ignited, fuel leaks, and user error appeared to be contributing factors in incidents that resulted in serious injury. Although delays in ignition apparently caused several incidents, the available data provide no evidence that delay caused by difficulty in operating multi-purpose lighters results in flashback that causes serious injury.

The staff found that a flashback resulting from a 15-second accumulation of propane gas is unlikely to ignite clothing or cause a serious burn injury. The tests showed that a flame can be produced with most non-child-resistant multi-purpose lighters in 5 or fewer operations. Cigarette lighters with child-resistant features that reset after every operation were operated at least 6 times within 15 seconds in most of the trials. Therefore, the staff concluded that a child-resistant mechanism that resets after each operation of a multi-purpose lighter would not prevent a user from successfully producing a flame and igniting a gas appliance before a hazardous flashback condition could occur.

The staff found insufficient evidence to conclude that current multi-purpose lighters pose a risk of injury due to flashback, or that the addition of a child-resistant mechanism that resets after each operation would pose such a risk.

Even without the results of these tests, however, the Commission would be justified in eliminating the requirement for multiple-operation capability from the rule. First, the commenters who first raised the issue of flashback provided no persuasive data to support their concern. Second, the injury data from flashback incidents do not reveal any injuries due to small delays such as might result from child-resistant mechanisms. (The only exception to this was one incident where the person put his face over a grill to see why it did not light and kept operating the (non-child-resistant) lighter.)

Third, market pressures likely will act to reduce the risk of flashback. The only child-resistant multi-purpose lighter now on the market is capable of multiple operations without operating the child-resistant feature each time. This lighter is easy to use and is made by BIC, a large manufacturer with an extensive distribution network. This lighter is likely to bring a competitive pressure for other manufacturers to make their child-resistant multi-purpose lighters easy to use. Thus, any risk of flashback would be reduced. In addition, repeat sales of a lighter model that is hard to light would suffer. The Commission concludes that the proportion of multi-purpose lighters with inefficient ignition mechanisms that will be marketed, if any, will be small. Of this small percentage, some persons would be cautious, or follow the instructions of some appliance manufacturers, and light the flame before turning on the gas; these persons would not be at risk of flashback. The Commission notes that of the non-child-resistant multi-purpose lighters that staff tested, one manufacturer had two models that were significantly less efficient in lighting than most of the other models. While this rule contains no lighting efficiency test, should any child-resistant multi-purpose lighter's poor lighting performance result in a flashback problem, the Office of Compliance would consider appropriate action.

Therefore, the Commission is unable to support a requirement in the final rule that multi-purpose lighters must allow multiple operation attempts before the child-resistant mechanism resets. The Commission revised the requirement for multi-purpose lighters in the final rule to allow a child-

resistant feature to reset after one or more operations of the ignition mechanism.

For the reasons given above, the requirements for multi-purpose lighters in § 1212.3 of the final rule read as follows:

(a) A multi-purpose lighter subject to this part 1212 shall be resistant to successful operation by at least 85% of the child-test panel when tested in the manner prescribed by § 1212.4.

(b) The child-resistant mechanism of a multi-purpose lighter subject to this Part 1212 must:

(1) Operate safely when used in a normal and convenient manner,

(2) Comply with this § 1212.3 for the reasonably expected life of the lighter,

(3) Not be easy to deactivate or prevent from complying with this § 1212.3.

(4) Except as provided in subparagraph (b)(5) of this section, automatically reset when or before the user lets go of the lighter.

(5) The child-resistant mechanism of a multi-purpose lighter subject to this Part 1212 that allows hands-free operation must:

(i) Require operation of an additional feature (e.g., lock, switch, etc.) after a flame is achieved before hands-free operation can occur;

(ii) Have a manual mechanism for turning off the flame when the hands-free function is used; and either

(iii) Automatically reset when or before the user lets go of the lighter when the hands-free function is not used; or

(iv) Automatically reset when or before the user lets go of the lighter after turning off the flame when the hands-free feature is used.

5. Discussion of "easily deactivated"

The Lighter Association, BIC, and Scripto objected to language in the discussion of comments on the ANPR in the preamble of the proposal that states that the Commission considers an "easily deactivated" child-resistant mechanism to be one that can be easily disabled with a common household tool. The Lighter Association stated that this is a very significant issue because no lighter is designed to this standard and that such a requirement would mean that a lighter must be tamper-proof. BIC stated that this interpretation is unreasonable and unworkable. Scripto commented that no standard can prevent a consumer's intentional destruction or alteration of a product's safety features, and that a "tamper-proof" requirement is unreasonable and impractical. Scripto suggested establishment of performance criteria to

determine what would constitute "easily deactivated."

Response: Disabling or removing the child-resistant mechanism was a common problem in the first 2 or 3 years after the effective date of the Safety Standard for Cigarette Lighters. In part, this was due to general consumer resistance to something new and less convenient. In addition, some of the early child-resistant cigarette lighter designs were difficult to operate. Effective enforcement of the standard, including pursuit of firms who purposely disabled child-resistant mechanisms on cigarette lighters offered for sale, and design changes by manufacturers to make mechanisms easier for consumers to use, appear to have reduced this problem for cigarette lighters.

The Commission expects that manufacturers will use their experience with cigarette lighters to design child-resistant mechanisms for multi-purpose lighters that will be easy for consumers to operate. In addition, many consumers have had experience with child-resistant mechanisms on other types of lighters.

The Commission is expressing no position at this time on any criterion for when a lighter is easily deactivated. If the staff identifies either a cigarette lighter or a multi-purpose lighter model with a child-resistant mechanism that it believes can be easily deactivated, the Office of Compliance would consider appropriate action.

6. Issue: Impact of a Rule on Small Companies

Donel, a small U.S. manufacturer of more expensive multi-purpose lighters, wrote that the cost and time to redesign and certify a lighter will make it very difficult for it to continue in the marketplace. It requested an additional 2-year grace period to comply with the regulations. The purpose of its request was its understanding that other firms were actively pursuing patent applications for child-resistant technology and that it needed to see what these patents covered before beginning to work on its own technology. They stated that, once the pending patents are issued, it would be able to proceed with redesigning or licensing to comply with the requirements.

SNC Group, a small U.S. firm, commented that patents filed by some companies may restrict competition, create hardship on small companies, and ultimately raise the cost to consumers. SNC Group suggested a number of possible ways to reduce the burden of a rule on small firms,

including CPSC-mandated design standards in which no one manufacturer or importer has intellectual property rights, free legal counsel and testing for small businesses with proprietary designs, and providing loans to small businesses to lessen the financial hardship associated with legal advice and retooling.

Response:

Effective date. The costs of developing and testing lighters that would meet the rule's requirements may have a significant impact on some small firms that have proprietary or exclusive rights to a non-child-resistant multi-purpose lighter design. The rule provides an effective date of 12 months from the date of publication in the **Federal Register**, as to products manufactured in, or imported into, the United States on or after that date. However, an additional 2-year grace period for small firms is not appropriate.

In order to issue a rule with an effective date of more than 180 days or less than 30 days, the Commission has to find that the longer or shorter date is in the public interest. 15 U.S.C. 2058(g)(1). The 12-month effective date lessens the economic burden of the rule, especially on small firms, while providing protection to consumers in a reasonably expeditious manner.

Based on experience with the Cigarette Lighter Safety Standard, the Commission estimates that it will take an average of 12 months to develop, test, retool for production, perform production tests, and manufacture and ship the product. The results of the conformance testing must be reported to CPSC at least 30 days in advance of the importation or distribution of the lighters. In addition, the time required for importing complying lighters into the United States will be a significant consideration for many firms.

Some manufacturers, especially those that have been following this rulemaking proceeding, may have already begun developing child-resistant models. Manufacturers who have had experience with developing child-resistant cigarette lighters may be able to take advantage of that experience and be able to manufacture and market child-resistant lighters sooner than 12 months. In fact, at least one model is already on the market and we are aware of other manufacturers that are working on child-resistant designs.

Manufacturers who have not followed, or only very recently started following, this rulemaking proceeding may not have begun any development work. Additionally, manufacturers that do not also produce cigarette lighters, such as some micro-torch

manufacturers, do not have prior experience developing child-resistant designs. These manufacturers may be adversely affected by an effective date shorter than 12 months.

Based on the Commission's experience with the Safety Standard for Cigarette Lighters, firms will continue to file new patents for child-resistant designs. New firms will enter the market, and others will continue working on technology for new or improved child-resistant designs. The commenters did not explain why they would not face similar issues on the delayed effective date as they will face on the proposed effective date.

Existing or pending patents may make entry into the market more difficult. However, any negative impact regarding patent infringement issues will be minimized because the standard is a performance standard rather than a design standard. Revising the requirements in the final rule to allow the child-resistant mechanism to reset either after one or more operations should also reduce some patent infringement concerns by allowing a wider variety of designs to comply with the standard.

A 12-month effective date does not mean that no benefits will occur until 1 year after the publication of the final rule. Indeed, one manufacturer already has a child-resistant multi-purpose lighter on the market. Other manufacturers can be expected to introduce their own models as they are developed. Therefore, CPSC expects that the number of child-resistant multi-purpose lighters on the market will increase prior to the effective date of the rule. For the reasons, stated above, the Commission concludes that a 12-month effective date is in the public interest.

Other actions. The Consumer Product Safety Act requires that consumer product safety standards be expressed in terms of performance requirements. This may prevent the Commission from mandating a single design. Also, mandating a single design would stifle the creativity of individual manufacturers and preclude future design improvements. The Commission does not have the authority or the funding to provide loans or subsidies for legal counsel, retooling, or testing.

As noted above, the rule will adversely affect some small businesses. Nevertheless, these impacts are justified by the overwhelming fire-prevention benefits expected from the rule.

7. Costs of Testing and Certifying

Zelco commented that the Commission has failed to make allowances for small business. Zelco

stated that the cost of testing and certification is exorbitant and an unnecessary burden on small companies. Zelco requested that the testing requirements be reduced or that the Commission subsidize the costs for small businesses. Donel commented that there are enormous costs involved in redesigning and certifying a child-resistant lighter.

Response: The Commission did consider the impact of testing and certifying on small businesses. The Preliminary Regulatory Analysis in the proposal estimated the average cost of testing at about \$25,000 per model. However, testing and certification are necessary to ensure that all multi-purpose lighters on the market are child-resistant.

8. Issue: Supervision

Zelco commented that lighters are adult products and that, if children were supervised and taught to respect them, there would be no need for these regulations. Scripto stated that child-resistant mechanisms are not a substitute for proper adult supervision. Scripto stated that, in their experience, most instances of serious injury associated with child-play fires involved gross parental neglect.

Independent Safety Consulting commented that incidents involving multi-purpose lighters demonstrate the normal and expected range of parental behavior when it comes to supervision; accidents happen even when children are appropriately supervised. The American Academy of Pediatrics commented that adult supervision can never be perfect.

Response: Proper adult supervision is very important. Teaching children to "respect" adult items, and otherwise avoid hazards, is a necessary component of child rearing. It is, however, an unreliable strategy for injury prevention. Three- and 4-year-old children are fully capable of verbalizing rules repeated to them by adult caretakers. This is simple mimicry to a large extent, and does not imply either that children have a full understanding of the potential consequences of their behavior, or that they have developed sufficient control of their impulses to obey the rules with 100-percent consistency.

Congress addressed the general issue of adult responsibility in its passage of the Poison Prevention Packaging Act. The Report of the Senate Committee on Commerce (1970) stated that negligence is not the principal cause of poisoning incidents, and that there are too many potential hazards to expect that children will be adequately protected from all of

them solely through adult intervention. S. Rep. No. 91-845 at 3 (1972).

The fire incident reports show that children generally were under reasonable levels of supervision at the time they started the fires. While child-resistant mechanisms do not substitute for parental supervision, they can provide a valuable measure of safety.

9. Issue: Labeling

Zelco commented that labeling requirements would be sufficient. The American Academy of Pediatrics stated that product labeling is very important, but that it will not be as effective as making the lighters child-resistant. Independent Safety Consulting commented that a label is not likely to significantly reduce these fires and that warning labels cannot affect behavior nearly as well as can a technical design change.

Response: The Commission does not believe that warning labels alone can effectively address the risks associated with multi-purpose lighters. Labeling of multi-purpose lighters (including "Keep out of reach of children") has always been required under the FHSA, and this has clearly been insufficient to prevent child-play fires. Since most caregivers are fully aware of the dangers of young children playing with lighters, and since incident information shows that children access these lighters in spite of attempts to store them out of reach, the Commission concludes that additional or different warning statements would not reduce the incidence of child-play fires with multi-purpose lighters.

10. Issue: Education

Zelco stated that the aim of these regulations could be accomplished just as easily through education. Scripto commented that the Commission must consider the need for concomitant education efforts. Swedish Match recommended that the Commission fund a strong education program to "address consumer behavior in leaving their lighters and their young children unattended."

The American Academy of Pediatrics commented that consumer education is very important but that it will not be as effective as making the lighters child-resistant. Independent Safety Consulting states that an education campaign is not likely to significantly reduce these fires. Child-resistant mechanisms should be coupled with information and education so that parents can be aware of the limitations of a child-resistant feature.

The Lighter Association provided information about education programs they developed with the Learn Not to Burn Foundation and the National Fire

Protection Association. The programs warn preschoolers and adults of the risk of lighters and matches. The Lighter Association also submitted an article from the January/February 1999 National Fire Protection Association (NFPA) Journal reporting that the Portland, Oregon, program showed a 36-percent decline in juvenile fire-setting as a result of use of the Youth Education Program.

BIC submitted a copy of their "play safe! be safe!"® safety program, which was developed in 1994 in cooperation with Fireproof Children of Pittsford, New York. This program teaches young children the basics of fire prevention and shows them how to respond to specific situations in case of fire. The program is being utilized in hundreds of pre-school classrooms in the U.S. and Canada.

Response: The Commission does not believe that education alone can effectively address the risks associated with multi-purpose lighters. As an injury prevention strategy, education is less effective than product modifications, which do not rely on behavior changes. Education serves to provide the public with accurate information. For example, it may be appropriate to advise consumers that child-resistant does not mean child-proof, and that child-resistant mechanisms are intended to prevent lighter use by most children under 5.

The incident data, however, show little need for an education program to "address consumer behavior in leaving their lighters and their young children unattended." The data show that, in general, children were not "unattended," and that in many cases, lighters were placed where they could be thought to be "out of reach" but were nevertheless reached.

The effectiveness of the Youth Education Program is unsubstantiated because there are important confounding factors that preclude a valid inference of a direct cause-effect relationship between the program and any statistically significant change in fires set by juveniles. Furthermore, it is not clear that the Youth Education Program addressed the age group targeted by a standard for child resistance.

The Safety Standard for Cigarette Lighters was issued in 1993 and became effective in 1994. It is possible that the use of child-resistant cigarette lighters contributed to the drop in the proportion of fires attributable to juveniles over the 4-year period (1993/1994 to 1996/1997) cited in the NFPA Journal article (if, as noted above, children under 5 are included in the age group studied).

Given the lack of consistent evidence of their effectiveness, the Commission concludes that education programs are an inadequate substitute for the a standard that requires multi-purpose lighters to be child resistant.

11. *Issue: Provisions of Test Protocol*

a. *Position of on/off switch.* BIC contended that multi-purpose lighters with on/off switches should be tested with the switch in the unlocked position, rather than in the locked position, as proposed. BIC stated that many consumers would leave the lighter in the unlocked position. Further, BIC pointed out that a manufacturer could design a lighter with an on/off switch that is very difficult for a child to unlock, and with a very simple child-resistance mechanism which, in itself, would not meet the 85% child-resistance requirement.

Response: The Commission agrees with BIC's recommended modification to the test protocol because on/off switches are not adequate to serve as part of the child-resistance mechanism. First, as the Commission's baseline testing demonstrated, most children in the panel age group (42 to 51 months old) can operate the switches, which are similar to those used on many types of toys. Second, when practical, safety devices should function automatically. When in the locked position, the switch may help delay or deter some proportion of children. This protection, however, is not reliable. To provide this protection, intended users must return the switch to the locked position every time the lighter is used. For a variety of reasons, even careful adults may fail to do so. Thus, as BIC points out, test results for lighters tested with the switch in the locked position may not reflect the true child-resistance of the product as actually used by consumers.

Therefore, on August 4, 1999, the Commission published a notice in the **Federal Register** to propose that the test protocol should require that lighters with on/off switches that do not automatically reset to the locked position be tested with the switch in the on, or unlocked, position. The Commission also provided an opportunity for interested parties to present oral comments on this issue on September 15, 1999. The Executive Director of the National Fire Protection Association Center for High-Risk Outreach commented that conducting the protocol test with the lighter on/off switch in the unlocked position would add an important element of realism to the test.

Accordingly, the Commission revised the test procedure at § 1212.4(f)(1) in the final rule to provide:

Note: For multi-purpose lighters with an "on/off" switch that does not automatically reset to the locked position, the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

b. *Participation of children in multiple tests.* Milford Consulting Associates endorses the provision that allows the same children to test child-resistant packaging, cigarette lighters, and multi-purpose lighters, so long as the children participate in each test on a different day. It stated that the cross learning from test to test would be negligible, but that the children's familiarity with the test setting would be facilitated by multiple tests, making the test less intimidating to the children.

Response: The Commission agrees that the cross learning from one type of test to another would be negligible. The test procedure in § 1212.4(a)(7) of both the proposal and the final rule allows children to participate in tests of different products, provided that the tests are conducted on different days.

c. *Tester quotas and lighter quotas.* Milford Consulting Associates requested some changes to the requirements for the number of children who are tested by each tester and in the number of tests conducted with each surrogate lighter. They requested that when two central location test sites are used and a tester or a surrogate lighter drops out, the remaining tests be allocated equally to the remaining testers at that one test site.

Response: Currently, the test procedure has very specific requirements for the number of children who can be tested by each tester and the number of times each surrogate lighter can be used in testing. The reason for these requirements is to minimize the impact of any one tester or any one lighter on the final test results. Based on the staff's experience with the standard for cigarette lighters, tester variability can influence the test results. In addition, surrogate lighters may vary in operation forces. Because exceeding the proposed quotas could introduce test bias, the Commission did not make any changes.

d. *Participation.* Milford Consulting Associates requested that children who refuse to attempt to operate the surrogate multi-purpose lighter throughout the entire test period should be counted in the test results, provided they are not disruptive. They stated that in a real-life situation some children would refuse to touch a lighter even while a companion is doing so.

Response: The Commission believes that refusing children should continue to be eliminated from the test results because it provides a more appropriate

test for the lighter. A child's refusal in a test may be related to the circumstances of the test and does not necessarily mean that the child would not attempt to operate a lighter in the home. The Commission believes that the 85% acceptance criterion should be based on the number of children who attempt to operate the lighter and are unable to do so. This is the procedure used in the Safety Standard for Cigarette Lighters.

e. *Orientation of lighter during demonstration.* BIC Corporation and Milford Consulting Associates requested a change in § 1212.4(f)(3) of the test protocol. In the proposed rule, during the demonstration of lighter operation to the children, the tester was instructed to hold the surrogate multi-purpose lighter in a vertical position in one hand with the child-resistant feature exposed. BIC pointed out that the normal operating position of multi-purpose lighters for many purposes is horizontal.

Response: The Commission agrees that this requirement should be changed because some multi-purpose lighters are operated in a vertical position and some are operated in a horizontal position. The final rule eliminates reference to any specific orientation. Instead, the rule provides that the tester should hold the lighter in a comfortable operating position in one hand so both children can see the operation of the child-resistant mechanism and the ignition mechanism during each demonstration. The purpose of this provision is to assure that the children are able to clearly see the operation of the lighter. As long as the children can see the operation, there is no need to hold the lighter in any particular position.

12. Issue: Anti-Stockpiling Reporting

Scripto recommends a change to the anti-stockpiling provision. This change would require information used to establish the number of lighters made or imported during the year following publication of the final rule to be filed with CPSC at the end of each calendar month instead of within 10 days of shipment, as proposed. Scripto states that this would reduce the reporting requirements and provide the Commission with better visibility and control of these shipments.

Response: Because industry members reported abuses of the similar anti-stockpiling requirement in the Safety Standard for Cigarette Lighters, the Commission proposed a reporting requirement for this rule. The Commission agrees with Scripto's recommendation, in the interest of reducing the paperwork burden on manufacturers and the staff without

compromising the ability of the Commission to effectively enforce the anti-stockpiling provision. The final rule requires reporting within 10 days of the end of each calendar month, for lighters shipped within that month, instead of within 10 days of lighter shipment.

13. Issue: In-Bond Shipments

Scripto reported problems it has experienced with seizures by customs and delays at foreign ports of shipments of non-child-resistant lighters that are imported into the U.S. in bond for export to other nations. It requested CPSC to review this transit-and-export process in order to reduce unnecessary delays and paperwork in the future.

Response: Scripto refers to the process of moving noncomplying cigarette lighters manufactured in Mexico through the United States, in bond, for export to foreign countries that do not require the lighters to be child-resistant. This process is a program of the U.S. Customs Service. If contacted in advance of such shipments, the Office of Compliance is able to work with manufacturers and importers to facilitate the smooth movement of in-bond shipments.

14. Issue: Households Without Young Children

Ms. Lorraine Daly, a consumer, wrote that there is a very large percentage of older citizens in the country who don't have children in their homes and therefore don't need the protection of child-resistance on medicines or lighters. Similarly, Ms. Eve Mallett wrote, "We can't child proof the world at the expense of childless or older people."

Response: Available data indicate that both lighter child-play fires and accidental ingestions of medicines have occurred in the homes of older consumers. These incidents commonly occur while grandparents are baby-sitting or during family visits. The Poison Prevention Packaging Act has provisions that allow for availability of non-child-resistant packaging for medicines otherwise required to be in child-resistant packaging. These provisions allow handicapped or arthritic consumers to have ready access to their medicines. However, there is no comparable need for a consumer to have a non-child-resistant multi-purpose lighter.

In addition, unlike multi-purpose lighters, the particular design of child-resistant packaging for medicines is selected by the manufacturer or the pharmacist, not the consumer. Like child-resistant cigarette lighters, there

will be a number of different multi-purpose lighter designs to choose from. The Commission believes that older consumers who can operate a current multi-purpose lighter will find a child-resistant multi-purpose lighter that they are able to operate with little or no difficulty.

Therefore, there is no need to forego the lifesaving benefits of the rule to accommodate the special needs of elderly or handicapped persons.

F. Environmental Considerations

Pursuant to the National Environmental Policy Act and CPSC's procedures, the Commission considered the potential environmental effects of the rule. Under CPSC's regulations, this rule falls within a category of actions that normally have little or no potential for affecting the human environment, and for which neither an environmental impact assessment nor an environmental impact statement is required. 16 CFR 1021.5(c)(1).

Less than 1% of the non-child-resistant multi-purpose lighters that are sold in this country are manufactured domestically. The rule is not expected to significantly alter the amount of materials, energy, or waste generated during production of the lighters. Nor should the rule cause manufacturers to shift production to other countries or locations. Molds and other tools used by manufacturers in the production of multi-purpose lighters or their components are periodically replaced. Potentially, the rule may cause some manufacturers to replace the molds and other tools earlier than they would have otherwise.

The rule does not require any recall of non-child-resistant lighters manufactured or imported before the effective date; therefore, there are no disposal issues with regard to such lighters. The rule is not expected to affect the manner in which multi-purpose lighters are packaged for sale, or to affect the amount of butane or other fuel used in the operation of the lighters.

The Commission concludes, from the available information, that the rule will not significantly affect raw material usage, air or water quality, manufacturing processes, or disposal practices in a way that will significantly impact the environment.

G. Statutory Findings

The CPSA also requires the Commission to make the following findings before it promulgates a rule:

(A) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable

risk of injury associated with such product;

(B) That the promulgation of the rule is in the public interest;

(C) That the benefits expected from the rule bear a reasonable relationship to its costs; and

(D) That the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated. 15 U.S.C. 2058(f)(3).

The Commission has made the required findings, which are published as Appendix A to the final rule.

H. Regulatory Analysis

Before issuing a final rule, the CPSC requires the Commission to consider and make appropriate findings for inclusion in the rule with respect to:

(A) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) The need of the public for the consumer products subject to such rule, and the probable effect of such rule, upon the utility, cost, or availability of such products to meet such need; and

(D) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety. 15 U.S.C. 2058(f)(1). These findings are also published in the appendix to the final rule.

Based on these findings, the Commission must, if it issues a final rule, publish a final regulatory analysis with the rule, containing:

(A) A description of the potential benefits and the potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs;

(B) A description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen; and

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues. 15 U.S.C. 2058(f)(2).

The Commission's final regulatory analysis of the rule on multi-purpose lighters is published below.

Final Regulatory Analysis

Requirements of the Rule

The rule addresses the risk of death and injury caused by children under the age of 5 playing with multi-purpose lighters, including micro-torches. Manufacturers or importers of products meeting the definition of "multi-purpose lighters" will have to certify that their products comply with the rule and provide evidence of a reasonable testing program, as required by 15 U.S.C. 2063, to support the certification. The rule specifies minimum requirements and features of the required testing program.

The test protocol is intended to determine the percentage of children in a specified age range that could be expected to be able to operate the lighter. It requires surrogates that will not produce a flame be used in the tests in place of production lighters. Up to two panels of 100 children are used to test the surrogates. If a child succeeds in operating a surrogate, a visual or audible signal is produced. If at least 85% of the children in the test panels are unable to operate the surrogates, the production lighters comply with the child-resistance requirements.

The rule also establishes certain minimum recordkeeping and reporting obligations for manufacturers, importers, and distributors. The effective date of the rule is December 22, 2000. All multi-purpose lighters manufactured in the U.S. or imported on or after this date will have to comply with the requirements of the rule.

Product and Market Information

The Product

The product subject to this rule, multi-purpose lighters, is described in Section A of this notice.

Sales, Retail Prices and Useful Product Life

Multi-purpose lighters, including micro-torches, were introduced around 1985. Sales of multi-purpose lighters increased rapidly after their introduction. Scripto-Tokai, the firm that introduced multi-purpose lighters, reports that it sold one million units the first year. Industry sources estimate that sales of multi-purpose lighters were about 20 million units in 1998 and will be approximately 21 million units in 1999. Industry sources are divided over their expectations for future sales. Some expect sales to continue to increase at the rate of 5 to 10% annually over the next several years. Others believe that the market for multi-purpose lighters is becoming satiated and that sales are

likely to increase at a slower pace than in the past.

Retail prices of multi-purpose lighters have declined over the last couple of years. Currently, retail prices for multi-purpose lighters start at less than \$2.50, and most sell for less than \$6.00. However, some high-end multi-purpose lighters retail for \$20 to \$40 or more. Micro-torches have been observed retailing for as little as \$12, but they more frequently retail for around \$20 to more than \$100. Micro-torches and other high-end multi-purpose lighters combined probably have less than 5% of the market for multi-purpose lighters.

The useful life of a multi-purpose lighter depends on how often and for what purpose it is used. If a typical multi-purpose lighter contains enough fuel for an average of 1,000 lights, a multi-purpose lighter that is used several times a day would be expected to last less than 1 year. On the other hand, a lighter that is used less than once a day, or only seasonally, could last longer.

The fuel supply is not the only thing that limits the useful life of a multi-purpose lighter. A multi-purpose lighter can break or wear out, the piezo crystals can become dirty or misaligned, the fuel lines can become clogged, and the O-rings may fail and allow fuel to leak out of the lighter. Since most multi-purpose lighters are relatively inexpensive, some may simply be misplaced by consumers.

According to industry sources, more than 18 million lighters were sold in 1997. At the same time, a study based on a panel of 20,000 households indicated that fewer than 8 million U.S. households purchased multi-purpose lighters between October 1996 and October 1997. This suggests that most multi-purpose lighters have a useful life of less than one year, and/or that a large proportion of households that have multi-purpose lighters use more than one lighter over the course of a year.

The useful life of the more expensive models and micro-torches can be longer. These lighters are refillable and retail for \$20 to more than \$100. Although the unit sales of the more expensive lighters account for only a small portion of the annual sales of multi-purpose lighters, the number in use at any given time, because of their longer expected life, is likely to be somewhat higher than their share of the annual sales.

Based on the assumption that the average useful life of multi-purpose lighters is approximately one year or less, the Commission estimates that the number of multi-purpose lighters used during a given year is roughly equal to the estimated annual sales. Thus, in the period 1995 through 1998, the number

of multi-purpose lighters in use in a given year was probably in the range of 16 million to 20 million.

Manufacturers

CPSC has identified about 40 firms that manufacture, import, or privately label multi-purpose lighters. There are likely other firms, especially small importers or private labelers, that have not been identified. The number of firms participating in the market has increased as sales have increased.

Four manufacturers are members of the Lighter Association Inc., a trade association representing manufacturers of cigarette lighters. In 1997, the Lighter Association estimated that its members had more than 90% of the market for multi-purpose lighters in the United States. However, the market share of the Lighter Association members appears to be declining as competition from Asian and other imports is increasing.

The manufacturer with the largest market share is Scripto-Tokai Corporation. Although Scripto once had over 90% of the market, industry sources indicate that its share has fallen, and probably is now in the range of 80 to 90%. Most of the remaining 10 to 20% are manufactured by companies such as BIC, Swedish Match, Ronson, and various Asian manufacturers.

BIC Corporation manufactures its multi-purpose lighter in South Carolina. Only one other manufacturer, Donel, a manufacturer of high-end lighters, is known to produce multi-purpose lighters domestically. Scripto-Tokai imports its lighters from Mexico. Flamagas (Clipper brand) lighters are produced in Spain. Most other lighters are manufactured in Asia.

There are a handful of small U.S.-based companies that have proprietary designs for multi-purpose lighters. These companies generally work with Asia-based manufacturers to manufacture their products. However, the U.S.-based companies have often borne the research and development costs. Other small U.S.-based companies are known to import and privately label multi-purpose lighters for which they do not hold proprietary designs.

Substitutes for Multi-Purpose Lighters

There are a number of products that can be used for the same purposes as multi-purpose lighters. The most likely and versatile substitute is probably ordinary box or book matches. Compared with about 8 million households purchasing multi-purpose lighters in 1997, a 1991 study for the CPSC indicated that more than 60 million households had matches (either book or box matches). Cigarette lighters

can also be used for many of the purposes for which multi-purpose lighters are used. The retail prices of the substitutes are reasonably close to the retail prices of multi-purpose lighters. However, since sales of multi-purpose lighters have climbed rapidly from approximately 1 million units in 1985 to 20 million in 1998, we can infer that some consumers perceive that they receive greater utility from multi-purpose lighters than they would from the substitutes in some applications.

There are also reasonable substitutes for micro-torches when they are used in applications such as soldering. The closest substitutes would likely be butane or propane torches that do not have internal ignition mechanisms. These are functionally nearly identical to micro-torches when used for torch applications, except that they must be ignited with a match or other external lighter. Electric soldering irons can also be used for many of the same applications. The cost to consumers of these substitutes may be reasonably similar to the cost of micro-torches.

Potential Benefits of the Rule

Societal Costs of Child-Play Fires

The rule is intended to reduce fires resulting from children under the age of 5 playing with multi-purpose lighters. The benefits to society of the rule will be the expected reduction in the societal costs of the deaths, injuries, and property damage associated with these fires.

The Commission is aware of 196 fires from 1995 through 1998 started by children under age 5 playing with multi-purpose lighters. These incidents resulted in 35 deaths, 81 injuries, and substantial property damage. The societal costs of these fires are discussed below. The analysis is limited to this 4-year period because the data available for other years are less complete.

Deaths: If we assume a cost of \$5 million for each fatality, an estimate that is consistent with the existing literature, a point estimate of the societal costs of the known fatalities between 1995 and 1998 is \$175 million.

Injuries: Many of the 81 non-fatal injuries were severe. At least 43 involved burn injuries. Fire burns are among the most costly of injuries in terms of the cost of medical treatment and the pain and suffering of the victim. A CPSC study estimated that: the average cost of a hospitalized fire burn injury was \$898,000; the average cost of a burn injury where the victim was treated and released was estimated to be \$15,000; and the average cost of a burn injury treated elsewhere was \$2,000.

These costs include medical and transportation costs, lost productivity, and pain and suffering. Of the 43 burn injuries, at least 15 were hospitalized and 12 were treated and released. The remaining 16 burn victims were either treated at the scene or the treatment they received is unknown. Based on the average societal costs from these types of injuries, the total cost of the burn injuries known to have occurred during this period is estimated to be at least \$13.7 million ($15 \times \$898,000 + 12 \times \$15,000 + 16 \times \$2,000$).

At least 20 of the 81 injuries involved smoke inhalation. The CPSC study referenced above estimated that the average societal cost of a smoke inhalation injury was about \$130,000 if the victim was hospitalized, and \$13,000 if the victim was treated and released. If the victim was treated at the scene or received other treatment, the average societal cost was estimated to be \$2,000. At least one of the smoke inhalation victims was hospitalized, and 12 were treated and released. If we assume that the remaining 7 victims were treated at the scene, the total societal costs associated with the smoke inhalation cases are estimated to be about \$0.3 million ($1 \times \$130,000 + 12 \times \$13,000 + 7 \times \$2,000$).

The remaining 18 victims either had other types of injuries, such as broken bones or lacerations, or the type of injury was not reported. The treatment of these 18 victims was either unknown or not reported. Based on the above referenced CPSC study, the average societal costs of other non-hospitalized injuries is estimated to be \$13,000. Therefore, the total societal costs of the 16 victims who had injuries other than burns or smoke inhalation can be estimated at \$.2 million ($18 \times \$13,000$).

Based on the above discussions, the Commission estimates that the total societal costs of the injuries associated with children playing with multi-purpose lighters that we know to have occurred during the 1995 through 1998 period to be \$13.4 million. This is a conservative estimate, as it includes only the incidents of which the CPSC is aware.

Property Damage: The total property damages from the 196 child-play fires known to have occurred from 1995 through 1998 exceeded \$5 million. This number is conservative because it only includes the fires known to CPSC. And, of those known fires, it only includes fires where a property damage estimate was reported to CPSC.

Total Societal Costs: Summarizing all of the above costs (deaths, injuries, and property damage), the total estimated societal costs of the known incidents for

the 4-year period 1995 through 1998 is about \$194.2 million, or \$48.6 million annually. This comes to about \$2.43 per year for each multi-purpose lighter in use. It is important to note that these cost estimates are based only on the incidents reported to CPSC, not on national fire loss estimates. There are likely to be other incidents of which CPSC is not aware.

Expected Reduction in Societal Costs

The rule is not expected to eliminate all fire incidents involving children under the age of 5. Some children in that age range will be able to operate multi-purpose lighters that meet the requirements of the rule. Indeed, a multi-purpose lighter will meet the requirements of the rule even if up to 15% of the subjects in the test panel can operate the lighter.

On the other hand, some children under the age of 5 cannot operate the non-child-resistant multi-purpose lighters currently on the market. CPSC baseline testing indicates that, depending on the model, 4 to 41% of test subjects cannot operate non-child-resistant multi-purpose lighters. Therefore, the rule for multi-purpose lighters is expected to reduce the number of children under the age of 5 that can operate multi-purpose lighters by 75 to 84%.²

Additionally, the overall effectiveness of the standard may be higher than the 75 to 84% estimated above for two reasons. First, manufacturers may achieve an average level of child-resistance greater than 85% to ensure that their design will always achieve at least the minimum level of child resistance required by the rule. The experience with cigarette lighters, for example, indicates that most manufacturers achieve 90% or higher child resistance.

Second, CPSC probably overestimated the baseline child-resistance of the non-child-resistant multi-purpose lighters in use. This is because CPSC tested lighters with on/off switches in the off, or locked, position. If the lighter

had been tested with the switch in the on, or unlocked, position, as required by the final rule, the baseline child-resistance would have been much lower than the 41% estimated above. We expect that some multi-purpose lighters will at times be stored with the switch in the unlocked position.

Using the lower end of the range of the estimated effectiveness of the rule, during the 1995 through 1998 time frame, societal costs of child-play fires involving multi-purpose lighters would have been reduced by about \$36.5 million annually had all multi-purpose lighters been child-resistant.³ Assuming that an average of 20 million multi-purpose lighters were used each year, the gross benefit per lighter would have been about \$1.82. If there were child-play fires involving multi-purpose lighters during this period of which CPSC is not aware, or if a substantial number of consumers store multi-purpose lighters unlocked, the estimated benefits would have been higher.

Potential Costs of the Rule

Manufacturing costs. Manufacturers will incur costs to modify their products to comply with the rule. In general, costs that would be incurred by the manufacturers in developing, producing, and selling new complying lighters include the following:

- Research and development toward finding the most promising approaches to improving child resistance, including building prototypes and surrogate lighters for preliminary child-panel testing;
- Retooling and other production equipment changes required to produce child-resistant multi-purpose lighters, beyond normal periodic changes made to the plant and equipment;
- Labor and material costs of the additional assembly steps, or of the modification of assembly steps, in the manufacturing process;
- The additional labeling, recordkeeping, certification, testing, and reporting that will be required for each model.
- Various administrative costs of compliance, such as legal support and executive time spent at related meetings and activities; and
- Lost revenue if the child-resistant features adversely affect sales.

Industry sources have not provided firm estimates of these costs. However, the Lighter Association stated that its members believed the costs would

average between \$0.25 and \$0.75 per lighter. One major manufacturer, BIC, has introduced a child-resistant multi-purpose lighter. Because BIC did not previously manufacture a non-child-resistant lighter, a spokesman was unable to estimate the incremental cost of developing and manufacturing child-resistant multi-purpose lighters.

Research and Development Costs.

One manufacturer speculated that the costs of developing, testing, and retooling for production of multi-purpose lighters might be \$1 million per manufacturer, if it is possible to adapt the same technology used to make cigarette lighters child-resistant. However, the manufacturer stated that, if it were not possible to adapt the cigarette lighter technology, the costs could be as high as \$5 million per manufacturer. Two other manufacturers provided lower estimates of the costs. They expected to spend \$100,000 to \$1 million. However, they stressed that these were guesses and that unforeseen problems, such as problems stemming from patents owned by others, could increase the costs. After evaluating this conflicting information from some manufacturers, it seems likely that the average investment in research, development, and retooling would be no more than \$2 million.

If, as discussed above, there are 20 manufacturers of multi-purpose lighters and research and development costs are as high as \$2 million per manufacturer, then the total industry-wide research, development, and retooling costs will be about \$40 million. If these costs are amortized over 10 years and sales increase at an annual rate of 1% from a base of 21 million units in 1999, then the research, development and retooling costs will average about \$0.23/unit. For a manufacturer with a large market share (*i.e.*, selling several million units annually) the cost per unit for research, development and retooling may be significantly lower than this. On the other hand, for manufacturers with a small market share, such as the manufacturers of high-end lighters and micro-torch lighters, the per-unit development costs could be substantially greater, because these costs would be amortized over a significantly lower production volume. However, the information available is insufficient to provide a reliable estimate of the cost per unit for the higher-end and micro-torch-type lighters.

Material and Labor Costs. In addition to the research, development, and retooling costs, material and labor costs are likely to increase. For example, additional labor will be required to add the child-resistant mechanism to the

² The estimated minimum improvement in child resistance due to the rule for any given non-child-resistant lighter is calculated by dividing the percentage improvement in child resistance (the 85% minimum requirement of the rule minus the baseline child resistance of the non-child-resistant lighter) by the percentage of children that can operate the non-child-resistant lighter (100% minus the baseline %). For example, the least child-resistant lighter in the baseline testing (4% child resistance) would show an estimated 84% improvement in child resistance, and the same percent reduction in child-play fires [(85 - 4)/(100 - 4) = 81/96 = 84%]. The most child-resistant lighter in the baseline testing would show a 75% improvement [(85 - 41)/(100 - 41) = 44/59 = 75%].

³ Calculated by multiplying the estimated \$48.6 million in societal costs by 0.75 (the expected reduction in such fires).

lighter during assembly. Additional materials may also be needed to produce the child-resistant mechanism. While CPSC was unable to get reliable estimates, some industry sources indicated that these costs would be low, probably less than \$0.25 per unit.

Multi-purpose lighters will also be required to have a label that identifies the manufacturer and the approximate date of manufacture. However, virtually all products are already labeled in some way. Since the requirement in the rule allows substantial flexibility to the manufacturer for things such as color, size, and location, this requirement is not expected to increase the costs significantly.

Certification and Testing Costs.

Certification and testing costs include the costs of producing the surrogates needed in the testing, conducting the child-panel tests, and issuing and maintaining records for each model. These costs could average \$25,000 per model. However, the cost for any individual firm may be different. The cost for conducting child-panel tests for one model could be substantially lower if only one panel is required. The cost could be higher if the manufacturer must use a second panel or redesign a model that failed the initial test. The cost of designing surrogates could range from virtually nothing (if the production lighter has an audible signal, such as a click, that occurs when it has been operated successfully) to several thousand dollars (if surrogates must be designed and built).

These costs are incurred only once, and would therefore, be amortized over the entire production of the model. Based upon the estimates described above, the amortized certification and testing costs are expected to average less than one cent per unit. However, for models with small market shares, the cost per unit for certification and testing may be higher.

Administrative Costs. There may be some additional and ongoing administrative expenses associated with compliance and related activities. While these expenses are difficult to quantify, they are expected to be slight and have little impact on the unit costs.

Multi-purpose lighters are sold in countries other than the United States. Some manufacturers may develop lighters that meet the requirements of the rule for distribution in the United States, but may continue to distribute the current, non-child-resistant models in other countries. Thus, some manufacturers may incur the incremental costs associated with producing multiple lines of similar products. These costs could include

extra administrative costs required to maintain different lines and the incremental costs of producing different lines of similar products, such as using different molds or different assembly steps. These costs would be mitigated if other countries adopted similar standards.

Total Manufacturing Costs. The rule will likely increase the total cost of manufacturing multi-purpose lighters by about \$0.48 per unit. This estimate is in the \$0.25 to \$0.75 per unit range provided by the Lighter Association in response to the ANPR. The low end of the range provided by the Lighter Association may be more accurate if the additional material and labor costs are significantly less than estimated above.

The increased cost of manufacturing multi-purpose lighters will, for the most part, ultimately be borne by consumers. Generally, the increased cost of production will be passed on to the consumer in the form of higher prices. Assuming a 100% markup over the incremental cost to manufacturers (estimated at \$0.48/unit) the rule may be expected to increase the retail price of multi-purpose lighters by \$0.96 per unit. However, some manufacturers may be unable to pass all of the incremental costs directly to the consumers. This may be especially true in the case of the up-front research and development costs. In these cases, the costs may be indirectly borne by consumers in such forms as generally higher prices on the range of products produced by the manufacturer. The retail prices for high-end and micro-torch multi-purpose lighters will probably increase by more than \$0.96 per unit, since their costs per unit are greater. However, since the high-end and micro-torch lighters comprise such a small portion of the market, this should not significantly affect the average cost of producing multi-purpose lighters.

Net Benefits

As previously discussed, the rule is expected to produce a gross societal benefit of \$1.82 per lighter and to increase the cost to consumers by about \$0.96 per unit. Therefore, the expected net benefit of the rule is \$0.86 per multi-purpose lighter sold (\$1.82—\$0.96). Since annual sales of multi-purpose lighters exceed 20 million units, the rule should result in net societal benefits of at least \$17.2 million annually ($\$0.86 \times 20 \text{ million} = \$17.2 \text{ million}$). As discussed previously, the actual net benefits may differ from the estimates if some of the assumptions used in computing the estimates prove inaccurate.

Other Impacts of the Rule

Stockpiling. The rule contains anti-stockpiling provisions, authorized by section 9(g)(2) of the CPSA, to prohibit excessive production or importation of noncomplying lighters during the 12-month period between the publication date and the effective date of the rule. The provision would limit the production or importation of noncomplying products to 120% of the amount produced or imported in the most recent calendar year before the issuance of the final rule.

While the anti-stockpiling provision should have little impact on the market as a whole, it may adversely impact any small importers or manufacturers that were just entering the market. Such firms may have had low sales volume in their first year or two of operation, and thus their base volume would be low. In the absence of the anti-stockpiling provisions, they may have been able to increase their sales volume by a greater proportion than would be allowed under the anti-stockpiling provision. There is no limit on the number of child-resistant multi-purpose lighters that may be imported, manufactured, or sold during this period.

Effects on Competition and International Trade

The rule is not likely to have a significant adverse impact on competition. Scripto-Tokai Corporation introduced multi-purpose lighters in 1985 and for many years maintained a market share of 90% or more. Although Scripto-Tokai is still the dominant manufacturer, its market share has dropped in the face of increased competition from other manufacturers and importers. BIC has already introduced a multi-purpose lighter that meets the requirements of the rule. Moreover, the Commission is aware of several other manufacturers, including some small firms that are actively developing child-resistant multi-purpose lighters. These multi-purpose lighters are expected to be on the market by the time the rule becomes effective.

Impact on Small Business

CPSC has identified about 40 manufacturers, importers, and private labelers of multi-purpose lighters. Although the dominant firms are not small, a significant number of the remaining firms are considered to be small businesses according to guidelines established by the Small Business Administration (SBA). The rule may have a significant impact on some of the small firms.

The small businesses that are most likely to be impacted by the rule are

those that market multi-purpose lighters to which they have proprietary or exclusive rights. These firms will likely have to bear the up-front costs of developing the child-resistant features, as well as the retooling and certification costs. As noted, these costs could exceed \$100,000 even if few problems are encountered. If problems are encountered (e.g., designs that infringe upon patents held by others or initial designs that fail the certification tests) the costs could exceed \$2 million.

Of the small firms known to the Commission, seven have proprietary or exclusive rights to particular multi-purpose lighter models. Some of these firms are actively developing child-resistant models, and one is already marketing a multi-purpose lighter that it believes to be child-resistant (although it has not been tested). Thus the added burden is not insurmountable by small firms. However, some small firms may decide that the added costs are too great and cease marketing their proprietary designs. Other small businesses that currently market multi-purpose lighters and micro-torches do not have proprietary or exclusive rights to any multi-purpose lighter model. These companies either import or privately label lighters produced by other firms. In these cases, the manufacturer or firm that actually owns the design will likely bear most of the research, development, retooling, and certification costs. Since these manufacturers often supply product to more than one importer or private labeler, the costs are likely spread over a higher production volume. Moreover, multi-purpose lighters usually account for only a small percentage of many of the importers' and private labelers' sales. Therefore, even if a small importer or private labeler stopped importing or distributing multi-purpose lighters, it is not likely to suffer a significant adverse effect if multi-purpose lighters accounted for a small percentage of its total sales.

Although there will be adverse effects on some small businesses, these effects are justified by the greater safety benefits expected from the rule.

Impact on Utility to the Consumer

The rule may reduce the utility that consumers receive from multi-purpose lighters if child-resistant multi-purpose lighters are more difficult to operate than are non-child-resistant models. This could result in some consumers switching to substitute products, such as cigarette lighters or matches. However, as was the case with child-resistant cigarette lighters, manufacturers are likely to develop

child-resistant multi-purpose lighters that are at most only slightly more difficult for adults to operate than are non-child-resistant lighters. Therefore, the number of consumers who stop using multi-purpose lighters because of the child-resistant mechanisms is expected to be small. Moreover, even if some consumers do switch to other products, the risk of fire is not expected to increase significantly. Most cigarette lighters must already meet the same child-resistance standard that multi-purpose lighters will have to meet. Although consumers that switch to matches (as opposed to using child-resistant cigarette or multi-purpose lighters) may increase the risk of child-play fires from matches somewhat, matches are inherently more child-resistant than non-child-resistant multi-purpose lighters. Thus, even if some consumers did switch to using matches, the risk of child-play fires would still likely be less than if they continued to use non-child-resistant multi-purpose lighters.

Some manufacturers of micro-torches may respond to the rule by no longer offering micro-torches that have internal ignition mechanisms. The consumer would, therefore, have to use an external ignition source to light the torch. Although this option could decrease manufacturing costs, it could reduce the convenience and utility of the micro-torches. Consumers will have to provide external ignition sources, such as matches, to ignite the torches. It will also take more time to ignite such a torch, since both hands will be required and the worker or consumer will have to put down what they were working with to pick up the ignition source.

Alternatives Considered to the Rule

The Commission considered several possible alternatives to the rule. These alternatives included (1) not taking any action and relying on voluntary efforts, (2) issuing labeling requirements instead of performance requirements, and (3) narrowing the scope of the rule. The Commission also considered different effective dates and some alternatives aimed at reducing the burden on certain small businesses.

No Action/Rely on Voluntary Efforts. The Commission considered the impact of taking no action to reduce the occurrence of fires started by children playing with multi-purpose lighters. If no mandatory rule is issued, some manufacturers may still introduce child-resistant multi-purpose lighters. While these manufacturers can emphasize the safety of their product, they would be at a competitive price disadvantage

compared to manufacturers who continued to sell non-child-resistant lighters. This would result in a lower level of benefits than would be obtained with the rule.

Although the portion of the market that would be captured by manufacturers of child-resistant lighters is not known, it is reasonable to assume it would be substantially less than 100%. Thus, the benefits to society of taking no action or relying on voluntary efforts would be lower than they would be under a mandatory rule.

Currently, there is no voluntary standard for child-resistant multi-purpose lighters, and no apparent industry interest in adopting one. The Commission potentially could work with appropriate standards-setting organizations to try to develop such a standard, but it is not clear that an acceptable voluntary standard could be developed with sufficient speed, or that conformance would be adequate.

Labeling Requirements

The Commission considered the impact of not issuing a performance standard, but to instead require additional warning labels on multi-purpose lighters. However, the FHSA already requires multi-purpose lighters to be labeled "Keep out of reach of children." The effectiveness of additional labeling would be low.

Narrowing the Scope

The Commission considered the impact of exempting the more expensive multi-purpose lighters from the rule. This would have been analogous to the exemption in the cigarette lighter standard for the more expensive non-novelty cigarette lighters. In that case, however, there was little evidence of involvement of those expensive lighters in child-play fires.

There are 3 firms that are known to market high-end multi-purpose lighters; all 3 of these firms have fewer than 100 employees and are considered to be small businesses. (One firm claims that its multi-purpose lighter has features that should make it child-resistant.) Of the 6 firms that are known to distribute micro-torches, 3 have fewer than 100 employees and are considered to be small businesses.

For the reasons given in the response to comments on the proposal, Section E of this notice, the Commission believes that the more expensive multi-purpose lighters are as likely to be involved in child-play fires as are the less expensive models and should not be excluded.

The Commission also considered the impact of excluding micro-torches from the rule. As noted, the Commission

received several comments from the lighter industry, in response to the NPR, encouraging the Commission to exclude micro-torches. For the reasons given in the response to comments in Section E of this notice, the Commission believes that micro-torches will be stored around the home in the same way that multi-purpose lighters are. Therefore, they will be accessible to small children and should not be excluded from the standard.

The Commission is aware of one incident involving a fire started by a child under the age of 5 with a micro-torch-type lighter. The lighter was being used to light the pilot light of a gas furnace, a use more characteristic of multi-purpose lighters than of torches. However, micro-torch lighters represent only a small portion of the multi-purpose lighters in use. Micro-torches probably account for significantly less than 5% of sales of multi-purpose lighters. Therefore, the lack of other incidents involving micro-torches may be related to the low number of these products in use.

Alternatives To Reduce the Burden on Small Businesses

The Commission considered several exemptions or special provisions to reduce the regulatory burden on certain small businesses. These provisions would have applied only to businesses that met the SBA definition of a small business and were not owned by or a subsidiary of a larger company, unless the combined employment would still meet the SBA criteria.

Alternative Effective Date. The Commission considered establishing an effective date of more than the proposed 12 months after the date of publication of the final rule in the **Federal Register**, for some small manufacturers. The intent of such an extension would be to reduce the burden of the rule on small firms by giving them extra time to develop child-resistant lighters and bring them to market. However, for the reasons given in Section E of this notice, the Commission decided that an effective date exceeding 1 year from the rule's publication was not in the public interest.

Exemption from testing. The Commission considered exempting some small businesses from the requirement to conduct the child-panel certification tests, if the firm had a reasonable basis to believe that the multi-purpose lighter would pass the tests if they were conducted. However, the Commission concluded that conducting these tests is necessary to ensure that the lighter is child-resistant. The actual child-panel tests are a small

part of the entire cost of designing and bringing a child-resistant lighter to market. Although the average cost of this testing per model may be about \$25,000, the costs may vary among firms. On the low end, the costs may be as low as \$10,000 if surrogates do not have to be designed, only one panel of children is required, and the company can conduct much of the testing internally. On the other hand, the costs could exceed \$40,000 if the company has to design surrogates, use more than one child-panel for the tests or has to redesign the lighter because it fails the test. If a manufacturer is confident that its design is child-resistant, it should also be confident that the cost of the certification testing will be on the low side of the estimated range of costs. Furthermore, the testing is a one-time cost. Once a design passes the qualification test, it does not have to be tested again for child-resistance.

If certain small firms were exempted from the testing, and one of their models was later found not to be child-resistant, the cost to the manufacturer of a recall could exceed the cost of the testing. Moreover, if an exemption from testing were granted and a lighter model were in fact not child-resistant, it could lead to hundreds of thousands, or even millions, of non-child-resistant multi-purpose lighters being introduced into commerce. Just one additional child-play fire incident associated with such a lighter could result in societal costs that greatly exceed the cost of the certification testing. Therefore, the Commission does not believe that it is in the public interest to exempt small firms from the testing requirements of the rule.

I. Final Regulatory Flexibility Analysis

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the RFA, as stated in § 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations.⁴ The Commission's initial regulatory flexibility analysis

⁴The Regulatory Flexibility Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

(IRFA) was published with the proposed rule.

The final regulatory flexibility analysis (FRFA) is to contain:

(1) A succinct statement of the need for, and objectives of, the rule;

(2) A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) A description of, and an estimate of the number of, the small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and a description of the type of professional skills necessary for preparation of the report or record; and

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The Need for and Objectives of the Rule

The rule addresses the risk of death and injury from residential fires started by young children under the age of 5 playing with multi-purpose lighters. Since 1988, the Commission has identified 237 fires that were started by children under age 5 who were playing with multi-purpose lighters. These fires resulted in a total of 45 deaths and 103 injuries. Because these are only the incidents known to the CPSC, the actual numbers may be higher. The societal cost of these fires is about \$48.6 million annually. Requiring that multi-purpose lighters be child-resistant, as defined in the rule, will significantly reduce the number of fires started by children under the age of 5.

Firms Subject to the Rule

The rule covers manufacturers, importers, private labelers, distributors, and retailers of multi-purpose lighters, including micro-torches, intended for sale to consumers. All firms that manufacture or import multi-purpose lighters will have to certify that their

multi-purpose lighters are child-resistant. These firms will also be subject to the reporting and recordkeeping requirements in the rule.

The number of firms that manufacture, import, or privately label these lighters is increasing. While about 40 firms have been identified, there may be other companies that have not been identified. Except for two manufacturers (one large and one small), all firms are believed to be importers rather than domestic manufacturers. Several of the importers are subsidiaries of larger firms or foreign manufacturers. Although the dominant firms are not small, as many as 20 of the remaining firms may be considered to be small businesses according to the SBA.

The small businesses that are most likely to be substantially impacted by the rule are those that have proprietary or exclusive rights to specific multi-purpose lighter models. These firms will likely have to bear the up-front costs of developing the child-resistant features, retooling, and certification. These costs could exceed \$100,000, even if few problems are encountered. The costs could be as high as \$2 million if problems are encountered, such as designs that infringe upon patents held by others or initial designs that fail the certification tests.

Of the small firms known to the Commission, seven are believed to have proprietary or exclusive rights to particular multi-purpose lighter models. Some of these firms are actively working on developing child-resistant models. One is already marketing a multi-purpose lighter that it believes to be child-resistant, although it has not been certified in accordance with the requirements of the rule. Thus, although the rule will impose costs on small firms, this burden is not insurmountable, and some small firms with proprietary designs should be able to compete successfully after the rule goes into effect. However, some firms may decide that the added costs are too great and cease marketing their proprietary non-child-resistant designs.

Many of the small businesses that market multi-purpose lighters and micro-torches do not have proprietary or exclusive rights to any multi-purpose lighter model. These companies either import or privately label lighters produced by other firms. The impact on these companies is not likely to be significant. The manufacturers or firms that actually own the designs will likely bear most of the research, development, retooling, and certification costs. Since these manufacturers often supply product to more than one importer or private labeler, the costs are likely to be

spread over a higher production volume. Furthermore, even if a small importer or private labeler stopped importing or distributing multi-purpose lighters, it is not likely to suffer a significant adverse effect if multi-purpose lighters account for a small percentage of its total sales, as is thought to be the case with many of the importers.

Some small importers may experience some disruption in their supply of multi-purpose lighters if some of the foreign suppliers opt not to develop child-resistant multi-purpose lighters. However, the 12-month period between the publication of the final rule and its effective date should allow time for most importers to take action to ensure that they have a source for child-resistant multi-purpose lighters.

Issues Raised by the Public Comments on the IRFA

Several issues were raised in the public comments on issues relating to the IRFA. These issues include: the proposed requirement for multiple operations, money for legal counsel and testing, that CPSC should mandate a specific design, that the effective date should be longer, that the cost of certification testing is excessive, and alternatives to be considered to the proposed rule. The Commission's responses to these comments are given in Section E of this notice.

Reporting and Recordkeeping Requirements

All manufacturers and importers of multi-purpose lighters will be required to keep certain records regarding the certification testing and production (quality control) testing of their multi-purpose lighters. The preparation of the records should not require any skills that would not typically be possessed by or available to a manufacturer or importer. For example, the production testing is very similar to the quality control testing that most manufacturers undertake routinely. There are also independent quality control and engineering laboratories and other professional consultants with which firms can contract for these services.

In order to perform the certification tests, the manufacturers will have to supply at least 6 empty surrogates. Most manufacturers will probably be able to use empty production lighters for the surrogates (if the lighter makes an audible "click" when the ignition mechanism is operated properly). Other manufacturers may have to develop surrogates for use in the certification tests that produce an audible or visual signal when the ignition mechanism is

successfully operated. This may involve technical knowledge of miniature electronics that some small firms may not have in-house. However, there are independent engineering firms with this expertise with which small firms may contract.

Conducting the certification tests and preparing the supporting documentation does not require any special technical skill or extensive training. Manufacturers could conduct the conformance tests with in-house personnel, but it is likely that many will employ private consulting or testing services. The records of the testing would likely be compiled by the firm conducting the testing and maintained by the manufacturer or importer. Manufacturers or importers would keep copies of other reports or certification records.

The rule also allows importers to rely on testing by or for a foreign manufacturer to support the rule's certification and reporting requirements, provided that the records (1) are in English, (2) are complete, (3) can be provided to the Commission within a reasonable time, if requested, and (4) provide reasonable assurance the multi-purpose lighters are child-resistant. This provision may reduce the testing burden on some small importers (indeed, on any importer), to the extent manufacturers supply lighters to more than one importer.

At least 30 days before it first imports or distributes a multi-purpose lighter model, the manufacturer or importer must provide written notice to the CPSC. Among other things, this report is to include basic identifying information as to the manufacturer or importer, a description of the lighter model and its child-resistance features, a description and summary of the certification testing, and the location where the other required records will be kept. The manufacturer or importer must also supply the CPSC with a prototype or production unit of the lighter model.

The reporting requirements of the rule are necessary for the CPSC to monitor compliance. The Commission is not aware of any method by which the reporting burden on small businesses could be reduced while still accomplishing the purpose of the rule. The estimated reporting burden, however, is low—less than 100 hours per model in the initial production year (including the certification testing) and significantly less than this in subsequent years.

Assuming that approximately 20 manufacturers, with 1 to 2 models each, introduce child-resistant multi-purpose lighters during the first year after the

publication of the final rule, the total paperwork and reporting burden for all manufacturers will be 2,000 to 4,000 hours. In subsequent years, the total paperwork and reporting burdens should be significantly less. For example, if three new models are introduced annually, the total burden will be approximately 300 hours.

Other Alternatives Considered

The Commission considered four basic alternatives to certain elements of the rule. Specifically, the Commission considered (1) narrowing the scope to exclude high-end and/or micro-torch multi-purpose lighters, (2) requiring only additional labeling, (3) taking no action and relying on voluntary efforts, and (4) alternative effective dates. These alternatives were rejected for the reasons given in the Commission's Regulatory Analysis in Section H of this notice.

Summary and Conclusions

The rule will affect all manufacturers and importers of multi-purpose lighters, including a number of manufacturers and importers that are small businesses. The small firms that import or manufacture multi-purpose lighters will be impacted by the rule's performance, certification, recordkeeping, and reporting requirements. The higher costs of manufacturing child-resistant lighters that their suppliers incur will likely be passed on to these firms as well. Some of the firms may have temporary disruptions in their supply of multi-purpose lighters because of the rule. However, it is unlikely that any of these effects would be significant.

In addition to the small importers, there are a few small firms that manufacture their own multi-purpose lighters or have their own proprietary designs manufactured for them. The rule may have a more significant impact on these firms since they will likely bear most of the cost of developing and certifying the child-resistant mechanisms for their multi-purpose lighters.

The Commission considered some alternatives to the rule that might have reduced the burden on small manufacturers. However, these alternatives were rejected since the level of safety that would be achieved was lower under these alternatives than under the rule. These alternatives included taking no action, requiring additional labeling only, exempting the high-end multi-purpose lighters from the scope of the rule, and extending the effective date.

J. Effects on the Elderly and Handicapped

Section 9(e) of the CPSA requires that, in promulgating a consumer product safety rule, "the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule." 15 U.S.C. 2058(e). The following discussion examines the potential effect of the rule on elderly and handicapped persons.

The rule is unlikely to have a significant impact on the elderly or handicapped who can operate non-child-resistant multi-purpose lighters. The lighter industry now has several years experience in the design of child-resistant mechanisms for cigarette lighters, and it is reasonable to expect that this experience will be applied to child-resistant devices for multi-purpose lighters. Early designs for cigarette lighters were somewhat cumbersome and often inconvenient to use, leading to customer complaints and to intentional defeat of some types of child-resistant mechanisms by some persons. Since the Safety Standard for Cigarette Lighters became effective, child-resistant mechanisms have evolved. Although some types are less than ideal, others are transparent, or nearly so, to the user.

Current multi-purpose lighters typically are operated by a trigger (operated with the forefinger) or a button (operated with the thumb), and are easy to use with one hand. Child-resistant versions of these lighters will probably require some additional action or force, and thus may be at least somewhat more complex or less convenient to operate than non-child-resistant lighters. However, because ease of use is critical to consumer acceptance, it is likely that multi-purpose lighters will continue to be operable with one hand, and that the child-resistant devices will not be overly difficult to use.

The staff reviewed three child-resistant multi-purpose lighter designs. The child-resistant device on each product is a latch that blocks the operating mechanism. Two have trigger-style operating mechanisms. These have devices built into the top side of the handle, in line with the expected placement of the user's thumb. One trigger-style lighter requires that the user apply a force of 1.25 kg or 2.75 kg (depending on placement) with the thumb to unlatch the operating mechanism. This requires both knowledge of how the device works and

a level of strength below the average for a tested sample of subjects aged 60 to 89 years of age for a similar task (Imrhan, 1989). The other requires the user to first slide a button backward (toward the palm) approximately $\frac{1}{8}$ inch before pulling the trigger. The latter requires only knowledge, because the action of sliding the button backwards is counter to the normal motion when holding and operating the lighter, but requires only nominal force and dexterity.

The third lighter has a slide-button operating mechanism positioned on the top of the handle. It requires that a second slide latch on the reverse side of the handle be pushed sideways before the lighter can be operated. Although simple in principle, this third lighter does not fit the user's hand, and requires coordination to operate. Provided clear instructions are included on the packaging, the first two types should be usable by handicapped and elderly persons who can operate current non-child-resistant lighters. The third is likely to be difficult for users in general. Competitive forces should ensure that elderly and handicapped consumers will find one or more products they are able to use.

K. Paperwork Reduction Act

As explained above, the standard and the certification provisions will require manufacturers and importers of multi-purpose lighters to test surrogate and production lighters, maintain records, and report data to the Commission relating to the multi-purpose lighters that they produce or import. For this reason, the rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501-3520. Therefore, the proposed rule was submitted to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11.

Based on estimates made in the course of developing the cigarette lighter standard and on information obtained from industry sources, the Commission estimates that complying with the testing, recordkeeping, and reporting requirements of the rule will require approximately 100 hours per model for the first year, and substantially less in subsequent years. The time required for testing is expected to average about 80 hours per model. The time required for recordkeeping and reporting is expected to be about 10 hours for each model per year. The exact number of manufacturers and importers is not known. However, the number of manufacturers and importers

appears to be increasing. Currently, the Commission believes that there may be as many as 40 different models of multi-purpose lighters on the market. With a few exceptions, most manufacturers and importers have only one model. Therefore, the total amount of time that will be required for complying with the testing, recordkeeping, and reporting requirements of the rule is approximately 4,000 hours in its initial year or so, and substantially less in later years.

L. Executive Orders

This rule has been evaluated in accordance with Executive Order No. 13,132, and the rule has no substantial federalism implications.

Executive Order No. 12,988 requires agencies to state the preemptive effect, if any, to be given to the regulation. The preemptive effect of this rule is established by 15 U.S.C. 2075(a), which states:

(a) Whenever a consumer product safety standard under the CPSA applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or continue in effect any provision of a safety standard or regulation which prescribed any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such products which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

Subsection (b) of 15 U.S.C. 2075 provides a circumstance under which subsection (a) does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety standard applicable to a consumer product for its own [governmental] use, and which is not identical to the consumer product safety standard applicable to the product under the CPSA. This occurs if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the consumer product safety standard.

Subsection (c) of 15 U.S.C. 2075 authorizes a State or a political subdivision of a State to request an exemption from the preemptive effect of a consumer product safety standard. The Commission may grant such a request, by rule, where the standard or regulation of the State or political subdivision (1) provides a significantly higher degree of protection from such risk of injury than does the consumer product safety standard and (2) does not unduly burden interstate commerce.

List of Subjects in 16 CFR Part 1212

Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as set forth below.

1. A new Part 1212 is added to read as follows:

PART 1212—Safety Standard for Multi-Purpose Lighters

Subpart A—Requirements for Child-Resistance

Sec.

1212.1 Scope and application.

1212.2 Definitions.

1212.3 Requirements for multi-purpose lighters.

1212.4 Test protocol.

1212.5 Findings.

Subpart B—Certification Requirements

Sec.

1212.11 General.

1212.12 Certificate of compliance.

1212.13 Certification tests.

1212.14 Qualification testing.

1212.15 Specifications.

1212.16 Production testing.

1212.17 Recordkeeping and reporting.

1212.18 Refusal of importation.

Subpart C—Stockpiling

Sec.

1212.20 Stockpiling.

Appendix A to Part 1212—Findings Under the Consumer Product Safety Act

Subpart A—Requirements for Child-Resistance

Authority: 15 U.S.C. 2056, 2058, 2079(d).

§ 1212.1 Scope, application, and effective date.

This part 1212, a consumer product safety standard, prescribes requirements for multi-purpose lighters. These requirements are intended to make the multi-purpose lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all multi-purpose lighters, as defined in § 1212.2, that are manufactured in the United States, or imported, on or after December 22, 2000.

§ 1212.2 Definitions.

As used in this part 1212:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, etc.) means: A hand-held, flame-producing product that operates on fuel,

incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

(b) *Successful operation* means one signal of any duration from a surrogate multi-purpose lighter within either of the two 5-minute test periods specified in § 1212.4(f).

(c)(1) *Surrogate multi-purpose lighter* means a device that

(i) Approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a multi-purpose lighter intended for use by consumers,

(ii) Has no fuel,

(iii) Does not produce a flame, and

(iv) produces an audible, or audible and visual, signal that will be clearly discernible when the surrogate multi-purpose lighter is activated in each manner that would produce a flame in a fueled production multi-purpose lighter.

(2) This definition does not require a multi-purpose lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a multi-purpose lighter without fuel as a surrogate multi-purpose lighter if a distinct audible signal, such as a "click," can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production multi-purpose lighter without the signal. But see § 1212.4(f)(1).

(d) *Child-resistant mechanism* means the mechanism of a multi-purpose lighter that makes the lighter resist successful operation by young children, as specified in § 1212.3.

(e) *Model* means one or more multi-purpose lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child

resistance. Lighter characteristics that may affect child resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

§ 1212.3 Requirements for multi-purpose lighters.

(a) A multi-purpose lighter subject to this part 1212 shall be resistant to successful operation by at least 85% of the child-test panel when tested in the manner prescribed by § 1212.4.

(b) The child-resistant mechanism of a multi-purpose lighter subject to this part 1212 must:

- (1) Operate safely when used in a normal and convenient manner,
- (2) Comply with this § 1212.3 for the reasonably expected life of the lighter,
- (3) Not be easy to deactivate or prevent from complying with this § 1212.3.

(4) Except as provided in paragraph (b)(5) of this section, automatically reset when or before the user lets go of the lighter.

(5) The child-resistant mechanism of a multi-purpose lighter subject to this part 1212 that allows hands-free operation must:

- (i) Require operation of an additional feature (e.g., lock, switch, etc.) after a flame is achieved before hands-free operation can occur;
- (ii) Have a manual mechanism for turning off the flame when the hands-free function is used; and either
- (iii) Automatically reset when or before the user lets go of the lighter when the hands-free function is not used; or
- (iv) Automatically reset when or before the user lets go of the lighter after turning off the flame when the hands-free feature is used.

§ 1212.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a multi-purpose lighter is resistant to successful operation by children uses a panel of children to test a surrogate multi-purpose lighter representing the production multi-purpose lighter. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1212.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be:

- (i) 30 ± 2 children (20 ± 1 males; 10 ± 1 females) 42 through 44 months old;
- (ii) 40 ± 2 children (26 ± 1 males; 14 ± 1 females) 45 through 48 months old;

- (iii) 30 ± 2 children (20 ± 1 males; 10 ± 1 females) 49 through 51 months old.

Note to paragraph (a)(4): To calculate a child's age in months: Subtract the child's birth date from the test date. The following calculation shows how to determine the age of the child at the time of the test. Both dates are expressed numerically as Month-Day-Year.

Example: Test Date (e.g., 8/3/94) minus Birth Date—(e.g., 6/23/90). Subtract the number for the year of birth from the number for the year of the test (i.e., 94 minus 90 = 4). Multiply the difference in years by 12 months (i.e., 4 years $\times$ 12 months = 48 months). Subtract the number for the month of the birth date from the number of the month of the test date (i.e., 8 minus 6 = 2 months). Add the difference in months obtained above to the number of months represented by the difference in years described above (48 months + 2 months = 50 months). If the difference in days is greater than 15 (e.g., 16, 17 . . .), add 1 month. If the difference in days is less than 15 (e.g., 14, 15), do not add or subtract a month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate multi-purpose lighter shall participate.

(6) Two children at a time shall participate in testing of surrogate multi-purpose lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate multi-purpose lighter. No child shall participate in both surrogate multi-purpose lighter testing and either surrogate cigarette lighter testing or child-resistant package testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate multi-purpose lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate multi-purpose lighters may be tested within the United States at one or more central locations, provided the participating children are drawn from a variety of geographical locations.

(2) Testing of surrogate multi-purpose lighters shall be conducted in a room that is familiar to the children on the

test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate multi-purpose lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate multi-purpose lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from the 100-child test panel (20 ± 2 children each for 5 testers and 17 ± 2 children each for 6 testers).

Note: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate multi-purpose lighters.*

(1) Six surrogate multi-purpose lighters shall be used for each 100-child panel. The six multi-purpose lighters shall represent the range of forces required for operation of multi-purpose lighters intended for use. All of these surrogate multi-purpose lighters shall have the same visual appearance, including color. The surrogate multi-purpose lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate multi-purpose lighters shall be used for the entire 100-child panel. The surrogate multi-purpose lighters may be used in more than one 100-child panel test. The surrogate multi-purpose lighters shall not be damaged or jarred during storage or transportation. The surrogate multi-

purpose lighters shall not be exposed to extreme heat or cold. The surrogate multi-purpose lighters shall be tested at room temperature. No surrogate multi-purpose lighter shall be left unattended.

(2) Each surrogate multi-purpose lighter shall be tested by an approximately equal number of children in a 100-child test panel (17 ± 2 children). Note: If a surrogate multi-purpose lighter is permanently damaged, testing shall continue with the remaining multi-purpose lighters. When a multi-purpose lighter is dropped out, the requirement that each multi-purpose lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate multi-purpose lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production multi-purpose lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for the corresponding production multi-purpose lighter.

(5) Before and after testing surrogate multi-purpose lighters with each child, each surrogate multi-purpose lighter shall be operated outside the presence of any child participating in the test to verify that it produces a signal. If the surrogate multi-purpose lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate multi-purpose lighter does not produce a signal when it is operated after the test, the results for the preceding test with that multi-purpose lighter shall be eliminated. An explanation shall be recorded on the data collection record. The multi-purpose lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate multi-purpose lighter at any time (either verbally or with body language such as facial expressions),

unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of multi-purpose lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate multi-purpose lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right—never touch a real lighter—but your [parent, etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate multi-purpose lighter and may tell or show each other how to operate it. (This interaction is not considered to be disruption as described in paragraph (e)(2) of this section.) However, neither child shall be allowed to touch or operate the other child's multi-purpose lighter. If one child takes the other child's surrogate multi-purpose lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He (she) has to try to do it himself (herself)."

(e) *Children who refuse to participate.*

(1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than 1 minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate multi-purpose lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say "I have a special lighter that will not make a flame. It makes a noise like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the

surrogate multi-purpose lighter, so that the surrogate multi-purpose lighter cannot be seen by the child, and shall operate the surrogate multi-purpose lighter once to produce its signal. The tester shall say "Your parents said it is OK for you to try to make that noise with your lighter." The tester shall place a surrogate multi-purpose lighter in each child's hand and say "now you try to make a noise with your lighter. Keep trying until I tell you to stop."

Note: For multi-purpose lighters with an "off/on" switch, the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate multi-purpose lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark—it won't hurt you—try to make a noise with your lighter." If any child successfully operates the surrogate multi-purpose lighter during this first 5-minute period, the lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate multi-purpose lighter during the 5-minute period specified in § 1212.4(f) (3), the adult tester shall demonstrate the operation of the surrogate multi-purpose lighter. To conduct the demonstration, secure the children's full attention by saying "Okay, give me your lighter(s) now." Take the surrogate multi-purpose lighters and place them on the table in front of you out of the children's reach. Then say, "I'll show you how to make the noise with your lighters. First I'll show you with (child's name) lighter and then I'll show you with (child's name) lighter." Pick up the first child's surrogate multi-purpose lighter. Hold the lighter approximately 2 feet in front of the children at their eye level. Hold the surrogate multi-purpose lighter in a comfortable operating position in one hand so both children can see the operation of the child-resistant mechanism and the ignition mechanism during each demonstration. Say "now watch the lighter." Look at each child to verify that they are both looking at the lighter. Operate the multi-purpose lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally

describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, "Okay, now watch this lighter." Repeat the demonstration as described above using the second child's multi-purpose lighter.

Note to paragraph (f)(3): The demonstration is conducted with each child's lighter, even if one child has successfully operated the lighter. Testers shall conduct the demonstration in a uniform manner, including the words spoken to the children, the way the multi-purpose lighter is held and operated, and how the tester's hand and body is oriented to the children. All testers must be able to operate the surrogate multi-purpose lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate multi-purpose lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate multi-purpose lighter. After the demonstrations, give the same surrogate multi-purpose lighter back to each child who did not successfully operate the surrogate multi-purpose lighter in the first 5 minutes by placing the multi-purpose lighter in the child's hand. Say "Okay, now you try to make the noise with your lighter(s)—keep trying until I tell you to stop." If any child successfully operates the surrogate multi-purpose lighter during this period, the surrogate multi-purpose lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. If the other child has not yet successfully operated the surrogate multi-purpose lighter, the tester shall ask the successful child to remain until the other child is finished.

Note: Multi-purpose lighters with an on/off switch shall have the switch returned to the position the child left it at the end of the first 5-minute test period before returning the lighter to the child.

(5) At the end of the second 5-minute test period, take the surrogate multi-purpose lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: "These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that if you find a real lighter you won't touch it and that you'll tell a grownup right away?" Wait for an affirmative response from each

child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate multi-purpose lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to a parent or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters or matches, and shall remind the parent or guardian to keep all lighters and matches, whether child-resistant or not, out of the reach of children. For children who operated the surrogate multi-purpose lighter, the notification shall state that the child was able to operate the child-resistant multi-purpose lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the multi-purpose lighters, so that the tester's full attention is on the children during the test period. If actual testing is videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken after actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

- (1) Sex (male or female).
- (2) Date of birth (month, day, year).
- (3) Age (in months, to the nearest month).
- (4) The number of the multi-purpose lighter tested by that child.
- (5) Date of participation in the test (month, day, year).
- (6) Location where the test was given (city, state, and the name of the site).
- (7) The name of the tester who conducted the test.
- (8) The elapsed time at which the child achieved any operation of the surrogate signal in the first 5-minute test period.
- (9) The elapsed time at which the child achieved any operation of the surrogate signal in the second 5-minute test period.
- (10) For a single pair of children from each 100-child test panel, photograph(s)

or video tape to show how the multi-purpose lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate multi-purpose lighter resists operation by at least 85% of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered to be resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate multi-purpose lighter, the test results are inconclusive, and the surrogate multi-purpose lighter shall be tested with a second 100-child test panel in accordance with this § 1212.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. (2)(i) If additional testing of the surrogate multi-purpose lighter is required by paragraph (h)(1) of this section, conduct the test specified by this § 1212.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered resistant to successful operation by at least 85% of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate shall be considered not resistant to successful operation by 85% of the child test panel, and no further testing is conducted.

(ii) Thus, for the first panel of 100 children, the surrogate passes if there are 0–10 successful operations by the children; the surrogate fails if there are 19 or greater successful operations; and testing is continued if there are 11–18 successes. If testing is continued with a

second panel of children, the surrogate passes if the combined total of the successful operations of the two panels is 30 or less, and it fails if there are 31 or more.

§ 1212.5 Findings.

(a) Before issuing a final rule, the Consumer Product Safety Act (CPSA), 15 U.S.C. 2058(f)(1), requires the Commission to consider and make appropriate findings for inclusion in the rule with respect to:

(1) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(3) The need of the public for the consumer products subject to such rule, and the probable effect of such rule, upon the utility, cost, or availability of such products to meet such need; and

(4) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety

(b) The CPSA, 15 U.S.C. 2058(f)(3), also requires the Commission to make the following findings before it promulgates a rule, and to include such findings in the rule:

(1) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(2) That the promulgation of the rule is in the public interest;

(3) That the benefits expected from the rule bear a reasonable relationship to its costs; and

(4) That the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(c) The required findings are included as Appendix A to this part 1212.

Subpart B—Certification Requirements

Authority: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

§ 1212.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a

reasonable testing program. The purpose of this subpart B of part 1212 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Multi-purpose lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1212.12 Certificate of compliance.

(a) *General requirements.* (1) *Manufacturers (including importers).* Manufacturers of any multi-purpose lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1212.13, 1212.14, and 1212.16. Manufacturers must also label each multi-purpose lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1212.15 and 1212.17. For purposes of this requirement, an importer of multi-purpose lighters shall be considered the “manufacturer.”

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the multi-purpose lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of multi-purpose lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* (i) If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that:

(A) The importer is a resident of the United States or has a resident agent in the United States and

(B) The records are in English and the records and the surrogate multi-purpose lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1212.17(a)) or, in the case of production records, can be provided to

the Commission within 7 calendar days in accordance with § 1212.17(a)(3).

(ii) The importer is responsible for ensuring that:

(A) The foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1212.14–1212.16),

(B) The records provide a reasonable assurance that all multi-purpose lighters imported comply with the standard (§ 1212.13(b)(1)),

(C) The records exist in English (§ 1212.17(a)),

(D) The importer knows where the required records and multi-purpose lighters are located and that records required to be located in the United States are located there,

(E) Arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1212.17(a)), and

(F) The information required by § 1212.17(b) to be provided to the Commission's Office of Compliance has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product “complies with the Consumer Product Safety Standard for Multi-purpose lighters (16 CFR part 1212)”;

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (b)(2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each multi-purpose lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the multi-purpose lighter was manufactured.

(2) An identification of the manufacturer of the multi-purpose lighter, unless the multi-purpose lighter bears a private label. If the multi-purpose lighter bears a private label, it shall bear a code mark or other label that will permit the seller of the multi-purpose lighter to identify the

manufacturer to the purchaser upon request.

§ 1212.13 Certification tests.

(a) *General.* As explained in § 1212.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), must be based on a reasonable testing program.

(b) Reasonable testing programs.

(1) *Requirements.* (i) A reasonable testing program for multi-purpose lighters is one that demonstrates with a high degree of assurance that all multi-purpose lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1212.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any multi-purpose lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include: (A) Qualification tests, which must be performed on surrogates of each model of multi-purpose lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1212.14) and

(B) Production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1212.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all multi-purpose lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each multi-purpose lighter or multi-purpose lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1212.17 of this subpart.

§ 1212.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of multi-purpose lighters distributes multi-purpose lighters in commerce in the United States,

surrogate multi-purpose lighters of each model shall be tested in accordance with § 1212.4 to ensure that all such multi-purpose lighters comply with the standard. However, if a manufacturer has tested one model of multi-purpose lighter, and then wishes to distribute another model of multi-purpose lighter that differs from the first model only by differences that would not have an adverse effect on child resistance, the second model need not be tested in accordance with § 1212.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed multi-purpose lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a multi-purpose lighter design after it has been in production, this may be done by following the testing procedures at § 1212.4.

§ 1212.15 Specifications.

(a) *Requirement.* Before any multi-purpose lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate multi-purpose lighters used for qualification testing under § 1212.14 are described in a written product specification. (Section 1212.4(c) requires that six surrogate multi-purpose lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the multi-purpose lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the multi-purpose lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the multi-purpose lighters and any child-resistant features.

§ 1212.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of multi-purpose lighters subject to the standard as they are manufactured, to demonstrate that the multi-purpose

lighters meet the specifications, required under § 1212.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other multi-purpose lighters produced during the interval will meet the standard.

(c) *Test failure.* (1) *Sale of multi-purpose lighters.* If any test yields results which indicate that any multi-purpose lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of multi-purpose lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the multi-purpose lighters or perform additional tests to ensure that only complying multi-purpose lighters are distributed in commerce. Multi-purpose lighters from other production intervals having test results showing that multi-purpose lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all multi-purpose lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all multi-purpose lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could adversely affect its child-resistance, the multi-purpose lighter must undergo new qualification tests in accordance with § 1212.14.

§ 1212.17 Recordkeeping and reporting.

(a) Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with

section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (a)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by § 1212.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept for a period of 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1212.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept for a period of 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for a period of 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the

United States may maintain the production records required by this paragraph (a)(3) outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1212.15 shall be kept for 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Office of Compliance, Consumer Product Safety Commission, 4330 East-West Highway, Room 610, Bethesda, Maryland 20814-4408. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) a detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) a description of the qualification testing, including a description of the surrogate lighters tested (including a description of the point in the operation at which the surrogate will signal operation—e.g., the distance by which a trigger must be moved), the specification of the surrogate lighter required by § 1212.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) an identification of the place or places that the lighters were or will be manufactured,

(5) the location(s) where the records required to be maintained by paragraph (a) of this section are kept, and

(6) a prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1212.18 Refusal of Importation

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1212. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart, or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard or for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product either fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

Authority: 15 U.S.C. 2058(g)(2), 2065(b), 2079(d)

§ 1212.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base period.* For purposes of this rule, "base period" means the 1-year period ending December 21, 1999.

(c) *Prohibited act.* Manufacturers and importers of multi-purpose lighters shall not manufacture or import such lighters that do not comply with the requirements of this part between December 22, 1999 and December 22, 2000, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

(d) *Reporting and recordkeeping requirements.* All firms and persons who make or import multi-purpose lighters, after the date of publication of this rule, that do not meet the requirements of this standard, shall

supply the Commission's Office of Compliance with:

(1) Supporting information to establish the number of multi-purpose lighters made or imported during the base period. This information shall be submitted by January 21, 2000.

(2) Supporting information to establish the number of lighters made or imported during the year following publication of the final rule. This information shall be submitted within 10 days of the end of each calendar month, for lighters shipped within that month.

(3) Supporting information shall be sufficient to identify the manufacturer or importer, the party to which the lighters were sold, the destination of the lighters, and shall include copies of relevant invoices and importation documents.

Appendix A to Part 1212—Findings Under the Consumer Product Safety Act

Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule. Because the findings are required to be published in the rule, they reflect the information that was available to the Consumer Product Safety Commission ("CPSC" or "Commission") when the standard was issued on December 22, 1999.

A. *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with multi-purpose lighters. The Commission has identified 196 fires that occurred from 1995 through 1998 that were started by children under age 5 playing with multi-purpose lighters. These fires resulted in a total of 35 deaths and 81 injuries. Fire-related injuries include thermal burns—many of high severity—as well as asoxia and other, less serious injuries. The societal costs of these fires is estimated to include \$175 million in deaths, \$13.7 million in injuries, and over \$5 million in property damage. Because these data are from known fires rather than national estimates, the extent of the total problem may be greater. Fires started by children under age 5 are those which the standard would most effectively reduce.

B. *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as multi-purpose lighters, that are defined in § 1212.2(a) of 16 CFR Part 1212. This definition includes products that are referred to as micro-torches. Multi-purpose lighters may use any fuel and may be refillable or nonrefillable. Approximately 21 million multi-purpose lighters are expected to be sold to consumers in the U.S. during 1999. Multi-purpose lighters manufactured in the United States, or imported, on or after December 22, 2000 will be required to meet child-resistance requirements. The following

products are not multi-purpose lighters: devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210); devices that contain more than 10 oz. of fuel; and matches.

C. *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use multi-purpose lighters primarily to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, or fuel-fired appliances or devices or their pilot lights.

1. There will be several types of costs associated with the rule. Manufacturers would have to devote some resources to the development or modification of technology to produce child-resistant multi-purpose lighters. Before being marketed, the lighters must be tested and certified to the new standard. It is also possible that manufacturing child-resistant lighters may require more labor or material than non-child-resistant lighters.

2. Manufacturers will have to modify their existing multi-purpose lighters to comply with the rule. In general, costs that manufacturers would incur in developing, producing, and selling new complying lighters include the following:

- Research and development toward finding the most promising approaches to improving child resistance, including building prototypes and surrogate lighters for preliminary child panel testing;
- Retooling and other production equipment changes required to produce more child-resistant multi-purpose lighters, beyond normal periodic changes made to the plant and equipment;
- Labor and material costs of the additional assembly steps, or modification of assembly steps, in the manufacturing process;
- The additional labeling, recordkeeping, certification, testing, and reporting that will be required for each new model;
- Various administrative costs of compliance, such as legal support and executive time spent at related meetings and activities; and
- Lost revenue if sales are adversely affected.

3. Industry sources have not been able to provide firm estimates of these costs. One major manufacturer has introduced a child-resistant multi-purpose lighter. However, because that company did not previously manufacture a non-child-resistant lighter, it was unable to estimate the incremental cost of developing and manufacturing child-resistant multi-purpose lighters.

4. Assuming that there are 20 manufacturers and that each invests an average of \$2 million to develop and market complying lighters, the total industry cost for research development, retooling, and compliance testing would be approximately \$40 million. If amortized over a period of 10 years, and assuming a modest 1% sales growth each year, the average of these costs would be about \$0.23 per unit. For a

manufacturer with a large market share (i.e., selling several million units or more a year) the cost per unit of the development costs could be lower than the estimated \$0.23 per unit, even at the high end of the estimates. On the other hand, for manufacturers with a small market share, the per-unit development costs would be greater. Some manufacturers with small market shares may even drop out of the market (at least temporarily) or delay entering the market.

5. In addition to the research, development, retooling, and testing costs, material and labor costs are likely to increase. For example, additional labor will be required to add the child-resistant mechanism to the lighter during assembly. Additional materials may also be needed to produce the child-resistant mechanism. While CPSC was unable to obtain reliable estimates, some industry sources indicated that they believed that these costs would be relatively low, probably less than \$0.25 per unit.

6. Multi-purpose lighters will also be required to have a label that identifies the manufacturer and the approximate date of manufacture. However, virtually all products are already labeled in some way. Since the requirement in the rule allows substantial flexibility to the manufacturer in terms of things such as color, size, and location, this requirement is not expected to increase the costs significantly.

7. Certification and testing costs include costs of producing surrogate lighters; conducting child panel tests; and issuing and maintaining records for each model. The largest component of these costs is believed to be building surrogates and conducting child panel tests, which, based on CPSC experience, may cost about \$25,000 per lighter model. Administrative expenses associated with the compliance and related activities are difficult to quantify, since many such activities associated with the rule would probably be carried out anyway and the marginal impact of the recommended rule is probably slight.

8. Multi-purpose lighters are sold in countries other than the United States. Some manufacturers may develop lighters that meet the requirements of the rule for distribution in the United States, but continue to distribute the current, non-child-resistant models in other countries. Thus, some manufacturers may incur the incremental costs associated with producing multiple lines of similar products. These costs could include extra administrative costs required to maintain different lines and the incremental costs of producing different lines of similar products, such as using different molds or different assembly steps. These costs would, however, be mitigated if similar or identical standards were adopted by other countries. In total, the rule will likely increase the cost of manufacturing multi-purpose lighters by about \$0.48 per unit.

9. At the present time, one manufacturer has about 80–90% of the market for multi-purpose lighters. The other manufacturers, importers, and private labelers divide up the remaining 10–20% of the market. Thus, there is already a very high degree of concentration in the market. Even so, at least two

manufacturers have already entered the market with models that are believed to meet the requirements of the rule and at least one other firm is believed to be actively developing a child-resistant lighter. Therefore, the rule is not expected to have any significant impact on competition. Moreover, other firms are expected to enter the market for multi-purpose lighters, and thereby increase competition, as the market expands. Firms that market child-resistant multi-purpose lighters before the standard's effective date may gain an initial competitive advantage. However, any differential impact is likely to be slight and short-lived. Other manufacturers can be expected to have child-resistant multi-purpose lighters developed and ready to market before or soon after the rule goes into effect.

D. *Impact on consumers.* Aside from increased safety, the rule is likely to affect consumers in two ways. First, the increased cost for producing the child-resistant models will likely result in higher retail prices for multi-purpose lighters. Second, the utility derived from child-resistant lighters may be decreased if complying lighters are less easy to operate.

1. Assuming a 100% markup over the incremental cost to manufacturers (estimated at \$0.48/unit), the rule may be expected to increase the retail price of multi-purpose lighters by \$0.96 per unit. The per-unit price increase for micro-torches and other high-end multi-purpose lighters may be higher due to the smaller numbers of such lighters produced.

2. The utility that consumers receive from multi-purpose lighters may be reduced if the rule makes the lighters more difficult to operate. This could result in some consumers switching to substitute products, such as matches. However, as with child-resistant cigarette lighters, the increased difficulty of operating child-resistant multi-purpose lighters is expected to be slight. Moreover, even if some consumers do switch to other products, the risk of fire is not expected to increase significantly. Most cigarette lighters (one possible substitute) must already meet the same child-resistant standard as those applicable to multi-purpose lighters. Although consumers that switch to matches may increase the risk of child-play fires somewhat, matches seem to be inherently more child resistant than are non-child-resistant multi-purpose lighters. Previously, the CPSC determined that non-child-resistant cigarette lighters were 1.4 times as likely as matches to be involved in child-play fires and 3.9 times as likely to be involved in a child-play death. Thus, even if some consumers did switch to using matches, the risk of child-play fires would still likely be less than if they continued to use non-child-resistant multi-purpose lighters.

3. The total societal costs of fires known to have been started during 1995 through 1998 by children under age 5 playing with multi-purpose lighters was approximately \$194.2 million, or \$48.6 million per year. This is probably an underestimate, since it only includes the cases of which CPSC is aware. During the same period, an estimated 20 million multi-purpose lighters were available for use each year. The societal costs of the

fires started by young children attempting to operate multi-purpose lighters is, therefore, about \$2.43 per lighter (\$48.6 million ÷ 20 million lighters) per year. The rule is expected to reduce this cost by 75 to 84%. Therefore, the expected societal benefit of the rule in terms of reduced fires, deaths, injuries, and property damage is expected to be at least \$1.82 per complying lighter sold.

4. As discussed above, the rule may increase the cost of manufacturing multi-purpose lighters by \$0.48 and may increase the retail prices by as much as \$0.96. Therefore, assuming that sales of multi-purpose lighters remain the same, the net benefit (benefits minus costs) of the rule to consumers is expected to be at least \$0.86 per unit (\$1.82—\$0.96). Based on annual sales of approximately 20 million units per year, the rule would result in an annual net benefit to consumers at least \$17.2 million (20 million × \$0.86) annually.

5. The actual level of benefits observed could be higher if some multi-purpose lighters are stored with the on/off switch in the "on" position. If a significant number of consumers commonly store multi-purpose lighters with the switch on, the effective level of child resistance of multi-purpose lighters currently in use may be lower than indicated by CPSC's baseline testing. This would increase the effectiveness of the rule and the value of the net benefits.

E. *Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* 1. The performance requirements of this part 1212 are based on the Commission's Safety Standard for Cigarette Lighters, 16 CFR part 1210. In developing that standard, the Commission considered the potential effects on competition and business practices of various aspects of the standard, and incorporated some burden-reducing elements into the standard.

2. One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to the requirements of the standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however. Although some of the largest firms may market some child-resistant multi-purpose lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the provisions of this part 1212 would not adequately reduce the unreasonable risk associated with multi-purpose lighters.

F. *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury.* The Commission's hazard data and regulatory analysis demonstrate that multi-purpose lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a

number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective (one year after publication of the final rule) will provide manufacturers and importers of most products adequate time to design, produce, and market safer multi-purpose lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with multi-purpose lighters.

G. *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with multi-purpose lighters. The cost of these accidents, which is estimated to be greater than \$48.6 million annually, will also be greatly reduced. The rule is expected to reduce this societal cost by 75–84%, or by greater than \$36.5 million. The estimated annual costs to the public are expected to be less than \$20 million. Therefore, substantial net benefits will accrue to consumers. Thus, the Commission finds that a reasonable relationship exists between the expected benefits and the expected costs of the standard.

H. *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission incorporated a number of features from the cigarette lighter standard, 16 CFR part 1210, in order to minimize the potential burden of the rule on industry and consumers. The Commission also considered alternatives involving different performance and test requirements and different definitions determining the scope of coverage among products. Alternatives that would be more burdensome to industry would have higher costs to consumers. Less burdensome alternatives would have lowered the risk-reduction benefits to consumers. No alternative has been identified that would result in a higher level of net benefits to consumers.

2. A less stringent acceptance criterion of 80% (rather than the standard's 85%) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90%) acceptance criterion was also considered. This higher performance level may not be commercially or technically feasible for many firms, however. The Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying multi-purpose lighters not be operable by at least 85% of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

3. The standard becomes effective 12 months after it is issued December 22, 2000. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. Although most multi-purpose lighters sold in the U.S. could probably be made child-resistant within 6 months, the supply of some imported multi-purpose lighters would be disrupted. The 12-month period in the standard would minimize this potential effect, and would allow more time for firms to design, produce, and import complying multi-purpose lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of multi-purpose lighters for the U.S. market. A longer effective date was deemed unsuitable because it would unduly delay the lifesaving benefits of the standard and would penalize firms that have already begun to develop child-resistant multi-purpose lighters.

I. *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. The standard provides substantial net benefits to society. Although certain alternatives to the final rule were estimated to also have net benefits to consumers, they would decrease the level of safety. Therefore, the Commission finds that the standard is in the public interest.

Dated: December 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.

1. Letter from J. Carr, to Honorable Ann Brown, Chairman, U.S. Consumer Product Safety Commission, petitioning the Commission to initiate rulemaking proceedings to amend the Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame® disposable butane "multi-purpose lighter." (Received by CPSC February 15, 1996)
2. Letter from T. Stevenson, Deputy Secretary and Freedom of Information Officer, Office of the Secretary, CPSC, to J. Carr, February 23, 1996.
3. **Federal Register** Notice, (Requesting Comment on Petition) "Petition CP 96-1 Requesting a Child-Resistance Standard for Multi-Purpose Lighters," May 7, 1996.
4. Petition Comment CC 96-3-1, F. Hon, President, Calico Brands, Inc, May 30, 1996.
5. Petition Comment CC 96-3-2, B. Radnofsky, Esq., and C. Guthrie, Vinson & Elkins, L.L.P., June 12, 1996.
6. Petition Comment CC 96-3-3, M. Reynolds, Group Vice President, Colibri Corporation, June 17, 1996.
7. Petition Comment CC 96-3-4, J. Geremia, Ph.D., June 17, 1996.
8. Petition Comment CC 96-3-5, D. Denton, July 2, 1996.
9. Petition Comment CC 96-3-6, M. Forays, Senior Vice President, Administration, Scripto-Tokai Corporation, July 3, 1996.

10. Petition Comment CC 96-3-7, D. Baker, General Counsel, Lighter Association, Inc., July 5, 1996.

11. Petition Comment CC 96-3-8, D. Carson, Esq., Carson, Carson, & Carson, July 5, 1996.

12. Petition Comment CC 96-3-9, M. McLoughlin, Customer Relations Manager, Pinkerton Group Inc. (A Swedish Match Company), July 8, 1996.

13. Briefing Package, "Multi-Purpose Lighter Petition," November 26, 1996.

14. "Petition to initiate rulemaking proceeding to amend 16 CFR 1210 Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame[®] disposable butane 'multi-purpose' lighter within the scope of the Safety Standard for Cigarette Lighters" (CP 96-1), February 1996 (Tab A of 11/26/96 Briefing Package).

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16. Smith, L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Division of Hazard Analysis, November 12, 1996 (Tab C of 11/26/96 Briefing Package).

17. Karels, T., "Economic Consideration of the Petition on Multipurpose Lighters," CPSC, Directorate for Economic Analysis, November 25, 1996 (Tab D of 11/26/96 Briefing Package).

18. Meiers, C., "Attractiveness and Appeal of Multi-Purpose Lighters to Children (Petition CP 96-1)," CPSC, Division of Human Factors, September 19, 1996 (Tab E of 11/26/96 Briefing Package).

19. Smith, L., "Response to Public Comments, Multi-Purpose Lighter Petition-CP 96-1," CPSC, Division of Hazard Analysis, November 12, 1996. (Tab F of 11/26/96 Briefing Package).

20. Perry, E., "Response to Comments on Multi-Purpose Lighters," CPSC, Directorate for Engineering Sciences, September 6, 1996 (Tab G of 11/26/96 Briefing Package).

21. Meiers, C., "Response to Public Comments on Requiring Multi-Purpose Lighters to be Child-Resistant (Petition CP 96-1), CPSC, Division of Human Factors, September 16, 1996 (Tab H of 11/26/96 Briefing Package).

22. Poth, R., "Comments In Response to Petition CP 96-1 For Child-Resistant Multi-Purpose Lighters, CPSC, Office of Compliance, September 18, 1996 (Tab I of 11/26/96 Briefing Package).

23. **Federal Register** Notice, "Multi-Purpose Lighters; Advance Notice of Proposed Rulemaking; Request for Comments and Information," 62 Fed. Reg. 2327 (January 16, 1997).

24. **Federal Register** Notice, "Multi-Purpose Lighters; Extension of Period for Issuing a Notice of Proposed Rulemaking," 63 Fed. Reg. 1077 (January 8, 1998).

25. ANPR Comment CH 97-1-1, G. Phelps, President, International Association of Arson Investigators, Inc., August 26, 1996.

26. ANPR Comment CH 97-1-2, B. Radnofsky, Esq. and C. Guthrie, Vinson & Elkins, LLP, October 17, 1996.

27. ANPR Comment CH 97-1-2a, B. Radnofsky, Esq. and C. Guthrie, Vinson & Elkins, LLP, January 6, 1997.

28. ANPR Comment CH 97-1-2b, B. Radnofsky, Esq. and C. Guthrie, Vinson & Elkins, LLP, March 11, 1997.

29. ANPR Comment CH 97-1-3, C. Craig, March 4, 1997.

30. ANPR Comment CH 97-1-4, M. Forays, Senior Vice President, Administration, Scripto-Tokai Corporation, March 13, 1997.

31. ANPR Comment CH 97-1-5, M. McLoughlin, Customer Relations Manager, Swedish Match (Cricket®), March 14, 1997.

32. ANPR Comment CH 97-1-6, D. Baker, General Counsel, The Lighter Association, Inc., March 17, 1997.

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35. ANPR Comment CH 97-1-9, D. Bruce Kehoe, Esq., Wilson Kehoe & Winingham, March 4, 1998.

36. ANPR Comment CH 97-1-10, M. Collmer, Esq., McDowell Collmer, L.L.P., March 17, 1997.

37. Briefing Package, "Proposed Standard for Multi-Purpose Lighters," CPSC, July 15, 1998.

38. Draft **Federal Register** Notice, "Utility Lighters; Notice of Proposed Rulemaking," (Tab A of 7/15/98 Briefing Package).

39. Franklin, R., "Preliminary Regulatory Analysis of Multi-Purpose Lighters," CPSC, Directorate for Economic Analysis, July 14, 1998 (Tab B of 7/15/98 Briefing Package).

40. Letter from T. Kelleher, Senior Vice President-Administration, General Counsel and Secretary, BIC, to B. Jacobson, CPSC, "BIC® SureStart™ Utility Lighter," May 8, 1998 (Tab C of 7/15/98 Briefing Package).

41. Smith, L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Division of Hazard Analysis, July 9, 1998 (Tab D of 7/15/98 Briefing Package).

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43. Jacobson, B., "Advance notice of proposed rulemaking," CPSC, Division of Health Sciences, July 2, 1998 (Tab F of 7/15/98 Briefing Package).

44. Sushinsky, G., "Gas Grill Ignition Tests," CPSC, Directorate for Laboratory Sciences, June 29, 1998 (Tab G of 7/15/98 Briefing Package).

45. Meiers, C., "Response to public Comments on Advance Notice of Proposed Rulemaking (ANPR) Requiring Multi-Purpose Lighters to be Child-Resistant," CPSC, Division of Human Factors, April 28, 1998 (Tab H of 7/15/98 Briefing Package).

46. Franklin, R., "Response to Comments Concerning Economic Issues Raised by Comments to the ANPR on Multi-Purpose Lighters," CPSC, Directorate for Economic Analysis, July 14, 1998 (Tab I of 7/15/98 Briefing Package).

47. Bogumill, M., "Response to Comments on Multi-Purpose Lighter ANPR," CPSC, Office of Compliance, June 5, 1998, (Tab J of 7/15/98 Briefing Package).

48. Briefing Package, "Supplemental Information—Proposed Standard for Multi-

Purpose Lighters," CPSC, September 10, 1998.

49. Smith, L., "Fire Incidents Involving Multi-Purpose Lighters," CPSC, Division of Hazard Analysis, August 20, 1999 (Tab A of 9/10/98 Briefing Package).

50. Perry, E., and C. Paul, "Feasibility of Making Multi-Purpose Lighters Child-Resistant," CPSC, Division of Mechanical Engineering, August 19, 1998 (Tab B of 9/10/98 Briefing Package).

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54. Perry, E., and C. Paul, "Flash-Back Prevention," CPSC, Division of Mechanical Engineering, August 26, 1998 (Tab F of 9/10/98 Briefing Package).

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88. Transcript, "Hearing on Multi-Purpose Lighters," January 20, 1999.

89. Letter from M. Forys, Senior Vice President, Administration and Corporate Secretary, Scripto, to B. Jacobson, CPSC, "Aim 'n Flame Consumer Claims Potentially Involving 'BackFlash,'" March 29, 1999.

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94. Bogumill, M., "Response to Comments on NPR for Multi-Purpose Lighters," CPSC, Office of Compliance, November 4, 1999 (Tab C of 11/19/99 Briefing Package).

95. Sedney, C., "Child-Resistant Lighter Mechanisms and the Risk of Flashback Injuries," CPSC, Division of Human Factors, October 29, 1999 (Tab D of 11/19/99 Briefing Package).

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102. Sedney, C., "Effect of the Proposed Rule on Elderly and Handicapped Persons," CPSC, Division of Human Factors, October 29, 1999 (Tab K of 11/19/99 Briefing Package).

103. Draft **Federal Register** Notice, "Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated with Multi-Purpose Lighters That Can Be Operated by Children," (Tab L of 11/19/99 Briefing Package).

104. Draft **Federal Register** Notice, "Safety Standard for Multi-Purpose Lighters," (Tab M of 11/19/99 Briefing Package). 3

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule To Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Multi-Purpose Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Commission issues a safety standard for multi-purpose lighters to reduce risks of injury that are associated with the lighters because they can be operated by young children. In this final rule the Commission determines, under section 30(d) of the Consumer Product Safety Act, that it is in the public interest to issue the safety standard, or to take any other regulatory action to address risks of injury that are associated with multi-purpose lighters due to the fact that they can be operated by children, under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act.

DATES: This rule is effective January 21, 2000.

ADDRESSES: Copies of documents relevant to this rulemaking can be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207-0001, Telephone (301)504-0800, fax (301) 504-504-0127, email cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Concerning legal aspects: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0980, ext. 2217.

Concerning the Safety Standard for Multi-Purpose Lighters: Michael Bogumill, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0477, ext. 1206; email mbogumill@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Commission determines by rule that it will regulate those risks of death and injury that are associated with multi-purpose lighters, and that are due to the fact that the lighters can be operated by young children, under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2084. Young children do not appreciate all of the consequences of using the product.

Those consequences can include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the multi-purpose lighter, or other persons. These risks will be regulated under the CPSA, rather than under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277, or the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471-1476.

Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product that could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the **Federal Register**, the Commission issues a rule under the CPSA that will impose child-resistance requirements on multi-purpose lighters. Information on the safety hazards associated with the use of multi-purpose lighters by young children, and on other aspects relating to the need for and provisions of the Safety Standard for Multi-Purpose Lighters can be found in the portion of this issue of the **Federal Register** that issues the standard.

As discussed below, it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than are the authorities of the FHSA or the PPPA.

In the rule issued elsewhere in this issue of the **Federal Register**, to be codified at 16 CFR 1212.2, multi-purpose lighters are defined as follows:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, etc.) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes,

whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

B. Choice of Statute

Of the statutes administered by the CPSC, the CPSA, the FHSA, and the PPPA provide potential authority for a child-resistance requirement for multi-purpose lighters. The possible regulatory options include issuing a consumer product safety standard under the CPSA, a banning rule under the FHSA, and a rule to establish requirements to make multi-purpose lighters "significantly difficult for children under five years of age" to operate under the PPPA.

The risks of injury associated with multi-purpose lighters that can be operated by children arise because multi-purpose lighters are mechanical devices intended to produce flame and can be operated by children.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to multi-purpose lighters when such requirements are "reasonably necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with multi-purpose lighters.

Part of the rule for multi-purpose lighters that is issued elsewhere in this issue of the **Federal Register** is a certification rule that requires the manufacturer or importer to conduct tests to ensure that the lighters comply with the safety requirements of the rule. This testing is necessary to ensure the effectiveness of the rule, because the complex and time-consuming child-panel tests in the standard make it impractical for the Commission to routinely test for compliance. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is explicit in this regard and, thus, is preferable.

The Commission has determined that a stockpiling rule is in the public interest because it will help ensure the effectiveness of any standard for multi-purpose lighters. Neither the FHSA or the PPPA explicitly authorizes such a rule.

The FHSA includes provisions that authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that is or contains a "hazardous substance." The FHSA authorizes the Commission to regulate multi-purpose lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term is defined in the FHSA. However, no provision of the FHSA expressly authorizes the Commission to address a hazard that is associated with the mechanical operation of a multi-purpose lighter as a flame-producing device. The changes needed to reduce the risk of child-play fires also involve the mechanical characteristics of the lighter's operating mechanism. Thus, the CPSA is a more appropriate statute for regulating the mechanical risk of child resistance.

Under the PPPA, the Commission may issue a rule requiring the "package"—that is, the multi-purpose lighter—to be "significantly difficult" for children younger than 5 years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the fuel-containing portion of the multi-purpose lighter or "obtain a toxic or harmful amount" of the fuel are not the risks of injury associated with multi-purpose lighters that the Commission is now addressing. Rather, it is the risk of death and injury from fires started by children with multi-purpose lighters. This risk arises from the mechanical operation of the multi-purpose lighter, and from the ability of young children to manipulate the multi-purpose lighter to produce a flame.

Additionally, the PPPA allows the manufacturer of a substance subject to special-packaging requirements to use packaging that is not child-resistant if (1) the substance is also distributed in child-resistant packages and (2) the packages that are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant multi-purpose lighters of the types covered by the rule, could significantly impair the effectiveness of the rule to reduce the risk of injury.

The Commission received one comment on the proposed rule to issue child-resistance requirements for multi-purpose lighters under the CPSA. BIC Corporation disagreed with the Commission's characterization of a multi-purpose lighter as a "package" for butane, as that term is used in the PPPA. BIC cited two court decisions that support its contention.

The Commission has not changed its view that a lighter can be a package for the fuel it is sold with, and at least one court has agreed with this view. See *Carlson v. BIC Corp.*, 840 F. Supp. 457, 467 (E.D. Mich. 1993). However, even if BIC were correct that multi-purpose lighters are not packages of butane under the PPPA, this simply would provide further support for the Commission's decision to regulate the risk arising from children's operation of these lighters under the CPSA. Thus, no change to the proposed rule is required in response to this comment.

Therefore, for the reasons given above, the Commission is issuing a rule to determine that it is in the public interest to regulate under the CPSA any risks of injury associated with the fact that multi-purpose lighters can be operated by young children. This finding will be codified at 16 CFR 1145.17. The rule shall become effective immediately upon its publication in the **Federal Register**. 5 U.S.C. 553(d)(3). (There is a 1-year delayed effective date for the safety standard itself.)

C. Impact on Small Entities

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603–612, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. A final regulatory analysis is required when a final rule is issued. 5 U.S.C. 604. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The regulation issued below does not by itself impose any legal or other obligation on any person or firm. The rule simply expresses the Commission's determination that any action taken to eliminate or reduce risks of injury associated with multi-purpose lighters due to the fact that they can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA. In issuing the safety standard for multi-purpose lighters, the Commission followed all applicable provisions of the CPSA. The RFA also applies to the safety standard, and the Commission has certified that the Safety Standard for Multi-Purpose Lighters will not have a significant economic impact on a substantial number of small entities. Because this final rule under section 30(d) of the CPSA imposes no obligation on any person or firm, the Commission hereby certifies that this 30(d) rule will not

have a significant economic impact on a substantial number of small entities.

D. Environmental Considerations

The rule issued below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment, and the Commission has no information that would indicate otherwise. Therefore, neither an environmental assessment nor an environmental impact statement is required.

E. Conclusion

After consideration of the information discussed above, the Commission finds that for any regulatory action needed to address risks of injury associated with multi-purpose lighters due to the fact that they can be operated by children, it is in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This determination does not affect other hazards associated with multi-purpose lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel that is flammable or toxic or generates pressure. Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a multi-purpose lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Fire prevention, Infants and children, Packaging and containers.

For the reasons given above, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for Part 1145 is revised to read as follows:

Authority: 15 U.S.C. 2079(d).

2. A new § 1145.17 is added to read as follows:

§ 1145.17 Multi-purpose lighters that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that multi-purpose lighters can be operated by young children, rather than to regulate such risks under the Federal

Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with multi-purpose lighters because the lighters can be operated by young children shall be regulated under one or more provisions

of the Consumer Product Safety Act.

Other risks that are associated with such lighters, and that are based solely on the fact that the lighters contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: December 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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Registered
Patent
Lawyer

Wednesday
December 22, 1999

Part III

**Consumer Product
Safety Commission**

**16 CFR Parts 1213, 1500, and 1513
Safety Standard for Bunk Beds; Final
Rule**

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500, and 1513

Safety Standard for Bunk Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) has determined that unreasonable risks of injury and death are associated with bunk beds that are constructed so that children can become entrapped in the beds' structure or become wedged between the bed and a wall.

This document issues the final rules mandating bunk bed performance requirements to reduce this hazard. The rules are issued under both the Federal Hazardous Substances Act (FHSA), for bunk beds intended for use by children, and the Consumer Product Safety Act (CPSA), for bunk beds not "intended" for (but often used by) children.

DATES: These rules will become effective June 19, 2000 and will apply to all bunk beds manufactured in the United States, or imported, on or after that date.

ADDRESSES: Documents relating to these rules can be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or inspected at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-0800.

FOR FURTHER INFORMATION CONTACT: Pamela Major, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0608, ext. 1373; email pmajor@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In this document, the Commission issues rules mandating requirements to protect against the entrapment of children in bunk beds.¹ Without proper guardrails and safe dimensions for openings in the bed's structure, a bunk bed may allow a child to be entrapped, and thus strangle or suffocate. This can occur when the child becomes wedged between the bed and the wall, when the child slips his or her torso through an opening in the bed that is too small for its head to pass through (torso-first

entrapment), or when the child places his or her head in an opening, then moves to a narrower area of the opening where the head cannot pull out, and then falls or loses his/her footing (head-first entrapment).

There is a voluntary standard for bunk beds, ASTM F1427-96, that contains provisions to protect children from entrapment. The ASTM standard requires:

- Guardrails on both sides of the upper bunk, except for up to 15 inches at each end of the bed. The upper edge of the guardrails shall be no less than 5 inches above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

- That openings in the structure surrounding the upper bunk be small enough to prevent passage of a tapered block having a base measuring 3.5 inches by 6.2 inches.

- That openings in the end structures within 9 inches above the sleeping surface of the lower bunk mattress be either small enough to prevent passage of the 3.5 by 6.2 inch block or large enough to permit passage of a 9-inch diameter sphere (the space needed to withdraw a child's head).

- Labels and instructions.

Because of continued reports of deaths and other incidents associated with entrapment in bunk beds, and because of indications there might not be adequate compliance with the voluntary ASTM standard, the CPSC published an advance notice of proposed rulemaking (ANPR) to begin a rulemaking proceeding that could result in performance or other standards to address the risk of entrapment associated with bunk beds.² 63 FR 3280 (January 22, 1998); 64 FR 3456 (January 22, 1999) (extension of time to issue proposed rule). After considering the comments received in response to the ANPR, the Commission voted 2-0-1³ to publish a notice of proposed rulemaking (NPR) to propose a new 16 CFR Part 1213 under the Consumer Product Safety Act (CPSA) and a new 16 CFR Part 1513 under the Federal Hazardous Substances Act (FHSA). 64 FR 10245

²The ANPR was approved by a 2-1 vote of the Commission. Chairman Ann Brown and Commissioner Thomas H. Moore voted to approve the ANPR; Commissioner Mary Sheila Gall voted not to publish the ANPR.

³Chairman Ann Brown and Commissioner Thomas H. Moore voted to publish the NPR; Commissioner Mary Sheila Gall abstained.

(March 3, 1999); 64 FR 14158 (March 24, 1999) (notice of opportunity for presentation of oral comments). The entrapment provisions of these two rules are identical. As discussed below in Section E of this notice, the CPSC rule addresses hazards associated with adult bunk beds (those not specifically intended for use by children, although they are often used for that purpose), and the FHSA rule addresses hazards associated with bunk beds intended for use by children.

After the original proposal, discussions at ASTM meetings indicated that requirements in addition to those originally proposed are needed to adequately address fatalities due to entrapment of children's necks in the end structures of bunk beds. The Commission voted 2-1 to propose these additional requirements. 64 FR 37051 (July 9, 1999).

B. Incident Data

Deaths

From January 1990 through August 9, 1999, CPSC received reports of 91 bunk-bed-related deaths of children under age 15 (see Table 1 below).

TABLE 1.—FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY YEAR AND HAZARD PATTERN
[January 1990 to August 9, 1999]

Year	Total ¹	En-trap.	Hang-ing	Falls
1990	7	5	2	.....
1991	15	10	2	3
1992	4	3	1	.....
1993	19	10	7	2
1994	10	6	3	1
1995	12	5	5	2
1996	12	11	1	.....
1997 ²	8	6	2	.....
1998 ²	3	1	1	1
1999 ²	1	.....	1	.....
Total ...	91	57	25	9

Source: CPSC data files, January 1990–August 9, 1999.

¹ These deaths are neither a complete count of all that occurred during this time period nor a sample of known probability of selection. However, they provide a minimum number of deaths occurring during this time period and illustrate the circumstances involved in some bunk-bed-related fatalities.

² The Death Certificate files for 1997 through August 9, 1999, are not complete.

Of the 91 fatalities, 57 resulted from entrapment. An additional 25 children died when they inadvertently were hung from the bed by such items as belts, ropes, clothing, and bedding, and 9 children died in falls from bunk beds.

As shown in Table 2, over 96% (55 of 57) of those who died in entrapment incidents were age 3 and younger, and

¹ The Commission voted 2-1 to issue this rule. Chairman Ann Brown and Commissioner Thomas H. Moore voted to issue the rule. Commissioner Mary Sheila Gall voted against. Statements of the Commissioners concerning this vote are available from the Office of the Secretary.

all but one were younger than 5. In contrast, about 76% (19 of 24) of those who died in hanging incidents were age 6 and older. Fall deaths were split among children 4 years of age and younger and children 9 and older.

TABLE 2.—FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY VICTIM AGE AND HAZARD PATTERN [January 1990–August 9, 1999]

Age (years)	Total	En-trap.	Hanging	Falls
<1	18	16	1	1
1	20	19	1	.....
2	16	13	2	1
3	8	7	.....	1
4	4	1	1	2
5	1	.....	1	.....
6	3	.....	3	.....
7	3	1 ¹	2	.....
8	2	.....	2	.....
9	3	.....	2	1
10+	13	.....	10	3
Total ...	91	57	25	9

Source: CPSC data files, January 1990–August 9, 1999.

¹Child was blind and confined to upper bunk by removal of the ladder.

Using statistical methodology (capture-recapture), about 10 bunk-bed-related entrapment deaths are estimated to have occurred in the United States each year since 1990.

Injuries

From hospital emergency room data reported through the National Electronic Injury Surveillance System (NEISS), the Commission estimates that about 34,300 bunk-bed-related injuries to children under the age of 15 were treated in U.S. hospital emergency rooms during 1998. Forty-one percent of the victims were younger than 5 years. A review of the descriptive comments received for each injury revealed that falls from the bed were involved in a majority of the incidents. There were a few reports of limb entrapment incidents, and one incident involved a 2-year-old male who was found hanging from a bunk bed with a sheet wrapped around his neck; he was admitted to the hospital with a head injury.

Entrapment Incidents

The Commission reviewed entrapment-related incidents, which

accounted for the majority of deaths, in further detail to obtain additional information about the circumstances involved. Both fatal and “near-miss” incidents were included. The “near-miss” incidents, usually reported through consumer complaints, were those in which a child became entrapped in the bed, often requiring rescue by the parent or caregiver. In these cases, there were generally no injuries or injuries were minor (contusions/abrasions). However, the Commission examined “near-miss” incidents because they have the potential for death or serious injury.

There were 122 entrapment incidents from January 1990 through August 9, 1999, of which 57 were fatalities and 65 were “near-misses.” Table 3 illustrates the location in the bunk bed where the child was entrapped.

TABLE 3.—LOCATION IN BUNK BED OF FATAL AND “NEAR-MISS” ENTRAPMENT INCIDENTS

Location of entrapment	Type of incident		
	Total	Fatal	Near-Miss
Top Bunk	77	39	38
Guardrail	51	27	24
Bed/Wall	11	9	2
End structure	12	1	11
Add-on rail	1	1	0
Other	1	0	1
Unknown	1	1	0
Bottom Bunk	27	12	15
Guardrail	1	0	1
Bed/Wall	6	6	0
End structure	14	3	11
Add-on rail	2	2	0
Other	4	1	3
Ladder	7	2	5
Unknown Bunk	11	4	7
Guardrail	2	0	2
Bed/Wall	1	1	0
End structure	4	0	4
“Safety rails”	1	1	0
Other	1	0	1
Unknown	2	2	0
Total	122	57	65

Source: CPSC data files, January 1990–August 9, 1999.

Based on a review of the 57 bunk bed entrapment deaths, the Commission concludes that 39 deaths could have been prevented if the beds had conformed to the current ASTM standard and that 42 could have been prevented by the Commission’s bunk

bed rules. Of the three incidents that occurred in bunk beds conforming to the ASTM standard, two involved entrapment in the upper bunk. In these separate incidents, an 18-month-old infant and a child who was almost 5 years old slipped through the space

between the end of the guardrail and the end structure of the bed and became wedged between the bed and a wall. In the third incident, a 22-month-old child became entrapped by the head in an opening. The opening was between the underside of the upper bunk foundation

support and a curved structural member in the bunk bed end structure.

C. The Rule's Requirements

The final rule defines a bunk bed as any bed in which the underside of any foundation is over 30 inches from the floor.

Any bunk bed shall provide at least two upper bunk guardrails, at least one on each side of the bed. One guardrail shall be continuous between each of the bed's end structures. The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of the guardrail and the nearest bed end structure. For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed. Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

There has been some question about how to interpret the requirement that the guardrail shall be "continuous" between the end structures. The Commission will tolerate a gap between the guardrail and end structure of up to 0.22 inches (so as to not cause a finger entrapment hazard for a child). Moreover, the guardrail need not necessarily be fastened to the end structure (as by bolting or welding).

The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. The Commission does not intend for this requirement to prohibit designs where the wall-side guardrail terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block (representing a child's torso) shown in Figure 1 of Parts 1213 and 1513.

The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

With no mattress on the bed, there shall be no openings in the end

structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 of Parts 1213 and 1513.

There shall be no openings in the end structures between the underside of the foundation of the upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere (representing a child's head).

In order to protect against head-first entrapment in a bed's end structure, the Commission's staff developed a test procedure using the template shown in Figure 2 of Parts 1213 and 1513. This template and procedure are similar to those that were developed to address neck entrapment hazards in playground equipment structures and that are specified in ASTM F 1487-98, "Standard Specification for Playground Equipment for Public Use." The ASTM standard for bunk beds does not contain a comparable provision.

Any portion of an opening in the bed's end structure below the foundation of the upper bunk that is required to be probed by the wedge-block probe shown in Figure 1 of Parts 1213 and 1513, and that will allow free passage of a 9-inch diameter sphere, must satisfy the new neck entrapment provisions in the rules.

The template of Figure 2 embodies the following principles. First, a child will not be able to insert his or her neck sideways into an opening of less than 1.88 inches. (This dimension represents the neck breadth of 2.5 inches for a 5th percentile 2-year-old child, minus an allowance of 0.62 inches for tissue compression.)

Second, there is a minimal likelihood of entrapment when the boundaries of an opening converge on the neck at an included angle of greater than 75°. See CPSC memorandum from Shelley Waters Deppa to John Preston, "Voluntary Standards for Gates and Enclosures," January 15, 1985. This angle was chosen because it is slightly larger than the angles involved in neck entrapment accidents with baby gates and expandable enclosures.

In addition, in some boundary configurations, a child who slips while his/her head is in the opening will be removed from the opening by the force of gravity. In the final rule, an opening that indicates a neck entrapment potential when tested with the template of Figure 2 is nevertheless allowed if its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck

can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

The template is used to protect against head-first entrapment as follows. First, all portions of the boundary of the opening are probed with the "A" section of the test template of Figure 2. The template is inserted into the opening, with the plane of the template in the plane of the opening and with the "top" of the template perpendicular to the centerline of the portion of the boundary being probed. (It may be necessary to detach the "B" section of the template to fit the "A" section into the opening.) The "A" section of the template is then moved along the centerline of the portion of the boundary being probed until it is stopped by contact with the boundaries of the opening (see Figure 3 of Parts 1213 and 1513).

If there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template, the boundary is converging on a potential neck entrapment point at an angle of less than 75°, and further investigation is required. (Contact at an upper corner of the template, as shown in Figure 2, is not considered to be contact with a "side.")

To check further for the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with the template's plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of Parts 1213 and 1513). If the neck portion can completely enter the opening (pass 0.75 inch or more beyond the points where contact with the sides of the "A" section of the template occurred), the opening may present a neck entrapment hazard. Such an opening is not allowed unless the lower boundary of the opening slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the larger (greater than 9-inch) part of the opening.

There shall be a permanent label or marking on each bed stating the name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding, but that may be covered by the placement of a pillow.

⚠ WARNING

To help prevent serious or fatal injuries from entrapment or falls:

- Never allow a child under 6 years on upper bunk
- Use only a mattress that is ___ inches long and ___ inches wide on upper bunk
- Ensure thickness of mattress and foundation combined does not exceed ___ inches and that mattress surface is at least 5 inches below upper edge of guardrails

DO NOT REMOVE THIS LABEL

BILLING CODE 6355-01-C

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, *etc.* In addition, the maximum thickness of the mattress and foundation required for compliance with § 1213.3(a)(5) and (b)(1) shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

- (1) Do not allow children under 6 years of age to use the upper bunk.
- (2) Use guardrails on both sides of the upper bunk.
- (3) Prohibit horseplay on or under beds.
- (4) Prohibit more than one person on upper bunk.
- (5) Use ladder for entering or leaving upper bunk.

D. The ASTM Standard

The entrapment requirements in the final rules being issued are identical to those in the ASTM standard, with the following exceptions.

1. *Definition of bunkbed:* In the ASTM standard, a bunk bed is defined as a bed in which the underside of the foundation is over 35 inches from the floor, rather than the 30 inches in the final rule. Neither of these definitions requires that there be two separate sleeping surfaces.

2. *Guardrails:* The final rule provides that one guardrail (the wall side) shall be continuous between the bed's end structures. The other guardrail may terminate before reaching the bed's end structures, providing there is no more

than 15 inches between either end of the guardrail and the nearest bed end structure. The current ASTM standard permits both guardrails to end 15 inches from the nearest bed end structure. Compared to the final rule, this permits two areas where a child could become entrapped between the bed and the wall.

3. *Bunk end structures:* (a) The final rule provides that there shall be no openings in the end structures between the underside of the foundation of the upper bunk and the upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1 (representing a child's torso) unless the openings are also large enough to permit the free passage of a 9-inch diameter sphere (to ensure the head can also pass through). In the ASTM standard, these passage requirements apply only to that portion of the end structure that is between the level of the lower bunk foundation support system and 9.0 inches (230 mm) above the sleeping surface of the maximum thickness mattress and foundation combined as recommended by the manufacturer.

During 1999, there were three meetings of the ASTM subcommittee at which changes to the ASTM standard were voted upon or discussed. The following discussion describes how these potential changes relate to how close the voluntary standard might have ultimately resembled the final rules if they were not now being issued by the Commission.

The ASTM subcommittee approved a motion to define a bunk bed as a bed in which the underside of the foundation is over 30 inches from the floor, as in the mandatory rule. After discussing the meaning of the term "continuous

guardrail," the subcommittee approved a revision that would require one guardrail on the upper bunk to terminate no greater than 1.5 inches from the end structures, as opposed to the proposed requirement that the guardrail be continuous between the end structures. As noted above, the 1.5 inch space approved by the subcommittee would not comply with the final rule's requirement that the wall-side guardrail be continuous between the end structures.

The revision approved by the ASTM subcommittee also clarified that the 15-inch space between the ends of the other upper bunk guardrail must be measured 5 inches above the sleeping surface of the maximum thickness mattress specified. This clarification agrees with the final rule.

In addition, the subcommittee approved a change to the instructions that must accompany a bunk bed to inform consumers that a bunk bed placed adjacent to a wall must have the continuous guardrail on the wall-side of the bed. This requirement agrees with the final rule.

The ASTM subcommittee voted to expand the current entrapment requirements to include the entire end structure between the level of the upper and lower bunk foundation support systems, as provided in the final rule. Further, it did not oppose adding a neck entrapment requirement to the ASTM standard. However, the members present questioned the need for a 75° angle on the test probe, when a 55° angle on a similar probe in the ASTM public playground equipment standard appeared to have been effective in addressing neck entrapment incidents in openings. A working group was established to draft a recommendation

for the subcommittee on whether the probe to be used in the ASTM bunk bed standard should have a 75° angle as in the proposed rule or a 55° angle as in the playground equipment standard. A motion was approved to accept the recommendation of the working group and to forward it, together with the other previously approved revisions, to ASTM for a ballot by the full subcommittee. At the request of ASTM, CPSC staff searched CPSC playground incident data and verified that no neck entrapments were reported in structures conforming to the requirements in the voluntary playground standards.

A September 9, 1999 letter from the ASTM working group was submitted as a comment on the July 9, 1999 NPR. The letter stated that the working group had recommended to the ASTM subcommittee that the neck entrapment requirement to be added to the ASTM standard for bunk beds will specify the probe in the ASTM public playground equipment standard, which uses a 55° angle.

After the ASTM working group's decision to use the 55° playground equipment probe, manufacturers discussed limiting the revision of the requirements for lower bunk end structures in the ASTM standard to metal bunk beds only. Their rationale for such a limitation is that there have been no known neck entrapment incidents in wooden bunk beds and that it is not likely that a wooden bunk bed would be manufactured with openings of a shape that would present neck entrapment. At the present time, the Commission does not know whether the lower bed end structure requirements in the ASTM standard will apply only to metal beds.

The revisions to the voluntary standard that were approved during the meetings of the ASTM bunk bed subcommittee have not been sent for balloting by the entire subcommittee. The Commission does not know when the ballot will be mailed or what new requirements will be approved.

E. Statutory Authorities for This Proceeding

The FHSA authorizes the regulation of unreasonable risks of injury associated with articles intended for use by children that present mechanical (or electrical or thermal) hazards. FHSA § 2(f)(D), 15 U.S.C. 1261(f)(D). The hazards associated with bunk beds that are described above are mechanical. *See* FHSA § 2(s), 15 U.S.C. 1261(s). The CPSA authorizes the regulation of unreasonable risks of injury associated with "consumer products," which include bunk beds"whether intended

for the use of children or adults. CPSA § 3(a)(1), 15 U.S.C. § 2052(a)(1).

Thus, bunk beds intended for the use of adults can be regulated only under the CPSA, while bunk beds intended for the use of children potentially could be regulated under either the FHSA or the CPSA. The Commission considers a bunk bed to be intended for use by children if it has smaller than twin-size mattresses or incorporates styling or other features especially intended for use by children. The available data do not indicate whether the known deaths and injuries are occurring on beds intended for use by children. Nevertheless, any regulation for bunk beds should include beds intended for children, since there is no reason why such beds, to the extent they exist, do not present the same risks to children as do adults' bunk beds.

Section 30(d) of the CPSA, however, provides that a risk associated with a consumer product that can be reduced to a sufficient extent by action under the FHSA can be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to do so. 15 U.S.C. 2079(d). Because the risks of bunk beds can be addressed with the two-pronged approach (*i.e.*, by both statutes), there appears to be no strong reason why it would be in the public interest to regulate bunk beds only under the CPSA. Accordingly, the requirements were proposed, and are issued, as two separate rules, one under the CPSA for "adult" bunk beds and the other under the FHSA for beds intended for use by children.

F. Statutory Findings Relating to the Voluntary Standard

The Commission may not issue a standard under either the CPSA or the FHSA if an industry has adopted and implemented a voluntary standard to address the risk, unless the Commission finds that "(i) compliance with such voluntary * * * standard is not likely to result in the elimination or adequate reduction of such risk of injury; or (ii) it is unlikely that there will be substantial compliance with such voluntary * * * standard." *See* 9(f)(3)(D) of the CPSA, 15 U.S.C. 2058(f)(3)(D), and 3(i)(2) of the FHSA, 15 U.S.C. 1262(i)(2). The percentage of currently produced bunk beds that conform to the ASTM standard could be as high as 90% or more. This raises the questions of whether the ASTM standard is substantively adequate and, if so, whether it will command "substantial compliance."

The rule goes beyond the provisions of the ASTM voluntary standard. First, it eliminates the voluntary standard's

option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, the voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Third, the mandatory standard contains protection against neck entrapment that the voluntary standard lacks. Finally, the mandatory rule applies to bunk beds having a foundation over 30 inches from the floor, rather than the 35 inches in the ASTM standard. These provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted below, have benefits that bear a reasonable relationship to their costs.

Therefore, the Commission finds that compliance with the voluntary standard is unlikely to eliminate or adequately reduce the risk of entrapment injury or death. For this reason, the voluntary standard does not bar issuance of a rule.

Even if the voluntary and mandatory standards were identical, however, there is the issue of whether there will be substantial compliance with the voluntary standard. Neither the CPSA nor the FHSA define "substantial compliance." The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of "substantial compliance" that the Office of General Counsel provided to the Commission. 64 Fed. Reg. 10245, 10248-49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from "all persons who would be affected by such an interpretation." *Id.* at 10249. The Commission received more than 20 comments on the interpretation.

Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not "substantial compliance" with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. *See, e.g.*, 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of "substantial compliance" focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision

focus on the specific facts of this rulemaking and are stated below.

The legislative history regarding the meaning of "substantial compliance" indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. E.g., Senate Report No. 97-102, p. 14 (May 15, 1981); House Report No. 97-158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97-208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However, the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

The Commission must also consider that bunk beds have a very long product life, frequently being passed on to

several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

- Rarely or never cause death;
- Cause only less severe injuries;
- Do not cause deaths or injuries principally to a vulnerable segment of the population;

- Are not intended for children and which have no special attraction for children;
- Have a relatively short life span;
- Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
- Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
- Require some additional intervening action to be hazardous.

And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

The Commission emphasizes that its decision is not based on the argument that a mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

G. Response to Comments

The Commission received 21 written comments in response to the NPR published in the **Federal Register** on March 3, 1999. In addition, six people gave oral testimony in a public hearing held on May 6, 1999. Also, five comments were received in response to the revised entrapment requirements published in the July 9, 1999, **Federal Register**. The Commission's responses to these comments are given below:

1. Comments on the March 3, 1999, NPR

a. *Favoring a mandatory rule:* Seven commenters responding in writing to the March 3, 1999, NPR, and three persons at the May 6, 1999, public hearing, favored a mandatory rule addressing entrapment in bunk beds. Their reasons were varied and included:

- Reports of deaths show there is an unreasonable risk;
- A mandatory standard will improve compliance;
- The benefits show a reasonable relationship to costs;

- A mandatory rule permits the Commission to seek penalties from violators;

- There is increased awareness of mandatory standards; and

- A mandatory standard removes the cost advantage of producing nonconforming beds.

b. *Reference the ASTM standard:* Two comments on the NPR neither opposed nor favored a mandatory rule. The President of ASTM and the chairman of the ASTM F15.30 subcommittee for bunk beds requested that, if the Commission elects to proceed with a mandatory standard, it should reference the ASTM F1427 voluntary standard. At the present time, there are some significant differences in the entrapment requirements in the ASTM standard and those in the mandatory rule. Although the ASTM subcommittee for bunk beds has agreed to make certain revisions to the voluntary standard, these revisions would not make the entrapment requirements in the ASTM standard identical to those in the rule (see additional discussion below in the response to comments on the July 9, 1999 NPR). Further, the Commission does not know that these revisions will be approved by the formal ASTM ballot process. Therefore, the mandatory rule does not reference the ASTM standard, but instead contains specific requirements addressing entrapment.

c. *Substantial compliance:* As noted, where there is a voluntary standard in place, both the CPSA and the FHSA prohibit the Commission from issuing a mandatory standard unless the Commission finds either that the voluntary standard is not likely to eliminate or adequately reduce the risk or that it is unlikely that there will be "substantial compliance" with the voluntary standard.

For the reasons stated in Section F of this notice, the Commission has found both that the voluntary standard will not adequately reduce the risk of injury from bunk beds and that it is unlikely that there will be substantial compliance with the voluntary standard. Therefore, the voluntary standard is not a bar to issuance of a rule.

d. *OMB Circular No. A-119:* One commenter noted that OMB Circular No. A-119 directs agencies to use voluntary standards in lieu of government-unique standards except where they are inconsistent with law or otherwise impractical. However, Circular No. A-119 states that it should not "be construed to commit any agency to the use of a voluntary standard which * * * is, in its opinion, inadequate * * * or is otherwise inappropriate."

The Commission determines that, in this case, reliance on the voluntary standard is "inappropriate" for the reasons stated in Section H of this notice. Thus, Circular No. A-119 does not prevent issuance of a final rule.

e. *Entrapment incidents:* A bunk bed manufacturer claimed that the extra cost and major design changes required to comply with the proposed rule's provisions for a continuous guardrail do not reduce or eliminate the potential hazards. The manufacturer also claimed that there were no incidents of entrapment between a bunk bed and a wall prior to the inception of the 1996 ASTM standard.

However, CPSC is aware of 9 fatalities resulting from entrapment between a top bunk and a wall from 1990 through August 9, 1999. Two of these fatalities occurred in beds conforming to the ASTM standard's requirement for a wall-side guardrail that permits gaps up to 15 inches in width between each end of the guardrail and the bed's end structures. One of these deaths occurred in 1994 and the other in 1996. In both, the victims slipped through the unprotected area between the end of the guardrail and bed end structure. The requirement in the rule for a continuous wall-side guardrail will prevent future incidents of this type.

f. *Hazards in other types of beds:* It was noted by one commenter that other types of beds, such as small single beds and trundle beds, could have the same entrapment hazards as bunk beds if they are used by preschool age children. The commenter, therefore, suggested that any bed intended for preschool age children, and adult beds (since it is predictable that young children will be placed in these beds), should be subject to a mandatory standard.

The Commission did not extend the scope of the standard to cover beds other than bunk beds, because this would involve different considerations of risk, cost, and benefits, and is outside the scope of the present proceeding.

This commenter also recommended that both adult and children's bunk beds should be covered by a single standard, and that the standard should be issued under the CPSA.

As explained in the proposal and in Section E of this notice, the CPSA provides that a risk that can be adequately regulated under the FHSA can be regulated under the CPSA only if the Commission determines, by rule, that regulating the risk under the CPSA is in the public interest. Bunk beds intended for use by children, but not other bunk beds, could adequately be regulated under the FHSA, and the Commission did not find reasons why it

would be in the public interest to regulate the risk from children's bunk beds under the CPSA. Accordingly, the Commission proposed to regulate bunk beds intended for use by children under the FHSA and to regulate other (adult) bunk beds under the CPSA. Although this does not comply with the commenter's recommendation that both categories of bunk beds be regulated under the CPSA, it does comply with the recommendation that the standard's requirements apply to both adults' and children's beds.

g. *Bunk beds for institutional use:* Two comments addressed the issue of whether the rule should apply to bunk beds sold for institutional use, such as school or college dormitories, prisons, and military facilities. One comment, from a trade association representing a number of major producers of bunk beds, states that to include institutional beds in the scope of the rule would be a departure from past CPSC practice. The association asserts that the regulation of public accommodations has traditionally been accomplished through state and municipal building codes. The other comment, from a manufacturer of college dormitory furniture, strongly objects to a regulation that is unsupported by any data to show that there is a high risk for adults or college students. Institutional bunk beds are generally not provided with guardrails, and the manufacturer claims that to add such rails, and comply with other provisions in the proposed rule, would add \$225 to the cost of each of his beds and be of no benefit to an adult user.

Although the Commission cannot confirm the commenter's cost estimate, it agrees that the cost of compliance with the rule would be substantially higher for institutional bunk beds than for residential beds, in part because institutional beds typically do not have any guardrails (since they are intended for teenagers or adults). Furthermore, of the two known fatalities of children that occurred in beds that were originally sold for institutional use, one was an entrapment between the lower bunk mattress and a wall, a scenario not addressed by the rule. The other incident was an entrapment in a gap between the end structure and a mattress that was too short to fit properly on the lower bunk. This incident would be addressed by a label and the instructions for proper mattress size if institutional beds were included in the scope of the rule.

According to information supplied by industry, there are about 200,000 bunk beds sold for the institutional market each year for use by colleges and

boarding schools, the military, mental health facilities, and correctional facilities. The expected useful life of these institutional products is estimated by industry at 7 to 10 years. Therefore, there may be about 1.7 million institutional beds in use. Manufacturers projected that the cost of compliance for institutional bunk beds would be considerably higher than that of residential bunk beds, due to the addition of two guard rails (rather than one for residential) and the heavier-duty materials used in institutional bunk beds. For comparison purposes, if the only significant cost was the addition of two guardrails (equivalent to rails used in residential beds), the cost of compliance for institutional bunk beds would be twice that of residential units, or \$30 to \$80 per bed.

Given that one death would have been addressed during the last 9.5 years, and that an average of about 1.7 million institutional bunk beds may have been in use during those years, the risk addressed by inclusion of institutional beds in the mandatory standard would be about 0.06 deaths per million beds in use per year ((1 death/9.5 years)/1.7 million beds). Assuming a societal cost of \$5 million per death, the annual societal value of averting this risk is about \$0.30 per bed per year. If we assume a useful life of 10 years, and a discount rate of 3%, the estimated present value of averting this risk would be about \$2.55 per bed over its entire useful life. Thus, based on available information, the benefits of the rule, if applied to institutional bunk beds, would likely be substantially less than the costs. Because of this, and because the likelihood that consumers will purchase institutional beds in the future is not known, the Commission decided not to include institutional bunk beds within the scope of the rule. For the purposes of this rule, facilities intended for use by children under age 6 are not considered to be institutions.

h. Effective date: The Commission proposed an effective date of 180 days (6 months) after the final rule is published. A trade association representing a number of major bunk bed producers commented that there should be an 18-month lead time before the rule becomes effective; the association reiterated this in its comments on the July 9, 1999, NPR. A time line showing the tasks needed to comply with the proposed rule was included in the association's comments. The trade association stated that between 5 and 10 months of time were needed to allow manufacturers, distributors, and retailers to sell their inventories.

An allowance of lead time to deplete inventory is not necessary, because the rule will apply only to bunk beds manufactured or imported after the rule's effective date. Deletion of the time allotted for inventory depletion from the trade association's time line would result in an effective date of 8 to 13 months after publication.

The CPSC provides that an effective date shall not exceed 180 days unless the Commission finds that a longer period is in the public interest. Although the schedule provided by the association might be reasonable for a high-volume manufacturer with numerous models affected by the rule, the Commission considers the schedule to be unnecessarily long for the minor changes imposed by the rule on the small manufacturers likely to be affected. Thus, the Commission cannot conclude it is in the public interest to extend the effective date past the proposed 180-day period. The Commission concludes that the 180-day period between publication of the final rule and its effective date is reasonable and adequate to allow manufacturers time to make any necessary product changes.

2. Comments on the July 9, 1999, NPR

a. Support for the rule: One commenter, who had previously submitted a comment supporting the rule in the March 3, 1999, NPR, also supports the revised rule on the grounds that "these requirements are necessary to address fatalities due to entrapment of children's necks in end structures of bunk beds." The commenter also believes "that the Commission should not defer to the ASTM voluntary standard because of widespread lack of compliance and because the current voluntary standard is inadequate." As previously stated, the Commission is not relying on the voluntary standard.

b. Neck entrapment probe: Two comments from bunk bed manufacturers that are members of the ASTM F15.30 subcommittee addressed the angle incorporated into the probe in the revised proposed rule. One of the comments, submitted on behalf of the entire subcommittee, stated that the lower bunk end-structure requirements in the ASTM standard would be revised in accordance with the requirements in the proposed rule (§§ 1213.3(b)(3) & (4), 1213.4, 1513.3(b)(3) & (4), and 1513.4), except that the sides of the probe (see Figure 2) would have a 55° angle relative to the centerline of the probe instead of the 75° angle of the probe in the revised proposed rule. The comment from the other manufacturer, a member of the ASTM bunk bed subcommittee,

also addressed the angle on the end-structure probe and stated that, while he could accept a probe with either angle, it was his opinion that the 55° angle should be adopted. Both of these comments supported a 55° angle based on its apparent success in preventing neck entrapment incidents in playground equipment.

Another comment, from a trade association representing major manufacturers of bunk beds, reiterated the association's comment on the March 3, 1999 NPR that it was not opposed to a mandatory rule for bunk beds, and supported a provision to address neck entrapment in lower bunk end structures. It also takes no position on the appropriate probe for this purpose, but recommends "a probe which eliminates or adequately reduces the risk of neck entrapment."

In drafting the neck entrapment requirements, the CPSC staff initially considered using a probe identical to that in the ASTM F1487 standard for public playground equipment (with a 55° angle). The rationale for the 55° angle stems from a recommendation by a committee, convened in 1976 by the National Recreation and Park Association (NRPA), that developed requirements for a possible CPSC mandatory standard for playground equipment. The angle requirement was "intended to eliminate dangerous angles that could form openings tending to entrap or strangle the user." The rationale for the committee's recommendation stated: "[I]t is best engineering judgement at this point, and takes into consideration the fact that most angles present in current equipment are 60° or greater." Based on this NRPA committee recommendation, the CPSC Handbook for Public Playground Safety, first published in 1981, also addresses neck entrapment in angles on public playground equipment by recommending that angles be greater than 55°.

The Commission decided that the angle on the neck entrapment probe in the bunk bed standard should be 75°, instead of 55°, for a number of reasons. First, in 1985, following a number of deaths resulting from neck entrapment in accordion-style baby gates and enclosures, the staff worked with industry to draft requirements for a voluntary standard for these products. The staff developed a probe that had an angle of 75° at its base, because an 11-month-old child had become fatally entrapped in a diamond-shaped opening in a baby gate having a 71° angle at its base. The probe was designed to protect children two years of age and younger. It was accepted by the ASTM gate and

enclosure subcommittee and eliminated V-shaped openings with angles less than 75°.

Second, the lack of injury data involving public playground equipment having angles greater than 55° does not convince the Commission that a 55° probe would adequately protect children. The potential for children to become entrapped in an angle between 55° and 75° depends on the type of equipment. The pieces of public playground equipment most likely to have angles between 55 and 75° that could cause neck entrapment are dome climbers and handrails on ladders. Public playground equipment is generally intended for children from 2 through 12 years of age. Dome climbers are not appropriate for children under 5 years of age. Children 5 years of age and older who use dome climbers are more likely to be able to call out for assistance or pull themselves up and out if they become entrapped. As for ladder handrails, the angles that potentially could be an entrapment hazard are generally located at the bottom of the ladder below the neck level of even small children.

Finally, children under 2 years of age are almost always supervised when playing in public playgrounds, and adult assistance would be readily available if needed. This is not the case with bunk beds, where children are left to sleep unattended.

For the above reasons, the Commission concludes that a 75° angle on the neck entrapment probe is necessary to adequately address the risk of entrapment in bunk bed end structures to protect children under 2 years of age.

H. The Need for a Mandatory Standard

As noted in Section F of this notice, a mandatory standard is needed to provide requirements that are not now in the voluntary standard. In deciding to issue this rule, the Commission also considered carefully the particular characteristics of the bunk bed industry. This industry is highly diverse and fragmented, with differing levels of sophistication relating to product safety. Firms can easily enter and leave the bunk bed manufacturing business. This fragmentation and diversity contributes to difficulties in achieving more complete compliance with the voluntary standard.

Because it is difficult to identify all firms in the industry, it is difficult for voluntary standards organizations and trade associations to conduct outreach and education efforts regarding the voluntary standard. By contrast, in industries with a smaller number of

firms (and particularly large firms), it is easier to find the firms and educate them about the existence and importance of voluntary standards. Mandatory standards—codified in the accessible Code of Federal Regulations—are easier to locate, and their significance is more obvious.

These generalizations about the industry are supported by the staff's enforcement experience. The CPSC's Office of Compliance (EXC) is aware of 167 firms who currently either manufacture or import bunk beds. Between November 1994 and October 1997, CPSC staff participated in eight recalls of bunk beds that did not comply with the voluntary standard. The recalls involved 41 manufacturers and importers, and affected approximately 531,000 bunk beds. In early 1998, CPSC Compliance staff conducted limited retail surveillance of bunk beds for compliance with the voluntary standard. Twenty-three firms had at least one model of bunk bed that did not conform, and six of these firms were repeat violators. This surveillance resulted in five recalls, involving approximately 37,000 beds.

Later in 1998, a consumer complaint and a report under Section 15 of the CPSA sparked investigations that resulted in recalls of 58,000 bunk beds and 5,400 bunk bed kits. To date, the total number of bunk beds and kits recalled since 1994 has risen to more than 630,000, involving 48 firms.

Since 1994, at the completion of each round of surveillance and follow-up action, CPSC staff believed that the known bunk bed manufacturers complied with the voluntary standard. This is the case today. Yet, each time, the staff later discovered more manufacturers, and some of their beds had to be recalled because they presented a risk of entrapment. The Commission believes that, in the absence of a mandatory rule, this pattern would continue.

Some manufacturers contacted by Compliance did not see an urgency to comply with a "voluntary" standard, and they did not recognize the hazards associated with noncompliance. Other manufacturers were not even aware of the standard. As a result, in the absence of a mandatory standard, entrapment hazards would continue to exist on beds in use and for sale.

For the foregoing reasons, the Commission believes that a mandatory bunk bed entrapment standard is needed and has, therefore, decided to issue the mandatory rule.

A mandatory bunk bed entrapment standard will bring the following benefits:

1. A mandatory standard will increase the awareness and sense of urgency of manufacturers in this industry regarding compliance with the entrapment provisions, thereby increasing the degree of conformance to those provisions.

2. A mandatory standard will allow the Commission to seek penalties for violations. Publicizing fines for noncompliance with a mandatory standard will deter other manufacturers from making noncomplying beds.

3. A mandatory standard will allow state and local officials to assist CPSC staff in identifying noncomplying bunk beds and taking action to prevent the sale of these beds.

4. Under a mandatory standard, retailers and distributors will violate the law if they sell noncomplying bunk beds. Retailers and retail associations will then insist that manufacturers and importers provide complying bunk beds.

5. The bunk bed industry is extremely competitive. Manufacturers who now conform to the ASTM standard have expressed concern about those firms that do not. Nonconforming beds can undercut the cost of conforming beds. A mandatory standard will take away any competitive cost advantage for unsafe beds.

6. A mandatory standard will help prevent noncomplying beds made by foreign manufacturers from entering the United States. CPSC could use the resources of the U.S. Customs Service to assist in stopping hazardous beds at the docks.

I. Other Statutory Requirements and Findings

The Commission is issuing the requirements for bunk beds not intended for use by children as a consumer product safety standard under the CPSA. This requires a finding that the requirements are reasonably necessary to eliminate or adequately reduce an unreasonable risk of injury presented by bunk beds. This finding is made in the appendix to Part 1213.

Section 9(e) of the CPSA requires that, in promulgating a consumer product safety rule, "the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule." 15 U.S.C. 2058(e).

The requirements for end-structure openings and, except as noted below, for a continuous guardrail on the wall side of bunk beds do not entail any inconvenience for the user. The requirement that guardrails cannot be

removed without either intentionally releasing a fastening device or applying forces sequentially in different directions also is expected to not have a significant adverse effect on the elderly or handicapped. First, the voluntary standard has required this safety feature for many years, and many currently manufactured bunk beds already have this feature. Second, handicapped or elderly persons rarely use the top bunk. Third, once installed, guardrails are likely to be left in place. Finally, the actions needed to use guardrails with these features would present little or no additional difficulty for elderly or handicapped persons who can remove guardrails without these features. Therefore, after considering the effects of the rule on elderly and handicapped persons, the Commission concludes that the life saving benefits of the rule clearly warrant whatever small adverse effect it may cause on the use of bunk beds by the elderly or handicapped, if any.

The regulation for bunk beds intended for the use of children requires a determination under FHSA Section 3(a)(1) that bunk beds that do not comply with the rule present mechanical hazards, as provided in FHSA Section 3(a)(1), and are thus hazardous substances. See FHSA Sections 2(f)(1)(D) and 2(s). Under the FHSA, a product that is a hazardous substance and intended for use by children is banned. FHSA Section 2(q)(1). This finding is made in the appendix to Part 1513.

To issue a final rule under either the CPSA or the FHSA, the Commission must publish the text of the final rule and a final regulatory analysis that includes the elements stated in 3(i)(1) of the FHSA or section 9(f)(2) of the CPSA. 15 U.S.C. 1262(i)(1), 2058(f)(2). The required final regulatory analysis is in Section J of this notice.

Before issuing a final regulation under either the CPSA or the FHSA, the Commission must make other statutory findings. These concern voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. CPSA § 9(f)(3), 15 U.S.C. 2058(f)(3); FHSA § 3(i)(2), 15 U.S.C. 1262(i)(2). These findings are made in the appendices to Parts 1213 and 1513, respectively.

J. Final Regulatory Analysis

Introduction: The rules issued in this notice are under the authority of both the CPSA and the FHSA. Both statutes require that the Commission publish a final regulatory analysis of the rule. The Commission's final regulatory analysis is published below. (Since the technical

requirements of the rule under the CPSA and the rule under the FHSA are identical, this analysis will refer to "the rule.")

Product and market information: The retail prices of bunk beds range from about \$100 to over \$700; manufacturers estimate the average retail price to be about \$300. Some models now have a lower double bed with a twin upper bunk.

The American Furniture Manufacturers Association (AFMA) represents manufacturers of bunk beds. According to AFMA, 40 firms, either AFMA members or members of the existing ASTM bunk bed subcommittee, account for 75–80% of total known annual sales of bunk beds. Through Compliance staff activities, the Commission is now aware of 167 manufacturers of bunk beds. The share of the market accounted for by the 127 manufacturers or distributors who are not AFMA members or members of the ASTM subcommittee is not known, but is believed to account for a majority of the remaining 20–25% of annual sales.

Bunk beds are a category of bedroom furniture, and every manufacturer of bedroom furniture is a potential producer of bunk beds. Further, because of their straightforward design, other types of businesses (and individuals) can also produce these products. Thus, it is likely that there are other unidentified manufacturers, each producing small numbers of bunk beds.

Industry sources estimate that about 500,000 bunk beds are sold annually for household use, and that the expected useful life of these products is 13–17 years. Based on this information, the CPSC's Product Population Model (a computer-generated statistical program) estimates that there may be about 8 million bunk beds in household use.

AFMA sources indicate that imports of bunk beds by its members appear to be increasing. Industry sources indicate that most, if not all, metal bunk beds sold are imported. Metal bunk beds are estimated to account for about 20% of the sales of bunk beds.

Conformance with the existing voluntary standard: There is an existing voluntary standard for bunk beds, ASTM F1427. There are no known government or industry data describing the extent of conformance to this standard. However, based on its knowledge of industry practices, the Commission's Engineering Sciences staff (ES) estimated that roughly 50% of production from 1979 to 1986 conformed to the standard's upper bunk entrapment requirements. Staff estimates that, as the industry publicized the guidelines and CPSC

staff became involved in the standards process, conformance increased to roughly 75% of production during the period 1986 to 1992. The conformance was estimated to have increased further after 1992, when ASTM published its bunk bed standard and the staff (EXC) became active in monitoring for conformance to the standard. Staff estimates that up to 90% or more of production since 1992 conforms to the ASTM standard.

EXC reported that the bunk beds produced by the 40 firms that are either members of AFMA or the ASTM subcommittee all conform to the existing voluntary standard. EXC staff also examined the product lines of the remaining 127 identified firms, and believes that, after a number of recall activities, all of the beds produced by these firms were in conformance with the standard.

Costs and Benefits

Potential Costs. The costs associated with the mandatory rule include the cost of adapting to the provisions of the rule for any firms not now meeting those requirements. The cost factors affected by these requirements are any increases in the cost of materials, and any redesign costs necessary to comply with the mandatory rule.

Four manufacturers that previously had modified their production stated that the additional materials needed to address entrapment were nominal compared to overall materials costs in bunk bed production. They also stated that any redesign costs would not be significant on a per-unit basis. The most significant cost was the addition of a continuous guardrail to the top bunk, which might add \$15 to \$40 to the average retail price of bunk beds (or 5% to 13% of the average retail price). This cost will apply only to bunk beds in current production that do not now meet the voluntary standard.

There are also costs to some of the firms that now conform to the voluntary standard requirement for a wall-side guardrail, because the current voluntary standard allows for a 15-inch gap at either or both ends of this guardrail. A spokesman for a major independent bunk bed testing lab estimated that bunk bed models conforming to the voluntary standard are split about equally between those having a continuous wall-side rail (about 72 inches in length) and those having a 15-inch gap on one or both ends of the wall-side rail.

Thus, about 50% of all models that meet the current voluntary standard may require some change in design, as well as additional materials, to meet the requirements in the mandatory

standard. The incremental cost of closing the gap (or gaps) in the wall-side top rail is unknown. However, because a continuous rail is merely an extension of the existing rail already in place, the increase in the retail price is probably less than proportional to the increase in length. Thus, if a continuous rail adds \$15 to \$40 to the price of a bunk bed, closing the gap on the wall-side rail may cost consumers no more than about \$5 to \$10.

For a small number of firms, the rule may also result in costs associated with modifications of some bottom bunk end structures. Such modifications to openings may be required to prevent the free passage of a wedge block (simulating a child's torso) if they do not allow the free passage of a sphere (simulating a child's head). The requirement also addresses the shape of openings that could admit a child's neck, and entrap the head in the end structure. The Commission is aware of few current designs that will be affected by this latter requirement. However, if these one-time redesign costs are amortized over the entire production runs for these firms, the per-unit costs are expected to be small.

Potential benefits. The expected societal costs of bunk bed entrapment deaths represent the potential benefits of preventing these deaths. Epidemiology staff reported that there were 57 entrapment deaths associated with bunk beds from 1990 through August 9, 1999. Based on a review of the circumstances of the reports, staff concluded that the voluntary standard would have addressed 37 of the 39 top bunk entrapment deaths and 2 of the 3 bottom bunk end structure entrapment deaths. Altogether, the Commission concludes that the voluntary standard would have addressed 68% (39/57) of the reported fatalities due to entrapment in both the top and bottom bunk locations. Additionally, conformance to the final rule (as opposed to the voluntary standard) will address another 3 of the 57 (about 5%) entrapment deaths, including the 2 top-bunk deaths that would not have been addressed by the voluntary standard, and 1 bottom bunk end-structure death.

The Commission projects that about 10 bunk bed entrapment fatalities have occurred annually since 1990. Thus, for the segment of bunk beds that do not conform to the voluntary standard, the rule will address about 7 deaths per year. For the segment of bunk beds that conform to the requirements of the voluntary standard but not the rule, the rule will address an additional death every other year, or about 0.5 deaths per year.

To determine the expected benefits of the rule, it is necessary to estimate the risk of entrapment death associated with bunk beds not conforming to the requirements of the mandatory rule. In this case, the risk computation requires information on the number of bunk beds that did not conform to the voluntary standard and on the number of bunk beds that conformed to the voluntary standard but not the mandatory rule.

Since an estimated 1.2 to 2.4 million bunk beds in use since 1990 did not conform to the voluntary standard, the risk of entrapment addressed by the rule for this group of beds ranges from about 2.9 to 5.8 deaths per million nonconforming beds (7 deaths per 2.4 million beds to 7 deaths per 1.2 million beds). At an assumed societal cost of \$5 million per death, a useful life of about 15 years for a bunk bed, and a discount rate of 3%, the estimated present value of averting entrapment fatalities on beds that did not conform to the voluntary standard ranges from about \$175 to \$350 per noncomplying bed.

The rule will also address another 0.5 entrapment deaths annually that would not have been addressed by the voluntary standard. Assuming that about one-half of the 5.6 to 6.8 million bunk beds would have conformed to the voluntary standard but not the mandatory rule, the risk of entrapment for these beds would have ranged from about 0.15 to 0.18 deaths per million beds (0.5 deaths per 3.4 million beds to 0.5 deaths per 2.8 million beds). Using the assumptions stated above, the estimated present value of averting entrapment fatalities not addressed by the voluntary standard ranges from \$9 to \$11 per noncomplying bed.

Comparison of costs and benefits. The above analysis evaluated the costs and benefits of the rule for two market segments: bunk beds that do not conform to the voluntary standard, and bunk beds that conform to the requirements of the voluntary standard but not to the requirements of the mandatory rule. For the segment of bunk beds that does not conform to the voluntary standard, the expected benefits of the rule (about \$175 to \$350 per bed) are substantially greater than the expected costs of the rule (about \$15 to \$40 per bed). Thus, if the standard prevents all of the deaths addressed on bunk beds not conforming to the voluntary standard, the expected net benefits per bed sold will range from a low of about \$135 (\$175 – \$40) to about \$335 (\$350 – \$40), and will average about \$235 per bed. The effectiveness of the standard in preventing the injuries and deaths it addresses is expected to be very high.

For the second segment, those beds that meet the requirements of the voluntary standard but not those of the rule, the expected benefits range from about \$9 to \$11 per bed and the costs range from about \$5 to \$10.

Institutional bunk beds. The Commission also considered applying the rule to bunk beds produced for the institutional market (such as for colleges, the military, etc.). As described in Section G of this notice, the Commission excluded institutional bunk beds from the rule.

K. Final Regulatory Flexibility Act Certification

The Commission is required by the Regulatory Flexibility Act of 1980 (RFA) to address and give particular consideration to the economic effects of the rule on small entities.

The precise number of firms manufacturing bunk beds is not known. Commission staff has identified 167 firms that have produced bunk beds: these were identified through the trade association, national and regional trade shows, industry contacts, the Internet, and retail inspections. Small Business Administration guidelines classify firms in the furniture industry as small if they have less than 500 employees, are independently owned, and are not dominant in the field; thus, most of the identified firms would be classified as small businesses. It is likely that there are additional unidentified firms that produce relatively small numbers of bunk beds. These remaining producers are also likely to be small businesses.

Even though there is a substantial number of small firms, the Commission does not expect that there will be a significant effect on these firms. As noted earlier, after the extensive recall activities conducted by the Commission's staff, the 167 firms identified by the staff apparently conform to the existing voluntary standard, and will require only slight modifications to comply with the mandatory rule. For firms not conforming to the voluntary standard, the requirements are expected to result in cost increases that are small and likely to be passed on to consumers.

The mandatory rule will not require third-party testing, and it is anticipated that firms themselves will do the testing required to certify that their products comply with the mandatory standard.

There are no reporting or recordkeeping requirements under the rule. There are no Federal rules that the rule will duplicate, or with which it will overlap or conflict.

Accordingly, the Commission certifies that the rule will not have a significant

economic impact on a substantial number of small entities.

L. Environmental Assessment

The rule will not cause manufacturers to dispose of existing construction materials or packaging. Sale of inventories of finished noncomplying products (including those at retail) will not be prohibited, since the rule will apply only to units produced or imported after the effective date.

The rule is not expected to have a significant effect on the materials used in the production and packaging of subject bunk beds, or in the number of units discarded after the rule.

Therefore, no significant environmental effects are expected to be caused by the rule for bunk beds.

M. Executive Orders

Executive Order No. 12,988 requires agencies to state the preemptive effect, if any, to be given the regulation. The preemptive effects of these rules are established by Section 26 of the CPSA, 15 U.S.C. 2075, and Section 18 of the FHSA. Section 26(a) of the CPSA states:

(a) Whenever a consumer product safety standard under [the CPSA] applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or continue in effect any provision of a safety standard or regulation which prescribed any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such products which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

Subsection (b) of 15 U.S.C. 2075 provides a circumstance under which subsection (a) does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety standard applicable to a consumer product for its own [governmental] use, and which is not identical to the consumer product safety standard applicable to the product under the CPSA. This occurs if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the consumer product safety standard.

Subsection (c) of 15 U.S.C. 2075 authorizes a State or a political subdivision of a State to request an exemption from the preemptive effect of a consumer product safety standard. The Commission may grant such a request, by rule, where the State or political subdivision standard or regulation (1) provides a significantly higher degree of protection from such

risk of injury than does the consumer product safety standard and (2) does not unduly burden interstate commerce.

Similar preemption provisions are in the FHSA. See FHSA Section 18(b), 15 U.S.C. 1261 note.

This rule has been evaluated in light of the principles stated in Executive Order No. 13,132 concerning federalism, even though that Order does not apply to independent regulatory agencies, such as CPSC. The only substantial federalism concern associated with this rule is preemption of non-identical state standards. The Commission is aware of standards in California and Oklahoma that differ from the final rule in minor ways. In fact, the Commission understands that the intent of the California standard was to duplicate the anticipated Federal rule.

By establishing findings the Commission must make to issue these types of rules and expressly providing for preemption of non-identical state standards, Congress clearly intended preemption of state law in these circumstances. Further, the preemption is the minimum required to carry out the purposes of the CPSA and the FHSA. In view of the minor differences between these two state rules and the Federal rule, the Commission concludes that the Federal rule will have no adverse effect on the safety of the citizens of these two states.

Further, to the extent that these state rules differ from each other and from the voluntary standard, manufacturers who would like to provide bunk beds to either of these states and to another state may have to sell different versions of their beds to satisfy the conflicting standards. Thus, these state rules, if not preempted, could have an adverse economic effect on manufacturers and distributors.

List of Subjects in 16 CFR Parts 1213, 1500, and 1513

Bunk beds, Consumer protection, Infants and children, Reporting and recordkeeping requirements.

Effective date. These rules will become effective June 19, 2000.

For the reasons set out in the preamble, the Commission amends Title 16, Chapter II, Subchapters B and C, of the Code of Federal Regulations as set forth below.

1. A new Part 1213 is added to Subchapter B, to read as follows:

PART 1213—SAFETY STANDARD FOR ENTRAPMENT HAZARDS IN BUNK BEDS

Sec.

1213.1 Scope, application, and effective date.

1213.2 Definitions.

1213.3 Requirements.

1213.4 Test methods.

1213.5 Marking and labeling.

1213.6 Instructions.

1213.7 Findings.

Figures 1–4

Appendix to Part 1213—Findings Under the Consumer Product Safety Act

Authority: 15 U.S.C. 2056, 2058.

§ 1213.1 Scope, application, and effective date.

(a) *Scope, basis, and purpose.* This part 1213, a consumer product safety standard, prescribes requirements for bunk beds to reduce or eliminate the risk that children will die or be injured from being trapped between the upper bunk and the wall, in openings below guardrails, or in other structures in the bed.

(b) *Application and effective date.* The standard in this part applies to all bunk beds, except those manufactured only for institutional use, that are manufactured in the United States, or imported, on or after June 19, 2000. (Facilities intended for use by children under age 6 are not considered to be institutions.) Bunk beds intended for use by children are subject to the requirements in 16 CFR 1500.18(a)(18) and 16 CFR part 1513, and not to this part 1213. However, those regulations are substantively identical to the requirements in this part 1213.

§ 1213.2 Definitions.

As used in this part 1213:

Bed. See *Bunk bed*.

Bed end structure means an upright unit at the head and foot of the bed to which the side rails attach.

Bunk bed means a bed in which the underside of any foundation is over 30 inches (760 mm) from the floor.

Foundation means the base or support on which a mattress rests.

Guardrail means a rail or guard on a side of the upper bunk to prevent a sleeping occupant from falling or rolling out.

§ 1213.3 Requirements.

(a) *Guardrails.* (1) Any bunk bed shall provide at least two guardrails, at least one on each side of the bed, for each bed having the underside of its foundation more than 30 inches (760 mm) from the floor.

(2) One guardrail shall be continuous between each of the bed's end

structures. "Continuous" means that any gap between the guardrail and end structure shall not exceed 0.22 inches (5.6 mm) (so as to not cause a finger entrapment hazard for a child).

(3) The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of the guardrail and the nearest bed end structures.

(4) For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed.

(5) Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

(6) The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. This requirement does not prohibit a wall-side guardrail that terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

(7) With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block shown in Figure 1 of this part when tested in accordance with the procedure at § 1213.4(a).

(b) *Bed end structures.* (1) The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

(2) With no mattress on the bed, there shall be no openings in the end structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 when tested in accordance with the procedure at § 1213.4(b).

(3) When tested in accordance with § 1213.4(c), there shall be no openings in the end structures between the underside of the foundation of the

upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere.

(4) All portions of the boundary of any opening required by §§ 1213.4(c)(1) and (2) to be probed by the wedge block of Figure 1, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1213.4(c)(3).

§ 1213.4 Test methods.

(a) *Guardrails* (see § 1213.3(a)(6)). With no mattress on the bed, place the wedge block shown in Figure 1, tapered side first, into each opening in the bed structure below the lower edge of the uppermost member of the guardrail and above the underside of the upper bunk's foundation. Orient the block so that it is most likely to pass through the opening (e.g., the major axis of the block parallel to the major axis of the opening) ("most adverse orientation"). Then gradually apply a 33-lbf (147-N) force in a direction perpendicular to the plane of the large end of the block. Sustain the force for 1 minute.

(b) *Upper bunk end structure* (see § 1213.3(b)(2)). Without a mattress or foundation on the upper bunk, place the wedge block shown in Figure 1 into each opening, tapered side first, and in the most adverse orientation. Determine if the wedge block can pass freely through the opening.

(c) *Lower bunk end structure* (see § 1213.3(b)(3)). (1) Without a mattress or foundation on the lower bunk, place the wedge block shown in Figure 1, tapered side first, into each opening in the lower bunk end structure in the most adverse orientation. Determine whether the wedge block can pass freely through the opening. If the wedge block passes freely through the opening, determine whether a 9-inch (230-mm) diameter rigid sphere can pass freely through the opening.

(2) With the manufacturer's recommended maximum thickness mattress and foundation in place, repeat the test in paragraph (c)(1) of this section.

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Figure 1

by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment.

(i) Insert the "A" section of the test template shown in Figure 2 of this part into the portion of the boundary of the opening to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Figure 2) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Figure 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

(ii) To check the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of this part). If the neck portion of the "B" section of the template completely enters the opening (passes 0.75 inch or more beyond the points previously contacted by the "A" section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

§ 1213.5 Marking and labeling.

(a) There shall be a permanent label or marking on each bed stating the name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

(b) The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding but that may be covered by the placement of a pillow.

BILLING CODE 6355-01-P

**WARNING**

To help prevent serious or fatal injuries from entrapment or falls:

- Never allow a child under 6 years on upper bunk
- Use only a mattress that is ___ inches long and ___ inches wide on upper bunk
- Ensure thickness of mattress and foundation combined does not exceed ___ inches and that mattress surface is at least 5 inches below upper edge of guardrails

DO NOT REMOVE THIS LABEL

BILLING CODE 6355-01-C

§ 1213.6 Instructions.

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, *etc.* In addition, the maximum thickness of the mattress and foundation required for compliance with § 1213.3(a)(5) and (b)(1) shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

- (1) Do not allow children under 6 years of age to use the upper bunk.
- (2) Use guardrails on both sides of the upper bunk.
- (3) Prohibit horseplay on or under beds.

(4) Prohibit more than one person on upper bunk.

(5) Use ladder for entering or leaving upper bunk.

(6) If the bunk bed will be placed next to a wall, the guardrail that runs the full length of the bed should be placed against the wall to prevent entrapment between the bed and the wall. (This applies only to bunk beds without two full-length guardrails.)

§ 1213.7 Findings.

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3). These findings are contained in the Appendix to this Part 1213.

(a) The rule in this part (including its effective date of June 19, 2000 is reasonably necessary to eliminate or

reduce an unreasonable risk of injury associated with the product.

[These findings are contained in the Appendix to this part 1213.]

(b) Promulgation of the rule is in the public interest.

(c) Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with such voluntary standard.

(d) The benefits expected from the rule bear a reasonable relationship to its costs.

(e) The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

BILLING CODE 6355-01-P

Figure 1 to Part 1213—Wedge Block for Tests in § 1213.4(a), (b), and (c)

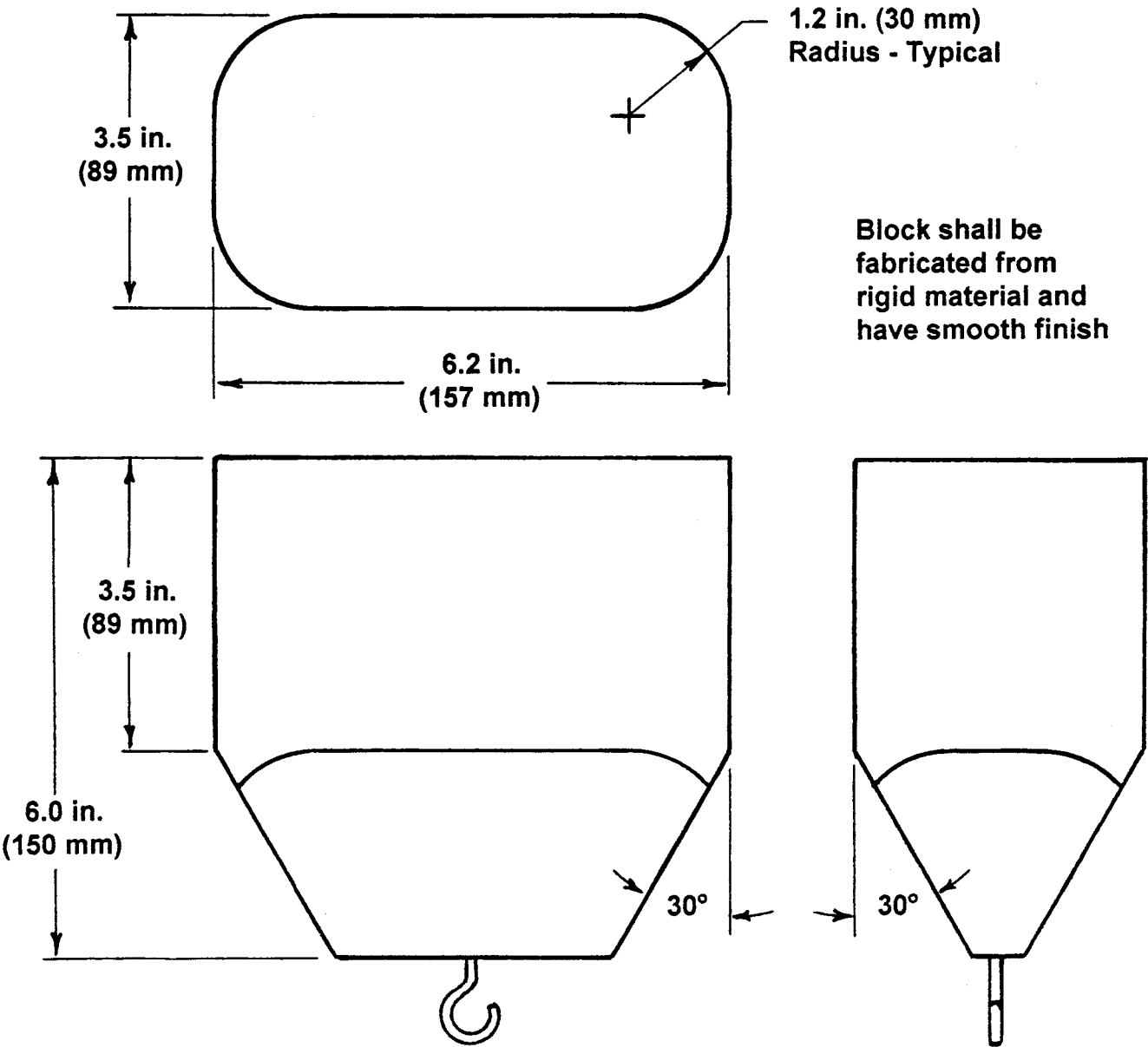
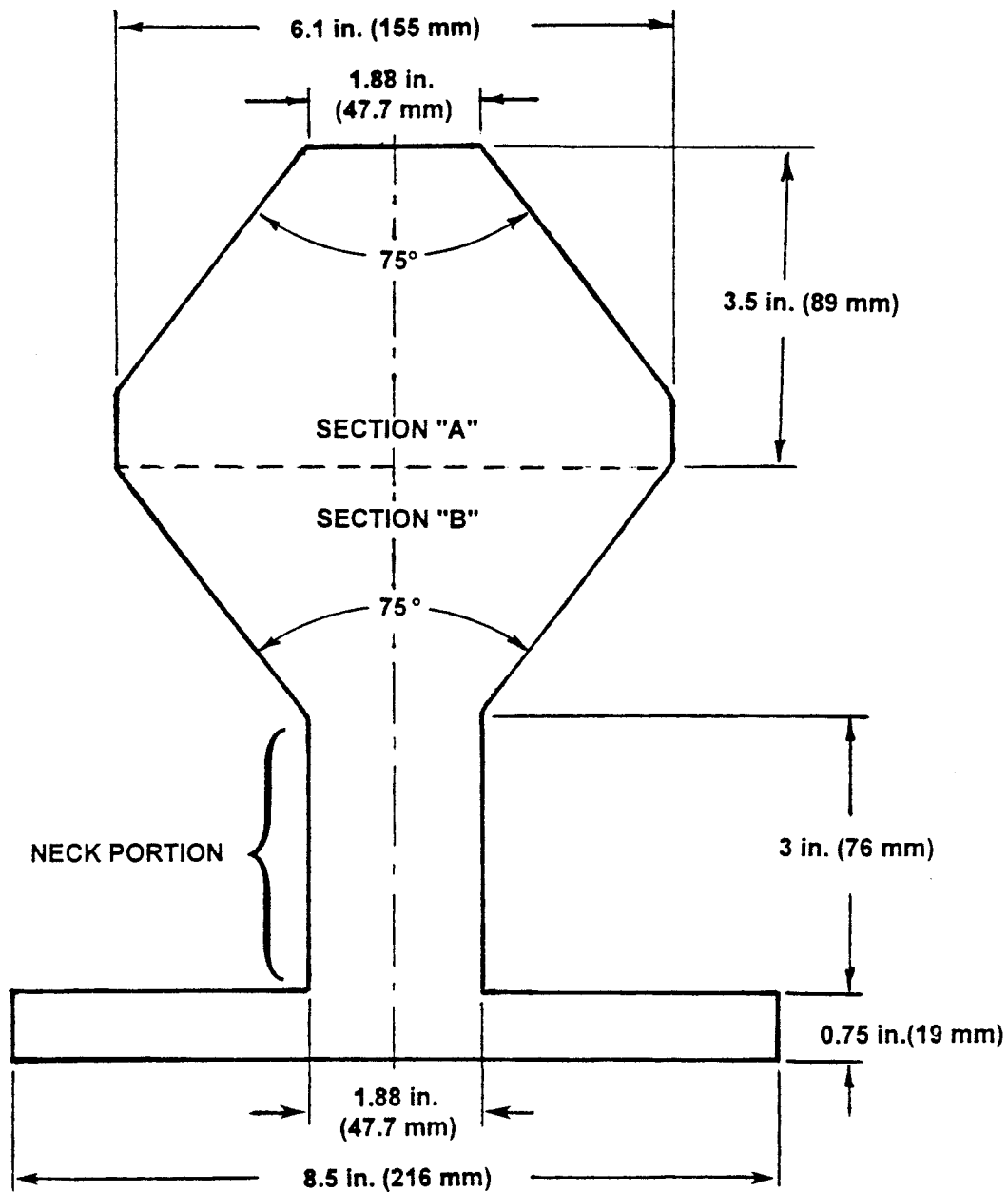


Figure 1 to Part 1213 - Wedge Block for Tests in § 1213.4(a), (b) and (c)

Figure 2 to Part 1213—Test Template for Neck Entrapment



NOTE – Probe to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Probe for Neck Entrapment

Figure 3 to Part 1213—Motion of Test Template Arrested by Simultaneous Contact With Both Sides of “A” Section and Boundaries of Opening

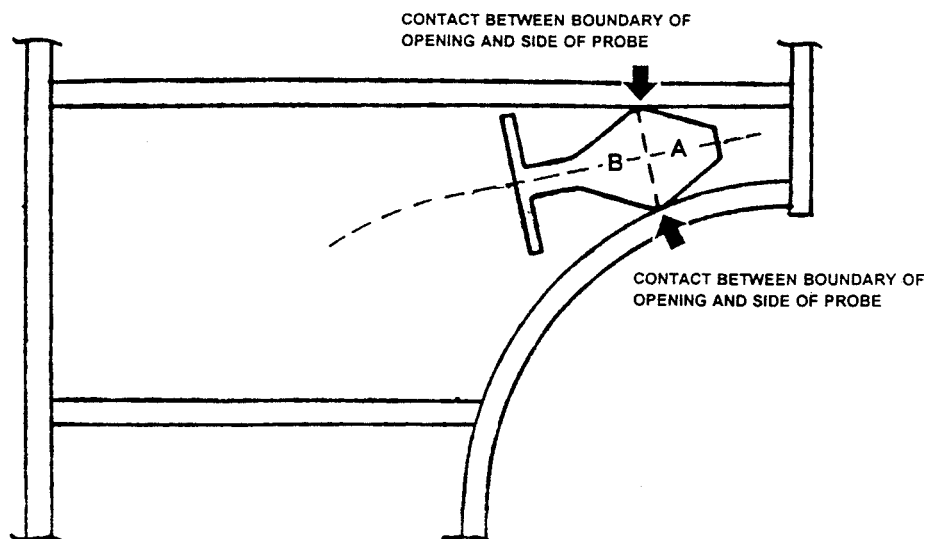


Fig. 3 – Motion of Test Probe Arrested by Simultaneous Contact With Both Sides of “A” Section of Probe and Boundaries of Opening

Figure 4 to Part 1213—Neck Portion of “B” Section of Template Enters Completely Into Opening

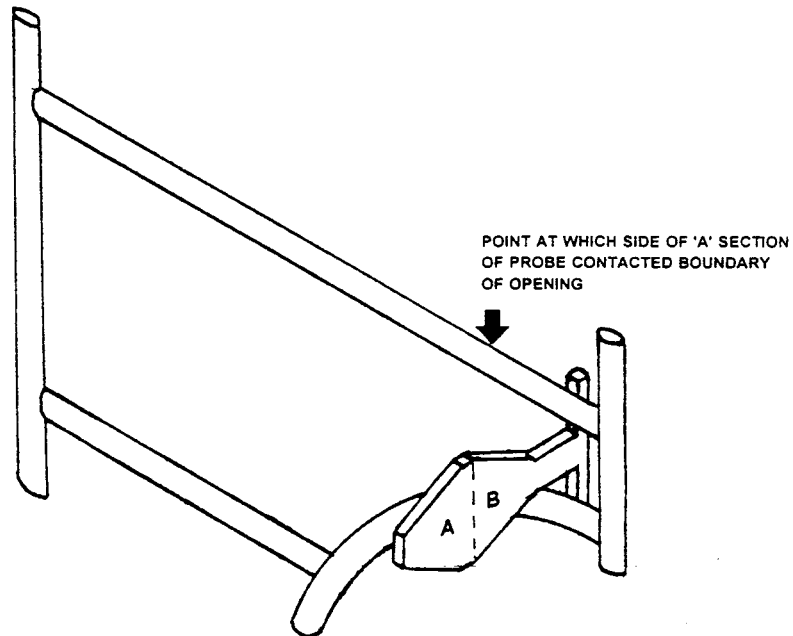


Fig 4 – Neck Portion of “B” Section of Probe Enters Completely into Opening

Appendix to Part 1213—Findings Under the Consumer Product Safety Act

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3). Because of this, the facts and determinations in these findings apply as of the date the rule was issued, December 22, 1999.

A. The rule in this part (including its effective date of June 19, 2000) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

1. For a recent 9.6-year period, the CPSC received reports of 57 deaths of children under age 15 who died when they were trapped between the upper bunk of a bunk bed and the wall or when they were trapped in openings in the bed's structure. Over 96% of those who died in entrapment incidents were age 3 or younger. On average, averting these deaths is expected to produce a benefit to society with a present value of about \$175 to \$350 for each bed that otherwise would not have complied with one or more of the rule's requirements.

2. This increased safety will be achieved in two ways. First, all bunk beds will be required to have a guardrail on both sides of the bed. If the bed is placed against a wall, the guardrail on that side is expected to prevent a child from being entrapped between the bed and the wall. The guardrail on the wall side of the bed must extend continuously from one end to the other. Second, the end structures of the bed must be constructed so that, if an opening in the end structure is large enough so a child can slip his or her body through it, it must be large enough that the child's head also can pass through.

3. For the reasons discussed in paragraph D. of this Appendix, the benefits of the changes to bunk beds caused by this rule will have a reasonable relationship to the changes' costs. The rule addresses a risk of death, and applies primarily to a vulnerable population, children under age 3. The life-saving features required by the rule are cost-effective and can be implemented without adversely affecting the performance and availability of the product. The effective date provides enough time so that production of bunk beds that do not already comply with the standard can easily be changed so that the beds comply. Accordingly, the Commission finds that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

B. Promulgation of the rule is in the public interest. For the reasons given in paragraph A. of this Appendix, the Commission finds that promulgation of the rule is in the public interest.

C. Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with such voluntary standard.

1. *Adequacy of the voluntary standard.* i. In this instance, there is a voluntary standard

addressing the risk of entrapment in bunk beds. However, the rule goes beyond the provisions of the voluntary standard. First, it eliminates the voluntary standard's option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, it requires more of the lower bunk end structures to have entrapment protection. The voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Both of these provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted in paragraph D of this Appendix, have benefits that bear a reasonable relationship to their costs.

ii. Therefore, the Commission finds that compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk of entrapment injury or death.

2. *Substantial compliance.* i. Neither the CPSA nor the FHSA define "substantial compliance." The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of "substantial compliance" that the Office of General Counsel provided to the Commission. 64 Fed. Reg. 10245, 10248–49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from "all persons who would be affected by such an interpretation." *Id.* at 10249. The Commission received more than 20 comments on the interpretation.

ii. Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not "substantial compliance" with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See, e.g., 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of "substantial compliance" focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision focus on the specific facts of this rulemaking and are stated below.

iii. The legislative history regarding the meaning of "substantial compliance" indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. E.g., Senate Report No. 97–102, p. 14 (May 15, 1981); House Report No. 97–158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97–208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

iv. Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However,

the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

v. There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

vi. In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

vii. Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

viii. The Commission must also consider that bunk beds have a very long product life, frequently being passed on to several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

ix. Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

x. What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the

conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

xi. Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

xii. It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

xiii. Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

- Rarely or never cause death;
- Cause only less severe injuries;
- Do not cause deaths or injuries principally to a vulnerable segment of the population;
- Are not intended for children and which have no special attraction for children;
- Have a relatively short life span;
- Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
- Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
- Require some additional intervening action to be hazardous.

xiv. And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

xv. The Commission emphasizes that its decision is not based on the argument that a mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

D. *The benefits expected from the rule bear a reasonable relationship to its costs.*

1. *Bunk beds that do not comply with ASTM's requirements for guardrails.* The cost of providing a second guardrail for bunk beds that do not have one is expected to be from \$15–40 per otherwise noncomplying bed. If, as expected, the standard prevents virtually all of the deaths it addresses, the present value of the benefits of this modification are estimated to be from \$175–350 per otherwise noncomplying bed. Thus, the benefit of this provision is about 4–23 times its cost.

2. *Bunk beds that comply with ASTM's requirements for guardrails.* The voluntary

standard allows up to a 15-inch gap in the coverage of the guardrail on the wall side of the upper bunk. Additional entrapment deaths are addressed by requiring that the wall-side guardrail be continuous from one end of the bed to the other. The estimated present value of the benefits of this requirement is \$2.40 to \$3.50 per otherwise noncomplying bed. The Commission estimates that the materials cost to extend one guardrail an additional 30 inches (760 mm) will be less than the present value of the benefits of making the change. Further, the costs of any design changes can be amortized over the number the bunk beds manufactured after the design change is made. Thus, the costs of any design change will be nominal.

3. *Lower bunk end structures.* The Commission is aware of a death, involving entrapment in the end structures of the lower bunk, occurring in a scenario not currently addressed by the voluntary standard. This death would be addressed by extending the voluntary standard's lower bunk end structures entrapment provisions from 9 inches above the lower bunk's sleeping surface to the bottom of the upper bunk and by also including a test for neck entrapment in this area. The Commission expects the costs of this requirement to be design-related only, and small. Indeed, for some bunk beds, materials costs may decrease since less material may be required to comply with these requirements than is currently being used. Again, the design costs for these modifications to the end structures can be amortized over the subsequent production run of the bed.

4. *Effect on market.* The small additional costs from any wall-side guardrails and end-structure modifications are not expected to affect the market for bunk beds, either alone or added to the costs of compliance to ASTM's provisions.

5. *Conclusion.* The Commission has no reason to conclude that any of the standard's requirements will have costs that exceed the requirement's expected benefits. Further, the total effect of the rule is that the benefits of the rule will exceed its costs by about 4–23 times. Accordingly, the Commission concludes that the benefits expected from the rule bear a reasonable relationship to its costs.

E. *The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission considered relying on the voluntary standard, either alone or combined with a third-party certification program. However, the Commission concluded that a mandatory program will be more effective in reducing these deaths, each of which is caused by an unreasonable risk of entrapment. Accordingly, these alternatives would not prevent or adequately reduce the risk of injury for which the rule is being promulgated.

2. The Commission also considered a suggestion that bunk beds that conformed to the voluntary standard be so labeled. Consumers could then compare conforming and nonconforming beds at the point of purchase and make their purchase decisions with this safety information in mind. This,

however, would not necessarily reduce injuries, because consumers likely would not know there is a voluntary standard and thus would not see any risk in purchasing a bed that was not labeled as conforming to the standard.

3. For the reasons stated in this Appendix, no alternatives to a mandatory rule have been suggested that would adequately reduce the deaths caused by entrapment of children in bunk beds. Accordingly, the Commission finds that this rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

2. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

3. Section 1500.18 is amended by adding paragraph (a)(18) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) * * *

(18)(i) Any bunk bed (as defined in § 1513.2(c) of this chapter) that does not comply with the requirements of part 1513 of this chapter.

(ii) *Findings.* In order to issue a rule under Section 3(e) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1262(e), classifying a toy or other article intended for use by children as a hazardous substance on the basis that it presents a mechanical hazard (as defined in Section 2(s) of the FHSA), the FHSA requires the Commission to make the following findings and to include these findings in the regulation: Bunk beds present a mechanical hazard; Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury, or it is unlikely that there will be substantial compliance with such voluntary standard; The benefits expected from the rule bear a reasonable relationship to its costs; and The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated. These findings are made in the Appendix to Part 1513.

4. A new part 1513 is added to Subchapter C to read as follows:

PART 1513—REQUIREMENTS FOR BUNK BEDS

Sec.

1513.1 Scope, application, and effective date.

1513.2 Definitions.

1513.3 Requirements.

1513.4 Test methods.

1513.5 Marking and labeling.

1513.6 Instructions.

Figures 1–4

Appendix to Part 1513—Findings Under the Federal Hazardous Substances Act

Authority: 15 U.S.C. 1261(f)(1)(D), 1261(s), 1262(e)(1), 1262(f)–(i).

§ 1513.1 Scope, application, and effective date.

(a) *Scope, basis, and purpose.* This part 1513 prescribes requirements for bunk beds to reduce or eliminate the risk that children will die or be injured from being trapped between the upper bunk and the wall or in openings below guardrails or in other structures in the bed. Bunk beds meeting these requirements are exempted from 16 CFR 1500.18(a)(18).

(b) *Application and effective date.* This part applies to all bunk beds, except those manufactured only for institutional use, that are manufactured in the United States, or imported, on or after June 19, 2000. (Facilities intended for use by children under age 6 are not considered to be institutions.) Bunk beds, as described in this section, that are not intended for use by children are subject to the requirements in 16 CFR part 1213, and not to 16 CFR 1500.18(a)(18). However, the provisions of 16 CFR 1213 are substantively identical to the requirements in this part 1513.

§ 1513.2 Definitions.

As used in this part 1513:

Bed. See *Bunk bed*.

Bed end structure means an upright unit at the head and foot of the bed to which the side rails attach.

Bunk bed means a bed in which the underside of any foundation is over 30 inches (760 mm) from the floor.

Foundation means the base or support on which a mattress rests.

Guardrail means a rail or guard on a side of the upper bunk to prevent a sleeping occupant from falling or rolling out.

§ 1513.3 Requirements.

(a) *Guardrails.* (1) Any bunk bed shall provide at least two guardrails, at least one on each side of the bed, for each bed having the underside of its foundation more than 30 inches (760 mm) from the floor.

(2) One guardrail shall be continuous between each of the bed's end structures. "Continuous" means that any gap between the guardrail and end structure shall not exceed 0.22 inches (5.6 mm) (so as to not cause a finger entrapment hazard for a child).

(3) The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of

the guardrail and the nearest bed end structure.

(4) For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed.

(5) Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

(6) The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the manufacturer's instructions is on the bed. This requirement does not prohibit a wall-side guardrail that terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

(7) With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block shown in Figure 1 of this part when tested in accordance with the procedure at § 1513.4(a).

(b) *Bed end structures.* (1) The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

(2) With no mattress on the bed, there shall be no openings in the rigid end structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 when tested in accordance with the procedure at § 1513.4(b).

(3) When tested in accordance with § 1513.4(c), there shall be no openings in the end structures between the underside of the foundation of the upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere.

(4) All portions of the boundary of any opening required by §§ 1513.4(c)(1) and (2) to be probed by the wedge block of Figure 1, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1513.4(c)(3).

§ 1513.4 Test methods.

(a) *Guardrails* (see § 1513.3(a)(6)). With no mattress on the bed, place the wedge block shown in Figure 1, tapered side first, into each opening in the rigid bed structure below the lower edge of the uppermost member of the guardrail and above the underside of the upper bunk's foundation. Orient the block so that it is most likely to pass through the opening (e.g., the major axis of the block parallel to the major axis of the opening) ("most adverse orientation"). Then, gradually apply a 33-lbf (147-N) force in a direction perpendicular to the plane of the large end of the block. Sustain the force for 1 minute.

(b) *Upper bunk end structure* (see § 1513.3(b)(2)). Without a mattress or foundation on the upper bunk, place the wedge block shown in Figure 1 into any opening, tapered side first, and in the most adverse orientation. Determine if the wedge block can pass freely through the opening.

(c) *Lower bunk end structure* (see § 1513.3(b)(3)). (1) Without a mattress or foundation on the lower bunk, place the wedge block shown in Figure 1, tapered side first, into each opening in the lower bunk end structure in the most adverse orientation. Determine whether the wedge block can pass freely through the opening. If the wedge block passes freely through the opening, determine whether a 9-inch (230-mm) diameter rigid sphere can pass freely through the opening.

(2) With the manufacturer's recommended maximum thickness mattress and foundation in place, repeat the test in paragraph (c)(1) of this section.

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Figure 1 by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment:

(i) Insert the "A" section of the test template shown in Figure 2 of this part into the portion of the boundary to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Figure 2) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Figure 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the

opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

(ii) To check the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of this part). If the neck portion of the "B" section of the template can completely enter the opening (passes 0.75 inch or more beyond the points

previously contacted by the "A" section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

§ 1513.5 Marking and labeling.

(a) There shall be a permanent label or marking on each bed stating the name

and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

(b) The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding but that may be covered by the placement of a pillow.

BILLING CODE 6358-01-P

△ WARNING
To help prevent serious or fatal injuries from entrapment or falls: • Never allow a child under 6 years on upper bunk • Use only a mattress that is ___ inches long and ___ inches wide on upper bunk • Ensure thickness of mattress and foundation combined does not exceed ___ inches and that mattress surface is at least 5 inches below upper edge of guardrails DO NOT REMOVE THIS LABEL

BILLING CODE 6355-01-C

§ 1513.6 Instructions

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, etc. In addition, the maximum thickness of the mattress and

foundation required for compliance with § 1513.3 (a)(5) and (b)(1) of this part shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

- (1) Do not allow children under 6 years of age to use the upper bunk.
- (2) Use guardrails on both sides of the upper bunk.
- (3) Prohibit horseplay on or under beds.

(4) Prohibit more than one person on upper bunk.

(5) Use ladder for entering or leaving upper bunk.

(6) If the bunk bed will be placed next to a wall, the guardrail that runs the full length of the bed should be placed against the wall to prevent entrapment between the bed and the wall. (This applies only to bunk beds without two full-length guardrails.)

BILLING CODE 6355-01-P

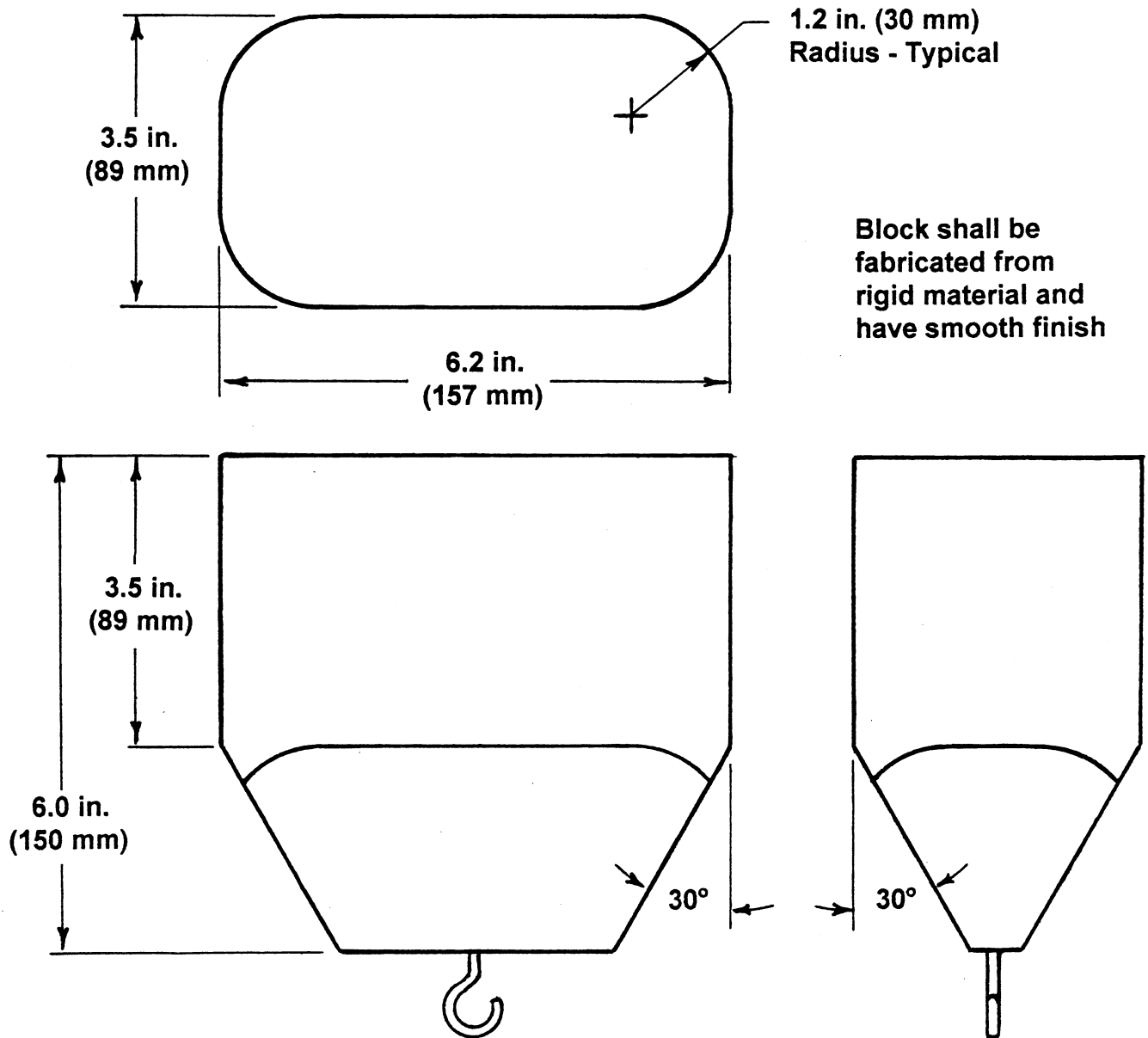
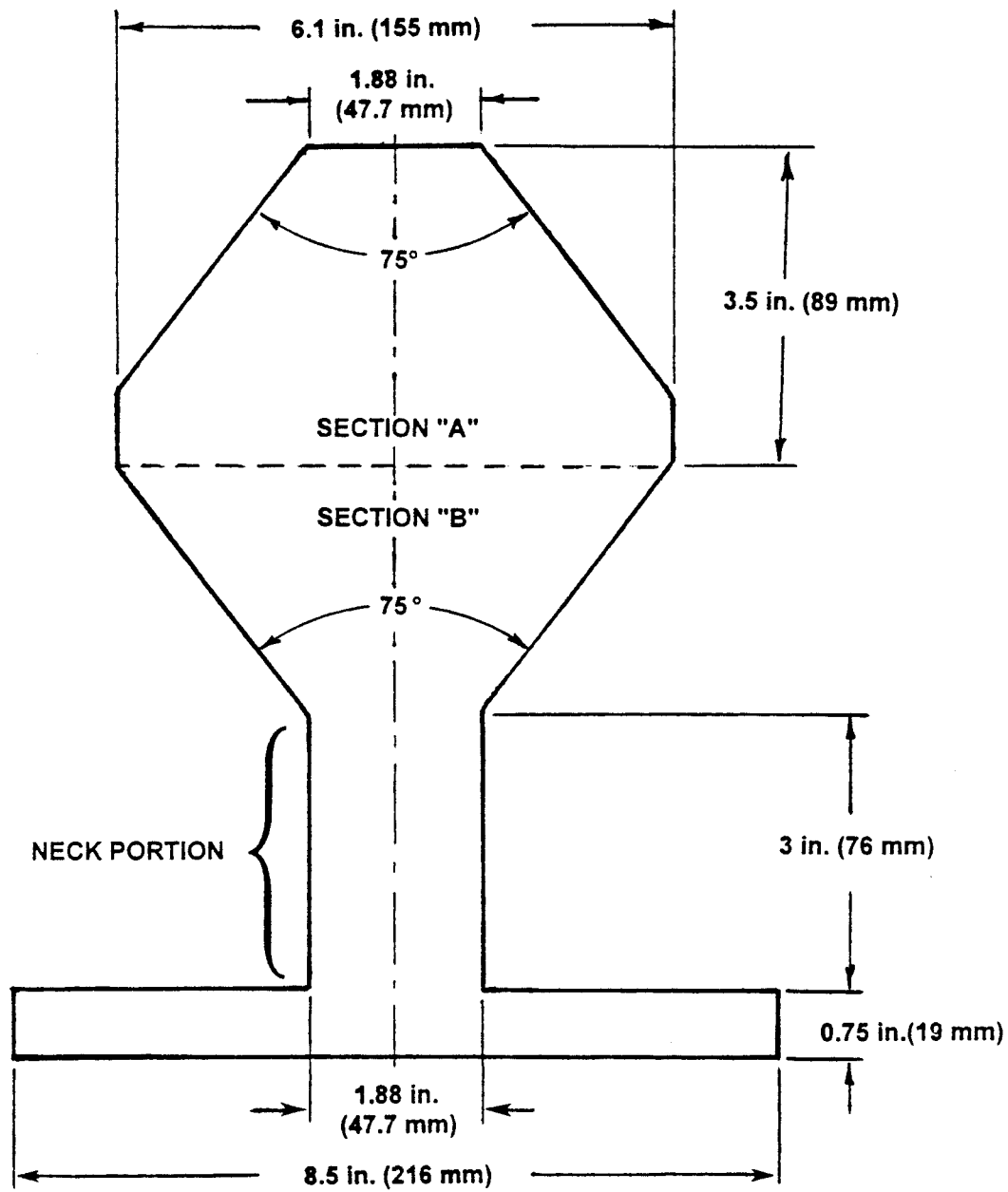


Figure 1 to Part 1513 - Wedge Block for Tests in § 1513.4(a), (b) and (c)



NOTE – Probe to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Probe for Neck Entrapment

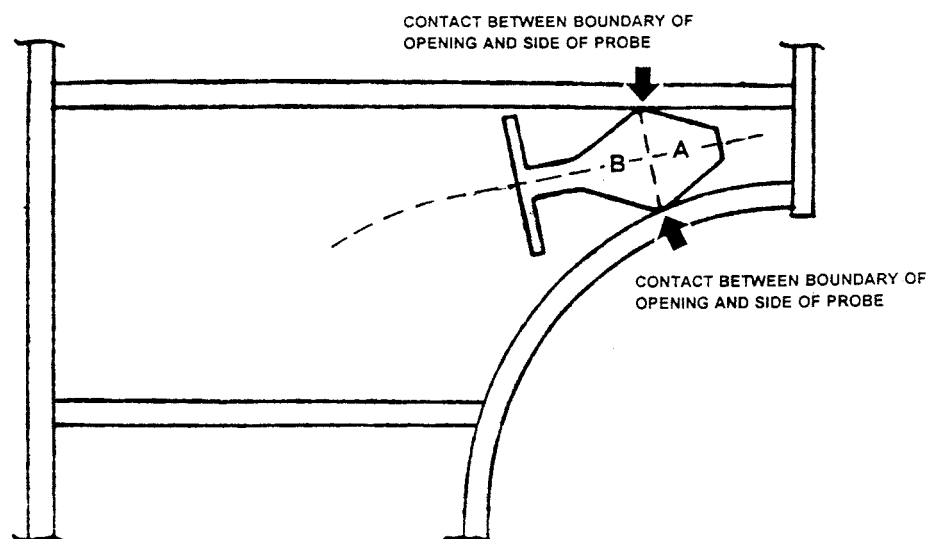


Fig. 3 – Motion of Test Probe Arrested by Simultaneous Contact With Both Sides of “A” Section of Probe and Boundaries of Opening

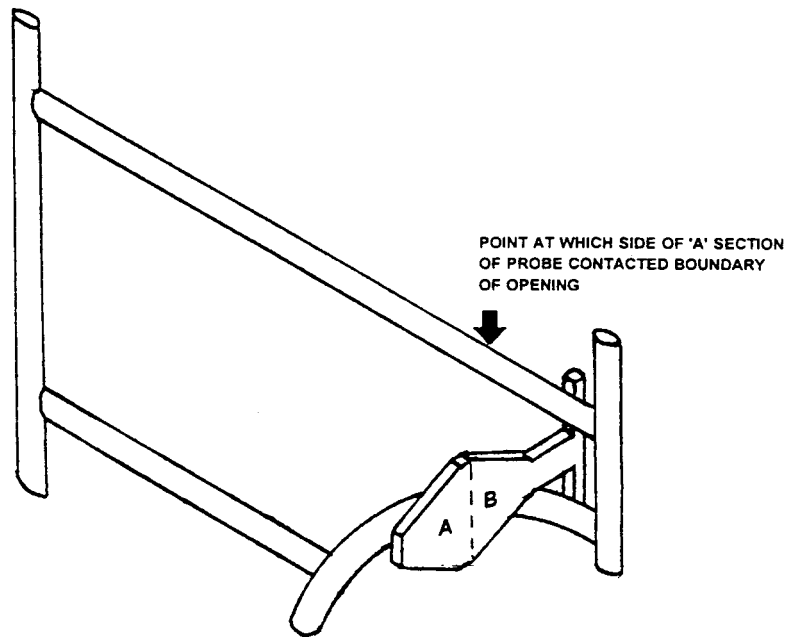


Fig 4 – Neck Portion of “B” Section of Probe Enters Completely into Opening

BILLING CODE 6355-01-C

Appendix to Part 1513—Findings Under the Federal Hazardous Substances Act

The Federal Hazardous Substances Act (FHSA) requires that the Commission, in order to issue Part 1513, make the following findings and include them in the rule. 15 U.S.C. 1261(s), 1262(i). Because of this, the facts and determinations in these findings apply as of the date the rule was issued, December 22, 1999.

A. *Bunk beds present a mechanical hazard.* Section 2(s) of the FHSA states that an "article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness * * * (3) from * * * surfaces, edges, openings, or closures * * * , or (9) because of any other aspect of the articles design or manufacture." 15 U.S.C. 1261(s).

2. For a recent 9.6-year period, the CPSC received reports of 57 deaths of children under age 15 who died when they were trapped between the upper bunk of a bunk bed and the wall or when they were trapped in openings in the bed's structure. Over 96% of those who died in entrapment incidents were age 3 or younger. On average, averting these deaths is expected to produce a benefit to society with a present value of about \$175 to \$350 for each bed that otherwise would not have complied with one or more of the rule's requirements.

3. This increased safety will be achieved in three main ways. First, all bunk beds will be required to have a guardrail on both sides of the bed. If the bed is placed against a wall, the guardrail on that side is expected to prevent a child from being entrapped between the bed and the wall. The guardrail on the wall side of the bed must extend continuously from one end to the other. Second, the end structures of the bed must be constructed so that, if an opening in the end structure is large enough so a child can slip his or her body through it, it must be large enough that the child's head also can pass through. Third, this area must also be constructed so that a child cannot insert his or her head into an opening and move to another part of the opening where the head cannot be pulled out and the neck can become entrapped.

4. For the reasons discussed in paragraph C of this Appendix, the benefits of the changes to bunk beds caused by this rule will have a reasonable relationship to the changes' costs. The rule addresses a risk of death, and applies primarily to a vulnerable population, children under age 3. The life-saving features required by the rule are cost-effective and can be implemented without adversely affecting the performance and availability of the product. The effective date provides enough time so that production of bunk beds that do not already comply with the standard can easily be changed so that the beds comply. Accordingly, the Commission finds that there is an unreasonable risk of entrapment injury associated with bunk beds that do not comply with Part 1513.

B. *Where a voluntary standard has been adopted and implemented by the affected*

industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury, or it is unlikely that there will be substantial compliance with such voluntary standard.

1. *Adequacy of the voluntary standard.* In this instance, there is a voluntary standard addressing the risk of entrapment in bunk beds. However, the rule goes beyond the provisions of the voluntary standard. First, it eliminates the voluntary standard's option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, it requires more of the lower bunk end structures to have entrapment protection. The voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Both of these provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted in this paragraph (a)(18), have benefits that bear a reasonable relationship to their costs.

Therefore, the Commission finds that compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk of entrapment injury or death.

2. *Substantial compliance.* i. The FHSA does not define "substantial compliance." The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of "substantial compliance" that the Office of General Counsel provided to the Commission. 64 FR 10245, 10248–49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from "all persons who would be affected by such an interpretation." Id. at 10249. The Commission received more than 20 comments on the interpretation.

ii. Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not "substantial compliance" with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See, e.g., 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of "substantial compliance" focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision focus on the specific facts of this rulemaking and are stated below.

iii. The legislative history regarding the meaning of "substantial compliance" indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. E.g., Senate Report No. 97–102, p. 14 (May 15, 1981); House Report No. 97–

158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97–208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

iv. Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However, the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

v. There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

vi. In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

vii. Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

viii. The Commission must also consider that bunk beds have a very long product life, frequently being passed on to several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

ix. Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

x. What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed

rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

xi. Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

xii. It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

xiii. Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

- Rarely or never cause death;
- Cause only less severe injuries;
- Do not cause deaths or injuries principally to a vulnerable segment of the population;
- Are not intended for children and which have no special attraction for children;
- Have a relatively short life span;
- Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
- Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
- Require some additional intervening action to be hazardous.

xiv. And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

xv. The Commission emphasizes that its decision is not based on the argument that a

mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

C. The benefits expected from the rule bear a reasonable relationship to its costs.

1. *Bunk beds that do not comply with ASTM's requirements for guardrails.* The cost of providing a second guardrail for bunk beds that do not have one is expected to be from \$15–40 per otherwise noncomplying bed. If, as expected, the standard prevents virtually all of the deaths it addresses, the present value of the benefits of this modification are estimated to be from \$175–350 per otherwise noncomplying bed. Thus, the benefit of this provision is about 4–23 times its cost.

2. *Bunk beds that comply with ASTM's requirements for guardrails.* The voluntary standard allows up to a 15-inch gap in the coverage of the guardrail on the wall side of the upper bunk. Additional entrapment deaths are addressed by requiring that the wall-side guardrail be continuous from one end of the bed to the other. The estimated present value of the benefits of this requirement will be \$2.40 to \$3.50 per otherwise noncomplying bed. The Commission estimates that the materials cost to extend one guardrail an additional 30 inches (760 mm) will be less than the present value of the benefits of making the change. Further, the costs of any design changes can be amortized over the number of bunk beds produced after the design change is made. Thus, any design costs are nominal.

3. *Lower bunk end structures.* The Commission is aware of a death, involving entrapment in the end structures of the lower bunk, occurring in a scenario not currently addressed by the voluntary standard. This death is addressed by extending the upper limit of the voluntary standard's lower bunk end structures entrapment provisions from 9 inches above the lower bunk's sleeping surface to the bottom of the upper bunk and by also including a test for neck entrapment in this area. The Commission expects the costs of this requirement to be design-related only, and small. Indeed, for some bunk beds, material costs may decrease since less

material may be required to comply with these requirements than are currently being used. Again, the design costs for these modifications to the end structures can be amortized over the subsequent production run of the bed.

4. *Effect on market.* The small additional costs from any wall-side guardrail and end-structure modifications are not expected to affect the market for bunk beds, either alone or added to the costs of compliance to ASTM's provisions.

5. *Conclusion.* The Commission has no reason to conclude that any of the standard's requirements have costs that exceed the requirement's expected benefits. Further, the total effect of the rule is that the benefits of the rule will exceed its costs by about 4–23 times. Accordingly, the Commission concludes that the benefits expected from the rule will bear a reasonable relationship to its costs.

D. *The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission considered relying on the voluntary standard, either alone or combined with a third-party certification program. However, the Commission concludes that a mandatory program will be more effective in reducing these deaths, each of which is caused by an unreasonable risk of entrapment. Accordingly, these alternatives would not prevent or adequately reduce the risk of injury for which the rule is being promulgated.

2. The Commission also considered a suggestion that bunk beds that conformed to the voluntary standard be so labeled. Consumers could then compare conforming and nonconforming beds at the point of purchase and make their purchase decisions with this safety information in mind. This, however, would not necessarily reduce injuries, because consumers likely would not know there is a voluntary standard and thus would not see any risk in purchasing a bed that was not labeled as conforming to the standard.

Dated: December 13, 1999.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

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27 CFR Part 200

Wednesday
December 22, 1999

Part IV

**Department of the
Treasury**

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 200, et al.

**Implementation of Public Law 105–33,
Section 9302, Relating to Tobacco
Importation Restrictions, Markings,
Minimum Manufacturing Requirements,
and Penalty Provisions, etc.; Final and
Proposed Rules**

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 200, 270, 275 and 290

[T.D. ATF-421]

RIN 1512-AB99

Implementation of Public Law 105-33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R-369P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements several provisions of the Balanced Budget Act of 1997. Section 9302 of the new law: places restrictions on the importation of previously exported tobacco products, requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorizes the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit.

The temporary rule implements these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Additionally, the Bureau of Alcohol, Tobacco and Firearms (ATF) has made several other clarifying changes to the tobacco regulations. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking that invites comments on this temporary rule for a 60-day period following the publication of this temporary rule.

DATES: These temporary regulations are effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers or Mr. Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8210, or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements several provisions in section 9302 of the Balanced Budget Act of 1997 (Act), Pub. L. 105-33, 111 Stat. 672. Section 9302 amends the Internal Revenue Code of 1986 (IRC) at sections 5704(b), 5712, 5754 and 5761(c). These new provisions relate to tobacco products, cigarette papers and tubes importation restrictions, markings, minimum manufacturing requirements and penalty provisions concerning tobacco products, and cigarette papers and tubes.

Congress amended the IRC so that the Secretary of the Treasury can more effectively enforce the collection of Federal excise taxes on such products. These provisions protect the Federal excise tax revenues derived from tobacco products, and cigarette papers and tubes. The Joint Committee on Taxation's "General Explanation of Tax Legislation Enacted in 1997" stated that the purpose of the amendments was to impose "expanded compliance measures designed to prevent the diversion of non-taxpaid tobacco products nominally destined for export to use within the United States." As the delegate of the Secretary of the Treasury (See Treasury Department Order 120-01 (formerly 221), dated June 6, 1972) ATF is implementing these new provisions by regulation.

Marks, Labels and Notices*Current Law*

The Federal excise tax on tobacco products, and cigarette papers and tubes is due on their removal from bonded premises. See 26 U.S.C. 5703. There are several exemptions from the Federal excise tax, under section 5704. Section 5704(b) allows a manufacturer of tobacco products, cigarette papers or tubes, or an export warehouse proprietor to transfer tobacco products and cigarette papers and tubes, without payment of tax to the bonded premises of another manufacturer or export warehouse proprietor. As defined in section 5702, a manufacturer of tobacco products means any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco. This term does not include a person who produces such products solely for the person's own consumption or use, or a proprietor of a customs bonded warehouse. A manufacturer of cigarette papers and tubes means a person who makes up cigarette paper and tubes, except for personal consumption. 26 U.S.C. 5702(h). An export warehouse proprietor means one who operates an export warehouse, which is a bonded

internal revenue warehouse for the storage of tobacco products, and cigarette papers and tubes. See 26 U.S.C. 5702(i), (j).

Section 5704(b) also allows a manufacturer of tobacco products, and cigarette papers and tubes, or an export warehouse proprietor to remove tobacco products, and cigarette papers and tubes for shipment to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. In addition, manufacturers may remove such articles for use of the United States without payment of the excise tax. Current ATF regulations which implement these provisions are located in 27 CFR part 290.

Furthermore, under 26 U.S.C. 5723(b), ATF is authorized to require certain marks, labels and notices on every package of tobacco products or cigarette papers. Based on this authority, for those products that are intended for export, 27 CFR 290.185 requires that every package of tobacco product that is deemed for export be marked with the words "Tax-exempt. For use outside U.S." or the words, "U.S. Tax-exempt. For use outside U.S." or a stamp, sticker or notice required by a foreign country or a possession of the United States, which identifies such country or possession. In addition, where taxpaid tobacco products are to be exported and a drawback of the tax paid to the manufacturer, 27 CFR 290.222 requires these packages to be marked with the words, "For Export with Drawback of Tax". These regulations serve two purposes. They enable us to clearly and easily identify packages of tobacco product that have been removed tax-free under section 5704(b) or subject to drawback under section 5706. In addition, the export marking requirement helps us to determine which tobacco products are intended for export. The regulations are a valuable enforcement mechanism that helps to prevent jeopardy of the revenue, because we can easily determine which products have been exempt from taxation and intended for export. When we identify a package of tobacco product in the U.S. market with tax-exempt export markings, we become concerned as to whether it has been Federally taxpaid.

New Law

Congress specifically requires, under section 9302(h)(1)(A) of the Act, that tobacco products, and cigarette papers and tubes may not be transferred or removed under 26 U.S.C. 5704(b) unless they bear the proper marks, labels and

notices as required by the Secretary of the Treasury. Thus, the Secretary of the Treasury is authorized to prescribe the type of marks, labels and notices required on products that are exempt from taxation under 26 U.S.C. 5704(b). Congress wanted to specifically authorize ATF to determine, for products exempt from taxation under section 5704(b), required marks, labels and notices to ensure protection of the Federal excise tax revenue. Congress wanted to ensure that non-taxpaid products intended for exportation bear the proper markings. Congress also wanted to require that taxpaid products that are ultimately sold on the domestic market must not bear exportation markings. Allowing products with export markings on the domestic U.S. market would hinder ATF enforcement of lawfully due taxes, and cause confusion as to whether the product has been taxpaid.

Thus, based on this authority, ATF has amended three sections of the regulations. We are now requiring that tobacco products, and cigarette papers and tubes bear the required marks, labels and notices in order to qualify for transfer or removal of the product without payment of tax. Accordingly, we have amended 27 CFR 270.233, 290.61 and 290.181. Thus, under amended § 270.233, tobacco products may not be transferred in bond unless they bear all required marks, labels and notices. In addition, under amended § 290.61, tobacco products, and cigarette papers and tubes may not be removed for exportation without payment of tax unless they bear all required marks, labels and notices. We have also amended § 290.181 to require that all tobacco products, cigarette papers and tubes must, before removal or transfer, bear the required marks, labels, or notices.

Finally, we have amended § 290.181 to clarify that the "package", upon which the marking, labeling and notice requirements are to appear, does not include any cellophane wrapping material that may enclose a package. A package, thus, is only intended to include the actual material that holds and encloses the tobacco products, and cigarette papers or tubes. This amended definition clarifies placement of the marking, labeling and notice requirements. In keeping with Congressional intent to prevent diversion of tobacco products, we wanted to ensure that markings, labels and notices on products destined for export are clear and not easily destroyed.

Minimum Manufacturing Activity Requirements

Current Law

Section 5712 currently requires that every person, before commencing business as a manufacturer of tobacco products or as an export warehouse proprietor, shall apply for and obtain a permit to engage in such business. *See also* 26 U.S.C. 5713. (Effective January 1, 2000 importers will also be required to obtain a permit.) Under current law, the application may be rejected and the permit denied if, after notice and opportunity for hearing, we find that: (1) The proposed premises are not adequate to protect the revenue, (2) the applicant's business experience, financial standing or trade connections demonstrates that the applicant is not likely to comply with the law or (3) the applicant failed to disclose required material information or made a material false statement on the application. These factors enable ATF to ensure that those engaged in the business of manufacturing tobacco products will adequately protect the revenue and comply with the law and regulations.

New Law

In section 9302 of the Act, Congress amended 26 U.S.C. 5712 by adding an additional factor for rejecting and denying an application for a permit. The new law provides that the an application may also be denied if "the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe." Based on this new language, ATF is authorized to establish minimum capacity or activity requirements, and will deny a permit application based on a failure to meet such minimum capacity or activity requirements. Congress enacted this provision to ensure that those who apply for a permit actually intend to engage in the bona fide business of manufacturing tobacco products in a way that will adequately protect the revenue and comply with the law and regulations.

In promulgating regulations that establish minimum capacity or activity requirements, ATF has considered several issues. ATF does not want to establish criteria that would effectively exclude small tobacco products manufacturers from obtaining a permit. In addition, ATF wants to establish criteria that will ensure that only those actually engaged in the business of manufacturing tobacco products are able to obtain a permit. Thus, ATF wants to establish criteria that would effectively exclude any persons who are not

legitimate manufacturers and whose primary interest in obtaining a manufacturer's permit is to obtain the tax deferral benefits that a permit might facilitate.

Small Manufacturers

Section 5712 requires that prior to engaging in the business of manufacturing tobacco products, a person must obtain a permit from ATF. We believe that any manufacturer who proposes to engage in the business of manufacturing of tobacco products, regardless of size, should be eligible to receive a permit, so long as they meet the definition of a manufacturer as defined in section 5702(d) and have fulfilled the other conditions in the law and regulations. In the past, ATF has issued permits to some small manufacturers of tobacco products, such as those who manufacture hand-rolled cigars. Thus, we did not want to establish minimum capacity or activity criteria that would exclude small tobacco products manufacturers.

Downstreaming of Taxes

As stated, ATF needs to ensure that only those persons who fit within the definition of manufacturer at section 5702(d) are eligible to receive a permit. We would like to ensure that permits are not issued to persons who intend to use the permit to delay tax payment. In recent years, ATF has received inquiries from those who would like to obtain a permit and establish bonded premises for the primary purpose of receiving tobacco products in bond and delaying payment of Federal excise taxes.

The Federal excise tax on tobacco products attaches to the products as soon as they are produced. The manufacturer is liable for the tax on tobacco products held in bond. The manufacturer actually pays the tax when the tobacco product is removed from bond. *See* 26 U.S.C. 5703. Generally, tobacco products are distributed under a three-tier distribution system. Once the manufacturer pays Federal excise tax after removal from bonded premises, the products are transferred to a wholesaler, which is the second level in the distribution system. The retailer is the third level in this tier system, and is a customer of the wholesaler.

As discussed previously, section 5704 provides that tobacco products may be transferred from a manufacturer or export warehouse proprietor to another manufacturer or export warehouse proprietor without payment of tax. Because of this exemption from taxation, a business could attempt to set up one or more wholesale warehouses

with some *de minimis* production capability, and obtain a manufacturer's permit for each wholesale warehouse. Using the in bond transfer provision provided by section 5704, each warehouse would then be eligible to receive tobacco products in bond at each wholesale warehouse, without payment of the excise tax. The taxes on the product would not be due until the product was distributed from the wholesale level to the retail level. This approach is referred to as "downstreaming of taxes," since it moves the collection point for the excise tax from the production level to the wholesale level. This is potentially beneficial for manufacturers, since they can effectively delay taxpayment until the product is removed from essentially the wholesale level. At the same time, it has an adverse effect on Federal tax receipts, since it delays payment of the Federal excise tax.

We would like to prevent the downstreaming of taxes. It undermines the effect and purpose of obtaining a permit to engage in the business of manufacturing tobacco products. It also contravenes the safeguards in obtaining a permit: to protect and collect the Federal excise tax revenue. ATF is also concerned with the potential number of new taxpayers (*i.e.*, wholesalers qualifying as manufacturers) and the proliferation of tax payment points, if this approach becomes widely used. We have found that the collection of excise taxes is best achieved at the highest level within the distribution chain—the manufacturer level. Collected at the manufacturer level, we have fewer taxpayers to monitor, and thus have more efficient tax collections and fewer administrative costs. By ensuring that tax payment is made at the true manufacturing level, we can decrease the likelihood that taxable product will evade proper tax payment.

Recognizing these concerns, ATF wants to ensure that the new minimum manufacturing criteria would prevent issuance of a permit to businesses that want to receive tobacco products in bond and delay Federal excise tax payments. In summary, we have amended the regulations whereby we will continue to issue permits to small manufacturers of tobacco products, despite limited production capacity, and to deny permits to persons who seek a permit for the principal purposes of receiving in-bond untaxed cigarettes.

Minimum Manufacturing Activity Criteria for Tobacco Products Manufacturers

Accordingly, ATF has amended the regulations at 27 CFR 270.61, by

requiring that a permit will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose proposed principal activity under such permit will be to receive or transfer non-taxpaid tobacco products in-bond. Furthermore, to qualify for a permit, the amount of tobacco products manufactured under a permit must exceed the amount transferred or received in-bond under such permit. For example, a person who only manufactures 1,000 cigarettes per month, may receive a maximum of 999 cigarettes in bond during the month under that permit. Likewise, a person who manufactures 10,000,000 cigarettes a month could receive up to 9,999,999 cigarettes in bond during the month under that permit. As stated, the quantity of tobacco products received or transferred in bond under a particular permit may not exceed the quantity of tobacco products manufactured under that permit for any given month.

Again, this criteria is intended to ensure that only those persons, whose primary activity is the manufacture of tobacco products, receive a manufacturer's permit. We believe that these changes to the regulations effectively accommodate small producers, while protecting the timely assessment and collection of the Federal excise tax revenue. We have also amended regulations in 27 CFR 200.49b to include this new activity criterion as a basis for rejecting an application for a permit. We have not amended 27 CFR 200.46, regarding revocation or suspension of tobacco permits, because we already require compliance with regulations issued under the IRC.

Importers and Export Warehouse Proprietors

Effective January 1, 2000, the IRC also requires that importers obtain a permit prior to engaging in the business. See 26 U.S.C. 5712. We have considered the issue very carefully, and have decided that we will not impose minimum capacity or activity criteria for importers at this time. In addition, we will not impose this type of requirement on export warehouse proprietors. We do not think that either of these permittees will, or can engage in possible similar misuse of their permits. However, ATF will consider imposing minimum manufacturing or activity criteria on importers and export warehouse proprietors if the need should arise.

Import Restrictions on Previously Exported Tobacco Products, Cigarette Papers and Tubes

Section 9302 of the Act also added new section 26 U.S.C. 5754, entitled "Restriction on importation of previously exported tobacco products." This new section places severe limitations on the conditions under which previously exported tobacco products, and cigarette papers and tubes may be imported or brought back into the United States. This new section states that such products may only be imported or brought into the United States as provided in section 5704(d).

Section 5704(d) allows previously exported tobacco products and cigarette papers and tubes to be released from Customs custody, without payment of tax, for transfer to a manufacturer of tobacco products or cigarette papers and tubes, or to the proprietor of an export warehouse. We note that section 5704(d) allows previously exported tobacco products to be lawfully transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor. The law does not mandate that the previously exported products return to its original manufacturer or export warehouse proprietor.

Thus, under section 5754, the only condition under which previously exported tobacco products and cigarette papers and tubes may be imported or brought into the United States is by release from Customs custody to a manufacturer or an export warehouse proprietor as an in-bond transfer. New section 5754 precludes the importation and tax payment of such products by an importer. The law is very clear and leaves no discretion to ATF in this regard. Section 5754 clearly states that such products may only be imported or brought into the United States by the method provided in section 5704(d); that is, a transfer, without payment of tax, to a manufacturer or export warehouse.

Based on the restrictive language of section 5754, ATF has amended several sections of the regulations in 27 CFR Part 275. Specifically, new or amended regulations now appear at 27 CFR 275.1, 275.81 and 275.82.

Under amended 27 CFR 275.1, the importation of tobacco products, and cigarette papers and tubes is generally discussed. In addition, 27 CFR 275.81 distinguishes between tobacco products and cigarette papers and tubes that are imported, and those that have been previously exported from the United States and returned to the US. Furthermore, 27 CFR 275.82 discusses

the new restrictions on the return of exported products.

Penalty and Forfeiture Provisions

In addition to the above restrictions on importations, section 9302 of the Act also imposes a new civil penalty on persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. The civil penalty is the greater of \$1,000 or five times the amount of tax imposed on the product. Thus, a larger penalty is imposed where the amount of the Federal excise tax on the product is greater than \$200. In addition to the civil penalty, criminal penalties and forfeiture of the product and any vessel, vehicle or aircraft involved in relanding or removing such product may be imposed. *See* 26 U.S.C. 5761(c).

Exemptions

The civil penalties do not apply to a manufacturer or export warehouse proprietor qualified under Chapter 52 of the IRC. *See* 26 U.S.C. 5704(b), 5704(d).

Application of Effective Dates

Section 9302(i) of the Act provides that the amendments to the IRC apply to "articles removed" after December 31, 1999. The Act amends the term "removed" to mean: "the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such article into the United States."

The new civil and forfeiture penalty in section 5761(c) applies only to tobacco products, and cigarette papers and tubes bearing export markings that have been "removed" on or after January 1, 2000. Accordingly, section 5761(c) applies to these products that are marked for export and removed from a manufacturer or export warehouse proprietor, released from Customs custody, or smuggled into the United States on or after January 1, 2000.

Articles that are removed on or before December 31, 1999 are not subject to the new penalty in section 5761(c). Tobacco products in packages bearing export marks that were lawfully removed from Customs custody and entered into the United States prior to January 1, 2000 are lawful products and not subject to the civil penalty under section 5761(c), or other criminal provisions of Chapter 52 of the IRC. These new penalty

provisions have been added to 27 CFR 275.83.

ATF has carefully considered ways to enforce section 5761(c), since the domestic market will contain tobacco products that have been lawfully removed on or before December 31, 1999, and products marked for export that have been unlawfully introduced into the domestic market after December 31, 1999 and subject to the civil penalty. To differentiate between the products that have been lawfully removed and unlawfully removed, we considered whether or not to change the export marking requirements under 27 CFR 290.185 for products manufactured after December 31, 1999. We have initially rejected this possibility, since it would impose major burdens on tobacco manufacturers. ATF has decided that voluntary commercial marks placed on packages by the tobacco industry will enable us to distinguish between these products. However, we will, under section 5704(b) authority, change the export marking on products manufactured after December 31, 1999 to differentiate between products removed if future investigations disclose the need to do so.

Repackaging

As noted, Congress enacted a new section 5754 in the IRC. Under this section, tobacco products and cigarette papers and tubes previously exported from the United States may only be imported or brought into the United States as provided in section 5704(d). Section 5704(d) provides that tobacco products and cigarette papers and tubes exported and returned may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax, for delivery to a manufacturer of tobacco products or cigarette papers and tubes or to an export warehouse proprietor. Except for a qualified manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor, section 5761(c) imposes penalties for the selling, relanding, and receiving of tobacco products that are labeled or shipped for export. In effect, section 5761(c) prohibits the sale of relanded tobacco product bearing export markings.

Although manufacturers and export warehouse proprietors are authorized to receive relanded tobacco products or cigarette papers or tubes from customs custody without payment of the Federal excise tax, there are limitations on what manufacturers and export warehouse proprietors may do with such product. As discussed below, the products may be destroyed, re-exported, or in the case

of a manufacturer, the product may be repackaged and removed for sale in the domestic market.

Export Warehouses

Section 5702 defines "export warehouse" to mean "a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States." An export warehouse proprietor is one who owns an export warehouse. Export warehouse proprietors are authorized to store non-taxpaid tobacco products, and cigarette papers and tubes for subsequent exportation. Under the IRC, an export warehouse proprietor is not authorized to pay excise tax on tobacco products, including relanded tobacco products for distribution into the domestic U.S. market. Export warehouses are specifically established under the law to facilitate the exportation of tobacco products without payment of the excise tax. Thus, by definition, an export warehouse can only receive tobacco products in bond and export them or return them to a manufacturer. Because there is no authority for the export warehouse proprietor to pay the excise tax and distribute tobacco products onto the domestic U.S. market, an export warehouse proprietor may lawfully receive relanded tobacco products, transfer relanded tobacco products to a qualified manufacturer, or re-export the relanded tobacco products. Export warehouse proprietors may also destroy these relanded tobacco products.

Manufacturers

Manufacturers are authorized under the IRC to pay excise tax on and distribute tobacco products into the domestic market. *See* 26 U.S.C. 5703. However, the IRC also requires that before removal from a manufacturer's factory, tobacco products must be put up in packages and bear the marks, labels, and notices required by the Secretary.

As stated above, the Secretary has the general authority to prescribe packaging and marking requirements for tobacco products. *See* 26 U.S.C. 5723(a) and (b). Under this authority, ATF has prescribed regulations under 27 CFR 290.185 which require that products removed for exportation exempt from taxation must bear export markings. Again, such markings include the words, "Tax-exempt. For use outside of

U.S.” or “U.S. Tax-exempt. For use outside U.S.” These export markings signify that the product is not subject to Federal taxes and that it is not intended for distribution within the United States. We rely on these markings to identify these products as a tax-exempt export for enforcement purposes. In addition, ATF has prescribed regulations under 27 CFR 290.222 which require that tobacco products and cigarette papers and tubes on which tax has been paid and a drawback claim has been made must have a label affixed reading “For Export With Drawback of Tax.”

However, previously exported products that are relanded in the United States also bear the export markings required under § 290.185 and § 290.222 and may be intended for distribution in the domestic market. Because we cannot tell if a particular product on the market has been lawfully taxpaid and removed from Customs custody, or if it was smuggled into the U.S., the efficacy of the export marking requirements is severely reduced if these products are allowed in the domestic market. ATF has concluded that since relanded tobacco products are marked in accordance with the tobacco export regulations at 27 CFR 290.185 and bear a statement that says “Tax-exempt. For use outside of U.S.” or “U.S. Tax-exempt. For use outside U.S.” or in accordance with 290.222 and bear a statement that says “For Export With Drawback of Tax,” they are not properly marked for distribution on the domestic U.S. market. Further, if products with export markings were allowed on the domestic market, this practice would hinder ATF enforcement of the IRC and pose a jeopardy of the revenue. Our goal is to protect the revenue, and to determine whether the Federal excise tax on a relanded product has been paid. ATF has considered various options for removing these export markings and bringing relanded products into compliance with the domestic marking and labeling requirements. We have considered allowing such products to be over-stamped, allowing the obliteration of the tax-exempt marking, or allowing stickers to be placed over the markings. However these options of over-stamping, obliteration or stickers would negate the value of these markings as a tax enforcement tool. Over-stamping, obliteration, or placing stickers over the tax-exempt notice would not necessarily mean that the Federal excise tax had been paid on the relanded product. Any person could obtain product that had not been Federally taxpaid, and place

stickers over the “tax exempt” notice on packages and distribute them in the domestic market.

After careful consideration of the issue, we have concluded that a manufacturer who distributes relanded tobacco products onto the domestic market, must remove the product from its original packages (bearing export markings) and repackage them into new packages with the proper mark and notice requirements for domestic U.S. distribution as prescribed in 27 CFR part 270. ATF has determined that in order to protect the Federal excise tax revenue, it is essential to require the repackaging of these reimported products before they are introduced in domestic commerce.

Thus, under 26 U.S.C. 5761(c), products labeled for export may not be sold on the domestic U.S. market. However, manufacturers are eligible to receive relanded tobacco products, and cigarette papers and tubes and sell them on the domestic market if they are completely repackaged under the laws and regulations for products not intended for exportation. Accordingly, amended 27 CFR 275.82(b) prescribes requirements for repackaging under these circumstances. Also, regulations have been added at 27 CFR 270.213 which notify manufacturers that tobacco products marked for export are not eligible for distribution on the domestic market, and the need to repackage such products.

Finally, similar to an export warehouse proprietor, a manufacturer may also transfer the tobacco products to another manufacturer or export warehouse proprietor, re-export the relanded tobacco products, or destroy these relanded tobacco products.

Miscellaneous Changes

Form Numbers

In addition to the changes to the regulations necessitated by Public Law 105–33, ATF is making several miscellaneous administrative changes that update the references to ATF Form numbers within the regulations. The regulations at 27 CFR 290.61a, 290.142, 290.198 through 290.208, 290.210, 290.213, and 290.256 through 290.267 are also amended to change all references from the obsolete form number ATF F 2149/2150, to the new form number ATF F 5200.14. The regulations in 27 CFR 290.152 through 290.154 are also amended to change all references from the obsolete form number: ATF F 2635, to the new form number: ATF F 5620.8. The regulations in 27 CFR 290.62 are amended to delete

obsolete references to a Customs form and regulatory citation.

Record Retention of ATF Forms

Minor changes are being made in the regulations to reflect the correct number of years that ATF forms numbers 5700.14 and 5620.8 must be retained. The regulations are amended to change the records retention period from 2 years to 3 years.

Manufacturer's Record

The record of a manufacturer of tobacco products at 27 CFR 270.183 is amended to include the term “roll-your-own tobacco” and to include a record of transfers to, and receipts from foreign trade zones.

Export Warehouse Records

The records required to be maintained by an export warehouse proprietor at 27 CFR 290.142 have been amended to include several new items of information. Proprietors will now be required to indicate the manufacturer and brand name of products: received, removed, transferred, destroyed, lost, or returned to manufacturers or customs bonded warehouses. In addition, their records must also include the number of containers and unit type (e.g., cartons, cases).

Definitions

To clarify the regulations, several definitions are being added to the “Meaning of terms” sections in 27 CFR 275.11 and 290.11. Section 275.11 is amended by adding definitions for the terms “export warehouse,” “export warehouse proprietor,” “manufacturer of tobacco products,” “manufacturer of cigarette papers and tubes,” and “relanding.” Section 290.11 is amended by adding a definition for “zone restricted status.”

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866 because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0367 and 1512-0358. Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is found in 27 CFR 270.183 and 290.142. The collection of this information is required to verify that all tobacco products can be accounted for, thus ensuring that the tax revenue is protected. Without these recordkeeping requirements, no recording of the data elements pertaining to these operations would be prescribed.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this **Federal Register**.

Administrative Procedure Act

Because this document merely implements sections of the law which were enacted on August 5, 1997, and because immediate guidance is necessary to implement the provisions of the law, it is found to be contrary to the public interest and impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Drafting Information

The principal authors of this document are Ms. Teri Byers and Mr. Daniel Hiland, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury

Department also participated in developing this document.

List of Subjects*27 CFR Part 200*

Administrative practice and procedure, Authority delegations.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

Authority and Issuance

Accordingly, title 27, Code of Federal Regulations is amended as follows:

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Paragraph 1. The authority citation for part 200 continues to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

Par 2. Section 200.49b is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

§ 200.49b Applications for tobacco permits.

* * * * *

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in 27 CFR 270.61; or

* * * * *

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Par 3. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 270.61 is revised to read as follows:

§ 270.61 Qualification—General

(a) *Who must qualify.* Every person who produces tobacco products except for his or her own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose principal activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must exceed the quantity to be transferred or received in bond under the permit. For the purposes of this section, repackaging or relabeling activities alone do not qualify as a manufacturing activity.

Par. 5. Section 270.183 is revised to read as follows:

§ 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

- (a) Manufactured;
- (b) Received in bond by—
 - (1) Transfer from other factories,
 - (2) Release from customs custody,
 - (3) Transfer from export warehouses,
- and
- (4) Transfer from foreign trade zone;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;
- (e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22);
- (f) Removed, in bond, for—
 - (1) Export,
 - (2) Transfer to export warehouses,
 - (3) Transfer to other factories,
 - (4) Transfer to a foreign trade zone
 - (5) Use of the United States, and
 - (6) Experimental purposes off factory premises;

(g) Otherwise disposed of, without determination of tax, by—

(1) Consumption by employees on factory premises,

(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,

(3) Use for experimental purposes on factory premises,

(4) Loss,

(5) Destruction, and

(6) Reduction to materials;

(h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined and which are—

(1) Received, and

(2) Disposed of.

(Approved by the Office of Management and Budget under control number 1512-0358)

Par. 6. Section 270.213 is added to read as follows:

§ 270.213 Tobacco products labeled for export.

Tobacco products labeled for export are ineligible for removal from the factory and distribution into the domestic U.S. market. Such products may only be sold, transferred or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this section, “repackaging” shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of this subpart.

Par. 7. Section 270.233 is amended by adding a new sentence to the end of the section to read as follows:

§ 270.233 Transfer in bond.

* * * Tobacco products are not eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse unless they bear all required marks, labels, or notices.

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 8. The authority citation for part 275 is revised to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 9. Section 275.1 is revised to read as follows:

§ 275.1 Importation of tobacco products and cigarette papers and tubes.

This part contains regulations relating to tobacco products and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of tobacco products from a customs bonded manufacturing warehouse, class 6; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

Par. 10. Section 275.11 is amended by adding in alphabetical order, definitions for the terms “Export warehouse,” “Export warehouse proprietor,” “Manufacturer of tobacco products,” “Manufacturer of cigarette papers and tubes,” and “Relanding” to read as follows:

§ 275.11 Meaning of terms.

* * * * *

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco. A manufacturer of tobacco products does not include:

(1) A person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person’s own personal consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette papers or cigarette tubes, except for personal use or consumption.

Relanding. Any tobacco products, cigarette papers or tubes, which have been labeled or shipped for exportation (including to Puerto Rico) as prescribed in this chapter, previously exported and returned within the jurisdiction of the United States. This term does not apply

to any tobacco products, cigarette papers or tubes that are placed in appropriately marked receptacles by travelers or passengers prior to making their declaration to a U.S. Customs officer upon arrival in the United States.

* * * * *

Par. 11. Paragraph (a) of § 275.81 is revised to read as follows:

§ 275.81 Taxpayment.

(a) *General.* The provisions of this section apply to tobacco products, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States. For provisions relating to the importation of previously exported tobacco products and cigarette papers and tubes, see section 275.82.

* * * * *

Par. 12. Add § 275.82 to subpart F after the undesignated center heading “Release from Customs Custody * * *” to read as follows:

§ 275.82 Return of exported products.

(a) The provisions of this section apply to articles imported or brought into the United States after December 31, 1999. After such date, the importation or bringing in of tobacco products and cigarette papers and tubes that were previously exported from the United States is restricted. Such products may only be imported or brought into the United States by release from customs custody for delivery to a manufacturer of tobacco products or cigarette papers or tubes, or to the proprietor of an export warehouse. These products are transferred in bond and are released from customs custody without payment of that part of the duty attributable to internal revenue tax.

(b) The products described in paragraph (a) of this section may only be sold, transferred, or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this subsection, “repackaging” shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

Par. 13. Add § 275.83 to subpart F after the undesignated center heading “Release from Customs Custody of * * *” to read as follows:

§ 275.83 Penalties and forfeiture for relanded products.

Except for the return of exported products that are specifically authorized under § 275.82:

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in Title 26 U.S.C., be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by Title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This section shall apply only to tobacco products, cigarette papers and tubes removed after December 31, 1999.

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 14. The authority citation for part 290 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 15. Section 290.11 is amended by adding, in alphabetical order, the definition of “Zone restricted status” to read as follows:

§ 290.11 Meaning of terms.

* * * * *

Zone restricted status. Tobacco products, cigarettes papers and cigarette tubes which have been taken into a foreign trade zone from United States Customs territory for the sole purpose of exportation or storage until exported.

* * * * *

Par. 16. Section 290.61 is revised to read as follows:

§ 290.61 Removals, withdrawals, and shipments authorized.

(a) Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of

tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are not eligible for removal or transfer in bond under this part unless they bear the marks, labels, or notices required by this part.

§ 290.61a [Amended]

Par. 17. Section 290.61a is amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

Par. 18. In § 290.62 the fifth sentence and the seventh sentence of the section are amended to read as follows:

§ 290.62 Restriction on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.

* * * For this purpose, the customs authorities may require the master of the receiving vessel to submit for customs approval, prior to lading, customs documentation for permission to lade the articles. * * * Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122).

* * * * *

Par. 19. Section 290.142 is revised to read as follows:

§ 290.142 Records.

Every export warehouse proprietor must keep in such warehouse complete and concise records, containing the:

- (a) Number of containers;
- (b) Unit type (e.g., cartons, cases);
- (c) Kind of articles (e.g., small cigarettes);
- (d) Name of manufacturer and brand; and,
- (e) Quantity of tobacco products, cigarette papers and tubes received, removed, transferred, destroyed, lost or returned to manufacturers or to customs warehouse proprietors. In addition to such records, the export warehouse proprietor shall retain a copy of each Form 5200.14 received from a manufacturer, another export warehouse proprietor, or customs warehouse proprietor, from whom tobacco products and cigarette papers and tubes are received and a copy of each Form 5200.14 covering the tobacco products, and cigarette papers and tubes removed from the warehouse. The entries for each day in the records maintained or kept under this section shall be made by the close of the business day following

that on which the transactions occur. No particular form of records is prescribed, but the information required shall be readily ascertainable. The records and copies of Form 5200.14 shall be retained for 3 years following the close of the calendar year in which the shipments were received or removed and shall be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512–0367)

§ 290.143 [Amended]

Par. 20. Section 290.143(b) is amended by removing the phrase “2 years” and by adding in its place the phrase “3 years”.

§ 290.147 [Amended]

Par. 21. Section 290.147 is amended by removing the phrase “2 years” and by adding in its place the phrase “3 years”.

§ 290.152 [Amended]

Par. 22. Section 290.152 is amended by removing the reference “Form 2635” and add in its place the reference “Form 5620.8”. Section 290.152 is also amended by removing the words “two years” and adding in its place the phrase “3 years”.

§ 290.153 [Amended]

Par. 23. Section 290.153 is amended by removing the reference to “Form 2635 (5620.8)” and add in its place the reference “Form 5620.8”.

§ 290.154 [Amended]

Par. 24. Section 290.154 is amended by removing the reference to “Form 2635 (5620.8)” and add in its place the reference “Form 5620.8”. Section 290.154 is also amended by removing the phrase “2 years” and by adding in its place the phrase “3 years”.

Par. 25. Section 290.181 is revised to read as follows:

§ 290.181 Packages.

All tobacco products and cigarette papers and tubes will, before removal or transfer under this subpart, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart. For purposes of this subpart, the package does not include the cellophane wrapping material.

§ 290.198 [Amended]

Par. 26. Section 290.198 is amended by removing the references “Form 2149” and “Form 2150” and adding in their place the reference “Form 5200.14”.

§ 290.199 [Amended]

Par. 27. Section 290.199 is amended by removing the reference “Form 2149 or Form 2150” and adding in their place the reference “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

§ 290.200 [Amended]

Par. 28. Section 290.200 is amended by removing the reference to “Form 2149 or 2150, as the case may be,” and adding in its place the reference “Form 5200.14”.

§ 290.201 [Amended]

Par. 29. Section 290.201 is amended by removing the reference “Form 2150” and adding in its place the reference “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

§§ 290.202 through 290.204 [Amended]

Par. 30. Sections 290.202 through 290.204 are amended by removing the reference “Form 2149 or Form 2150” and adding in its place the reference “Form 5200.14”.

§ 290.205 [Amended]

Par. 31. Section 290.205 is amended by removing the reference “Form 2149/2150 (5200.14)” wherever it appears in paragraphs (a)(1) and (d) and adding in its place the reference “Form 5200.14”.

§ 290.206 [Amended]

Par. 32. Section 290.206 is amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

§§ 290.207 through 290.208 [Amended]

Par. 33. Sections 290.207 through 290.208 are amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

§ 290.210 [Amended]

Par. 34. Section 290.210 is amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

§ 290.213 [Amended]

Par. 35. Section 290.213 is amended by removing the reference “Form 2150” and adding in its place the reference “Form 5200.14”.

§ 290.256 [Amended]

Par. 36. Section 290.256 is amended by removing the reference “Form 2149” and adding in its place “Form 5200.14”.

§ 290.257 [Amended]

Par. 37. Section 290.257 is amended by removing the reference “Form 2149” and adding in its place “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

§§ 290.258 through 290.265 [Amended]

Par. 38. Sections 290.258 through 290.265 are amended by removing the reference “Form 2149” each place it appears and adding in its place the reference “Form 5200.14”.

§ 290.266 [Amended]

Par. 39. Section 290.266 is amended by removing the reference “Form 2150” and adding in its place “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

§ 290.267 [Amended]

Par. 40. Section 290.267 is amended by removing the reference “Form 2149” and adding in its place “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

Signed: October 12, 1999.

John W. Magaw,
Director.

Approved: November 17, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).
[FR Doc. 99-32598 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 200, 270, 275 and 290

[Notice No. 887]

RIN 1512-AB99

Implementation of Public Law 105-33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R-369P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to implement several provisions of the Balanced Budget Act of 1997. The new law: Places restrictions on the importation of previously exported tobacco products, requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorizes the Secretary to prescribe minimum capacity or activity requirements as a criterion for issuance of a manufacturer's permit. These new provisions of law are effective January 1, 2000.

Clarifying changes are also made to the tobacco regulations. In this notice of proposed rulemaking, ATF invites comments on the temporary rule.

DATES: Written comments must be received by February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091-0221; Notice No. 887. Refer to the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers or Mr. Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8210, or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**1. Temporary Regulations**

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Parts 200, 270, 275 and 290. For the text of the temporary regulations see T.D. ATF-421, published in the Rules and Regulations section of this issue of the **Federal Register**.

2. Public Participation*Who May Comment on This Notice?*

ATF requests comments on the temporary regulations from all interested persons. All 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, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand.

Will ATF Keep My Comments Confidential?

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

How Do I Send Facsimile Comments?

Comments may be submitted by facsimile transmission to (202) 927-8525. Facsimile comments must:

- Be legible
- Be 8½" x 11" in size
- Contain a legible written signature
- Be not more than three pages.

We will not acknowledge receipt of FAX transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (e-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice__@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address
- Reference this notice number
- Be legible when printed on not more than three pages 8½" x 11" in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and comment form through the address <http://www.atf.treas.gov/core/tobacco/rules/rules.htm>.

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 60-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

3. Regulatory Analyses and Notices*Is This a Significant Regulatory Action as Defined by 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.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection(s) of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory

Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information

may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 270.183 (control number 1512-0358) and 27 CFR 290.142 (control number 1512-0367). The collection of this information is required to verify that all tobacco products can be accounted for, thus ensuring that the tax revenue is protected. Without these recordkeeping requirements, no recording of the data elements pertaining to these operations would be prescribed. No additional burden hours are required.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

4. Drafting Information

This notice was written by Ms. Teri Byers and Mr. Daniel Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

Signed: October 12, 1999.

John W. Magaw,
Director.

Approved: November 17, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99-32599 Filed 12-21-99; 8:45 am]

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DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Parts 270, 275, 290, 295, 296**

[T.D. ATF—424]

RIN 1512-AB92

Implementation of Public Law 105-33, Section 9302, Relating to the Imposition of Permit Requirements on the Manufacturer of Roll-Your-Own Tobacco (98R-370P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements the provision of the Balanced Budget Act of 1997 relating to the new permit requirements on the manufacture of roll-your-own tobacco. This temporary rule also removes references to forms which have previously been made obsolete, and renumbers certain forms to reflect the current ATF numbering system. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60-day period following the publication of this temporary rule.

DATES: Effective date: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927-8210; or alc/tob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**Background**

This temporary rule implements the provision of the Balanced Budget Act of 1997, Public Law 105-33 ("the Act"), enacted on August 5, 1997 relating to roll-your-own tobacco. Section 9302 of the Act amends the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5701 and 5702 by imposing new permit requirements on the manufacture of roll-your-own tobacco.

This temporary rule also makes minor changes to remove references to obsolete forms and to replace old form numbers with current ATF form numbers. This rule also corrects the title of part 270 of

title 27 CFR to include manufacturers of cigarette papers and tubes.

Roll-Your-Own Tobacco

Roll-your-own tobacco is defined in the Act to mean "any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes." On or after January 1, 2000, manufacturers of roll-your-own tobacco are required to hold a permit. Section 9302(i)(2) of the Act also contains a transitional rule which allows those who on the date of enactment, August 5, 1997, were engaged in the manufacture of roll-your-own tobacco and who make an application for a permit prior to January 1, 2000, to continue to engage in such business pending final action on the application. In addition, by amending the definitions of the terms "Tobacco products" and "Manufacturer of tobacco products" to include roll-your-own tobacco, the Act subjects manufacturers of such products to all the statutory and regulatory controls set forth in chapter 52 of IRC. These controls include tax payment, permit qualification, bonding, recordkeeping, and civil and criminal sanctions. This rule contains temporary regulations implementing the provisions of section 9302 of the Balanced Budget Act of 1997 described above. In addition, this temporary rule prescribes the packages, marks, labels, and notice requirements for roll-your-own tobacco.

Specifically, these regulations require that every package of roll-your-own tobacco shall, before removal subject to tax, have imprinted thereon or on a label securely affixed to the package the designation "roll-your-own tobacco," as well as a statement of the pounds and ounces of the product contained in the package. As an alternative to the designation "roll-your-own tobacco," the package may be designated "Tax Class J." The Bureau believes that allowing the use of this alternative designation will adequately protect the revenue by distinguishing the roll-your-own tobacco class from the other classes of tobacco products. This also facilitates the relabeling of many tobacco products which are subject to tax but which are currently labeled as "smoking tobacco" rather than roll-your-own tobacco.

This document also contains a use-up rule for packages for roll-your-own tobacco. It allows manufacturers to

place roll-your-own tobacco in packages that do not meet the mandatory marking requirements. Under this use-up rule, until April 1, 2000, a manufacturer may continue to place roll-your-own tobacco in packages that were in use prior to January 1, 2000.

Title Change of Part 270

The title of 27 CFR part 270 is being changed to properly reflect the contents of this part. On October 17, 1996, Treasury Decision ATF-384 was published in the **Federal Register** (61 FR 54084). This decision eliminated Part 285, Manufacturers of Cigarette Papers and Tubes, by merging the contents into part 270 under a new subpart K. As a result of this action, the title to part 270 should have been changed to properly reflect regulations on the manufacture of tobacco products and the manufacture of cigarette papers and tubes.

Obsolete Forms

Changes to the regulations are being made to remove references to obsolete forms. First this removes the reference to ATF Form 2988 (5200.8), Deferred Tax Return—Puerto Rican Cigars and Cigarettes. This form was eliminated by Treasury Decision ATF-277 published in the **Federal Register** on November 9, 1988 (53 FR 45266) with the implementation of ATF Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico). References to ATF Form 2137 (5230.7), Monthly Tax Return—Manufacturer of Cigarette Papers and Tubes, and ATF Form 3071 (5210.7), Tax Return—Manufacturer of Tobacco Products, are also removed from the regulations. These forms were made obsolete by Treasury Decision ATF-219 published in the **Federal Register** on December 17, 1985 (50 FR 51386) with the implementation of ATF Form 5000.24, Excise Tax Return, for domestic producers. References to ATF Forms 3065, Record of Large Cigars, and 3066, Record of Small Cigars, are removed as these forms were inadvertently not removed from the regulations when such recordkeeping requirements were deemed no longer necessary.

Renumbered ATF Forms

Minor changes are made to reflect the correct ATF form number on certain forms. The regulation citation and form changes are as follows:

Regulation cite in 27 CFR	Old form number	New form number
290.147	2140	5220.4
275.86	2145	5200.11

Regulation cite in 27 CFR	Old form number	New form number
290.222, 290.224 through 290.227, 290.232	2147	5620.7
270.201	3067	5210.9
270.202, 275.141	3068	5210.5
270.311, 270.476, 275.170, 275.172	3069 (5200.7)	5200.7

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0358 and 1512-0502. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information in this regulation is found in 27 CFR 270.182, 270.183, 270.216a, 275.72b, and 295.45b. This information is required to ensure proper payment of excise tax on roll-your-own tobacco products.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this **Federal Register**.

Administrative Procedure Act

This document merely implements sections of the law that were enacted on August 5, 1997, and immediate guidance is necessary to implement the provisions of the law. Therefore, it is found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation under 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Jackie White, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Claims, Disaster

assistance, Excise taxes, Floor stocks tax, Penalties, Seizures and forfeitures, Surety bonds, Tobacco products.

Authority and Issuance

Accordingly, title 27 of the Code of Federal Regulations is amended as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The heading of part 270 is revised to read as set forth above:

Par. 2. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 3. Section 270.11 is amended by adding the definition for "Roll-your-own tobacco" and by revising the definitions "Manufacturer of tobacco products" and "Tobacco products" to read as follows:

§ 270.11 Meaning of terms.

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Par. 4. Subpart E is amended by removing § 270.61b and by revising § 270.61a to read as follows:

Subpart E—Qualification Requirements for Manufacturers

§ 270.61a Transitional rule.

Any person who:

(a) On August 5, 1997, was engaged in business as a manufacturer of roll-your-own tobacco, and

(b) Before January 1, 2000, submits an application as provided in this part to engage in such business, may continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture roll-your-own tobacco under such chapter 52.

§ 260.61b [Removed]

Par. 5. Section 270.133 is amended by revising the third sentence to read as follows:

§ 270.133 Amount of individual bond.

* * * The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed \$250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed \$150,000 for a manufacturer producing or receiving cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco in bond; and need not exceed \$250,000 for a manufacturer producing or receiving, any combination of tobacco products in bond. * * *

Par. 6. Section 270.181 is revised to read as follows:

§ 270.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§ 270.182 and 270.183. For this purpose *day* shall mean calendar day, except that the regional director (compliance) may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the regional director (compliance). No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in §§ 270.184 and 270.186, of tobacco products removed subject to tax and transferred in bond.

Except as provided in §§ 270.184 and 270.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term *business day* shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

Par. 7. Section 270.182 is amended by revising paragraph (a) to read as follows:

§ 270.182 Record of tobacco.

* * * * *

(a) Received (including tobacco resulting from reduction of cigars and cigarettes, and unpackaging of smokeless tobacco, pipe tobacco and roll-your-own tobacco), together with the name and address of the person from whom received;

* * * * *

Par. 8. Section 270.183 is amended by revising the introductory text to read as follows:

§ 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco): * * *

* * * * *

§ 270.201 [Amended]

Par. 9. Section 270.201 is amended by removing the reference to “Form 3067” and adding in its place the reference “Form 5210.9” wherever it appears.

§ 270.202 [Amended]

Par. 10. Section 270.202, introductory text, is amended by removing the reference to “Form 3068” and adding in its place the reference “Form 5210.5” wherever it appears.

§ 270.216a [Removed]

§ 270.216b [Redesignated as § 270.216a]

Par. 11. Section 270.216a is removed, § 270.216b is redesignated as § 270.216a and a new § 270.216b is added to read as follows:

§ 270.216b Notice for roll-your-own tobacco.

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “roll-your-own tobacco.” As an alternative, packages of roll-your-own tobacco may be designated “Tax Class J.”

(b) *Product weight.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual weight in pounds and ounces of the product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0502)

Par. 12. Section 270.216c is revised to read as follows:

§ 270.216c Package use-up rule.

Until April 1, 2000, manufacturers of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 216b. The manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

Par. 13. The second sentence of § 270.231 is revised to read as follows:

§ 270.231 Consumption by employees.

* * * Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff, pipe tobacco or roll-your-own tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. * * *

* * * * *

Par. 14. The second sentence of § 270.252 is revised to read as follows:

§ 270.252 Reduction of tobacco products to materials.

* * * If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco or roll-your-own tobacco and the kind and quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. * * *

Par. 15. The first sentence of § 270.255 is revised to read as follows:

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e., small cigars, large cigars, chewing tobacco, snuff,

pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by § 270.183. * * *

§ 270.311 [Amended]

Par. 16. Section 270.311 is amended by removing the reference "Form 3069 (5200.7)" and adding in its place the reference "Form 5200.7" wherever it appears.

§ 270.476 [Amended]

Par. 17. Section 270.476 is amended by removing the reference "Form 3069 (5200.7)" and adding in its place the reference "Form 5200.7" wherever it appears.

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 18. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703–5705, 5708, 5722, 5723, 5741, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 19. Section 275.11 is amended by revising the definitions of "Computation or computed," "Manufacturer of tobacco products," and "Tobacco products," and by adding a definition for "Roll-your-own tobacco" to read as follows:

§ 275.11 Meaning of terms.

Computation or computed. When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco) of tobacco products and the sale price of large cigars being shipped to the United States; that adequate bond has been posted to cover the payment, in Puerto Rico, of the tax on such products to be deferred under subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe

tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

Par. 20. A new § 275.72b is added to read as follows:

§ 275.72b Notice for roll-your-own tobacco.

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "roll-your-own tobacco." As an alternative, packages of roll-your-own tobacco may be designated "Tax Class J."

(b) *Product weight.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual weight in pounds and ounces of the product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0502)

Par. 21. Section 275.81 is amended by adding a new paragraph (c)(7) to read as follows:

§ 275.81 Taxpayment.

(c) * * *

(7) *For roll-your-own tobacco:* The importer will show the designation "roll-your-own" or "Tax Class J", the number of pounds and ounces, the rate of tax and the amount of tax due.

§ 275.86 [Amended]

Par. 22. Section 275.86 is amended by removing the reference to "Form 2145" and adding in its place the reference "Form 5200.11" wherever it appears.

Par. 23. Section 275.107 is revised to read as follows:

§ 275.107 Procedures at port of entry.

(a) The port director of customs at the port of entry will inspect the shipment

to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release.

(b) The statement of exceptions shall identify each shipping container which sustained a loss; the tobacco products and cigarette papers and tubes reported shipped in such container; and the tobacco products and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage.

(c) Where the statement is made on the basis of tobacco products or cigarette papers or tubes missing or damaged, the port director of customs shall show:

(1) The numbers of small cigarettes, large cigarettes, and small cigars.

(2) The number and total sale price of large cigars with a sale price of not more than \$235.294 per thousand,

(3) The number of large cigars with a sale price of more than \$235.294 per thousand,

(4) The number of books or sets of cigarette papers of each different numerical content.

(5) The number of cigarette tubes,

(6) The pounds and ounces of chewing tobacco and snuff,

(7) The pounds and ounces of pipe tobacco, and roll-your-own tobacco.

(d) If the port director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the tobacco products and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the port director of customs, the shipment may be released.

Par. 24. Section 275.110 is amended by revising paragraph (e) to read as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

* * * (e) the pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped, * * *

Par. 25. Section 275.117 is amended by revising paragraph (e) to read as follows:

§ 275.117 Procedure at port of entry.

* * * (e) the pounds and ounces of pipe tobacco or roll-your-own tobacco.

Par. 26. Section 275.121 is amended by revising the first sentence, and the last sentence to read as follows:

§ 275.121 Amount of bond.

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: Provided, That the amount of any such bond need not exceed \$250,000 where payment of tax on cigarettes or on any combination of tobacco products is deferred; and need not exceed \$150,000 where the tax on cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco is deferred.

* * * The manufacturer shall charge such account with the amount of tax that was agreed to be paid on Form 2987. The manufacturer must credit the account for the amount paid on Form 5000.25, at the time the tax return is filed.

Par. 27. Section 275.139 is amended by revising paragraph (a) to read as follows:

§ 275.139 Records.

* * * * *

(a) Date, quantity, kind of cigars, cigarettes, smokeless tobacco, pipe tobacco and roll-your-own tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing tobacco—snuff; pounds and ounces of pipe tobacco—roll-your-own tobacco).

* * * * *

Par. 28. Section 275.140 is amended by revising the last sentence and adding a sentence to read as follows:

§ 275.140 Taxpayment in the United States.

* * * * *

Such tobacco products and cigarettes papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on Form 5000.24. The amount of tax paid on such articles shall be separately stated on Form 5000.24.

§ 275.141 [Amended]

Par. 29. Section 275.141 is amended by removing the reference “Form 3068” and adding in its place the reference “Form 5210.5” wherever it appears.

§§ 275.170 and 275.172 [Amended]

Par. 30. Remove the reference “Form 3069 (5200.7)” and add in place of it the reference “Form 5200.7” wherever it appears in the following sections:

- (a) 275.170; and
- (b) 275.172.

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 31. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 32. Section 290.11 is amended by adding the definition for “Roll-your-own tobacco,” and by revising the definitions for “Manufacturer of tobacco products,” and “Tobacco products” to read as follows:

§ 290.11 Meaning of terms.

* * * * *

Manufacturer of tobacco products.

Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Par. 33. Section 290.143 is amended by revising paragraph (a) to read as follows:

§ 290.143 General.

(a) Every export warehouse proprietor shall at the times specified in this subpart make a true and accurate inventory of products held on ATF Form 5220.3 (3373). This inventory must be submitted to the Regional Director (Compliance), and must specify the following:

(1) The number of small cigars, large cigars, small cigarettes, large cigarettes, cigarette papers, and cigarette tubes held by such proprietor at the times specified in this subpart.

(2) The pounds and ounces of chewing tobacco, snuff, pipe tobacco and roll-your-own tobacco held by such proprietor at the times specified in this subpart.

(b) * * *

* * * * *

§ 290.147 [Amended]

Par. 34. Section 290.147 is amended by removing the reference to “Form 2140” and add in its place the reference “Form 5220.4”.

§§ 290.222, 290.224, 290.225, 290.226, 290.227, and 290.232 [Amended]

Par. 35. Remove the reference to “Form 2147” and add in its place the reference “Form 5620.7” wherever it appears in the following sections:

- (a) Section 290.222;
- (b) Section 290.224;
- (c) Section 290.225;
- (d) Section 290.226;
- (e) Section 290.227; and
- (f) Section 290.232.

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT FOR USE OF THE UNITED STATES

Par. 36. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 37. Section 295.11 is amended by adding the definition for “Roll-your-own tobacco”, and by revising the definitions for “Manufacturer of tobacco products,” and “Tobacco products” to read as follows:

§ 295.11 Meaning of terms.

* * * * *

Manufacturer of tobacco products.

Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

* * * * *

Par. 38. Section 295.45b is revised to read as follows:

§ 295.45b Notice for roll-your-own tobacco.
(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “roll-your-own tobacco.” As an alternative, packages of roll-your-own tobacco may be designated “Tax Class J”.

(b) *Product weight.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual weight in pounds and ounces of the product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0502)

Par. 39. Section 295.45c is added to read as follows:

§ 295.45c Package use-up rule.
Until April 1, 2000, manufacturers of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 216b. The manufacturer must have used such

packaging for roll-your-own tobacco before January 1, 2000.

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 40. The authority citation for part 296 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

Par. 41. Section 296.72 is amended by revising the definitions for “Tobacco Products” to read as follows:

§ 296.72 Meaning of Terms.
* * * * *
Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.
* * * * *

§ 296.74 [Amended]
Par. 42. The second sentence of § 296.74 is amended by adding the words “and roll-your-own-tobacco” after the term “pipe tobacco”.
Par. 43. Section 296.163 is amended by revising the definitions for

“Manufacturer of tobacco products” and “Tobacco products” to read as follows:

§ 296.163 Meaning of terms.
* * * * *
Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:
(1) A person who produces tobacco products solely for that person’s own consumption or use; or
(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.
* * * * *

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.
* * * * *
Signed: August 13, 1999.
John W. Magaw,
Director.

Approved: October 27, 1999.
John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).
[FR Doc. 99–32602 Filed 12–21–99; 8:45 am]
BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295 and 296

[Notice No. 889]

RIN 1512-AB92

Implementation of Public Law 105-33, Section 9302, relating to the Imposition of Permit Requirements on the Manufacture of Roll-Your-Own Tobacco (98R-370P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to implement section 9302 of the Balanced Budget Act of 1997. The new law enacted new permit requirements for manufacturers of roll-your-own tobacco. In addition, the temporary rule corrects the title to 27 CFR part 270, rennumbers certain forms to reflect the current ATF numbering system, and removes references to forms that were previously made obsolete. Clarifying changes are made to parts 270, 275, 290, 295, and 296. In this notice of proposed rulemaking, ATF invites comments on the temporary rule.

DATES: Written comments must be received on or before February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091-0221. (Attention: Notice Number 889). See the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Jackie White, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927-8210 or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**1. Temporary Regulations**

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR parts 270, 275, 290, 295, and 296. For the text of the temporary regulations see T.D. ATF-424, published in the Rules and Regulations section of this issue of the **Federal Register**.

2. Public Participation*Who May Comment on This Notice?*

ATF requests comments on the temporary regulations 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 practicable to do so. However assurance of consideration cannot be given except as to comments received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. Comments may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comment. We may also disclose the name of any person who submits a comment.

Can I Review Comments Received?

Yes. You may view and copy written comments on this project during normal business hours in the ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226, telephone (202) 927-8480. For information on filing a Freedom of Information Act request for a copy of the comments, please refer to the internet address <http://www.atf.treas.gov/about/foia/foia.htm>.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages of facsimile transmission to (202) 927-8525.

Facsimile comments must:

- Be legible
- Be 8½" x 11" in size
- Contain a legible written signature
- Be not more than three pages

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (e-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice_atfhq.atf.treas.gov. You must follow these instructions.

E-mail comments must:

- Contain your name, mailing address, and e-mail address
- Reference this notice number
- Be legible when printed on not more than three pages 8½" x 11" in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and the comment form through the address <http://www.atf.treas.gov/core/tobacco/rules/rules.htm>.

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 60-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

3. Regulatory Analyses and Notices*Is This a Significant Regulatory Action as Defined by Executive Order 12866?*

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection(s) of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services

Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 270.182, 270.183, 270.216b, 275.72b,

and 295.45b. This information is required to ensure proper excise payment of taxes on roll-your-own tobacco products. This information will be used to determine whether or not such excise taxes have been properly paid. The collection of information is mandatory. The likely respondents include small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden under control numbers 1512-358 and 1512-502 for the first year is 385 hours for initiating and obtaining required permits. For subsequent years, the total annual reporting and/or recordkeeping burden under 1512-0358 is 1,650 hours and under 1512-0502 the burden is 1 hour. Estimated average annual burden hours per respondent and/or recordkeeper under 1512-0358 is 150 hours; and under 1512-0502 the burden is 1 hour. The estimated number of respondents and/or recordkeepers are 11.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

4. Drafting Information

The principal author of this document is Jackie White, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

Signed: August 13, 1999.

John W. Magaw,
Director.

Approved: October 27, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99-32603 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295 and 296

[T.D. ATF-420]

RIN: 1512-AB88

Increase in Tax on Tobacco Products and Cigarette Papers and Tubes [99R-88P]

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This document implements the January 1, 2000 and January 1, 2002 tax increases on tobacco products and cigarette papers and tubes imposed by section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105-33). ATF is amending existing regulations to show the new tax rates. This document also makes additional changes of a technical nature.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8202, mdruh@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Tax Increases

Public Law 105-33, entitled "The Balanced Budget Act of 1997" (the Act) was enacted on August 5, 1997. Section 9302 (a) through (f) (111 Stat. 671) increases the tax imposed by the Internal Revenue Code of 1986 relating to tobacco products and cigarette papers and tubes in two increments. The first tax increase applies to articles removed from ATF or customs bond on or after January 1, 2000. The second tax increase applies to such articles removed on or after January 1, 2002. Section 9302(g) imposes a new tax on "roll-your-own" tobacco. In this document, we are simply listing the new tax rates in the appropriate sections of the regulations. In separate rulemaking documents, we will make other changes to the tobacco regulations to administer the new tax on "roll-your-own" tobacco, the floor

stocks tax, and other provisions of section 9302.

Tobacco regulations in 27 CFR parts 270, 275, 290, 295 and 296 that specified only the pre-2000 tax rates are amended to show the new rates. Examples of calculations in these regulations have been amended to show the current and future tax rates.

Excise Tax on Cigarette Papers

The Act modifies the tax imposed on cigarette papers manufactured in or imported into the United States. Sections 9302(c) of the Act raises the rate of tax. Section 9302(h)(3) of the Act revises how the excise tax on cigarette papers is applied. Previously, the excise tax only applied to books or sets of cigarette papers that contained more than 25 papers. As of January 1, 2000, all cigarette papers manufactured in or imported into the United States must be taxed without regard to the size of the book or set. The tax continues to be computed on each 50 papers or fractional part thereof, so in the following examples of tax computation, fractions of 50 papers are treated as a full 50 papers:

Quantity	Computation using tax rate applicable:		
	Prior to 1/1/2000	1/1/2000 to 12/31/2001	1/1/2002 and after
1,000 books of 20 papers each	No tax	\$4.24 (20,000 papers ÷ 50 = 400); (400 × 1.06¢ = \$4.24).	\$4.88 (20,000 papers ÷ 50 = 400); (400 × 1.22¢ = \$4.88)
1,007 books of 30 papers each	\$4.5375 (30,210 pa- pers ÷ 50 = 605); (605 × 0.75¢ = \$4.5375).	\$6.413 (30,210 pa- pers ÷ 50 = 605); (605 × 1.06¢ = \$6.413).	\$7.381 (30,210 pa- pers ÷ 50 = 605); (605 × 1.22¢ = \$7.381)
1,007 books of 60 papers each	\$9.0675 (60,420 pa- pers ÷ 50 = 1209); (1209 × 0.75¢ = \$9.0675).	\$12.8154 (60,420 pa- pers ÷ 50 = 1209); (1209 × 1.06¢ = \$12.8154).	\$14.7498 (60,420 pa- pers ÷ 50 = 1209); (1209 × 1.22¢ = \$14.7498)

Sale Price for Large Cigars

Regulations that refer to the wholesale price of large cigars have been removed or amended to refer to the sale price. Before January 1, 1991, the excise tax on large cigars was based on the wholesale price, but after that date, Public Law 101-508 changed the tax so it was based on the sale price. Since it is unlikely ATF or industry members will need to compute tax at the pre-1991 rates, we are deleting all references to those rates in the regulations. Should the need arise, we will refer to regulations that were in force at the time of removal. In this document, we have expanded the sale price regulations to include information contained in the old wholesale price regulations where this information is applicable to sale price. For example, we adopt rules for pricing of combination packages and cigars sold as "seconds."

Delegations of Authority

Pursuant to Treasury Decision 120-01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of ATF, the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by ATF delegation orders, regional directives, or similar delegation documents. In addition, the Secretary has placed delegations to specific ATF officials in some of the regulations issued pursuant to the IRC. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 52, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or

redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all redelegations of the Director's authority in the revised or amended sections of the regulations. The regulations, which specified an ATF officer by title, are being replaced with delegations to the "appropriate ATF officer." Along with this final rule, ATF is publishing a delegation order, in which we give the organizational titles

of the individuals who have authority to carry out each of the specified duties. The effect of these changes is to consolidate all delegations of authority into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the event of a change in delegation or in the event of a restructuring. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition to the above, this final rule also eliminates all references in the affected regulatory sections which identify the ATF officer with whom an ATF form is filed. Thus, in lieu of identifying the authorized officer in the regulations, the form itself will indicate the officer with whom it must be filed. Similarly, this final rule also amends the affected sections of the various parts to provide that documents other than ATF forms (such as letterhead applications, notices and reports) will be filed with the "appropriate ATF officer." The "appropriate ATF officer" is the Director's delegate and will be identified in the accompanying Delegation Order. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed in the event that authority to receive such submissions, or the title of the officer, changes.

Consistent with the above, this final rule makes various technical amendments to the affected parts of 27 CFR. Specifically, new sections are added to recognize the authority of the Director to delegate regulatory authorities in each part and to identify the appropriate delegation order as the instrument reflecting such delegations. Also, each part affected by this document is amended to provide that the instructions on an ATF form identify the ATF officer with whom it is filed.

Since ATF is issuing this Treasury decision to implement Public Law 105-33, we are amending only the sections that were affected by the law change. We intend to make similar changes in delegations to the remainder of parts 270, 275, 290, 295 and 296 in future technical correction documents. We plan to amend each part of Title 27 of the Code of Federal Regulations through a separate rulemaking. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Administrative Corrections

Minor changes are also made to remove references to obsolete OMB Control Number 1512-0362 and to reflect current ATF form numbers. The locations in the regulations regarding the form changes are as follows:

Regulation citation in 27 CFR	Old Form No.	New Form No.
270.431	2132	5230.2
270.422, 275.141	2138	5230.3

"Plain Language" Changes

When we were revising the regulations to make the changes in the tax rates, we also tried to simplify and clarify the language of the affected regulations. We did not change any requirements of these sections. Although we are not making a formal request for comments as part of this rulemaking, we welcome suggestions for improving the readability of these regulations at any time.

Administrative Procedure Act

This document merely implements parts of section 9302 of the Balanced Budget Act of 1997 that are effective on January 1, 2000. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to section 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Executive Order 12866

This document is not a significant regulatory action within the meaning of Executive Order 12866.

Paperwork Reduction Act

This document does not contain any new collections of information nor does it revise existing collections of information to impose new burdens. Consequently, 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 document. Three sections of the regulations that contain paperwork requirements are amended, but there are no changes of burden as a result of these changes:

- 27 CFR 275.181 is revised to eliminate the requirement for records of wholesale price; the requirement for records of sale price is retained (1512-0368).
- 27 CFR 295.51 is revised to change "wholesale" price to "sale" price, and the section is reorganized to make it easier to read (1512-0363).
- 27 CFR 296.74 is amended to give current and future tax rates, to clarify the wording, and to display the number of the current OMB approval (1512-0492).

Drafting Information

Marjorie Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

27 CFR Part 296

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance,

Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

Issuance

Title 27 CFR is amended as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The heading of part 270 is revised to read as set forth above.

Pars. 2–3. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 270.11 is amended by removing the definitions for the terms

“Determined or determination” and “Wholesale price,” and adding definitions for the terms “Appropriate ATF officer,” “ATF,” “Determine” and “Sale price” to read as follows:

§ 270.11 Meaning of terms.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director’s Authorities in 27 CFR parts 270, 275, and 296.

ATF. The Bureau of Alcohol, Tobacco and Firearms.

Determine. To establish enough information about taxable products at

the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 and used for computation of the tax.

Par. 5. Section 270.21 is revised to read as follows:

§ 270.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the years:		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars per thousand	\$1.125	\$1.594	\$1.828
Large cigars per thousand *			
• percentage of sale price	12.75%	18.063%	20.719%
• but not to exceed→	\$30	\$42.50	\$48.75

*For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand.

(b) See § 270.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

§ 270.22 [Removed]

Par. 6. Section 270.22 is removed.

§ 270.22a [Redesignated as § 270.22 and revised]

Par. 7. Section 270.22a is redesignated as § 270.22, and newly redesignated § 270.22 is revised to read as follows:

§ 270.22 Determination of sale price of large cigars.

(a) **General rule.** The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) **Special cases.**—(1) *In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will

determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)–1 through 48.4216(b)–4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm’s length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with § 70.701(d) of this chapter.

(2) **Adjustments in sale price.**—(i) *Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) **Time of adjustment.** If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by ATF’s determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) **Amount of adjustment.** The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate ATF officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) **Pricing for different packaging.** If different bona fide sale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes

of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are

taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for

distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

Par. 8. Section 270.23 is revised to read as follows:

§ 270.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	\$12	\$17	\$19.50
Large cigarettes up to 6½" long	25.20	35.70	40.95
Large cigarettes over 6½" long	Taxed at the rate for small cigarettes, counting each 2¾ inches or fraction thereof of the length of each as one cigarette.		

Par. 9. Section 270.25 is revised to read as follows:

§ 270.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Snuff	\$0.36	\$0.51	\$0.585
Chewing tobacco	0.12	0.17	0.195

* Prorate tax for fractions of a pound.

Par. 10. Section § 270.25a is revised to read as follows:

§ 270.25a Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates

under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	\$0.675	\$0.9567	\$1.0969
Roll-your-own tobacco	* No tax	0.9567	1.0969

* Prorate tax for fractions of a pound.

Par. 11. A new § 270.49 is added to read as follows:

§ 270.49 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 270. Some of the authorities in this part are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each delegation is listed by section in ATF

Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (<http://www.atf.treas.gov>).

Par. 12. Section 270.183 is amended by revising paragraph (e) to read as follows:

§ 270.183 Record of tobacco products.

* * * * *

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22, except cigars that cost more than \$235.294 may optionally be

shown as if the price were \$236 per thousand);

* * * * *

Par. 13. Section 270.184 is revised to read as follows:

§ 270.184 Record of removals subject to tax.

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

- (1) The date of removal,
- (2) The name and address of the person to whom shipped or delivered,
- (3) The kind and quantity of tobacco products removed, and
- (4) For large cigars, show the sale price (If the sale price is more than \$235.294 per thousand, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the

requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an ATF officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

§ 270.187 [Removed]

Par. 14. Section 270.187 is removed, and adding, in its place, a reference to § 270.22.

§ 270.187 Record of sales prices of large cigars.

Par. 16. Section 270.311 is amended by revising paragraph (b) to read as follows:

§ 270.311 Action by claimant.

* * * * *

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 270.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 3069 (5200.7) or Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

Par. 17. Section 270.351 is revised to read as follows:

§ 270.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers ¹ for removals during the years:		
	1993 to 1999 ²	2000 and 2001	2002 and after
Cigarette papers up to 6½" long	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

¹ Tax rate for less than 50 papers is the same. The tax is not prorated.

² Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

Par. 18. Section 270.352 is revised to read as follows:

§ 270.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½" long	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

*Tax rate for less than 50 tubes is the same. The tax is not prorated.

Par. 19. Section 270.421 is revised to read as follows:

§ 270.421 General.

(a) Every manufacturer of cigarette papers and tubes must keep records of daily operations and transactions. Records maintained must reflect the

date and number of cigarette papers and the date and number of cigarette tubes:

- (1) Manufactured;
- (2) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;
- (3) Removed, subject to tax;

(4) Removed, without payment of tax, for export purposes, use of the United States or transfer in bond pursuant to § 270.451; or

(5) Lost or destroyed.

(b) The entries for each day in the records maintained or kept under this subpart must be made by the close of the business day following that on

which the operations or transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable from the records kept.

(c) Records maintained under this section prior to January 1, 2000, must reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes.

(26 U.S.C. 5741.)

Par. 20. Section 270.422 is revised to read as follows:

§ 270.422 General.

Every manufacturer of cigarette papers and tubes must prepare a report on ATF Form 5230.3 in accordance with instructions for the form. The report must be prepared at the times specified in this subpart and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(a) *Reports for periods on or after January 1, 2000.* Reports submitted must reflect the total number of cigarette papers and cigarette tubes manufactured, received and lost or destroyed.

(b) *Reports for periods prior to January 1, 2000.* Reports submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed and lost or destroyed.

(26 U.S.C. 5722)

Par. 21. Section 270.431 is revised to read as follows:

§ 270.431 General.

Every manufacturer of cigarette papers and tubes must provide a true and accurate inventory on ATF Form 5230.2 in accordance with instructions for the form. Such inventory is subject

to verification by an ATF officer. The manufacturer must retain a copy of each inventory completed on ATF Form 5230.2 in accordance with this subpart.

(a) *Reports of inventory for periods on or after January 1, 2000.* Reports of inventory submitted must reflect the total number of cigarette papers and cigarette tubes held at the times specified in the subpart.

(b) *Reports of inventory for periods prior to January 1, 2000.* Reports of inventory submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart.

(26 U.S.C. 5721)

PART 275—[AMENDED]

Par. 22. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 20. Section 275.11 is amended by removing the definitions for the terms “Determined or determination” and “Wholesale price” and by adding definitions for the terms “Appropriate ATF officer,” “ATF,” “Determine” and “Sale price” to read as follows:

§ 275.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

* * * * *

ATF. The Bureau of Alcohol, Tobacco and Firearms.

* * * * *

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before 1/1/2000 or sale price of large cigars), that information must also be established as part of tax determination.

* * * * *

Sale price. The price for which large cigars are sold by the importer or manufacturer, determined in accordance with § 275.39 and used for computation of the excise tax.

* * * * *

Par. 23. A new § 275.29 is added to read as follows:

§ 275.29 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 275. Some of the authorities in this part are redelegated to “appropriate ATF officers.” The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (<http://www.atf.treas.gov>).

Par. 24. Section 275.30 is revised to read as follows:

§ 275.30 Pipe tobacco and roll-your-own tobacco.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound ¹ for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	\$0.675	\$0.9567	\$1.0969
Roll-your-own tobacco	No tax	0.9567	1.0969

¹ Prorate tax for fractions of a pound.

Par. 25. Section 275.31 is revised to read as follows:

§ 275.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Product	Tax rate for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars (per thousand)	\$1.125	\$1.594	\$1.828
Large cigars ¹			
percentage of sale price	12.75%	18.063%	20.719%
but not to exceed per thousand	\$30	\$42.50	\$48.75

¹ For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294.

(b) See § 275.39 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not

intended for sale shall be taxed at the same rate as similar cigars removed for sale.

Par. 26. Section 275.32 is revised to read as follows:

§ 275.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	\$12	\$17	\$19.50
Large cigarettes up to 6½" long	25.20	35.70	40.95
Large cigarettes over 6½" long	Use tax rates for small cigarettes, but count each 2¾ inches or fraction thereof of the length of each as one cigarette.		

Par. 27. Section 275.33 is revised to read as follows:

§ 275.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound ¹ for removals during the years		
	1993 to 1999	2000 or 2001	2002 and after
Snuff	\$0.36	\$0.51	\$0.585
Chewing tobacco	\$0.12	\$0.17	\$0.195

¹ Prorate tax for fractions of a pound.

Par. 28. Section 275.34 is revised to read as follows:

§ 275.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers ¹ for removals during the years		
	1993 to 1999 ²	2000 or 2001	2002 and after
Cigarette papers up to 6½" long	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

¹ Tax rate for less than 50 papers is the same. The tax is not prorated.

² Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

Par. 29. Section 275.35 is revised to read as follows:

§ 275.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes ¹ for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½" long	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

¹ Tax rate for less than 50 tubes is the same. The tax is not prorated.

Par. 30. Section 275.39 is amended to read as follows:

§ 275.39 Determination of sale price of large cigars.

The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the importer or manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price. See § 270.22(b) of this chapter for information on determining the sale price in special cases.

Par. 31. Section 275.81 is amended by revising paragraphs (c)(1), (c)(4)(ii) and (c)(4)(iii) to read as follows:

§ 275.81 Taxpayment.

* * * * *

(c) * * *

(1) *For cigarette papers:* For cigarette papers imported on or after January 1, 2000, the importer will show the total number of cigarette papers, the rate of tax, and the amount of tax due. For cigarette papers imported prior to January 1, 2000, the importer will show the number of books or sets, the number of papers in each book or set, the rate of tax, and the amount of tax due.

* * * * *

(4) * * *

(ii) For large cigars with a sale price of not more than \$235.294 per thousand, the number and total sale price of such cigars;

(iii) For large cigars with a sale price of more than \$235.294 per thousand, the number of cigars;

* * * * *

Par. 32. Section 275.107 is amended by revising paragraph (c)(4) to read as follows:

§ 275.107 Procedures at port of entry.

* * * * *

(c) * * *

(4) The number of cigarette papers. If imported prior to January 1, 2000, the number of books or sets of cigarette papers of each different numerical content.

* * * * *

Par. 33. Section 275.110 is amended by revising paragraphs (b) and (c) to read as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

* * * (b) the number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped; (c) the number of large cigars with a sale price of more than \$235.294 per thousand to be shipped.

* * * * *

Par. 34. Section 275.117 is amended by revising paragraphs (b) and (c) to read as follows:

§ 275.117 Procedure at port of entry.

* * * (b) the number and sale price of large cigars with a sale price of not more than \$235.294 per thousand, (c) the number of large cigars with a sale price of more than \$235.294 per thousand, * * *

* * * * *

Par. 35. Section 275.139 is amended by revising paragraphs (b) and (c) to read as follows:

§ 275.139 Records.

* * * * *

(b) The sale price of large cigars removed subject to tax, except that if the price is more than \$235.294 per thousand, it may be shown as if it were \$236 per thousand.

(c) *Cigarette papers:*

(1) Before January 1, 2000, the date and number of books or sets of cigarette papers of each numerical content.

(2) On and after January 1, 2000, the date and number of cigarette papers.

* * * * *

Par. 36. Section 275.170 is amended by revising the section heading and paragraph (b) to read as follows:

§ 275.170 Reduction of tobacco products to materials; ATF action.

* * * * *

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater

amount was actually paid. For each claim involving large cigars withdrawn from the market, the importer must include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid. (See 26 U.S.C. 5705)

Par. 37. Section 275.172 is amended by revising paragraph (b) to read as follows:

§ 275.172 Return to nontaxpaid status; action by taxpayer.

* * * * *

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the importer must include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid. (See 26 U.S.C. 5705)

Par. 38. Section 275.181 is revised to read as follows:

§ 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States must keep such records as are necessary to establish and verify the sale price that applies to large cigars removed (entered or withdrawn).

(a) *Basic record.* The importer must keep a record to show each sale price (as determined under § 275.39), which is applicable to large cigars removed. No later than the tenth business day in

January of each year the importer must prepare such a record to show the sale price in effect on the first day of that year for each brand and size of large cigars. The importer must note any change in a price from that shown in the record within ten business days after such change in price. The record must be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained. If an importer removes new types of large cigars after the beginning of the year, the importer must enter the sale price and its effective date for such large cigars in the basic record within ten business days after such removal.

(b) *Copies of price announcements.* The importer must keep a copy of each general announcement that is issued internally or to the trade about establishment or change of large cigar sale prices. If the copy does not show the actual date when issued it must be annotated to show this information.

(c) *Copies of entry and withdrawal forms.* The importer must keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to § 275.81.

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of sale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and sale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the appropriate ATF officer finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1512-0368)

PART 290—[AMENDED]

Par. 39. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 40. Section 290.11 is amended by removing the definition for the term “wholesale price” and adding a definition for the term “sale price” to read as follows:

§ 290.11 Meaning of terms.

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 or § 275.39.

PART 295—[AMENDED]

Par. 41. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 42. Section 295.11 is amended by removing the definition for the term “Wholesale price” and adding a definition for the term “Sale price” to read as follows:

§ 295.11 Meaning of terms.

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with § 270.22 or § 275.39 and used in computation of the tax.

Par. 43. Section 295.51 is revised to read as follows:

§ 295.51 Supporting records.

(a) *Records of removals.* Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 270 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

(1) The date of removal;
(2) The name and address of the Federal agency to which shipped or delivered;

(3) The kind and quantity and, (4) for large cigars, the sale price.

(b) *Records of returns.* If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) *Commercial records.* Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) *Retention period.* The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512-0363) (See 26 U.S.C. 5741)

PART 296—[AMENDED]

Par. 44. The authority citation for part 296 continues to read as follows:

Authority: 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

Par. 45. The heading of subpart C is revised to read as follows:

Subpart C—Disaster Loss Claims

Par. 46. Section 296.72 is amended by removing the definition for the term “Wholesale price” and adding definitions for the terms “Appropriate ATF officer” and “Sale price” to read as follows:

§ 296.72 Meaning of terms.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director’s Authorities in 27 CFR Parts 270, 275, and 296.

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with § 270.22 or 275.39 and used in computation of the tax.

Par. 47. Sections 296.74 through 296.77 are revised to read as follows:

§ 296.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

§ 296.75 Required information for claim.

The claim should contain the following information:

(a) That the tax on such tobacco products, or cigarette papers or tubes

has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993–1999 Rates]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.125 per thousand	\$22.50
1,000	Large cigars—sale price \$100/thousand	12.75% of sale price	12.75
500	Large cigars—sale price \$236/thousand	\$30 per thousand	15.00
10,000	Small cigarettes	\$12 per thousand	120.00
5,000	Large cigarettes	\$25.20 per thousand	126.00
2,000 sets	Cigarette papers—50 per set	\$0.0075 per set	15.00
1,000 sets	Cigarette papers—100 per set	\$0.015 per set	15.00
1,000	Cigarette tubes	\$0.015 per 50 tubes	0.30
100 lbs	Chewing tobacco	\$0.12 per pound	12.00
200 lbs	Snuff	\$0.36 per pound	72.00
100 lbs	Pipe tobacco	\$0.675 per pound	67.50
300 lbs	Roll-your-own tobacco	\$0 per pound .....	.....
Total claimed .....	.....	.....	478.05

[Example using 2000–2001 Rates]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.594 per thousand	\$31.88
1,000	Large cigars—sale price \$100/thousand	18.063% of sale price	18.06
500	Large cigars—sale price \$236/thousand	\$42.50 per thousand	21.25
10,000	Small cigarettes	\$17.00 per thousand	170.00
5,000	Large cigarettes	\$35.70 per thousand	178.50
199,975	Cigarette papers	\$0.0106 per 50 papers	42.40
1,000	Cigarette tubes	\$0.0213 per 50 tubes	0.43
100 lbs	Chewing tobacco	\$0.17 per pound	17.00
200 lbs	Snuff	\$0.51 per pound	102.00
100 lbs	Pipe tobacco	\$0.9567 per pound	95.67
300 lbs	Roll-your-own tobacco	\$0.9567 per pound	287.01
Total claimed .....	.....	.....	964.20

[Example using rates for 2002 and After]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.828 per thousand	36.56
1,000	Large cigars—sale price \$100/thousand	20.719% of sale price	20.72
500	Large cigars—sale price \$236/thousand	\$48.75 per thousand	24.38
10,000	Small cigarettes	\$19.50 per thousand	195.00
5,000	Large cigarettes	\$40.95 per thousand	204.75
199,975	Cigarette papers	\$0.0122 per 50 papers	48.80
1,000	Cigarette tubes	\$0.0244 per 50 tubes	0.49
100 lbs	Chewing tobacco	\$0.195 per pound	19.50
200 lbs	Snuff	\$0.585 per pound	117.00
100 lbs	Pipe tobacco	\$1.0969 per pound	109.69
300 lbs	Roll-your-own tobacco	\$1.0969 per pound	329.07
Total claimed .....	.....	.....	1,105.96

§ 296.76 Supporting evidence.

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost,

rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

296.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products, must be filed with the appropriate ATF officer.

Par. 48. A new undesignated centerheading and § 296.81 are added to the end of subpart C to read as follows:

Administrative Provisions

§ 296.81 Delegations of the Director.

The Director has general authority to take action on all matters under this subpart. Some of the authorities in this subpart are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each section is listed in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

Signed: October 5, 1999.

John W. Magaw,
Director.

Approved: October 27, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99-32605 Filed 12-21-99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[T.D. ATF—422; Re: Notice No. 888]

RIN 1512-AC07

Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Product Importers (98R-316P) And Miscellaneous Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements some of the provisions of the Balanced Budget Act of 1997. The new law sets forth the requirement that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity. Implementing changes, including a transitional rule, are made to part 275. In addition, clarifying changes are made to part 275. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a

60-day period following the publication of this temporary rule.

DATES: Effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen by writing to Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, by phone at 202-927-8210, or by e-mail at alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements some of the provisions of the Balanced Budget Act of 1997, Public Law 105-33 ("the Act"). These provisions amended the Internal Revenue Code of 1986 (IRC) to require that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity.

Current Regulation of Tobacco Products Importation

The Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the importation of tobacco products under the IRC, and in the Code of Federal Regulations, 27 CFR part 275. Before the enactment of the Act, no permit qualification requirement existed for importers of tobacco products.

The Act amended sections 5712 and 5713 of the IRC to require, in part, that importers of tobacco products apply for and obtain a permit before commencing business as an importer. The Act also provided a transitional rule to allow existing importers of tobacco products or cigarette papers and tubes, who file an application for a permit with ATF before January 1, 2000, to continue in such business pending final action on their application.

Under the temporary rule, persons who are already engaged in the business as an importer of tobacco products may continue in such business after January 1, 2000, provided they file an application for a permit with ATF before January 1, 2000. Such persons will be issued a temporary permit, which will remain valid for a period of one year or until a final determination is made on their application, if a final determination has not been made within that time. All others must obtain a permit before engaging in the business as an importer of tobacco products or cigarette papers and tubes beginning January 1, 2000.

Only manufacturers and export warehouse proprietors may import tobacco products in bond. Therefore, no bond need be filed by any other importer of tobacco products in conjunction with the permit, because

such importers are not authorized to import tobacco products without payment of tax upon release from customs custody.

Fully qualified applicants will be issued a permit limited to a three-year duration. A three-year permit duration was determined to be a reasonable method to avoid the proliferation of numerous unused permits, which would pose administrative difficulties and potential jeopardy to the revenue. Keeping track of unused permits would strain limited resources, and such permits could eventually fall into the hands of unqualified persons who would be unknown and unaccountable to ATF. Administrative controls will be put in place to facilitate timely renewals by permittees.

In addition, Part 275, Subpart G—Puerto Rican Tobacco Products and Cigarette Papers and Tubes, brought into the United States, contains obsolete requirements for the release of Puerto Rican tobacco products and cigarette papers and tubes from Customs custody without payment of tax. Accordingly, subpart G is being amended to eliminate the obsolete requirements under this temporary rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)), and pending receipt and evaluation of

public comments, approved by the Office of Management and Budget (OMB) under control number 1512-0398. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information initiated by this document is found in 27 CFR 275.204 and 275.205. This information is required to ensure proper payment of excise taxes on imported tobacco products and cigarette papers and tubes.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

“Plain Language” Changes

During the revision of the regulations in this document, we also tried to simplify and clarify the language of the affected regulations. Any suggestions for improving the readability of these regulations may be submitted as comments to the cross-referenced notice of proposed rulemaking.

Delegations

In the sections of the regulations that are affected by this document, we have changed obsolete ATF titles to read “the appropriate ATF officer” and referred to a delegation order that specifies the current title of the ATF official responsible for each activity. The titles of responsible persons in the remaining sections of these parts will be updated by a future technical amendment.

Administrative Procedure Act

Because this document merely implements sections of the law which are effective on January 1, 2000, and because immediate guidance is necessary to implement the provisions of the law, it is not found to be necessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in section 553(d).

Drafting Information

The principal author of this document is Clifford A. Mullen, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

List of Subjects in 27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and record keeping requirements, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Authority and Issuance

Par. 1. The authority citation for 27 CFR part 275 is revised to read:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5706, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 18 U.S.C. 2342.

Par. 2–3. Section 275.11 is amended by removing the definition of “District director of customs,” revising the definition of “Removal or Remove,” and adding the definitions for “Appropriate ATF officer,” “Customs officer,” “Port director of Customs,” and “Records” to read in alphabetical order as follows:

§ 275.11 Meaning of terms.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.16, Delegation Order—Delegation of the Director’s Authorities in 27 CFR Part 275, Importation of Tobacco Products and Cigarette Papers and Tubes.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Port Director of Customs. The director of any port or port of entry as defined in 19 CFR 101.1. A list of ports is set forth in 19 CFR 101.3.

Records. Statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (e.g., magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents that:

(1) Pertain to any importation of tobacco products or cigarette papers or tubes, or to the information contained in

the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the importation of merchandise; and

(2) Are of the type normally kept in the ordinary course of business; and

(3) Are sufficiently detailed to:

(i) Establish the right to make the importation;

(ii) Establish the correctness of any importation;

(iii) Determine the liability of any person for duties and taxes due, or which may be due, to the United States;

(iv) Determine the liability of any person for fines, penalties, and forfeitures; and

(v) Determine whether the person has complied with the laws and regulations administered by ATF and the Customs Service, and any other documents required under laws or regulations administered by ATF and the Customs Service.

Removal or Remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from internal revenue bond under 26 U.S.C. 5704, or release from customs custody, including conditional release in accordance with 19 CFR 141.0a(i), and shall also include the smuggling or other unlawful importation of such articles into the United States.

Par. 4. The fourth sentence of § 275.25 is revised to read as follows:

§ 275.25 Disposal of forfeited, condemned, and abandoned tobacco products and cigarette papers and tubes.

* * * Except where the tax is to be paid to the Port Directors of Customs or other authorized customs officer in accordance with Customs regulations (19 CFR part 127) on sales of articles by customs officers, the payment of tax on such articles must be evidenced by presentation, to the officer having custody of the articles, of a receipt from the appropriate ATF officer showing such payment. * * *

§ 275.39 [Removed and reserved]

Par. 5. Section. 275.39 is removed and reserved.

Par. 6. Section 275.40 is revised to read as follows:

§ 275.40 Persons liable for tax.

The importer of tobacco products or cigarette papers and tubes will be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided*, That tobacco products or cigarette papers or tubes (other than those previously exported and returned)

imported or brought into the United States, may be released from customs custody without payment of tax, for delivery to the proprietor of an export warehouse, to a manufacturer of tobacco products, or to a manufacturer of cigarette papers or tubes (except for tobacco products), if such articles are not put up in packages (see § 275.11). Under these circumstances the transferee will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the liability for such tax.

Par. 7. Section 275.41 is revised to read as follows:

§ 275.41 Determination and payment of tax.

Tobacco products and cigarette papers and tubes, imported or brought into the United States, on which internal revenue taxes are due and payable, must not be released from customs custody until such taxes have been determined and paid.

Par. 8. The last sentence of § 275.50 and the undesignated centerheading preceding it are revised to read as follows:

Exemptions From Taxes and Permits

§ 275.50 Exemptions.

* * *. These exemptions include, but are not limited to, certain importations in passengers' baggage, for use of crew members, and by foreign officials. Those persons importing tobacco products and cigarette papers or tubes as described in this section are not required to obtain a permit.

Par. 9. Section 275.62 is revised to read as follows:

§ 275.62 Customs' collection of internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States.

Internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States, which are to be paid to the Port Director of Customs or other authorized customs employee, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs, in accordance with customs procedures and regulations.

Par. 10. Paragraphs (a), (b), and (c), introductory text, of § 275.81 are revised to read as follows:

§ 275.81 Taxpayment.

(a) *General.* The provisions of this section apply to tobacco products,

cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States.

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under § 275.85 and 275.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty and taxpaid to Customs.

(c) *Required information.* When tobacco products, cigarette papers, or cigarette tubes enter the United States for consumption, or when they are removed for consumption, the importer must include on the customs form or authorized electronic transmission the following internal revenue tax information.

(1) * * *

Par. 11. Section 275.85 is revised to read as follows:

§ 275.85 Release from customs custody of imported tobacco articles.

(a) The provisions of this section apply only to tobacco products, cigarette papers, and cigarettes tubes, which are not put up in packages, i.e., not placed by the manufacturer or importer in packages in which the products will be sold to consumers. Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer to the factory of any manufacturer of tobacco products under the internal revenue bond of the manufacturer to whom such articles are released. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer, under the internal revenue bond of the manufacturer to whom such articles are released, to the factory of a manufacturer of cigarette papers and tubes; or a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section must be in

accordance with § 275.86: *Provided, however*, that in the case of products exported from the Virgin Islands, in order for a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes to remove such products from customs custody in the United States under the manufacturer's internal revenue bond without payment of internal revenue tax, the manufacturer must file an extension of coverage of the internal revenue bond on ATF Form 2105, and receive a notice of approval from the appropriate ATF officer. The extension of coverage must be executed by the principal and the surety and must be in the following form:

"Whereas the purpose of this extension is to bind the obligors for the purpose of the tax imposed by 26 U.S.C. 7652(b), on tobacco products and tubes exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax, for delivery to the principal on said bond."

"Now, therefore, the said bond is further specifically conditioned that the principal named therein must pay all taxes imposed by 26 U.S.C. 7652(b) plus penalties, if any, and interest, for which he may become liable with respect to these products exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax thereon, and must comply with all provision of law and regulations with respect thereto."

(b) Articles received into the factory of a manufacturer under the provision of this section are subject to the provisions of part 270 of this chapter.

Par. 12. Section 275.85a is revised to read as follows:

§ 275.85a Release from customs custody of returned articles.

(a) Domestically produced tobacco products (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released, under the bond of the manufacturer or export warehouse proprietor to whom such articles are released, from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery to the factory of any tobacco products manufacturer or to the permit premises of an export warehouse proprietor.

(b) Domestically produced cigarette papers and tubes (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping

container may be released from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery, under the bond of the manufacturer to whom such articles are released, to the factory of:

(1) A manufacturer of cigarette papers and tubes; or

(2) A manufacturer of tobacco products solely for use in the manufacture of cigarettes.

(c) Releases under this section must be in accordance with the procedures set forth in § 275.86. Once released, the tobacco products and cigarette papers and tubes will be subject to the tax and all other provisions of 26 U.S.C. chapter 52, and, as applicable, subject to the provisions of the regulations in part 270 of this chapter as if they had not been exported or otherwise removed from internal revenue bond.

Par. 13. Section 275.86 is revised to read as follows:

§ 275.86 Procedure for release.

(a) Every manufacturer of tobacco products and cigarette papers and tubes and every export warehouse proprietor who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under its internal revenue bond, as provided in § 275.85 or § 275.85a, must prepare a notice of release, Form 2145, in triplicate, and file the three copies of the form with the appropriate ATF officer. The appropriate ATF officer will not certify Form 2145 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under part 270 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form.

(b) Importers who are either manufacturers of tobacco products and cigarette papers and tubes or export warehouse proprietors, or their authorized agents, who request the release of tobacco products or cigarette papers and tubes from customs custody in the United States under this section, using customs electronic filing procedures, must not request such release until they have received the ATF Form 2145 certified by the appropriate ATF officer. Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 2145 along with a copy of the electronic filing and customs release to the appropriate ATF officer at the address shown thereon. The importer will retain one

copy of the ATF Form 2145 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

(c) Importers or their authorized agents requesting release of tobacco products or cigarette papers and tubes from customs custody in the United States under any other authorized procedure will submit all copies of the ATF Form 2145 to the appropriate customs officer along with their request for release. The customs officer will verify that the ATF Form 2145 has been certified by the appropriate ATF officer and return all copies to the importer or the importer's authorized representative.

(d) Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 2145 along with a copy of the customs release to the appropriate ATF office at the address shown thereon. The importer will retain one copy of the ATF Form 2145 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

§ 275.101 [Amended]

Par. 14. Section 275.101 is amended by removing paragraphs (d) and (e).

Par. 15. Section 275.106 is revised to read as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The taxpayer will prepare ATF Form 3075 (5200.9), in triplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid. The ATF officer assigned to inspect the shipment must obtain the receipted copy of the tax return from the taxpayer and verify on ATF Form 3075 (5200.9) that the proper tax has been prepaid. After verification of the tax return on ATF Form 3075 (5200.9), the ATF officer will return the receipted copy of the tax return to the taxpayer. The ATF officer will then present one copy of ATF Form 3075 (5200.9) to the taxpayer for attachment to the bill of lading to accompany the shipment, mail one copy to the appropriate ATF officer, and retain the remaining copy. The ATF officer will then prepare for each shipping container, a statement on ATF Form 3074 (5200.6) that the tax has been prepaid, and show the other information required by that form. The shipper must affix the completed ATF Form 3074 (5200.6) to the outside of each shipping container in which the articles are

packed. Such statement, ATF Form 3074 (5200.6), must be affixed to the outside container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not to the individual cartons, cases, etc., included in such outer container. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

§ 275.107 [Removed and reserved]

Par. 16. Section 275.107 is removed and reserved.

§ 275.108 [Removed and reserved]

Par. 17. Section 275.108 is removed and reserved.

Par. 18. Section 275.110 is amended by revising the first sentence to read as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

Where tobacco products are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer must calculate the tax and must prepare an original and two copies of Form 2987 (5210.8).

* * * * *

Par. 19. Section 275.111 is amended by revising the introductory text, paragraphs (a), (b), and (c) to read as follows:

§ 275.111 Inspection of shipment and certification by ATF officer.

On receipt of the original and two copies of the Form 2987 (5210.8) completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the tobacco products covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the tobacco products for shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by:

(a) Mailing one copy to the appropriate ATF officer;

(b) Returning one copy to the bonded manufacturer and

(c) Submitting the original to the Chief, Puerto Rico Operations.

* * * * *

Par. 20. Section 275.115a, paragraph (e), is revised to read as follows:

§ 275.115a Payment of tax by electronic fund transfer.

* * * * *

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate ATF officer will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part.

§ 275.117 [Removed and reserved]

Par. 21. Section 275.117 is removed and reserved.

§ 275.118 [Removed and reserved]

Par. 22. Section 275.118 is removed and reserved.

Par. 23. The undesignated center heading preceding § 275.135 is removed.

§§ 275.135—275.138 [Removed and reserved]

Par. 24. Sections 275.135 through 275.138 are removed and reserved.

Par. 25. The first sentence in § 275.140 is revised to read as follows:

§ 275.140 Taxpayment in the United States.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products or cigarette papers or tubes without payment of internal revenue tax, under his bond, and subsequently removes such products, subject to tax, must pay the tax imposed on such products by 26 U.S.C. 7652(a), at the rates prescribed in 26 U.S.C. 5701, on the basis of a return under the provisions of part 270 of this chapter applicable to the taxpayment of tobacco products. * * *

Par. 26. The first sentence in § 275.141 is revised to read as follows:

§ 275.141 Reports.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products, or cigarette papers or tubes without payment of internal revenue tax, under his bond, must report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. * * *

Par. 27. Subpart K is added to read as follows:

Subpart K—Tobacco Products Importers

Sec.

- 275.190 Persons required to qualify.
- 275.191 Application for permit.
- 275.192 Transitional rule.
- 275.193 Corporate documents.

275.194 Articles of partnership or association.

275.195 Trade name certificate.

275.196 Power of attorney.

275.197 Additional information.

275.198 Investigation of applicant.

275.199 Notice of Contemplated Disapproval.

275.200 Issuance of permit.

275.201 Duration of permit

275.202 Renewal of permit.

275.203 Retention of permit and supporting documents.

Required Records and Reports

275.204 General.

275.205 Recordkeeping requirements.

Filing and Retention of Records and Reports

275.206 Reports.

275.207 Filing.

275.208 Retention.

Subpart K—Tobacco Products Importers**§ 275.190 Persons required to qualify.**

Any person who engages in the business as an importer of tobacco products must qualify as an importer of tobacco products in accordance with the provisions of this part. Any person eligible for the exemption in § 275.50 is not engaged in the business as an importer of tobacco products.

Persons importing tobacco products and cigarette papers and tubes for personal use, in such quantities as may be allowed by Customs without payment of tax, do not require an importer's permit.

§ 275.191 Application for permit.

Except as provided in § 275.192, every person, before commencing business as an importer of tobacco products as defined in § 275.11, must make application for, and obtain, the permit provided by this subpart K. Such application must be made on ATF Form 5230.4, according to the instructions for the form. All documents required under this part to be furnished with such application must be made a part thereof.

§ 275.192 Transitional rule.

Any person who—

(a) Was engaged in the business as an importer of tobacco products before January 1, 2000, and

(b) Who files an application with ATF before January 1, 2000, may continue to import tobacco products and cigarette papers and tubes pending action on their application by ATF. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 will apply to such applicant.

§ 275.193 Corporate documents.

Every corporation, before commencing business as an importer of

tobacco products, must furnish with its application for permit, required by § 275.191, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate ATF officer, and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

§ 275.194 Articles of partnership or association.

Every partnership or association, before commencing business as an importer of tobacco products, must furnish with its application for permit required by § 275.191 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate ATF officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

§ 275.195 Trade name certificate.

Every person, before commencing business under a trade name as an importer of tobacco products, must furnish with his application for a permit, required by § 275.191, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such true copy of the certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

§ 275.196 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other

document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 must be furnished to the appropriate ATF officer. (For power of attorney in connection with conference and practice requirements see subpart E, part 70 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 275.194. Form 1534 does not have to be filed again with the appropriate ATF officer if such form has previously been submitted to ATF and is still in effect.

§ 275.197 Additional information.

The appropriate ATF officer may require such additional information as may be deemed necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant must, when required by the appropriate ATF officer, furnish as a part of his application for such permit such additional information as the appropriate ATF officer deems necessary to determine whether the applicant is entitled to a permit.

§ 275.198 Investigation of applicant.

Appropriate ATF officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether the applicant has disclosed all material information required, or whether the applicant has made any material false statement in the application for such permit.

§ 275.199 Notice of Contemplated Disapproval.

If the appropriate ATF officer has reason to believe that the applicant is not entitled to a permit, the appropriate ATF officer will promptly give to the applicant a notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 200 of this chapter. If, after such notice and opportunity for hearing, the appropriate ATF officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

§ 275.200 Issuance of permit.

If the application for permit, together with the required supporting documents, is approved, the appropriate ATF officer will issue a permit on ATF F 5200.24 to the applicant as an importer of tobacco products.

§ 275.201 Duration of permit.

(a) Permits other than temporary permits issued under paragraph (b) of this section will be valid for a period of three years from the effective date shown on the permit, ATF F 5200.24.

(b) Temporary permits will be issued for a one-year period to those applicants described in § 275.192.

§ 275.202 Renewal of permit.

Importers wishing to continue operations beyond the expiration of their current permit must renew their permit by making application within 30 days of such expiration on ATF F 5200.24, in accordance with instructions for the form. The expiring permit will continue in effect until final action is taken by ATF on the application for renewal, provided a timely application for renewal is filed.

§ 275.203 Retention of permit and supporting documents.

The importer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this part are kept. The permit and supporting documents must be made available for inspection by any appropriate ATF officer upon request.

Required Records and Reports

§ 275.204 General.

Every tobacco products importer must keep such records and, when required by this part, submit such reports, of the physical receipt and disposition of tobacco products. Records and reports will not be required under this part with respect to tobacco products while in customs custody.

§ 275.205 Recordkeeping requirements.

Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any tobacco product or cigarette papers or tubes must make and keep records. A person purchasing a tobacco product from the importer in a domestic transaction and who does not knowingly cause merchandise to be imported is not required to make and keep records unless:

(a) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g.,

the importer is not an independent contractor but the agent of the person placing the order).

(b) The tobacco products purchased from the importer include more than 60,000 cigarettes, in which case the importer and the person placing the order with the importer must keep the records required by 27 CFR Part 296, Subpart F, Distribution of Cigarettes. Dividing a single shipment of more than 60,000 cigarettes into smaller components of 60,000 cigarettes or less does not exempt any person from the recordkeeping requirements of this subpart.

Filing and Retention of Records and Reports

§ 275.206 Reports.

(a) Importers must file a monthly report on ATF F 5220.6 in accordance with the format and instructions for the form.

(b) The first report(s) must be submitted by the 15th day of the month following the month in which the permit is issued; all previous months beginning January 1, 2000, must also be reported at that time.

For example:

An importer who is issued a permit with a date of August 17, 2000, would be required to submit by September 15, 2000, a total of eight reports for the months January–August, 2000.

(c) Reports with the notation “No Activity” must be made for those months in which no activity occurs.

(d) When a transfer of ownership of the business of an importer of tobacco products described in § 275.224, or when a change in control of a corporation described in § 275.226 occurs, a concluding report with the notation “Concluding Report” must be made for the month or partial month during which the transfer of ownership or change in control becomes effective.

§ 275.207 Filing.

All records and reports required by this part will be maintained separately, chronologically by transaction or reporting date, at the importer's place of business. The appropriate ATF officer may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely transmittal of any documents required to be submitted.

§ 275.208 Retention.

(a) All records and reports required by this part, documents or copies of documents supporting these records or reports, and file copies of reports required by this part to be submitted to ATF must be retained for not less than three years following the close of the calendar year in which filed or made, and during this period must be available for inspection and copying by ATF during business hours.

(b) Furthermore, the appropriate ATF officer may require these records to be kept for an additional period of not more than three years in any case where it is determined that such record retention is necessary to protect the revenue. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, must also be made available for inspection and copying.

Par. 28. Subpart L is added to read as follows:

Subpart L—Changes After Original Qualification of Importers

Changes in Name

Sec.

- 275.220 Change in individual name.
- 275.221 Change in trade name.
- 275.222 Change in corporate name.

Changes in Ownership and Control

- 275.223 Fiduciary successor.
- 275.224 Transfer of ownership.
- 275.225 Change in officers, directors, or stockholders of a corporation.
- 275.226 Change in control of a corporation.

Changes in Location or Address

- 275.227 Change in location.
- 275.228 Change in address.

Subpart L—Changes After Original Qualification of Importers

Changes in Name

§ 275.220 Change in individual name.

Where there is a change in the name of an individual operating as an importer of tobacco products, the importer must make application on ATF

Form 5230.5 for an amended permit within 30 days of such change.

§ 275.221 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by an importer of tobacco products in connection with operations authorized by the permit, the importer must make application on ATF Form 5230.5 for an amended permit to reflect such change within 30 days of such change. The importer must also furnish a true copy of any new trade name certificate or document issued to the business, or statement in lieu thereof, required by § 275.195.

§ 275.222 Change in corporate name.

Where there is a change in the corporate name of an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change. The importer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

Changes in Ownership and Control

§ 275.223 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an importer of tobacco products, as a continuing operation, such fiduciary must make application for permit, before commencing operations as required by subpart K of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary. However, where a fiduciary intends only to liquidate the business, qualification as an importer of tobacco products will not be required if the fiduciary promptly files with the appropriate ATF officer a written statement to that effect.

§ 275.224 Transfer of ownership.

If a transfer is to be made in ownership of the business of an

importer of tobacco products (including a change of any member of a partnership or association), such importer must give notice, in writing, to the appropriate ATF officer, naming the proposed successor and the desired effective date of such transfer. The proposed successor must qualify as an importer of tobacco products, before commencing operations, in accordance with the applicable provisions of subpart K of this part. The importer must give such notice of transfer, and the proposed successor must make application for permit in ample time for examination and approval thereof before the desired date of such change. The predecessor must make a concluding report, in accordance with the provisions of § 275.205, and surrender the permit with such report. The successor must make a commencing report, in accordance with the provisions of § 275.206.

§ 275.225 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of an importer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the importer must, within 30 days of such action, so notify the appropriate ATF officer in writing, giving the identity of such person. In the event that the acquisition of ten or more percent in aggregate of the outstanding stock of such corporation results in a change of control of such corporation, the provisions of § 275.226 will apply. When there is any change in the authority furnished under § 275.196 for officers to act on behalf of the corporation the importer must immediately so notify the appropriate ATF officer in writing.

§ 275.226 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation operating as an importer of tobacco products results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate importer must make application on ATF Form 5230.4 for a new permit within 30 days after the change occurs. Otherwise, the present permit will be automatically terminated at the expiration of such 30-day period, and the importer will dispose of all tobacco products on hand, in accordance with this part, make a concluding report, in accordance with the provisions of § 275.206, and

surrender his permit with such report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to such application.

Changes in Location or Address**§ 275.227 Change in location.**

Whenever an importer of tobacco products intends to relocate the principal business office, the importer must, before commencing operations at the new location, make application on ATF Form 5230.5 for, and obtain, an amended permit.

§ 275.228 Change in address.

Whenever any change occurs in the address, but not the location, of the

principal business office of an importer of tobacco products, as a result of action of local authorities, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

Signed: November 18, 1999.

John W. Magaw,
Director.

Approved: December 7, 1999.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 99-32600 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 275**

[Notice No. 888]

RIN 1512-AC07**Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Products Importers**

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to implement section 9302 of the Balanced Budget Act of 1997. The new law requires importers of tobacco products to qualify for a permit to conduct such operations. These regulations also make clarifying changes to part 275. In this notice of proposed rulemaking, ATF invites comments on the temporary rule.

DATES: Written comments must be received on or before February 22, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, Attention: Notice Number 888.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen by writing to the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, by telephone at 202-927-8210, or by sending an e-mail to alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The economic impact of this rulemaking on small businesses flows directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking and the associated temporary rule have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Bureau of Alcohol, Tobacco and Firearms at the address previously specified. Because OMB must complete its review of the collections of information between 30 and 60 days after publication, comments on the information collection should be submitted not later than January 21, 2000. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- How to enhance the quality, utility and clarity of the information to be collected;

- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology; and

- Estimates of the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The information collection initiated by this document is in 27 CFR 275.204 and 275.205. The Bureau of Alcohol, Tobacco and Firearms will use this information to protect the revenue. The collection of information is mandatory. The likely recordkeepers are businesses and small businesses. The recordkeeping requirement has been submitted to OMB for review and has been granted a temporary emergency approval by OMB under control number 1512-0555. ATF believes the recordkeeping represents usual and customary business records, so we estimate the total annual burden for the 1500 tobacco products importers as 1 hour.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Public Participation

ATF requests comments on the temporary regulations 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 practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

Comments may be submitted by facsimile transmission (FAX) to (202) 927-8602, provided the comments: (1) Are legible; (2) are 8½" x 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.

ATF will not recognize any material in comments as confidential. 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 comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all

circumstances, to determine if a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR part 275. For the text of the temporary regulations see T.D. ATF-422, published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The principal author of this document is Clifford A. Mullen, Regulations Division, Bureau of Alcohol, Tobacco

and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

Signed: November 18, 1999.

John W. Magaw,
Director.

Approved: December 7, 1999.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 99-32601 Filed 12-21-99; 8:45 am]

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DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 296****[T.D. ATF-423]****RIN 1512-AB95****Floor Stocks Tax for Cigarettes (99R-259P)**

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final Rule (Treasury decision).

SUMMARY: This document implements section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105-33). This document prescribes regulations covering the computation and payment of floor stocks tax on Federally taxpaid or tax determined cigarettes which are held for sale on January 1, 2000 and January 1, 2002. This document also provides regulations for conducting inventories and for maintaining required records associated with the floor stocks tax.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT:

Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8210, e-mail, *alc/tob@atfhq.atf.treas.gov*.

SUPPLEMENTARY INFORMATION:**General Requirements**

Section 9302(j) of the Balanced Budget Act imposes a floor stocks tax on all cigarettes. This floor stocks tax is to be computed on Federally taxpaid or tax determined large and small cigarettes held for sale on the first moment of January 1, 2000 and January 1, 2002.

The floor stocks tax applies to anyone who holds cigarettes for sale on the tax increase dates. This applies to manufacturers, importers, wholesalers and retailers. The tax applies to cigarettes only; the floor stocks tax does not apply to other tobacco products (including cigars, smokeless tobacco, pipe tobacco, and roll-your-own tobacco) or cigarette papers and tubes. Cigarettes that are in vending machines in accordance with 27 CFR 296.212 on the tax increase dates are not subject to the tax.

Inventory Requirements

Liability for the floor stocks tax is determined on the basis of an inventory of cigarettes held for sale. Each person will be required to make either a record of the physical inventory or a book or

record inventory supported by the appropriate source records. The inventory must be taken sometime between December 26th and January 10th.

The inventory must separately account for any cigarettes held for sale that have been marked for export from the United States. A package of cigarettes marked for export from the United States has been imprinted or has been labeled with the words "Tax-exempt. For use outside U.S." or "U.S. Tax-Exempt. For use outside U.S." or has a stamp, sticker or notice, required by a foreign country or a possession of the United States, which identifies the foreign country or possession. If a person is required to file a return, that person will report the quantities of these export cigarettes separately on the tax return.

ATF believes that the requirements of a separate inventory and a separate reporting of cigarettes on the tax return marked for export are necessary to enforce the provisions of 26 U.S.C. 5761(c). Section 5761(c) of the IRC penalizes persons who sell, reland or receive cigarettes that have been labeled or shipped for export on or after January 1, 2000. We note that any person who has cigarettes with such export markings that are held on the first moment of January 1, 2000, and are tax paid or tax determined may continue to sell these cigarettes without incurring the penalties of section 5761(c).

The requirements to take a separate inventory of cigarettes that have been marked for export from the United States, and if required, a separate report on the tax return, will identify those who hold such cigarettes and the quantities involved. By identifying the quantities of cigarettes that have been marked for export before January 1, 2000, and the persons holding such cigarettes, ATF can more effectively conduct inspections to ensure compliance with the provisions of 26 U.S.C. 5761(c).

Filing Requirements

Any person holding Federally taxpaid or tax determined cigarettes on January 1, 2000 or January 1, 2002 may have to file a tax return and make payment. Each person is allowed a credit of \$500 or the amount of the tax liability, whichever is less. Therefore, a person whose liability is \$500 or less will not be required to file a return. However, all persons must maintain an inventory record establishing that the tax liability is \$500 or less.

Where tax is due, payment in full must accompany the return. For the tax increases on January 1, 2000, and

January 1, 2002, persons must file the floor stocks return and pay the floor stocks tax no later than March 31, 2000, or April 1, 2002, respectively.

Delegations

In the sections of the regulations that are affected by this document, we have replaced obsolete ATF titles with the "appropriate ATF officer" and referred to a delegation order that specifies the current title of the ATF official for each activity. The titles of responsible persons in the remaining sections of regulations in this part will be updated by future technical amendments.

Administrative Procedure Act

This document merely implements sections of the law that were enacted on August 5, 1997. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to 26 U.S.C. 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses pursuant to section 7805(f).

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866.

Paperwork Reduction Act of 1995

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information for OMB number 1512-0504 is found in 27 CFR 296.196 and 296.262. The collection information for OMB number 1512-0141 is found in 27 CFR 296.253. This information is required to ensure proper

records and payment of floor stocks tax on cigarettes. The collection of information is mandatory for respondents who are primarily businesses or otherwise operate for profit. The estimated average burden of this information collection is 4 hours per respondent for a small business and 12 hours per respondent for a large business. The overall burden of this information collection is estimated at 2 million hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document is Jackie White of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 296

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

PART 296—[AMENDED]

Paragraph 1. The authority citation for part 296 is revised to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

Par. 2. Subpart I is revised to read as follows:

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

General

Sec.

- 296.191 Purpose of this subpart.
- 296.192 Terms used in this subpart.
- 296.193 Floor stocks tax defined.
- 296.194 Persons liable for this tax.
- 296.195 Persons not liable for this tax.
- 296.196 Floor stocks requirements.

Inventories

- 296.201 Establish quantities of cigarettes.
- 296.202 Inventory for cigarettes with export markings.
- 296.203 How to identify cigarettes with export markings.
- 296.204 When to take inventory.
- 296.205 Physical inventory requirements.

- 296.206 Book or record inventory requirements.
- 296.207 Cigarettes in transit.
- 296.208 Guidelines to determine title of cigarettes in transit.
- 296.209 Cigarettes in a foreign trade zone.
- 296.210 Cigarettes held in bond.
- 296.211 Unmerchandise cigarettes.
- 296.212 Cigarettes in vending machines.
- 296.213 Cigarettes marked “not for sale” or “complimentary.”

Compute Tax Liability

- 296.221 Determine amount of tax due.
- 296.222 Floor stocks tax rates.
- 296.223 Apply tax credit.

Filing Requirements

- 296.231 How to obtain a tax return.
- 296.232 Prepare tax return.
- 296.233 How to pay.
- 296.234 Tax return due dates.
- 296.235 Filing requirements for multiple locations.
- 296.236 Cigarettes in a warehouse.
- 296.237 Controlled group members.

Records

- 296.241 Required records.
- 296.242 Period for maintaining records.
- 296.243 Cigarettes at multiple locations.
- 296.244 Where records must be maintained.
- 296.245 Errors in records.

Claims

- 296.251 Before filing a claim.
- 296.252 When to file a claim for errors on return.
- 296.253 How to file a claim for errors on return.
- 296.254 Destruction of cigarettes by a Presidentially-declared major disaster.
- 296.255 Additional reasons for filing a claim.

Alternate Methods or Procedures

- 296.261 Purpose of an alternate method or procedure.
- 296.262 How to apply for approval.
- 296.263 Conditions for approval.
- 296.264 Withdrawal of an alternate method or procedure.

ATF Authorities

- 296.270 Delegations of the Director
- 296.271 Entry, examination and testimony.
- 296.272 Issuance of summons.
- 296.273 Refusing entry or examination.
- 296.274 Penalties for failure to comply.

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

Authority: Section 9302, Pub.L. 105–33, 111 Stat. 251, unless otherwise noted.

General

§ 296.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

§ 296.192 Terms used in this subpart.

(a) *Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296.

(b) *Controlled group.* Pursuant to 26 U.S.C. 5061(e)(3), the term “controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1(a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563–1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(d) *Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

(e) *Person.* When the term “person” is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) *Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

§ 296.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

§ 296.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or tax determined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 296.207 and 296.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 296.209).

§ 296.195 Persons not liable for this tax.

If you do not hold any taxpaid or tax determined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

§ 296.196 Floor stocks requirements.

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in §§ 296.205 and 296.206.

(b) *Compute tax amount.* Compute the amount of tax for the cigarettes held for

sale at the start of each of the tax increase dates. Refer to the table shown in § 296.222. Apply the tax credit as provided by § 296.223.

(c) *File tax return.* After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) *Maintain records.* Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to § 296.241.

(Approved by the Office of Management and Budget under control number 1512-0554)

Inventories**§ 296.201 Establish quantities of cigarettes.**

You must take an inventory to establish the quantity of cigarettes subject to the floor stocks tax. You may take a physical inventory or a book or record inventory.

§ 296.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

§ 296.203 How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words "Tax-exempt. For use outside U.S." or "U.S. Tax Exempt. For use outside U.S."; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

§ 296.204 When to take inventory.

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000	December 26, 1999	January 10, 2000.
January 1, 2002	December 26, 2001	January 10, 2002.

§ 296.205 Physical inventory requirements.

Your physical inventory must include a written record of:

(a) *Quantity and Type.* You must record the quantity and type of cigarettes in sufficient detail to determine the tax rate as stated in § 296.222 and whether the cigarettes

have export markings as stated in § 296.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A) ...	Count the: • Number of cigarettes without export markings. • Number of cigarettes with export markings.
Large cigarettes (Class B) ...	Count the: • Number of large cigarettes 6.5" or less in length without export markings. • Number of large cigarettes 6.5" or less in length with export markings. • Number of each size of large cigarettes more than 6.5" in length without export markings. • Number of each size of large cigarettes more than 6.5" in length with export markings.

(b) *Date.* Date(s) the inventory was taken.

(c) *Name.* Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) *Location.* Record where the inventory was taken (street address, city and State).

(e) *Time.* The physical inventory must be taken between the dates shown in § 296.204. If you do not take the physical inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual

quantity of cigarettes held as of the first moment of January 1, 2000 and January 1, 2002, respectively. These records must include all supporting records of receipt and disposition.

§ 296.206 Book or record inventory requirements.

You may use a book or record inventory if you have source records that show:

(a) The quantity of receipts and dispositions of all cigarettes.

(b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment

the tax increase became effective. Refer to § 296.205(a).

(c) The name and address of the consignor and consignee.

(d) The date of receipt or disposition of the cigarettes.

(e) The brand name of each product.

(f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in § 296.205(e).

§ 296.207 Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the

title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

§ 296.208 Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) *Freight on board (F.O.B.) destination.* The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) *Freight on board (F.O.B.) shipping point.* The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

§ 296.209 Cigarettes in a foreign trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

§ 296.210 Cigarettes held in bond.

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in ATF bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

§ 296.211 Unmerchtable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks tax. You must prepare a separate list of these items. You cannot include as unmerchtable any items that may be held because of poor market demand or to reduce your inventory.

§ 296.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

(a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and

(b) The cigarettes are ready to be dispensed by a consumer.

§ 296.213 Cigarettes marked "not for sale" or "complimentary."

Cigarettes marked "not for sale" or "complimentary" that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 296.205 and 296.206. Cigarettes that are marked "not for sale" or "complimentary" and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

Compute Tax Liability

§ 296.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 296.222. Multiply the amount of each type of cigarette by the applicable tax rate.

§ 296.222 Floor stocks tax rates.

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000)	\$5 per 1,000 or 10 cents per 20	\$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000)	\$10.50 per 1,000 or 21 cents per 20	\$5.25 per 1,000 or 10.5 cents per 20

Special rule: For large cigarettes over 6½ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2¾ inches and any fraction of the length, as one (1).

§ 296.223 Apply tax credit.

You are allowed a credit against your floor stocks tax of up to \$500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

Filing Requirements

§ 296.231 How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

(a) ATF web site (www.atf.treas.gov);

(b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

§ 296.232 Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 296.233 How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

(a) *Electronic fund transfer.* If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

(1) ATF web site (www.atf.treas.gov);

(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

(b) [Reserved]

§ 296.234 Tax return due dates.

Tax increase date	File tax return no later than:
January 1, 2000.	March 31, 2000 ¹
January 1, 2002.	April 1, 2002

¹ Section 9302(j) of P.L. 105-33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

§ 296.235 Filing requirements for multiple locations.

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of

filing a separate return for each place of business or location.

§ 296.236 Cigarettes in a warehouse.

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The cigarettes can be reported by a single location or apportioned among several locations.

§ 296.237 Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than \$500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in § 296.223 if it is apportioned to you as a member of the controlled group.

Records**§ 296.241 Required records.**

You must maintain:

(a) Inventory records.

(b) Tax computations.

(c) Names, addresses and employer identification number of all controlled group members, if applicable.

(d) Copy of tax return, if you filed one.

(e) List of locations and warehouses covered by the tax return.

(f) Any approved alternate method or procedure under 296.263.

§ 296.242 Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return	3 years from the tax increase date.
Filed a tax return on or before the due date of the return	3 years from the due date of the tax return, as specified in § 296.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

§ 296.243 Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

(a) Address.

(b) Name of the proprietor (if different).

(c) The employer identification number (if different).

(d) Quantity and classification of all cigarettes held at each location.

§ 296.244 Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

§ 296.245 Errors in records.

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

Claims**§ 296.251 Before filing a claim.**

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5200.28T and subsequently determined that you overpaid the tax.

§ 296.252 When to file a claim for errors on return.

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

§ 296.253 How to file a claim for errors on return.

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1512-0554)

§ 296.254 Destruction of cigarettes by a Presidentially-declared major disaster.

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Refer to subpart C of this part for the time, evidence and procedures for filing a claim.

§ 296.255 Additional reasons for filing a claim.

(a) *Manufacturer.* 27 CFR part 270, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) *Export warehouse proprietor.* 27 CFR part 290, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) *Exported taxpaid.* If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 290.

(d) *Importer.* An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

Alternate Methods or Procedures**§ 296.261 Purpose of an alternate method or procedure.**

An alternate method or procedure is a different way of performing a requirement than is provided in this subpart of regulations. You would only make a request if you wanted to perform a requirement in a different way than is provided in this subpart.

§ 296.262 How to apply for approval.

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

(Approved by the Office of Management and Budget under control number 1512-0554)

§ 296.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

- (a) There is good cause for its use.
- (b) It is consistent with the purpose and effect intended by the prescribed method or procedure.
- (c) It affords equivalent security to the revenue.
- (d) It is not contrary to any provision of law.
- (e) It will not result in an increase in cost to the Government.
- (f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes.
- (g) It is not a method or procedure that relates to the payment or collection of tax.

§ 296.264 Withdrawal of an alternate method or procedure.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. ATF will give you a written notice of the withdrawal.

ATF Authorities**§ 296.270 Delegations of the Director.**

The regulatory authorities of the Director contained in this subpart are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR part 296. ATF

delegation orders, such as ATF O 1130.14, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

§ 296.271 Entry, examination and testimony.

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate ATF officers may audit and examine all cigarettes, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining or collecting floor stocks tax. They may take testimony (under oath) of any person when inquiring as to proper payment of floor stocks taxes.

§ 296.272 Issuance of summons.

Appropriate ATF officers can issue summonses when there is no Justice Department referral under the authority stated in 27 CFR 70.22. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

- (a) Any books of account or other data pertaining to liability of floor stocks tax.

(b) Any person liable for the floor stocks tax or having possession of books of account or other data.

(c) Any other appropriate person in connection with the books or tax liability.

§ 296.273 Refusing entry or examination.

If you or another person in charge of the premises refuses to admit any appropriate ATF officer or prevents any appropriate ATF officer from examining the records or cigarettes, you may be liable for the penalties described in 26 U.S.C. 7342 and 7212, respectively.

§ 296.274 Penalties for failure to comply.

If you fail to follow these regulations, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.

Signed: October 13, 1999.

John W. Magaw,
Director.

Approved: October 27, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99-32604 Filed 12-21-99; 8:45 am]

BILLING CODE 4810-31-P

34 CFR Part 76

Wednesday
December 22, 1999

Part V

Department of Education

34 CFR Part 76

State-administered Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 76

State-administered Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) governing State-administered programs. These final regulations are necessary to implement a recent statutory change that affects all elementary and secondary education programs administered by the United States Department of Education (Department) under which the Secretary allocates funds to States on a formula basis. The regulations will ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under these programs.

DATES: These regulations are effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C120, Washington, DC 20202-6140. Telephone: (202) 205-8524. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On May 18, 1999, the Secretary published in the *Federal Register* (64 FR 27152) a notice of proposed rulemaking (NPRM) proposing to revise sections in EDGAR governing State-administered programs. These proposed amendments were designed to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under these programs.

Prior to publishing the NPRM, the Department took a number of steps to consult with State and local officials regarding the statutory provision that these final regulations implement, and the specific measures the Secretary proposed to undertake to assist States and localities in meeting their obligations under it. In December 1998, the Department sent two letters to chief State school officers informing them of changes to the Public Charter Schools

Program (PCSP) as a result of passage of the Charter School Expansion Act of 1998 (Act). The second letter specifically highlighted the requirement in section 10306 of the Act that the Secretary and States take measures to ensure that charter schools receive the Federal-to-State formula funds for which they are eligible within five months of opening for the first time or expanding their enrollment. In March 1999, Department officials discussed the new provision and our plans for implementing it with State and local officials, as well as charter school operators and developers, at our national conference on charter schools.

Since publication of the NPRM, we have consulted with State officials through an SEA chat room on the Department's internet web site, and at several meetings, including two national Title I meetings. In addition, we sent two letters to chief State school officers and State program directors specifically requesting comments on the NPRM.

In the preamble to the NPRM, the Secretary discussed on pages 27152 and 27153 the major provisions in the proposed regulations. These provisions would amend Part 76 of EDGAR by redesignating subpart H as subpart I, and adding a new subpart H. The proposed provisions included the following:

- For covered programs in which States and local educational agencies (LEAs) allocate funds by formula, a requirement that States and LEAs implement procedures that ensure that each charter school opening for the first time or significantly expanding its enrollment on or before November 1 of an academic year receives the full amount of funds for which it is eligible within five months of the date the charter school opens or significantly expands its enrollment.

- For each charter school opening or significantly expanding its enrollment after November 1 but before February 1 of an academic year, a requirement that States and LEAs implement procedures that ensure that the charter school receives at least a *pro rata* portion of the funds for which the charter school is eligible within five months of the date the charter school opens or significantly expands its enrollment.

- For each charter school opening or significantly expanding its enrollment on or after February 1, a provision permitting, but not requiring, States and LEAs to implement procedures to provide the charter school with a *pro rata* portion of the funds for which the charter school is eligible under a covered program.

- For covered programs in which States and LEAs award funds through a competitive process, a requirement that States and LEAs implement procedures that ensure that each eligible charter school scheduled to open during the academic year has a full and fair opportunity to compete to participate in the program.

- A general prohibition against States and LEAs relying on enrollment or eligibility data from a prior year in determining a charter school's eligibility to receive funds under a covered program during an academic year in which the charter school opens for the first time or significantly expands its enrollment, even if allocations to other LEAs or public schools are based on a prior year's data.

- An exemption from the proposed regulations for SEAs and LEAs that do not allocate funds by formula or hold competitions among eligible applicants under a covered program.

These final regulations contain several significant changes from the NPRM. These changes are fully explained in the "Analysis of Comments and Changes" attached as an appendix to these final regulations. The changes pertain to the meaning of the term *significant expansion of enrollment*; the time period within which SEAs and LEAs are required to make allocations to charter schools that open or expand between November 1 and February 1; the entities that can provide the required 120-day notice to an SEA or LEA; and the penalty for a charter school's failure to comply with the 120-day notice requirement.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

Some of the programs that are affected by these final regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

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

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<http://ocfo.ed.gov/fedreg.htm>

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

Dated: December 16, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 76 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3, 3474, 6511(a), and 8065a, unless otherwise noted.

2. Subpart H of part 76 is redesignated as subpart I.

3. A new subpart H is added to part 76 to read as follows:

Subpart H—How Does a State or Local Educational Agency Allocate Funds to Charter Schools?

General

76.785 What is the purpose of this subpart?

76.786 What entities are governed by this subpart?

76.787 What definitions apply to this subpart?

Responsibilities for Notice and Information

76.788 What are a charter school LEA's responsibilities under this subpart?

76.789 What are an SEA's responsibilities under this subpart?

Allocation of Funds by State Educational Agencies

76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?

76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?

76.793 When is an SEA required to allocate funds to a charter school LEA under this subpart?

76.794 How does an SEA allocate funds to charter school LEAs under a covered program in which the SEA awards subgrants on a discretionary basis?

Adjustments

76.796 What are the consequences of an SEA allocating more or fewer funds to a charter school LEA under a covered program than the amount for which the charter school LEA is eligible when the charter school LEA actually opens or significantly expands its enrollment?

76.797 When is an SEA required to make adjustments to allocations under this subpart?

Applicability of This Subpart to Local Educational Agencies

76.799 Do the requirements in this subpart apply to LEAs?

Subpart H—How Does a State or Local Educational Agency Allocate Funds to Charter Schools?

General

§ 76.785 What is the purpose of this subpart?

The regulations in this subpart implement section 10306 of the Elementary and Secondary Education Act of 1965 (ESEA), which requires States to take measures to ensure that each charter school in the State receives the funds for which it is eligible under a covered program during its first year of operation and during subsequent years in which the charter school expands its enrollment.

(Authority: 20 U.S.C. 8065a)

§ 76.786 What entities are governed by this subpart?

The regulations in this subpart apply to—

(a) State educational agencies (SEAs) and local educational agencies (LEAs) that fund charter schools under a covered program, including SEAs and LEAs located in States that do not participate in the Department's Public Charter Schools Program;

(b) State agencies that are not SEAs, if they are responsible for administering a covered program. State agencies that are not SEAs must comply with the provisions in this subpart that are applicable to SEAs; and

(c) Charter schools that are scheduled to open or significantly expand their enrollment during the academic year and wish to participate in a covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.787 What definitions apply to this subpart?

For purposes of this subpart—

Academic year means the regular school year (as defined by State law, policy, or practice) and for which the State allocates funds under a covered program.

Charter school has the same meaning as provided in title X, part C of the ESEA.

Charter school LEA means a charter school that is treated as a local educational agency for purposes of the applicable covered program.

Covered program means an elementary or secondary education program administered by the Department under which the Secretary allocates funds to States on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis.

Local educational agency has the same meaning for each covered program as provided in the authorizing statute for the program.

Significant expansion of enrollment means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that the SEA determines to be significant.

(Authority: 20 U.S.C. 8065a)

Responsibilities for Notice and Information

§ 76.788 What are a charter school LEA's responsibilities under this subpart?

(a) *Notice.* At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide its SEA with written notification of that date.

(b) *Information.* (1) In order to receive funds, a charter school LEA must provide to the SEA any available data or information that the SEA may reasonably require to assist the SEA in estimating the amount of funds the charter school LEA may be eligible to receive under a covered program.

(2)(i) Once a charter school LEA has opened or significantly expanded its enrollment, the charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require.

(ii) An SEA is not required to provide funds to a charter school LEA until the charter school LEA provides the SEA with the required actual enrollment and eligibility data.

(c) *Compliance.* Except as provided in § 76.791(a), or the authorizing statute or implementing regulations for the applicable covered program, a charter school LEA must establish its eligibility and comply with all applicable program requirements on the same basis as other LEAs.

(Approved by the Office of Management and Budget under control number 1810-0623)
(Authority: 20 U.S.C. 8065a)

§ 76.789 What are an SEA's responsibilities under this subpart?

(a) *Information.* Upon receiving notice under § 76.788(a) of the date a charter school LEA is scheduled to open or significantly expand its enrollment, an SEA must provide the charter school LEA with timely and meaningful information about each covered program

in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program.

(b) *Allocation of Funds.* (1) An SEA must allocate funds under a covered program in accordance with this subpart to any charter school LEA that—

(i) Opens for the first time or significantly expands its enrollment during an academic year for which the State awards funds by formula or through a competition under the program;

(ii) In accordance with § 76.791(a), establishes its eligibility and complies with all applicable program requirements; and

(iii) Meets the requirements of § 76.788(a).

(2) In order to meet the requirements of this subpart, an SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA.

(3)(i) The failure of an eligible charter school LEA or its authorized public chartering agency to provide notice to its SEA in accordance with § 76.788(a) relieves the SEA of any obligation to allocate funds to the charter school within five months.

(ii) Except as provided in § 76.792(c), an SEA that receives less than 120 days' actual notice of the date an eligible charter school LEA is scheduled to open or significantly expand its enrollment must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(iii) The SEA may provide funds to the charter school LEA from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Approved by the Office of Management and Budget under control number 1810-0623)

(Authority: 20 U.S.C. 8065a)

Allocation of Funds by State Educational Agencies

§ 76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?

(a) For purposes of this subpart, an SEA must determine whether a charter school LEA is eligible to receive funds under a covered program based on actual enrollment or other eligibility

data for the charter school LEA on or after the date the charter school LEA opens or significantly expands its enrollment.

(b) For the year the charter school LEA opens or significantly expands its enrollment, the eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on enrollment or eligibility data from a prior year.

(Authority: 20 U.S.C. 8065a)

§ 76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

(b) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1 but before February 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives at least a *pro rata* portion of the proportionate amount of funds for which the charter school LEA is eligible under each covered program. The *pro rata* amount must be based on the number of months or days during the academic year the charter school LEA will participate in the program as compared to the total number of months or days in the academic year.

(c) For each eligible charter school LEA that opens or significantly expands its enrollment on or after February 1 of an academic year, the SEA may implement procedures to provide the charter school LEA with a *pro rata* portion of the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.793 When is an SEA required to allocate funds to a charter school LEA under this subpart?

Except as provided in §§ 76.788(b) and 76.789(b)(3):

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must allocate funds to the charter school LEA within five months of the date the charter school LEA opens or significantly expands its enrollment; and

(b)(1) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1, but before February 1 of an academic year, the SEA must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(2) The SEA may provide funds to the charter school LEA from the SEA's allocation under the program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

§ 76.794 How does an SEA allocate funds to charter school LEAs under a covered program in which the SEA awards subgrants on a discretionary basis?

(a) *Competitive programs.* (1) For covered programs in which the SEA awards subgrants on a competitive basis, the SEA must provide each eligible charter school LEA in the State that is scheduled to open on or before the closing date of any competition under the program a full and fair opportunity to apply to participate in the program.

(2) An SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or significantly expanded its enrollment to compete for funds under a covered program.

(b) *Noncompetitive discretionary programs.* The requirements in this subpart do not apply to discretionary programs or portions of programs under which the SEA does not award subgrants through a competition.

(Authority: 20 U.S.C. 8065a)

Adjustments

§ 76.796 What are the consequences of an SEA allocating more or fewer funds to a charter school LEA under a covered program than the amount for which the charter school LEA is eligible when the charter school LEA actually opens or significantly expands its enrollment?

(a) An SEA that allocates more or fewer funds to a charter school LEA than the amount for which the charter school LEA is eligible, based on actual enrollment or eligibility data when the charter school LEA opens or significantly expands its enrollment, must make appropriate adjustments to the amount of funds allocated to the charter school LEA as well as to other LEAs under the applicable program.

(b) Any adjustments to allocations to charter school LEAs under this subpart must be based on actual enrollment or

other eligibility data for the charter school LEA on or after the date the charter school LEA first opens or significantly expands its enrollment, even if allocations or adjustments to allocations to other LEAs in the State are based on enrollment or eligibility data from a prior year.

(Authority: 20 U.S.C. 8065a)

§ 76.797 When is an SEA required to make adjustments to allocations under this subpart?

(a) The SEA must make any necessary adjustments to allocations under a covered program on or before the date the SEA allocates funds to LEAs under the program for the succeeding academic year.

(b) In allocating funds to a charter school LEA based on adjustments made in accordance with paragraph (a) of this section, the SEA may use funds from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

Applicability of This Subpart to Local Educational Agencies

§ 76.799 Do the requirements in this subpart apply to LEAs?

(a) Each LEA that is responsible for funding a charter school under a covered program must comply with the requirements in this subpart on the same basis as SEAs are required to comply with the requirements in this subpart.

(b) In applying the requirements in this subpart (except for §§ 76.785, 76.786, and 76.787) to LEAs, references to SEA (or State), charter school LEA, and LEA must be read as references to LEA, charter school, and public school, respectively.

(Authority: 20 U.S.C. 8065a)

Appendix to the Preamble—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Need for Final Regulations

Comments: Five commenters expressed strong support for the issuance of final regulations in order to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the Federal-to-State formula funds for which they are eligible in a timely fashion. Two commenters objected to the issuance of final regulations as premature and inconsistent with the Department's regulatory principles. These commenters recommended that the Secretary issue the

proposed regulations as nonregulatory guidance to determine whether final regulations are absolutely necessary.

Discussion: The Secretary believes that these final regulations are necessary to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under the covered programs in accordance with the requirements of section 10306 of the Act. A number of State and local officials as well as charter school operators have raised questions about the proper interpretation of section 10306 of the Act, and have requested guidance from the Department regarding implementation of the provision. Due to a number of factors, including the importance of the statutory requirement and the high level of uncertainty regarding its interpretation, the Secretary believes that final regulations are necessary to ensure a uniform interpretation of the law among States. Also, consistent with the Department's Principles for Regulating, the provisions in these final regulations are intended to allow SEAs and LEAs maximum flexibility to develop procedures that will enable them to comply with the statutory requirement in a manner that minimizes any disruption in State and local administration of the covered programs.

Changes: None.

Need for Nonregulatory Guidance

Comments: Six commenters recommended that the Secretary issue nonregulatory guidance to assist States in implementing these final regulations. Three commenters specifically requested guidance on the effect of the regulations on State administration of funds under Part B of the Individuals with Disabilities Education Act (IDEA), including the funding formulas in the Grants to States Program and the Preschool Grants Program.

Discussion: The Secretary agrees that the issuance of nonregulatory guidance would be useful to assist States in implementing these final regulations. Accordingly, within the next several months, we intend to issue guidance that will address specific implementation issues relating to the various covered programs, including allocation issues under Part B of IDEA and Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA). For a discussion of the effect of these final regulations on Part B of IDEA, see "Allocation of Funds" in this "Analysis of Comments and Changes."

Changes: None.

Information Collection Requirements

Comments: One commenter requested that the Secretary describe in the final regulations the specific types of information SEAs and LEAs will be expected to collect under the regulations.

Discussion: The two provisions in these regulations that impose information collection requirements on SEAs, LEAs, and charter schools are §§ 76.788 and 76.789(a). Section 76.788 requires new and expanding charter schools to notify their SEA or LEA of the date the charter school is scheduled to open or expand, and to provide the SEA or LEA with eligibility and enrollment data.

Under § 76.789(a), SEAs and LEAs must provide timely and meaningful information to new and expanding charter schools.

In light of the potential administrative burden that compliance with the statutory requirement may place on States and localities, we believe it is important to allow States and LEAs as much flexibility as possible in determining the specific information they will need to collect from and provide to charter schools, and in developing the necessary procedures for transferring that information. We believe it would be counterproductive to include any additional specifications for the collection of information in these final regulations.

Changes: None.

Definition of Academic Year (§ 76.787)

Comment: One commenter recommended that the Secretary define *academic year* in the final regulations.

Discussion: We agree that defining *academic year* in these final regulations is useful, and considered several factors in crafting the definition. First, while all State laws require a minimum number of days that school districts must provide academic instruction, most States give their districts discretion to establish the actual opening dates and calendar of the school year. In a few cases, States establish the school calendar year for its LEAs. In either case, the opening dates of the school or *academic year* typically range from mid-August to mid-September. Another important factor that is incorporated into the definition is the use of the term *academic year* as a placeholder reference for the fiscal year or budget period for which a State allocates funds under a covered program.

Changes: We have revised § 76.787 to add a definition for the term *academic year*. The definition preserves State and local flexibility in establishing an academic year calendar, but references the fiscal period for which the State allocates funds under a covered program.

Definition of Charter School LEA (§ 76.787)

Comments: Two commenters objected to the definition of *charter school LEA* set forth in the proposed regulations because it would allow charter schools to be treated as an LEA for purposes of some covered programs but not others. These commenters expressed concern that charter schools will manipulate the system by claiming to be an LEA or a public school within an LEA for different programs, depending on whether the charter school deems it to be convenient. One commenter recommended that the definition of *charter school LEA* be based on State law.

Discussion: We disagree that allowing a charter school to be treated as an LEA for purposes of some covered programs and a public school within an LEA for purposes of other covered programs will lead to widespread manipulation of the system by charter schools. Each of the Federal statutes governing the covered programs defines *LEA* for purposes of the programs authorized under the statute. Because these definitions are broad and rely heavily on State law, the Secretary generally will defer to the State on the question of whether a charter school is an LEA or a public school within an LEA.

As a general rule, however, a charter school cannot be an LEA and a public school within an LEA under the same Federal definition. Title XIV of the ESEA defines *LEA* for purposes of programs authorized under the ESEA. Because both the Title I Program and the Safe and Drug-Free Schools and Communities Program are authorized under the ESEA, for example, a charter school could not be an LEA for purposes of Title I and a school within an LEA for purposes of Safe and Drug-Free Schools. Likewise, because the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) adopts the ESEA definition of *LEA*, a charter school could not be treated differently for purposes of ESEA programs and programs authorized under Perkins III.

IDEA, on the other hand, contains its own definition of *LEA*. Therefore, it is conceivable that a charter school could be treated as an LEA for purposes of ESEA and Perkins III programs, and a public school within an LEA for purposes of programs authorized under Part B of IDEA. The charter school would have to be treated consistently, however, under the Preschool Grants Program and the Grants to States Program, since both of these programs are authorized under Part B of IDEA.

One possible exception to the general rule that a charter school cannot be treated as an LEA and a public school within an LEA under different covered programs that rely on the same Federal definition of *LEA*, is where a State law provision specifically authorizes charter schools to elect to be treated as an LEA or a public school within an LEA for purposes of a particular program. In such a case, the Secretary generally will defer to State law.

Changes: None.

Definition of Significant Expansion of Enrollment (§ 76.787)

Comments: Six commenters requested that the Secretary include in the final regulations a definition for *significant expansion of enrollment* in order to avoid unnecessary conflict between States and charter schools. Two of these commenters recommended that the term be defined based on congressional intent and the Secretary's considerations in the preamble to the proposed regulations. One commenter opposed defining the term in the final regulations but suggested, instead, that the final regulations include a provision specifically authorizing States to define the term.

Discussion: We agree that defining *significant expansion of enrollment* in these final regulations is necessary to clarify a major component of the regulations. Consistent with the overall intent of these final regulations, however, we believe that the term should be defined in a manner that gives meaning to the statutory provision upon which these regulations are based, while allowing States maximum flexibility in implementing the statutory and regulatory requirements. The requirements in these final regulations are not triggered by minor increases in enrollment caused by normal turnover. Rather, these regulations apply to substantial increases in enrollment that are caused by significant, or abnormal, events.

A charter school for the performing arts, for example, may offer two educational programs that focus on music and art. If the charter school were to add a third educational program in dance, and the addition of that educational program resulted in a substantial increase in the number of students attending the charter school, then the SEA or LEA serving the charter school would be required to comply with these final regulations when providing funds to the charter school under a covered program. It is not enough for a charter school to experience a significant event, but the event must also result in a substantial increase in the number of students attending the charter school.

Changes: We have revised § 76.787 to define the term *significant expansion of enrollment*. The definition is similar to the definition set forth in the preamble to the proposed regulations, but is broader in that it focuses on substantial increases in a charter school's overall enrollment without regard to student eligibility for program funds. In addition, SEAs are given flexibility to treat any expansion of enrollment as significant.

120-Day Notice Requirement (§ 76.788(a))

Comments: One commenter supported the 120-day notice requirement, but recommended that charter schools also be required to provide auditable enrollment information to the State or LEA at the time the charter school provides the notice. Another commenter opposed the 120-day notice requirement because of the delay that many charter schools encounter in receiving approval of their charters. This commenter recommended that the regulations be revised to require charter schools to notify the State or LEA of the date the charter school is scheduled to open or expand 60 days before the charter school opens or expands, or within 30 days of the date the charter school receives its charter.

Discussion: We believe that it is unreasonable to expect a charter school that has not yet opened or expanded to be able to provide auditable enrollment information to its SEA or LEA. It is not unreasonable, however, to expect a charter school to know, at least 120 days in advance, the date the charter school anticipates opening or expanding. Most successful charter schools will spend at least 120 days planning prior to opening for the first time or significantly expanding their enrollment. Because SEAs and LEAs may be required to reserve a portion of funds under each covered program for eligible charter schools that open or expand during the academic year, SEAs and LEAs will need to know as early as possible the number of charter schools that are scheduled to open or expand. Moreover, these final regulations do not preclude a prospective charter school from notifying its SEA or LEA of the date the charter school is scheduled to open, pending final approval of its charter.

Changes: None.

Penalty for Charter School's Failure to Provide Notice (§ 76.789(b)(3))

Comments: One commenter objected to the language in the proposed regulations that would allow an entity other than the charter school to notify the State or LEA of the date the charter school is scheduled to open or expand. A second commenter recommended that the regulations be revised to require a charter school that fails to meet the 120-day notice requirement to wait for the next grant cycle to receive funds under the applicable covered program.

Discussion: We agree that the charter school should bear primary responsibility for notifying the SEA or LEA of the date the charter school is scheduled to open or expand. Allowing an unspecified number of entities other than the charter school to place the SEA or LEA on notice could lead to unnecessary conflict between SEAs and LEAs and charter schools. In some cases, however, it may be more efficient for the responsible authorized public chartering agency to notify the SEA or LEA of the scheduled opening or expansion dates for its charter schools, rather than require each charter school to provide the notice individually.

We also agree that SEAs and LEAs should not be required to meet the five-month funding requirement with respect to charter schools that open or expand on or before November 1, if the charter school fails to comply with the 120-day notice requirement. As stated above, SEAs and LEAs will need to know as early as possible the number of charter schools that may be eligible to receive funds under a covered program in order to ensure that the funds are available for the charter school when it actually opens or expands.

Changes: We have revised § 76.788(a) to specify that a charter school or its authorized public chartering agency must notify the SEA or LEA of the date the charter school is scheduled to open or expand. We have revised proposed § 76.788(a)(2) (§ 76.789(b)(3) in these final regulations) further to specify the time period within which SEAs and LEAs must provide funds to charter schools that open or expand before November 1, but fail to provide 120 days' notice. Finally, we have revised § 76.789 to delete the reference to notice provided through some means other than § 76.788(a).

Estimates of Projected Enrollment (§§ 76.788(b)(1) and 76.789(b)(2))

Comments: One commenter recommended that the regulations require States and LEAs to rely on reasonable and objective data in estimating the amount of funds to reserve for charter schools under a covered program, and specifically authorize SEAs and LEAs to gather the data or require the charter school to provide it. Another commenter proposed that the final regulations include a new provision requiring estimates of projected enrollment to be based on the characteristics of the currently enrolled population, previous year enrolled population, or existing applications for enrollment at the charter school. Several commenters expressed opposition to the use of assumed proportionality (*i.e.*, surrounding LEAs' proportionate demographic characteristics) in

projecting enrollment at a charter school that is scheduled to open or expand. Another commenter objected to the use of the term "available" in the provision requiring charter schools to provide to the SEA or LEA any available data or information that the SEA or LEA may reasonably require to assist it in estimating the amount of funds to reserve for the charter school. This commenter stated that SEAs and LEAs should be able to collect any data that they may reasonably require.

Discussion: Section 76.789(b)(2) authorizes an SEA or LEA to reserve an appropriate amount of funds or make an initial allocation to eligible charter schools based on projected data. Accordingly, § 76.788(b)(1) requires a charter school to provide its SEA or LEA with any "available" data or information that the SEA may reasonably require to make these projections.

We agree that any data upon which an SEA or LEA relies to estimate the amount of funds to reserve for a new or expanding charter school should be reasonable. We believe that adoption of the remaining suggestions in the comments, however, would add unnecessary prescription to these final regulations. It is important to understand that these provisions concern only projected data that would be used until actual data are available. Under § 76.796, any allocations based on projected data that are inaccurate must be adjusted. Obviously, an SEA or LEA would want any projected data it uses to be as accurate as possible in order to reduce the need to make adjustments. Although these provisions require the new or expanding charter school to provide any available data to its SEA or LEA, there is nothing in these final regulations that would preclude an SEA or LEA from collecting the data itself.

It should also be noted that SEAs and LEAs are not required to use projected data. Rather, the SEA or LEA could reserve funds off the top of its total allocation and wait until actual data are available before making any allocations to charter schools.

Changes: We have revised § 76.789(b)(2) to require any estimates of a charter school's projected enrollment to be reasonable.

Actual Enrollment and Eligibility Data (§ 76.788(b)(2))

Comments: One commenter recommended that charter schools be required to provide the SEA or LEA with actual enrollment and eligibility data within 60 days of opening or expanding.

Discussion: Section 76.788(b)(2) requires a charter school to provide actual enrollment and eligibility data to the SEA or LEA at a time the SEA or LEA may reasonably require. We do not believe it would be appropriate to prescribe a specific period in the regulations for submitting the data. In many instances, 60 days would be unnecessarily long and might create difficulties for SEAs and LEAs in making funds available to eligible charter schools within five months. In other instances, depending on the specific circumstances, 60 days may not be sufficiently long. We believe these final regulations appropriately provide flexibility to each SEA and LEA to set a reasonable timeframe for collecting actual enrollment and eligibility data from charter schools.

Changes: None.

Timely and Meaningful Information (§ 76.789)

Comments: One commenter recommended that the Secretary define *timely* and *meaningful information* in the final regulations, while another commenter requested clarification of the meaning of the term in either the regulations or nonregulatory guidance.

Discussion: Section 76.789 requires SEAs and LEAs to provide charter schools with timely and meaningful information about each covered program in which the charter school may be eligible to participate, including notice of any upcoming competitions. We have refrained from defining *timely* and *meaningful* information in these final regulations because we do not believe that a single definition can comprehensively address all covered programs. Essentially, this provision requires SEAs and LEAs to provide charter schools with the information they reasonably need to know in order to make an informed decision about whether to apply to participate in a particular covered program, and the steps they need to take to do so. For example, for each covered program, we would expect an SEA to provide basic program information, such as the program's purpose, target population, eligibility requirements, application packages, dates of any competitions, copies of the statute, relevant regulations and guidance, etc. In terms of timing, the SEA should provide the information as early as possible to afford the charter school a genuine opportunity to apply to participate in the applicable covered program.

Changes: None.

Eligibility (§§ 76.788(c) and 76.789(b)(1)(ii))

Comments: Several commenters recommended that the Secretary clarify that charter schools must meet the same program and eligibility requirements as other LEAs and public schools in order to receive funds under an applicable covered program, and that the proposed regulations would not require a State or LEA to provide funds to charter schools if the State or LEA does not provide funds to other LEAs and public schools under the program. Two of these comments were made with specific reference to Title I and Part B of IDEA.

Discussion: Based on section 10306 of the Act, which these regulations implement, and its legislative history, it is clear that charter schools must receive the proportionate amount of funds for which they are eligible under the covered programs. In the absence of statutory or other regulatory language to the contrary, these final regulations should not be interpreted to afford any special rights or privileges to charter schools with regard to program eligibility. Thus, an SEA or LEA is not required to comply with these final regulations with respect to a new or expanding charter school that does not meet the eligibility and other program requirements of the applicable covered program. In determining a charter school's eligibility to receive funds under a covered program during an academic year in which

the charter school opens for the first time or significantly expands its enrollment, however, SEAs and LEAs may not rely on enrollment or eligibility data from a prior year, even if allocations to other LEAs or public schools are based on a prior year's data.

Nor do these final regulations require an SEA or LEA to provide funds to an eligible charter school if the SEA or LEA does not provide funds to other eligible LEAs or public schools under the program. Under Title I, for example, an LEA may choose to provide funds or services to eligible public schools in its district. If the LEA opts to provide services, rather than funds, to the Title I-eligible public schools in its district, these regulations would not require the LEA to provide funds to new or expanding charter schools. For a discussion of whether these final regulations require LEAs to provide funds to new and expanding charter schools under Part B of IDEA if the LEA does not provide funds to other eligible public schools, see "Allocation of Funds" in this "Analysis of Comments and Changes."

Changes: We have revised proposed §§ 76.788(b)(1)(ii) and 76.790(a)(2) (§§ 76.788(c) and 76.789(b)(1)(ii)), respectively, in these final regulations to clarify that a charter school must establish its eligibility and comply with all applicable program requirements in order to receive funds under these final regulations.

Date on Which a Charter School Opens or Expands (§§ 76.792–76.793)

Comments: Two commenters expressed support for the provisions in the regulations that require States and LEAs to provide funds to charter schools that open or expand prior to February 1. One of these commenters noted that its State law requires charter schools to open between August 15 and September 15. Another commenter recommended that the regulations be revised either to eliminate any requirement that States provide funding to charter schools that open after November 1, or to give States more flexibility in providing funds to charter schools that open after that date. Another commenter stated that the *pro rata* calculation should be flexible enough to allow States to use days rather than months.

Discussion: We agree that February 1 is a reasonable cut-off date for States to be required to provide some funding to eligible charter schools under the covered programs. Because these final regulations require States to provide only a *pro rata* portion of funds to eligible charter schools that open or expand between November 1 and February 1, charter schools will have an incentive to open or expand before November 1, thereby easing the potential administrative burden on States.

On the other hand, some charter schools may be unable to open or expand prior to November 1. While it would be unfair to require these charter schools to forgo entirely the funds for which they are otherwise eligible under a covered program, States should be given additional flexibility in providing funds to the charter schools. Such flexibility will ease further the potential administrative burden that funding charter

schools opening or expanding late in the academic year poses for States and local school districts.

Changes: We have revised § 76.792(b) to allow States to use days to calculate the *pro rata* allocation for charter schools that open or expand between November 1 and February 1 of an academic year. We have also revised § 76.793 to require SEAs and LEAs to provide funds to charter schools that open or expand on or before November 1 within five months, and to give SEAs and LEAs additional flexibility in providing funds to charter schools that open after November 1. Specifically, for charter schools that open or expand between November 1 and February 1, we have added a new paragraph requiring SEAs and LEAs to provide funds to those charter schools on or before the date the SEA or LEA provides funds to LEAs and public schools under the program for the succeeding academic year.

Comments: One commenter stated that the final regulations should apply only to charter schools that have actually opened or significantly expanded their enrollment, rather than to charter schools that are scheduled to open or expand.

Discussion: Many States and LEAs make allocations under the covered programs, particularly Title I and Part B of IDEA, in the spring or summer preceding the academic year for which the allocations are made. Therefore, in order to give meaning to section 10306 of the Act, which these final regulations implement, and ensure that funds are available for charter schools that open or expand during the academic year, it may be necessary for SEAs and LEAs to reserve a portion of funds under a particular covered program. In the absence of some advance notification to the SEA or LEA of a charter school's plans to open or expand, the SEA or LEA would have no way of knowing whether to reserve funds, or the amount of funds to reserve, for a charter school. Likewise, while it may be appropriate in some cases, a charter school should not be required to wait until after it opens to receive information about upcoming application deadlines or ongoing competitions under the covered programs in which the charter school is eligible to apply to participate.

On the other hand, it is important to note that these final regulations do not require SEAs or LEAs to provide any funds to charter schools before the charter school actually opens or significantly expands its enrollment. Under § 76.789(b)(2), for example, SEAs and LEAs may either allocate funds to or reserve funds for charter schools based on estimates of projected enrollment. Moreover, § 76.788(b)(2)(ii) specifically states that an SEA or LEA is not required to provide funds to a charter school that fails to provide the enrollment or eligibility data the SEA or LEA reasonably requires. Thus, although an SEA or LEA may provide funds to a charter school before the charter school actually opens or expands, nothing in these final regulations requires them to do so.

Changes: We have revised § 76.792 to clarify further that SEAs and LEAs are not required to provide any funds to a charter school that has not yet opened or expanded.

Use of Term Full Amount of Funds (§ 76.792)

Comments: One commenter recommended that the Secretary replace the term *full amount of funds* in § 76.792(a) of the regulations with the term *commensurate share of funds* in order to eliminate any ambiguity that use of the former term may cause. This commenter and a second commenter also stated that the Secretary should define or clarify the meaning of the term *commensurate share*.

Discussion: The intent of these final regulations is to require SEAs and LEAs to provide to each eligible charter school the amount of funds the charter school would receive under each program's statutory allocation formula if the charter school is included in the SEA or LEA's initial allocation. Under many of the covered programs, LEAs and public schools receive the proportionate amount of funds for which they are eligible, based on the total amount of funds that are available under the program and the program's statutory allocation formula.

These regulations are not intended to guarantee each charter school a particular funding level, or entitlement, that may be conditional based upon the appropriation level for any covered program. We agree that use of the term *full amount* does not convey this intent clearly, but are concerned that the term *commensurate share* may lack clarity as well. We believe that the term *proportionate amount* best conveys the intent of these final regulations. **Changes:** We have replaced the term *full amount of funds* in § 76.792(a) with the term *proportionate amount of funds*. We have also inserted the term *proportionate amount of funds* in §§ 76.792(b) and 76.792(c) to clarify further the purpose of these final regulations as discussed above.

Allocation of Funds (§§ 76.792–76.794)

Comments: One commenter stated that the final regulations should clarify that SEAs and LEAs are not required to send 100 percent of the funds for which a charter school is eligible to the charter school within the time periods specified in the regulations, but that they are required only to ensure that the appropriate amount of funds flow to the charter school. We believe the commenter meant that the SEA or LEA is not required to make one lump sum payment to the charter school at the beginning of the grant period.

Discussion: The commenter is correct in that these final regulations do not require SEAs and LEAs to send 100 percent of the funds for which a charter school is eligible to the charter school within the prescribed time periods. Department regulations prohibit recipients of Federal funds from earning excess interest on those funds. Therefore, when awarding subgrants under the covered programs, SEAs and LEAs are generally required only to ensure that the appropriate amount of grant funds are made available for draw down by the subgrant recipient—in this case, the charter school. The subgrant recipient, in turn, draws down funds on an as needed basis. Thus, while SEAs and LEAs are not actually required to send funds to the charter school, they are required to ensure that the proportionate

amount of funds for which the charter school is eligible is made available to the charter school within the time periods specified in these final regulations.

Changes: None.

Comments: One commenter requested that language be included in the final regulations specifically authorizing States to use non-Federal funds to supplement allocations to LEAs. Although this comment was made with specific reference to Part B of IDEA, the discussion that follows is applicable to all of the covered programs.

Discussion: States must follow applicable program requirements when allocating funds to LEAs under a covered program. While an SEA may use non-Federal funds to supplement LEA allocations that are reduced as a result of the SEA's compliance with section 10306 of the Act and these final regulations, the State may not substitute non-Federal funds for Federal funds when awarding subgrants under a covered program.

Changes: None.

Comments: One commenter requested that the Secretary revise the regulations to make the provisions governing competitive discretionary grant programs applicable to noncompetitive discretionary grant programs, so that prospective charter school applicants that fail to meet the application deadline for either type of discretionary grant program would be required to wait for the next grant cycle in order to receive funds under the program.

Discussion: Under § 76.794(b), SEAs and LEAs are completely exempt from the requirements of these final regulations when allocating funds under noncompetitive discretionary programs. Therefore, as a practical matter, SEAs and LEAs could require any school, including new and expanding charter schools, that fail to meet the application deadline to wait until the next grant cycle to apply for funds under these programs. Two of the covered programs under which SEAs or LEAs have total discretion either to provide services directly or award funds to subgrantees on a noncompetitive basis are Migrant Education and Neglected and Delinquent Children. In addition, a number of programs, such as Part B of IDEA and Safe and Drug-Free Schools, require SEAs to allocate a majority of funds on a formula basis, but also allow a portion of funds to be distributed on a discretionary basis. For these programs, the SEA would not be required to comply with these final regulations when distributing the discretionary portion of the funds on a noncompetitive basis. If the SEA distributes the discretionary portion of the funds on a competitive basis, § 76.794(a) would apply.

As stated in the preamble to the NPRM, the Secretary encourages SEAs and LEAs to consider charter schools on the same basis as other LEAs and public schools when providing funds on a discretionary, but noncompetitive, basis. Nevertheless, it is not the intent of these regulations to restrict in any way the discretionary authority of SEAs and LEAs with respect to these funds.

Changes: We have revised the definition of covered program in § 76.787 to clarify that noncompetitive discretionary programs are not covered by these final regulations, even

though funds are allocated to the State on a formula basis. We have also revised § 76.794(b) accordingly.

Comments: One commenter requested guidance on how LEAs can meet the requirements of these final regulations when allocating funds to new or expanded charter schools under Part B of IDEA.

Discussion: There is nothing in section 10306 of the Act, these final regulations, or the IDEA Amendments of 1997 that would compel an LEA to make allocations of Part B funds to charter schools that are public schools of that LEA, if the LEA does not make allocations of such funds to its other schools. Under section 613(a)(5) of IDEA, if an LEA provides Part B funds or services to public schools of the LEA, it must provide those funds or services in the same manner to charter schools that are public schools of the LEA. Likewise, if the LEA has eligibility criteria that its public schools must meet in order to receive Part B funds and the charter school meets those criteria, the LEA must provide Part B funds to the new or expanded charter school in the same manner that the LEA provides such funds to its other public schools. If an LEA allocates Part B funds to its public schools on a formula basis, in accordance with § 76.791 of these final regulations, the eligibility determination for the new or expanded charter school may not be based on enrollment or eligibility data from a prior year. In addition, funding allocations made on a formula basis must be made within the time periods specified in § 76.793 of these final regulations.

As stated in the Office of Special Education Programs (OSEP) Memorandum 99-12, if an LEA provides Part B funds to charter schools that are public schools within the LEA, a State can require that allocations of Part B funds be transferred from the LEA where the child was previously served and counted, or would have been served, to the LEA that distributes Part B funds to the charter school where the child is attending. In addition, the State can require that the funds be transferred from the public school of the LEA where the child was previously served and counted, or would have been served, to the charter school of the same LEA where the child is attending.

Changes: None.

Comments: One commenter requested guidance on how SEAs can meet the requirements of these final regulations when providing funds to new or expanded charter school LEAs under the current formula in the IDEA Preschool Grants Program and the permanent formula that will become effective for the IDEA Grants to States program when the appropriation for that program exceeds \$4,924,672,200.

Discussion: Under the formula at sections 611(g)(2)(B) and 619(g)(1) of Part B of IDEA, the State allocation to each eligible LEA is the total of three amounts—the base payment, the population payment, and the poverty payment. The base payment is the amount the LEA would have received for the base year had the State allocated 75 percent of its award to the local level (for the Grants to States Program, the base year is the fiscal year preceding the first fiscal year in which the amount appropriated for the program is

more than \$4,924,672,200; for the Preschool Grants Program, the base year is Federal fiscal year 1997). Therefore, the amount of Part B funds that a State must use to make base payments is set at 75 percent of the State's base year grant, and remains the same for each subsequent fiscal year. Federal regulations at 34 CFR 300.712(b)(2) and 34 CFR 301.31(b) provide information on when base payments must be adjusted. Because of section 10306 of the Act and these final regulations, base payments must also be adjusted when a charter school experiences a significant expansion of enrollment as defined in § 76.787 of these final regulations.

When calculating base payments for new or expanded charter school LEAs, States must use the method described in 34 CFR 300.712(b)(2)(i) and 34 CFR 301.31(b)(1). Thus, if a charter school LEA opens for the first time or significantly expands its enrollment, the State must divide the base allocation for LEAs that would have been responsible for serving children with disabilities now being served by the charter school LEA, among the charter school LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. Once the base payment for affected LEAs and the charter school LEA is calculated using the method described above, the State may use its State set-aside funds to supplement the subgrant of an LEA whose base payment is decreased as a result of having its base allocation divided. However, supplements provided for this purpose do not change the amount of the base payment the LEA is entitled to receive, and the SEA is not required to continue to provide these supplemental funds in future years.

The population payment (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction. The population payment should be allocated to new or expanded charter schools based on the number of elementary and secondary school children enrolled in the charter school. Under § 76.791 of these final regulations, the State may not rely on enrollment data from a prior year in calculating the new or expanded charter school's population payment, even if population payments to other LEAs are based on a prior year's enrollment data.

The poverty payment (15 percent of the remaining flow through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children living in poverty, as determined by the SEA. The poverty factor chosen must be applied uniformly to all eligible subgrantees. For example, if the State uses aggregate data on children who are eligible for free or reduced-price meals under the United States Department of Agriculture's National School Lunch Program, this data must be applied to the new or expanded charter school LEA to determine its poverty payment. Under § 76.791, the State may not rely on enrollment or eligibility data from a prior year in calculating the new or expanded charter school LEA's poverty payment, even

if poverty payments to other LEAs are based on data from a prior year.

Section 76.790(b)(2) of these final regulations provides the SEA with flexibility to allocate funds to eligible charter school LEAs based on reasonable estimates of projected enrollment at the charter school LEA. Under § 76.796, the SEA would be required to make appropriate adjustments to the subgrants of the new or expanded charter school LEA and affected LEAs based on actual enrollment and eligibility data. Under § 76.797(a), any required adjustments would have to be made on or before the date the SEA allocates funds to LEAs for the succeeding academic year.

The requirements in section 10306 of the Act and these final regulations apply only when a State or LEA allocates funds under a covered program to a charter school during its first year of operation or during subsequent years when the charter school significantly expands its enrollment. In all other years, an SEA or LEA allocates Part B funds to charter schools in the same manner as it allocates funds to other eligible LEAs and public schools. The only entities that are eligible to receive Part B funds under IDEA are entities that are established as LEAs under State law and those charter schools that are public schools of an LEA where that LEA distributes Part B funds to its other public schools.

Changes: None.

Comments: One commenter requested guidance on how an SEA or LEA reallocates funds if a charter school closes. Although this comment was made with specific reference to Part B of IDEA, the discussion that follows is applicable to all of the covered programs.

Discussion: Neither section 10306 of the Act nor these final regulations prescribe closeout or reallocation procedures for SEAs or LEAs to follow if and when a charter school closes. Therefore, as a general rule, if a charter school that has received funds in accordance with these final regulations closes, SEAs and LEAs should follow the same procedures that are used to close out subgrants and reallocate funds for other eligible entities under the applicable program.

Changes: None.

Adjustments (§§ 76.796–76.797)

Comments: Three commenters expressed support for the requirement in the proposed

regulations that States and LEAs make adjustments to allocations to charter schools based on actual enrollment and eligibility data. One of these commenters recommended that the regulations include a provision specifically authorizing charter schools to challenge the amount of the SEA or LEA's allocation, while another commenter recommended that the regulations prescribe additional remedies for States to recover overpayments. A fourth commenter opposed any requirement that States make adjustments for underpayments to charter schools, and a fifth commenter recommended that the Secretary delete the provision authorizing States and LEAs to make adjustments to allocations in the succeeding year. The fifth commenter questioned the usefulness of § 76.797, in light of the ability of States to recover overpayments from charter schools through offset of subsequent allocations.

Discussion: If an SEA or LEA has allocated more or fewer funds to a charter school than the amount for which the charter school is eligible based on actual enrollment or eligibility data, § 76.796 requires the SEA or LEA to make appropriate adjustments. The purpose of this provision is to ensure that charter schools receive the amount of funds they are eligible to receive—no more and no less. Accordingly, it requires SEAs and LEAs to make adjustments to charter school allocations for both overpayments and underpayments, as well as appropriate adjustments to the allocations of other LEAs and public schools. For example, if projected enrollment data result in an SEA allocating too few funds to a charter school LEA, the SEA would be required to adjust upward the charter school LEA's allocation when actual enrollment data are available. Similarly, if the SEA reserves more funds off the top of its total allocation than are needed to make allocations to eligible charter school LEAs, the SEA must return the excess funds to its other LEAs in proportion to their initial allocations. Our nonregulatory guidance will provide program-specific examples of how adjustments can be made.

If a charter school LEA believes its allocation under a covered program is inaccurate, it, like any other LEA, may appeal to the SEA under section 432(a) of the General Education Provisions Act. Moreover, nothing in § 76.796 is intended to limit the remedies otherwise available by law to SEAs or LEAs to recoup overpayments of funds.

Section 76.797 requires SEAs and LEAs to make any necessary adjustments on or before the date the SEA or LEA allocates funds to LEAs for the succeeding academic year. In other words, an SEA may make adjustments immediately, when it makes the next year's allocations, or anytime in between. This provision affords SEAs and LEAs flexibility to make adjustments when it is most convenient, provided those adjustments are made no later than when the SEA or LEA provides funds to LEAs and public schools for the succeeding academic year.

Changes: None.

Applicability of Provisions to LEAs (§ 76.799)

Comments: One commenter stated that the regulations should be expanded to address LEA-specific circumstances.

Discussion: Section 76.799(a) specifies that LEAs that are responsible for funding charter schools under a covered program are subject to the same requirements as SEAs. In § 76.799(b), we also explain that the terms *LEA*, *charter school*, and *public school* should be read in place of the terms *SEA* (or *State*), *charter school LEA*, and *LEA*, respectively, in these regulations to accomplish the requirement. When these substitute references are applied, these regulations already instruct LEAs on their responsibilities to new and expanding charter schools when allocating funds under the covered programs. Within the next several months, the Department also expects to issue nonregulatory guidance that will provide additional program-specific guidance for SEAs, LEAs, and charter schools.

Finally, as noted in the preamble to the NPRM, States are directly responsible for ensuring that LEAs meet the requirements of section 10306 of the Act and these final regulations. Accordingly, the Department expects that some SEAs may also provide guidance to LEAs on these matters. The Secretary believes that all of these measures are a satisfactory means of providing the expanded LEA-specific guidance that the commenter seeks, and that further regulations on this issue are unnecessary at this time.

Changes: None.

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Environmental Protection Agency

Wednesday
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Part VI

**Environmental
Protection Agency**

Water Quality Criteria; Notice of
Availability; 1999 Update of Ambient
Water Quality Criteria for Ammonia;
Notice

ENVIRONMENTAL PROTECTION AGENCY**[FRL-6513-6]****Water Quality Criteria; Notice of Availability; 1999 Update of Ambient Water Quality Criteria for Ammonia****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability.

SUMMARY: Pursuant to Section 304(a)(1) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) announces the publication and availability of the *1999 Update of Ambient Water Quality Criteria for Ammonia* (1999 Update), containing EPA's recommended ammonia criteria for the protection of freshwater aquatic life. These criteria are EPA's recommendations for States, Territories, and authorized Tribes to use as guidance in adopting water quality standards. Water quality standards form the basis for establishing enforceable, water quality-based effluent limitations in CWA permits. These criteria constitute the Agency's current recommended Section 304(a) criteria for ammonia, and will continue to serve as such until EPA publishes a revision. In August 1998, EPA published the *1998 Update of Ambient Water Criteria for Ammonia* and asked for public comment. The 1999 Update published today incorporates revisions made in response to comment on the 1998 Update, and supercedes all previous freshwater ammonia criteria.

ADDRESSES: "Obtaining the Document." A copy of the document, 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA-822-R-99-014) may be obtained from the U. S. Environmental Protection Agency, by contacting: National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, Ohio, USA 45242-2419, Phone: 1-800/490-9198; International: 1/513-489-8190, E-mail: ncepi.mail@epamail.epa.gov.

The document, and a fact sheet that provides an overview of the criteria document, may be viewed on the Internet at <http://www.epa.gov/ost/standards/amonsub.html>.

"Examining the Administrative Record." The Administrative Record supporting EPA's recommended ammonia criteria for the protection of freshwater aquatic life is available under docket number W-98-20 at the Water Docket, Room EB-57, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 on Monday through Friday, excluding Federal

holidays, between 9:00 a.m. and 4:00 p.m. For access to docket materials call (202) 260-3027 for an appointment. The record contains material that EPA relied on to support the recommended criteria contained in the 1999 update. A reasonable fee will be charged for photocopies.

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Standards and Applied Science Division (4305), U.S. EPA, Office of Science and Technology, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260-3809; thompson.brian@epamail.epa.gov.

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I. Background on Criteria Program

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) directs EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation. These criteria serve as guidance to States, Territories, and authorized Tribes in adopting water quality standards under Section 303(c) of the CWA that protect aquatic life from acute and chronic effects of ammonia. Water quality standards provide a basis for controlling discharges or releases of pollutants. Under the CWA, States and Tribes are to establish water quality criteria to protect designated uses. State and tribal decision makers retain the discretion to adopt water quality criteria on a case-by-case basis that differ from this guidance when appropriate and where supported by local data. In this notice EPA is announcing the publication and availability of the Agency's most recent calculation of water quality criteria for freshwater ammonia.

Ambient water quality criteria developed under Section 304(a) are based on data and scientific judgments on the relationship between pollutant concentrations and effects on aquatic life, human health, and the environment. Section 304(a) criteria do

not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

II. Background on Development of the Ammonia Criteria Document

In 1985, EPA published Ambient Water Quality Criteria for Ammonia—1984, which contained criteria concentrations for protection of freshwater aquatic life. The Criterion Maximum Concentration or CMC, which applied to short (acute) exposure, and the Criterion Continuous Concentration or CCC, which applied to longer (chronic) exposure, varied primarily with pH and the type of fishery involved. On July 30, 1992, EPA revised its recommended value for the CCC through a memorandum "Revised Tables for * * * Freshwater Ammonia Concentrations."

In late 1996 EPA undertook a review and revision of the CCC for ammonia, in response to public interest in the criterion. As part of this process, EPA undertook peer review of a draft criterion (June 5, 1997). The results of this peer review are included in Peer Review Report for EPA's Addendum to Ambient Water Quality Criteria Document for Ammonia, dated October 9, 1997. On August 18, 1998, EPA published the *1998 Update of Ambient Water Quality Criteria for Ammonia* and solicited public comment. Today, EPA is publishing the *1999 Update of Ambient Water Quality Criteria for Ammonia*, which incorporates changes made in response to public comment on the 1998 Update. The ammonia criteria published today supersede all previous freshwater aquatic life ammonia criteria.

The water quality criteria in the 1999 Update pertain only to fresh waters. They do not change or supersede the EPA criterion for ammonia in salt water, published in *Ambient Water Quality Criteria for Ammonia (Saltwater)—1989*.

EPA aquatic life criteria consist of acute and chronic criteria concentrations, applicable averaging periods (i.e., the duration used in comparing ambient water concentration to water quality criteria), and allowable excursion frequencies. The criteria published today are based on a revised temperature dependency of the CCC (chronic criterion), and modification of the 4-day criterion provision from 2.0 to 2.5 times the CCC. As a result, the acute criterion for ammonia remains dependent on pH and fish species (i.e., salmonids versus non-salmonids), and the chronic criterion for ammonia is now dependent on pH and temperature. In addition, at lower temperatures the chronic criterion is also dependent on

the presence or absence of early life stages of fish.

III. Response to Comments on 1998 Update

EPA considered all comments submitted on the 1998 Update. Responses to comments are contained in the document *Response to Comment on the 1998 Update of Ambient Water Quality Criteria for Ammonia*. The two most significant issues raised in the comments were the pH relationship and the temperature relationship used for the chronic criterion (CCC); that is, how the CCC changes as a function of pH and as a function of temperature.

A. Ammonia pH Relationship

In the 1998 Update, the pH relationship of the CCC was different than the pH relationship of the CMC. Notably, in the pH range from 8.0 to 6.5, the CCC increased less quickly with decreases in pH than did the CMC. Some commentors expressed concern that because so much more data are available to derive the acute relationship than the chronic relationship, it would be better to apply the acute relationship to the chronic criterion.

EPA does not agree that the chronic pH relationship should be the same as that of the acute pH. The data for smallmouth bass and for daphnia unequivocally demonstrate that the acute-chronic ratio changes with pH, and therefore that the chronic relationship should not be the same as the acute relationship. While there may be alternative ways of accounting for this difference, EPA believes that the approach it has taken, to derive the chronic relationship directly from the available chronic data for smallmouth bass and daphnia, is scientifically appropriate and reasonable. Thus, for the 1999 Update, EPA has not changed the chronic pH relationship.

B. Ammonia Temperature Relationship

In the derivation of the 1998 Update, the data used by EPA indicated that the

sensitivity of fish does not change significantly with temperature, either for acute or chronic exposure. However, some commentors expressed concern that the 1998 chronic criterion would change with temperature if invertebrates are considered.

In response to these comments, EPA re-examined the available data for invertebrates, which were from a study by Arthur et al. (1987), as referenced in the 1998 and 1999 Updates. The Arthur et al. data suggested a temperature relationship for invertebrates but not for fish. In the 1998 Update, EPA did not use the Arthur et al. data because the authors were concerned that other variable factors in their tests might have had a potential to confound their results. In re-examining their data in response to comments, however, EPA found that the *fish* data from Arthur et al. showed behavior quite similar to that from numerous other investigators, that is, little relationship with temperature. Consequently, EPA concluded that the *potential* confounding factors were *unlikely* to have much effect on the results, and that the Arthur et al. (1987) results could be used to define a temperature relationship for invertebrates.

In contrast to the fish data, the invertebrate data from Arthur et al. (1987) show a significant and consistent relationship of increasing lethal concentration (decreasing toxicity) with decreasing temperature. Because the two most sensitive species in the chronic data set are invertebrates, a temperature dependency for the effect concentrations for these species results in an overall temperature dependency for the ammonia chronic criterion. Therefore, EPA's 1999 Update contains a temperature dependent chronic criterion for ammonia. This temperature dependency does not affect the acute criterion, because none of the acutely sensitive species in the acute data set are invertebrates.

IV. Summary of the 1999 Ammonia Criterion

In natural waters ammonia exists in two forms, un-ionized NH_3 , and ionized NH_4^+ , with equilibrium controlled by temperature and pH. Whereas the 1984/1985 criteria were derived based on un-ionized ammonia, which required a relationship with temperature, the criteria published today are expressed only as total (un-ionized plus ionized) ammonia.

Based on differences in species acute sensitivity, different CMC values were derived for waters where salmonids (e.g., trout and salmon) are present and waters where salmonids are not present. Such distinctions in species *chronic* sensitivity were not apparent, however. Consequently the CCC does not vary with the type of fish present.

The acute criterion or CMC is unchanged from 1998. The values vary as a continuous function of pH and are not dependent on temperature. For example, as seen in Table 1 below, at pH=7 the values are 24.1 mg N/L for salmonid fish (trout and salmon) present, and 36.1 mg N/L for salmonids absent. Whereas at pH=8 the values are 5.62 mg N/L for salmonids present, and 8.40 mg N/L for salmonids absent.

TABLE 1.—AMMONIA CMC VALUES BASED PH AND FISH SPECIES

pH	CMC mg N/L	
	Salmonids present	Salmonids absent
7	24.1	36.1
8	5.62	8.40

The chronic criterion or CCC varies as continuous functions of temperature and pH. At lower temperatures, the values also depend on whether early life stages of fish are present or absent. To illustrate its general behavior, the table below (Table 2) shows example values of the CCC under a few different temperature and pH conditions.

TABLE 2.—AMMONIA CCC VALUES BASED ON TEMPERATURE, pH, AND EARLY LIFE STAGES OF FISH

Temperature	CCC mg N/L			
	Early life stages of fish present		Early life stages of fish absent	
	pH=7	pH=8	pH=7	pH=8
0° C	5.91	2.43	9.60	3.95
10° C	5.91	2.43	7.91	3.26
20° C	4.15	1.71	4.15	1.71
30° C	2.18	0.897	2.18	0.897

V. Implementation of the Final 1999 Ammonia Criteria

A. Design Flow and Averaging Period

The use of aquatic life criteria for developing water quality based permit limits and for designing waste treatment facilities requires the selection of an appropriate waste load allocation model. Dynamic models are preferred for the application of aquatic life criteria in order to make best use of the specified concentrations, durations, and frequencies. If dynamic models cannot be used, then an alternative is steady-state modeling. Because steady-state modeling is based on various simplifying assumptions, it is less complex, and might be less realistic, than dynamic modeling. However, since steady-state models are easier to apply, they are used more often than dynamic models.

An important step in the application of steady-state modeling to streams is calculating the design flow. States and Tribes can refer to Appendix D of the *Technical Support Document for Water Quality-based Toxics Control* (TSD) for EPA's recommended design flow, as well as EPA's basis for its design flow recommendations.

In the TSD, for aquatic life, EPA recommends design flows for both the criterion maximum concentration (CMC, or acute criterion) and the criterion continuous concentration (CCC, or chronic criterion). For the CMC, EPA recommends the 1B3 (the lowest one-day flow based on a three-year return interval when flow records are analyzed using EPA's 1986 DFLOW procedure) or the 1Q10 (the lowest one-day flow based on a ten-year return interval when flow records are analyzed using extreme-value statistics). For the CCC, EPA recommends the 4B3 (the lowest four-day flow based on a three-year return interval when flow records are analyzed using EPA's 1986 DFLOW procedure) or the 7Q10 (the lowest seven-day flow based on a ten-year return interval when flow records are analyzed using extreme-value statistics).

For ammonia, EPA continues to recommend the 1B3 or the 1Q10 as the design flow for the CMC. Even though EPA's recommended design flow for the CCC, as stated in the TSD, is based on a 4-day average, EPA's design flow guidance can be applied to the 30-day averaging period of ammonia. Therefore, for the CCC for ammonia, EPA recommends the 30B3 for the design flow, if flow records are analyzed using EPA's 1986 DFLOW procedure. In addition, EPA believes that the 30Q10 and the 30Q5 are at least as protective as the 30B3. Therefore, if flow records

are analyzed using extreme-value statistics, EPA also recommends the 30Q10 or the 30Q5 as the design flow for the CCC for ammonia. As explained in the 1999 Update, within this 30-day period, no 4-day average concentration should exceed 2.5 times the CCC. Consequently, the design flow should also be protective of any 4-day average at 2.5 times the CCC. EPA believes that in the vast majority of cases, the 30Q10 is protective of both the CCC (which, for ammonia, is associated with a 30-day average) and any 4-day average at 2.5 times the CCC. If the ammonia CCC is implemented using the 30Q10, no further conditions are necessary. However, if a State or Tribe specifies the use of the 30Q5, then the State or Tribe should demonstrate that a 7Q10 (the lowest average 7-day once-in-ten-year flow using extreme-value statistics) is protective of 2.5 times the CCC, to ensure that any short term (4-day) flow variability within the 30-day averaging period does not lead to shorter-term chronic toxicity. Since the 7Q10 approximates the 4B3 (the lowest average 4-day once-in-three year flow using EPA's 1986 DFLOW procedure), EPA recommends the 7Q10 be used to evaluate if any 4-day average within the 30-day averaging period will exceed 2.5 times the CCC. The comparison of the 30Q5 at one times the CCC to the 7Q10 at 2.5 times the CCC is stream-specific; a State or Tribe utilizing this approach should adopt both the 30Q5 at one times the CCC and the 7Q10 at 2.5 times the CCC into its standards and specify that the more stringent be used.

In adopting a freshwater aquatic life CCC for ammonia, based on the 30-day averaging period recommended in the 1999 Update, the procedures for calculating NPDES permit limits should be modified from those described in the TSD. The equations (and corresponding "multiplier tables") presented in the TSD assume a 4-day averaging period and are summarized below:

The acute long term average (LTA_a) is determined from the acute wasteload allocation (WLA_a) using the equation:

$$LTA_a = WLA_a e^{[0.5\sigma^2 - z\sigma]} \\ \text{where } \sigma^2 = \ln(CV^2 + 1)$$

The chronic long term average (LTA_c) is determined from the chronic wasteload allocation (WLA_c) using the equation:

$$LTA_c = WLA_c e^{[0.5\sigma_4^2 - z\sigma_4]} \\ \text{where } \sigma_4^2 = \ln(CV^2/4 + 1)$$

A comparison of the LTA_a and LTA_c is then performed and the minimum value is selected (LTA_{MIN}). The maximum

daily limit (MDL) is then calculated from the LTA_{MIN} using the equation:

$$MDL = LTA_{MIN} e^{[z\sigma - 0.5\sigma^2]} \\ \text{where } \sigma^2 = \ln(CV^2 + 1)$$

The average monthly limit (AML) is calculated from the LTA_{MIN} using the equation:

$$AML = LTA_{MIN} e^{[z\sigma_n - 0.5\sigma_n^2]} \\ \text{where } \sigma_n^2 = \ln(CV^2/n + 1)$$

The value of "n" in the calculation of the AML is based on an assumed monthly effluent monitoring frequency for the permittee. In general, the "n" value should be set equal to the actual monitoring frequency that will be required of the permittee. However, if the AML is based on the LTA_c (i.e., $LTA_{MIN} = LTA_c$), the TSD recommends that the value of "n" be set no lower than 4 (corresponding to the 4-day CCC) to ensure that the AML does not exceed the WLA_c .

Since the 1999 Update recommends a 30-day averaging period for deriving the CCC, the equation for determining the LTA_c should be modified as follows:

$$LTA_c = WLA_c e^{[0.5\sigma_{30}^2 - z\sigma_{30}]} \\ \text{where } \sigma_{30}^2 = \ln(CV^2/30 + 1)$$

The comparison of the LTA_a and LTA_c is then performed in the same manner and the MDL and AML are calculated from the LTA_{MIN} .

Consistent with the guidance regarding the calculation of an AML using a 4-day CCC, the value of "n" (assumed monitoring frequency) used in the AML calculation should not be less than the averaging period upon which the criterion value is based. For a more detailed discussion of the selection of an appropriate value for "n" in limit development, refer to Section 5.5.3 of the TSD.

B. Early Life Stage Absent (ELS-Absent) Provision

EPA is establishing a provision in its ammonia criteria that allows for a relaxation of the CCC when early life stages (ELS) of fish are not present, since, at low ambient water temperatures, adult and juvenile fish are less sensitive to ammonia toxicity than are early life stages of fish. EPA has concluded that it would be appropriate to relax the ammonia CCC, as ambient water temperature decreases, in waterbodies where early life stages are not present. This provision, based on ELS absent, applies only to the recommended aquatic life chronic criterion for ammonia, and any new or

revised water quality standard incorporating such a provision is subject to review and approval by EPA.

The 1999 Update constitutes EPA's scientific recommendations regarding ambient concentrations of ammonia that protect freshwater aquatic life. EPA will review, and approve and disapprove, State and Tribal water quality standards for ammonia, pursuant to section 303(c) of the CWA and the implementing regulations at 40 CFR 131.

EPA has identified the following list of issues regarding the implementation of the ELS-absent provision. These issues have been raised to EPA since the August 1998 update. EPA is posing the issues in a question and answer format to provide clarification on implementing the ELS-absent provision. In the event that States, territories, and authorized Tribes need further clarification on implementing the ELS-absent provision, they should consult with their local EPA Regional office.

1. What is the early life stage-absent (ELS-absent) provision?

Under specific conditions, States and Tribes may adjust their water quality standards to reflect the decrease in ammonia toxicity to adult and juvenile fish as water temperature decreases. Because ammonia toxicity to early life stages of fish does not appear to decrease as water temperature decreases, the ELS-absent provision is not allowed at times of the year when early life stages are present. *This ELS-absent provision applies only to the aquatic life chronic criterion for ammonia*, and the adoption of this provision, as is the case for any new or revised standard, is subject to approval by EPA.

The magnitude of the ELS-absent adjustment is dependent on temperature, and can be found in EPA's 1999 Update of Ambient Water Quality Criteria (1999 Update). In the 1999 Update, the ammonia chronic criterion is presented in two separate tables, one for periods when fish early life stages are present and one for periods when fish early life stages are absent. Therefore, when early life stages of fish are present, States and Tribes should use the ELS-present table, and when early life stages of fish are absent, States and Tribes may use the ELS-absent table.

2. How does EPA envision States and Tribes implementing the ELS-absent provision?

States and Tribes should clearly identify in their water quality standards the applicable ammonia criteria for all State or Tribal surface waters for all

times of the year. The approach a State or Tribe may choose will differ depending on how its water quality program is structured.

Some factors to consider in implementing the ELS-absent provision are the resources available for State and Tribal Agencies to administer site-specific risk management decisions; the variety of watersheds and eco-regions within a State or Tribe; the diversity of fisheries within the State or Tribe; and the geographic location of the State or Tribe. For example, a State or Tribe in the Pacific Northwest may choose not to modify criteria for ammonia at all, based on the absence of early life stages of fish, because the State or Tribe is dominated by salmonid fisheries with different species spawning throughout the year. Another State or Tribe may choose to make ELS-absent adjustments to the ammonia criteria site-specifically, when data or information is provided which justifies a different, more appropriate ammonia criterion. Many States and Tribes already have provisions in their water quality standards which authorize site-specific criteria modifications when new information becomes available. States and Tribes that have invested resources in mapping the distribution of different species within the State or Tribe may choose to determine which waterbodies warrant the ELS-absent provision and adopt seasonal ammonia criteria just for those waters as appropriate.

EPA believes that tailoring the ammonia criteria to different classes of waterbodies would be the most efficient means of administering the ammonia criteria ELS-absent provision. State and Tribal programs with refined, biologically-based designated use classification systems are best structured for this approach. Refining the designated use to reflect the presence or absence of sensitive life stages may involve an upfront investment of resources but in the long term, EPA believes it significantly reduces the administrative burden of having to repeatedly revise the standards site-specifically. Refined, biologically-based use classification systems enable States and Tribes to efficiently tailor numerous criteria to waterbodies with shared characteristics. Refined, biologically-based use classification systems also more clearly communicate the intended water quality goals of a waterbody to the public.

Any approach a State or Tribe chooses to implement the ammonia criteria must be reflected in the State's or Tribe's water quality standards and submitted to EPA for review and approval. In order for EPA to determine the scientific

defensibility of a State's or Tribe's approach as part of the Clean Water Act section 303(c) review and approval/disapproval process, EPA would want to review information concerning the geographic areas and the times of the year the ELS-absent provision applies, and would want the State or Tribe to provide all of the data and information the State or Tribe relied on for its rationale.

3. Is the ELS-absent provision considered a site-specific criterion or could a State or Tribe establish an eco-regional ELS-absent provision? Could a State adopt an ELS-absent provision state wide? If a State or Tribe uses an eco-region approach, what factors should it consider in determining the ELS-absent provision for its waterbodies?

The ELS-absent provision could be done on either a site-specific basis, or it may be more efficient to provide the adjustment on a watershed or eco-regional basis if sufficient information and data exist. If a State or Reservation is sufficiently small or homogenous, it could apply the same provision on the same schedule state or reservation-wide.

When establishing an ELS-absent provision on an eco-region basis, the objective should be that waters within each eco-region have similar periods when there is an absence of early life stages of fish. There are a number of factors that a State or Tribe could use to define its eco-regions. For example, if the spawning period of a given species of fish and the ambient water temperature vary with latitude, then a State or Tribe could use latitude to define its eco-regions. Other factors that a State or Tribe could use to define its eco-regions include watershed, elevation, and stream order. For smaller States or Reservations, geographic variations are likely to be less extreme, and will have a smaller effect on ambient water temperature and spawning periods. As the size of a State or Reservation increases, it becomes increasingly important to consider the effects of geographic variation on ambient water temperature and spawning periods, and it becomes more difficult to generalize about the level of protection afforded to the aquatic communities. The larger the area of consideration for the ELS-absent provision, the greater is the need for data or conservatism in its application.

4. Which stages of fish development are included in the term "early life stages?"

The early life stages include the pre-hatch embryonic period, the post-hatch free embryo or yolk-sac fry, and the

larval period, during which the organism feeds. Juvenile fish, which are anatomically rather similar to adults, are not considered an early life stage.

The duration of the early life stages extends from the beginning of spawning through the end of the early life stages.

Since the duration of early life stages can vary according to fish species, EPA recommends that any ELS-absent provision reflect such variations. A good source for determining the duration of early life stages is *The American Society*

for Testing and Materials (ASTM) Standard E-1241, "Standard Guide for Conducting Early Life-Stage Toxicity Tests with Fishes", which uses the following durations when testing for toxicity on early life stages (Table 3).

TABLE 3.—DURATION OF EARLY LIFE STAGE DEVELOPMENT OF SELECTED FISH SPECIES

Taxon	End of early life stage development
Fathead minnow	34 days after spawning.
Channel catfish	34 days after spawning.
Bluegill	34 days after spawning.
White Sucker	34 days after spawning.
Northern pike	34 days after spawning.
Striped bass	46 days after spawning.
Trout, salmon, char	30 days after swim-up (swim-up is the stage when fry leave the nest and swim up to the surface to catch food).

For taxa not listed above, the period for early life stage development should be based on taxonomic and life history similarity.

5. To allow the ELS-absent provision, should there be a complete absence of sensitive life stages or is the presence of very low densities acceptable, as long as there is no threat to the overall population? What should a State's or Tribe's determination of absence of fish sensitive life stages consist of? Is actual biological survey data required, or can a finding be based on expert opinion from fisheries biologists? Is EPA going to specify any minimum biological data requirements?

To be most protective of aquatic life in a waterbody being considered for the ELS-absent provision, knowing that there is a "complete absence", or "very low densities" of sensitive life stages of fish, would provide a high level of confidence in allowing for the adjustment. However, actually measuring the "complete absence" of sensitive life stages of fish in a waterbody may be very difficult, if not impossible, even with rigorous, scientifically designed sampling efforts. Most field sampling methods are not designed to sample for these sensitive life stages. In addition, "very low densities" are difficult to accurately measure without extensive fish population sampling at critical times of the year. Further, because the conditions for implementing an ELS-absent provision apply to all fish species rather than to only game fish species, there may be less field data readily available for all fish species comprising the aquatic community at any given site. Therefore, the objective should be to best identify the timeframes during the year when

sensitive life stages are most likely not to be present in numbers that, if chronic toxicity did occur, would affect the long-term success of the fish population.

To best determine when the ELS-absent provision should be applied, all readily available information regarding the fish species distributions, spawning periods, nursery periods and the duration of sensitive life stages found in the waterbody should be considered. Information on waterbody temperature might also be useful. Expert opinions from fisheries biologists and other scientists should be considered, and where it can be obtained, the consensus opinion from a diverse body of experts may be heavily relied upon.

The determination of the timeframe during the year when sensitive life stages are most likely not to be present in numbers that, if chronic toxicity did occur, would affect the long-term success of the fish populations, should include a record of information adequate to withstand public scrutiny. EPA will use this record as the basis upon which to approve or disapprove the standard. The record should clearly explain all the factors and information considered in arriving at the determination. EPA does not have minimum data requirements for these determinations; however, States and Tribes should rely on the preponderance of available information. Without adequate and reliable information, EPA would make the judgment that sensitive life stages are present and must be protected at all times of the year.

6. Is the evaluation of the presence or absence of early life stages of fish limited to what exists in a water body currently, or should historical data on aquatic communities be considered?

According to the Clean Water Act, States and Tribes are to protect existing uses, and therefore should protect for the most sensitive uses that have occurred in a given waterbody since November, 1975. 40 CFR 131.12(a)(1) and 40 CFR 131.3(e). Hence, States and Tribes should consider both current and historical species that have used a waterbody for spawning and rearing since November, 1975. Even where water quality is protective of designated uses, the current species composition in a waterbody may not reflect all species that have used the waterbody for spawning or rearing since 1975. It is EPA's position that any ELS-absent provision should not prevent the return of any species associated with an existing or designated use. Therefore, States and Tribes should evaluate both current and historical data back to November, 1975, in determining a presence or absence of sensitive life stages.

7. In specifying in its water quality standards when the ELS-absent provision applies, can a State or Tribe rely on the same date every year based on average annual ambient water temperatures, or should a State or Tribe rely on ambient water temperature thresholds that would trigger the ELS-absent provision?

EPA believes that the best way for a State or Tribe to implement its ELS-absent provision is to establish in its water quality standards a fall and a spring date based on historical spawning and early life stage data. Alternatively, a State or Tribe may

specify ambient water temperature thresholds that would serve as surrogates for expected spawning and expected absence of early life stages of fish. Upon reaching the temperature thresholds in the fall and spring, the ELS-absent provision would go into effect.

Either approach may be suitable, however, EPA recommends the establishment of a fall and spring date in a State's or Tribe's water quality standards, because such an approach is simpler to implement in NPDES (National Pollutant Discharge Elimination System) permits. Alternatively if a State or Tribe establishes an ambient water temperature threshold approach, it may specify the fall and spring temperature thresholds in its water quality standards. These thresholds would subsequently be implemented through water quality control measures (e.g., NPDES permitting, TMDLs). EPA, in its review and approval/disapproval of State and Tribal water quality standards, may request that States and Tribes submit detailed procedures addressing the implementation of this alternate approach. If the dates are decided at the time of permit issuance, then the ambient water temperature record (or other condition record) for the site would be evaluated (along with the pH and flow record) as part of the permit issuance process. The final NPDES permit would include fixed dates specifying the seasonally varying water quality-based effluent limit (WQBEL).

Regardless of the approach taken, States and Tribes should keep in mind the following concepts in determining the beginning and end of the ELS-absent period. In the spring, a State or Tribe should consider when (or at what ambient water temperature) early spring spawning is likely to occur, and set the spring cut-off date (or temperature threshold) accordingly. Setting a fall start date (or temperature threshold) is more complicated because in addition to considering when the late summer and early fall spawners are likely to stop spawning, a State or Tribe should also consider the duration of the early life stages of the late summer/early fall spawners. For instance, if the temperature threshold was triggered for the latest fall spawner on October 15, and its early life stage is expected to last 30 days, then the ELS-absent provision would begin as early as November 15. However, if in the same waterbody, the temperature threshold for spawning was triggered for an earlier spawner on October 1, and its early life stage lasted 60 days, then the ELS-absent provision could begin no earlier than December 1.

Hence when using temperature thresholds a State or Tribe needs to consider both expected spawning, as well as the expected duration of early life stages of fish. Safety factors are also appropriate where a State or Tribe is less confident in its data for a particular site or where there might be late spawning populations.

8. Can a State or Tribe apply the ELS-absent provision to an underlying site-specific ammonia criterion?

Applying the ELS-absent provision to a site-specific criterion depends on the procedure used for determining the site-specific criterion. At sites where the Water-Effect Ratio (WER) procedure is used, the WER would apply to both ELS-absent and ELS-present criteria values. (However, it has been EPA's experience that the WER procedure has yielded ratios close to 1.0 for ammonia.) At sites where the Recalculation or Resident Species procedure is used, a State or Tribe should consider the effects of having eliminated species from the data set before applying the ELS-absent provision. In many instances, site-specific criteria are developed for small tributary streams and headwater streams with lower species diversity and fewer game fish species. States and Tribes considering the ELS-absent provision must protect early life stages of all fish species, not just species considered to be of value to a fishery. Because the Recalculation Procedure involves a re-derivation of the criterion, and not merely a factor adjustment of the criterion, a re-derivation of a ELS-absent criteria table should follow procedures similar to those used in the 1999 Update.

C. State and Tribal Adoption of Ammonia Criteria

EPA recommends that States and Tribes adopt numeric ammonia criteria applicable at all times of the year for all waters designated for the protection of aquatic life or for waters whose existing uses include aquatic life. Numeric criteria may be adopted based on EPA's ambient water quality criteria for ammonia, such criteria modified to reflect site-specific conditions, or other scientifically defensible methods. 40 CFR 131.11(b)(1). States and Tribes should adopt narrative criteria where numeric criteria cannot be established or to supplement numeric criteria. 40 CFR 131.11(b)(2). Because EPA has issued section 304(a) criteria for ammonia, numeric criteria for ammonia can be established. Ammonia is a pollutant that is routinely found in the wastewater effluent of publicly-owned treatment works and landfill leachate, as

well as run-off from agricultural fields where commercial fertilizers and animal manure are applied. Ammonia is frequently identified as a pollutant causing or contributing to water quality impairment when states assemble their lists of impaired surface waters under section 303(d). Because ammonia has known toxic effects to aquatic life, as is demonstrated in EPA's 1999 Update of Ambient Water Quality Criteria for Ammonia, the Office of Water finds that control of ammonia discharges is necessary to protect aquatic life uses of surface water across the United States. Numeric criteria for ammonia are much easier to implement in NPDES permits than are narrative criteria because they form a concrete basis for calculating the need for and the substance of any needed effluent limitations. In the TMDL program, such criteria serve as a definitive benchmark for determining impairment of waters for listing purposes and then as a concrete starting point for establishing TMDL's, wasteload allocations for point sources and load allocations for nonpoint sources. Further, because water quality criteria are commonly implemented through regulatory mechanisms such as TMDLs and NPDES permits, State and Tribal adoption of numeric criteria does not have a direct impact on any given discharger. In the case of NPDES permits, a water quality based effluent limit would apply to a given discharger only if the discharge has the reasonable potential to cause an exceedance of a water quality criterion. In addition under section 303(d) of the CWA, waterbodies would be listed and TMDLs established only where the ambient concentrations in the water exceed the ammonia criteria.

The adoption of numeric criteria for ammonia will be a priority for the triennial reviews of water quality standards that will occur in FY2001–2003. Beginning with FY2001, EPA Headquarters and Regional Offices will develop management agreements with the states and tribes that will include commitments to have states and tribes adopt numeric criteria for ammonia. Where a state does not amend its water quality standards to include water quality criteria for ammonia that will ensure protection of designated uses, EPA's Office of Water will recommend to the Administrator that she act under Section 303(c) of the Clean Water Act to promulgate numeric criteria with the goal of assuring that protective criteria for ammonia apply in all states not later than 2004.

VI. Threatened or Endangered Species

Because ambient criteria are generally designed to protect 95 percent of all fish and aquatic invertebrate taxa, there remains a small possibility that the criteria will not protect all listed endangered or threatened species. Consequently, EPA recommends that States and Tribes develop more stringent, site-specific modifications of the criteria as necessary to protect threatened and endangered species.

In adopting ammonia criteria for specific water bodies, States and Tribes may need to develop more stringent, site-specific modifications of the criteria to protect listed endangered or threatened species, where sufficient data exist indicating that endangered or threatened species are more sensitive to a pollutant than the species upon which the criteria are based. Such modifications may be accomplished

using either of the following two procedures.

1. More stringent, site-specific modifications may be calculated to protect a listed endangered or threatened species by using the Species Mean *Acute* Value (SMAC) and Species Mean Chronic Value (SMCV). *Resetting the CMC*: If the CMC is greater than 0.5 times the Species Mean Acute Value for a listed threatened or endangered species, or a surrogate for such species, obtained from flow-through, measured-concentration tests, then the CMC should be reset equal to 0.5 times that Species Mean Acute Value. (The empirical factor 0.5 converts from a 50 percent lethality concentration to a minimal-lethality concentration.) *Resetting the CCC*: If the CCC is greater than the Species Mean Chronic Value of a listed threatened or endangered species or surrogate, then the CCC should be reset to that Species Mean Chronic Value. If the Species Mean

Chronic Value is not available, then the CCC can be reset by dividing the Species Mean Acute Value by the Acute to Chronic Ratio (ACR) in accord with EPA's "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses (1985)," for deriving a CCC for commercially and recreationally important species; or,

2. More stringent, site-specific modifications may be calculated to protect a listed endangered or threatened species by using the recalculation procedure for site-specific modifications described in Chapter 3 of the U.S. EPA Water Quality Standards Handbook, Second Edition—Revised (1994).

Dated: December 15, 1999.

Dana D. Minerva,

Acting Assistant Administrator for Water.

[FR Doc. 99-33152 Filed 12-21-99; 8:45 am]

BILLING CODE 6560-50-U

Registered Apparel Labels

Wednesday
December 22, 1999

Part VII

**Committee for the
Implementation of
Textile Agreements**

Availability of the Correlation: Textile and
Apparel Categories With the Harmonized
Tariff Schedule of the United States for
2000 and Establishment of an Import
Limit for Certain Man-Made Fiber Textile
Products Produced or Manufactured in
Belarus; Notices

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 2000

December 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The Committee for the Implementation of Textile Agreements (CITA) announces that the 2000 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in December 1999 as part of the Office of Textiles and Apparel (OTEXA) CD-Rom publications.

The CD ROM may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Barbara Anderson, at a cost of \$25. Checks or money orders should be made payable to the U.S. Department of Commerce. The Correlation is also available on the OTEXA website at <http://otexa.ita.doc.gov>.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-33226 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

December 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota reopenings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on September 27, 1999 (64 FR 51962) announced that the Government of the United States had requested consultations with the Government of Belarus with respect to glass fiber fabric in Category 622, produced or manufactured in Belarus, and that, if no solution was agreed upon in consultations with the Government of Belarus, the Government of the United States reserved its right to establish a twelve-month limit of not less than 6,480,552 square meters for the entry for consumption and withdrawal from warehouse for consumption of glass fiber fabric in Category 622, produced or manufactured in Belarus.

As no solution was agreed upon in consultations, the Government of the United States has decided to limit imports in this category for the twelve-month period beginning on September 17, 1999 and extending through September 16, 2000.

The United States remains committed to finding a mutual solution concerning Category 622. Should such a solution be reached in consultations with the Government of Belarus, further notice will be published in the **Federal Register**.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

A description of the textile and apparel categories in terms of HTS

numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** which is published elsewhere in this issue of the **Federal Register**.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period beginning on September 17, 1999 and extending through September 16, 2000, in excess of 6,480,552 square meters.¹

Textile products in Category 622 which have been exported to the United States prior to September 17, 1999 shall not be subject to this directive.

Textile products in this category which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements 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. 99-33227 Filed 12-21-99; 8:45 am]

BILLING CODE 3510-DR-M

¹ The limit has not been adjusted to account for any import exported after September 16, 1999.

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H.R. 1180/P.L. 106-170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

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