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Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–116–5]

RIN 0579–AA84

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States, subject to certain conditions. We are taking this action in response to a request from the Mexican Government and after reviewing public comments regarding that request and conducting a pest risk assessment. The conditions to which the importation of fresh Hass avocado fruit will be subject, including pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year shipments may enter the United States, will reduce the risk of pest introduction to an insignificant level. Furthermore, climatic conditions in those areas of the United States into which the avocados will be allowed will preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald C. Campbell, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–6799; E-mail: rcampbell@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations contained in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States. The regulations do not provide for the importation of fresh avocado fruits grown in Mexico into the United States, except to Alaska under the conditions specified in § 319.56–2bb.

On November 15, 1994, we published an advance notice of proposed rulemaking (ANPR) in the Federal Register (59 FR 59070–59071, Docket No. 94–116–1) announcing that the Animal and Plant Health Inspection Service (APHIS) had received a request from the Government of Mexico to allow, under certain conditions, the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into certain areas of the United States. We solicited comments concerning the Mexican Government request for 28 days ending on December 13, 1994, and two public hearings were held in late November 1994 concerning issues raised in the ANPR. On December 19, 1994, we published a document in the Federal Register (59 FR 65280, Docket No. 94–116–2) informing the public that we had reopened the comment period and would continue to accept comments until January 3, 1995, including any comments received between December 13—the close of the original comment period—and December 19. By the close of the extended comment period, we had received over 300 comments concerning the ANPR.

On July 3, 1995, we published in the Federal Register (60 FR 34831–34842, Docket No. 94–116–3) a proposed rule to allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States, subject to certain conditions. The proposed rule, which was published in response to the Mexican Government request mentioned above, included additional proposed phytosanitary requirements that we believe addressed many of the concerns expressed in the comments received in response to our November 1994 ANPR. The proposed rule also announced the availability of two documents that examined the risks associated with the proposed importation program: ''Risk Management Analysis: A Systems Approach for Mexican Avocado,'' which is referred to below as the risk management analysis, and ''Importation of Avocado Fruit (*Persea americana*) from Mexico: Supplemental Pest Risk Assessment,'' referred to below as the supplemental pest risk assessment.

On August 4, 1995, we published a notice of public hearings in the Federal Register (60 FR 39889–39890, Docket No. 94–116–4) that detailed the dates, times, and locations of five public hearings regarding the July 1995 proposed rule.

We solicited comments concerning the July 3, 1995, proposed rule for 105 days ending on October 16, 1995. We received 2,080 comments by that date, including 211 oral comments delivered at the five public hearings. Slightly more than 60 percent of the commenters—1,254 commenters out of 2,080—identified themselves as working in the domestic avocado industry, either directly as growers, packers, and shippers, or indirectly as part of their work in associated fields (agricultural consultants, pest control advisors, nurserymen, etc.). The remaining commenters included representatives of other agricultural interests, such as apple and citrus growers, packers, and shippers; members of Congress; representatives of State, local, and foreign governments; university researchers and professors; owners and employees of produce markets and retail operations; consultants; customs brokers; and representatives of numerous associations such as chambers of commerce, farm bureaus, marketing associations, consumer groups, and trade associations. Three hundred and ten of the commenters supported the proposed rule; 1,751 opposed it. Twenty-three of those comments opposing the proposal were petitions signed by a total of 958 individuals. Nineteen of the comments neither supported nor opposed the

proposal; 8 of those comments were postcards containing only a name and address, and the remaining 11 comments argued both sides of the issue, asked only that we use science as the sole criterion for making a decision, or discussed risk assessment methodology in general terms.

Those commenters who supported the proposed rule generally expressed their faith in the ability of the proposed systems approach to allow for the safe importation of Hass avocados from Mexico. Many of those commenters supporting the proposed rule also cited the need for the United States to lead the way in the elimination of non-tariff trade barriers.

The comments of those who opposed the proposed rule generally fell into one of three categories: (1) Dissatisfaction with the quantity or quality of the pest trapping and surveys conducted in Mexico and APHIS' supporting documentation, (2) skepticism with regard to how closely the proposed safeguards would be followed in Mexico, and (3) skepticism regarding APHIS' ability to effectively monitor and enforce the safeguards contained in the systems approach. These concerns were also raised in a study prepared by the University of California at Riverside's Center for Exotic Pest Research titled ''Risks of Exotic Pest Introductions from Importation of Fresh Mexican Hass Avocados into the United States.'' This study was submitted as a comment on the proposed rule and, as such, has been carefully reviewed by APHIS and is addressed in this final rule. The specific comments pertaining to the proposed rule are discussed in detail, by subject, below.

Risk Management Analysis and Supplemental Pest Risk Assessment Documents

Comment: The proposed rule states that *Anastrepha* spp. fruit flies have never been found in Hass avocados outside of laboratory tests, but APHIS itself said in a 1987 Federal Register document (52 FR 27669–27672, Docket No. 87–101, July 23, 1987) that its records showed over 200 *Anastrepha* finds in avocados intercepted at the U.S./Mexican border from smugglers.

Response: The proposed rule stated that ''according to APHIS and Agricultural Research Service records, *Anastrepha* fruit flies have never been found in Hass avocados outside of laboratory tests.'' In their interception records, APHIS inspectors do not normally record the variety of the fruit involved in a pest interception, so these written records are silent as to whether any Hass avocados were involved in those pest detections reported in the 1987 Federal Register document. However, APHIS Plant Protection and Quarantine officers at the El Paso, TX, border crossing report that they have cut thousands of confiscated Hass variety avocados without intercepting any fruit fly larvae. Similarly, Japanese plant health officials report that they have not detected any fruit fly larvae in more than 5 million kilograms of Mexican Hass avocados that have been imported into Japan since 1992.

Comment: APHIS' risk management analysis declares: ''There is a small possibility that part of or a whole shipment could be periodically diverted to southern States. Since California Hass would be out of season, detection would be fairly easy.'' Similarly, the supplemental pest risk assessment states, with regard to Florida and California, that ''* * * it would be relatively easy to detect smuggling or intentional diversion of shipments because Hass avocado fruit are not otherwise generally available in those areas during the winter months.'' To the contrary, the Avocado Market Research and Information Center of the California Avocado Commission (CAC) reports that during the 1991 to 1994 marketing years, movement of California Hass avocados to destination markets averaged 8,533,212 pounds for the month of November; 10,636,068 pounds for December; 18,108,162 pounds for January; and 19,530,637 pounds for February. To claim that domestic Hass avocados are out of season during the months of November through February is simply incorrect; that assertion, therefore, cannot be used to support APHIS' argument that the seasonal unavailability of domestic Hass avocados will make it easy to detect Mexican Hass avocados in prohibited States. It follows that the risk reduction estimate of 95 to 99 percent attributed to limited U.S. distribution is insupportable because it will be more difficult than originally thought to detect transshipment. APHIS must reevaluate this supposed mitigation measure in view of factual realities.

Response: We agree that the characterization of domestic avocados as ''out of season'' and ''not * * * generally available'' between November and February was inaccurate. Domestic production is lower during that period—especially during November and December—but not as low as those statements in the supplemental pest risk assessment and the risk management analysis suggest. The availability of domestic avocados in larger numbers than originally recognized does not, however, have a significant impact on our risk reduction estimates. The risk management analysis indicates that the 95 to 99 percent risk reduction estimate noted by the commenter is the reduction realized by limiting distribution versus allowing distribution throughout the United States. Our ability to detect Mexican avocados in markets outside the approved distribution area does play a role in the estimate of risk reduction, but the risk reduction estimate is based more on our expectation that the vast majority of the imported avocados will remain in the approved States. The supplemental pest risk assessment considered the possibility that as much as 5 percent of the imported fruit could be transported to a habitat suitable for pest establishment (which is a subset of all non-approved States) and still concluded that the risk of a pest outbreak would be insignificant. Another factor to consider is our decision to include in this final rule a requirement for all Mexican avocados imported into the United States to be individually labeled with a sticker that identifies the packinghouse in which the avocados were packed for shipment to the United States. (The new stickering requirement is in response to a separate comment that is discussed later in this document.) The stickering requirement will work to both discourage transshipment and facilitate identification of Mexican-origin avocados.

Comment: The persea mite, which is now devastating groves in California, is believed to have originated in Mexico or Central America. Why was the persea mite not considered in the supplemental pest risk assessment?

Response: During the risk assessment process, APHIS collected information on the persea mite (*Oligonychus persea,* also known as the avocado mite) and considered the risk posed by this pest. Unfortunately, this species was mistakenly not included on the list of potential arthropod quarantine pests in table 3 of the supplemental pest risk assessment. However, the persea mite is currently established in the United States and is not considered a quarantine pest. Pests that do not satisfy internationally accepted criteria of a quarantine pest are not analyzed in detail in risk assessments because non-quarantine pests are not candidates for risk mitigation. Although *O. persea* should have been listed on the pest list, its inclusion would not have changed the supplemental pest risk assessment beyond the pests listed in table 3. Listing of *O. persea* in table 3 would not have changed the findings of the risk assessment and would not have altered

the proposed mitigation program, which focuses on quarantine pests.

Comment: The leaf spotter, a pest identified in ''Australian literature'' that lays its eggs on immature fruit and eventually covers the fruit in pustules, occurs in Mexico and was not addressed in the supplemental pest risk assessment.

Response: We are not aware of an avocado pest referred to as the ''leaf spotter.'' Nonetheless, we reexamined the scientific literature and believe that the commenter may have been referring to one of two insect pests. *Homona spargotis* (Lepidoptera: Tortricidae) was first detected in the Australian State of Queensland in 1980 and since then a few papers discussing this pest have appeared in the Australian literature. One common name associated with this pest is ''avocado leafroller'' but one paper reports that ''serious damage also results from superficial scarring of the fruit.'' *Amblypelta nitida* (Hemiptera: Coreidae) also occurs in Queensland and is listed as a pest of macadamia and avocado. This true bug is sometimes referred to as the ''fruit spotting bug.'' However, we could find no evidence linking either of these pests with Mexican avocados. According to the scientific literature, all available pest data bases, and taxonomic specialists on these insect groups, neither of these pests have ever been detected in Mexico.

Comment: Too little is known about the basic taxonomy, biology, and ecology of the avocado seed pests and stem weevils that attack the avocados in Michoacan. Similarly, it is not known which species of *Anastrepha* attacks avocado fruit. Overall, there is a dearth of survey data and other reliable information on the population levels of all the pests of concern in Michoacan. More information must be gathered through additional precertification trapping and surveys before APHIS can construct a scientifically valid systems approach for the importation of Hass avocados from Michoacan, Mexico.

Response: On the contrary, we believe that there is sufficient information available regarding all of the pests of concern. By way of illustration, our risk management analysis and its attachments together contain over six pages of literature citations that back up the information and conclusions found in that document. Similarly, the supplemental pest risk assessment lists nearly four pages of citations. Avocados and pests of avocados have been studied in detail for many years, especially in Mexico, which is the world's largest producer and consumer of avocados. We believe that the information contained in the existing literature, along with ongoing studies, surveys, and trapping, provides a rational, reasonable, and scientifically valid basis for the safeguards contained in this final rule, safeguards that we believe will allow for the safe importation of Hass avocados from Michoacan, Mexico.

Comment: Mexican avocados should be prohibited entry into the United States until zero pest risk can be guaranteed.

Response: If zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. There will always be some degree of pest risk associated with the movement of agricultural products; APHIS' goal is to reduce that risk to an insignificant level. In the case of Hass avocados from Mexico, we believe that the overlapping and redundant safeguards contained in this final rule will reduce the pest risk associated with their importation to an insignificant level.

Comment: The State of Michoacan in general and the four municipalities listed in the proposed rule in particular are extremely diverse in terms of elevation and environment. Temperature data have not been provided to support the claim that temperatures are ''generally'' below 70 °F throughout the area during the months of November through February, and it seems likely that in some locations—especially at lower elevations—temperatures would be over 70 °F for parts of some days during the export period. Has APHIS taken into account these differences in elevation, temperature, and likely levels of pest activity in Michoacan? In addition, APHIS' statement that *Anastrepha* spp. will not oviposit below 70 °F is erroneous.

Response: The proposed rule stated that fruit flies reduce mating and oviposition when temperatures fall below 70 °F, not that they stop such activities. Our data show that although daytime temperatures may rise above 70 °F, which happens on some days, usually for a short time in the late afternoon, the average temperature in the region during November through February is between 62 and 64 °F, with nighttime lows in the 40's. Studies conducted by the Agricultural Research Service (ARS) of the U.S. Department of Agriculture (USDA) have shown that the Mexican fruit fly is less active, and oviposits less at temperatures below 70 °F, so the climate is not favorable to fruit fly activity during the proposed shipping season. The unfavorable climate, combined with the Hass avocado's non-preferred host status, make it likely that the infestation threat posed to the avocados by *Anastrepha* spp. fruit flies will be insignificant.

Comment: The trapping data provided in support of the proposed rule indicates that *Anastrepha* spp. fruit flies were trapped at 17 percent of the trapping sites. This indicates that Mexican fruit fly and other *Anastrepha* spp. fruit flies are present in the Michoacan avocado groves.

Response: We have acknowledged that *Anastrepha* spp. fruit flies are present in Michoacan, which is why the regulations in this final rule set forth safeguards to prevent the introduction of those pests. The requirements, such as surveillance trapping, increased trapping in response to a single fruit fly detection, Malathion bait treatments, covering of harvested avocados, fly-proof screens on packinghouses, and inspections, work together with the non-preferred host status of Hass avocado fruit attached to the tree to eliminate any significant risk from *Anastrepha*.

Comment: No rational basis is given for a number of the probability and confidence estimates used in the supplemental pest risk assessment. For example, the estimate for P6 (probability of infested fruit introduced into a suitable habitat leading to an outbreak) is very weakly supported. As used in the supplemental pest risk assessment, these estimates are inappropriate, misleading, and create a false sense of security. A transparent, thoroughly documented, and replicable risk analysis should be prepared and submitted to peer review.

Response: As stated in the supplemental pest risk assessment (p. 26), and in accordance with internationally accepted guidelines for pest risk assessment, when specific data were not available to provide precise estimates for a particular probability, estimates were based on available data and expert judgment. Estimates based largely on expert judgment typically have a degree of uncertainty associated with them. We accounted for the uncertainty of our estimates by characterizing them as a distribution of potential probabilities (i.e., as probability density functions) instead of point estimates. Some commenters indicated that APHIS underestimated the probabilities while others indicated that APHIS has overestimated the risk of importing Mexican avocado fruit. However, APHIS did not receive any information (e.g., biological, regulatory, statistical, or methodological) that could be interpreted as evidence that the

probability estimates were incorrect, or that they should be changed.

Comment: The supplemental pest risk assessment was conducted improperly and fails the test of peer review. Thus, its results must be rejected and provide no basis for accepting the proposed rule.

Response: The methods used by APHIS have been subjected to extensive internal and external peer review and have been accepted within the United States and internationally. Some commenters on this issue, including two individuals identified as risk assessment experts, commented that APHIS' risk assessment constituted correct and appropriate use of risk assessment tools. A variety of official commenters and peer reviewers, including risk assessment experts, commended APHIS' risk assessment, commented that the methods had been applied appropriately, and considered the conclusions to be justified and believable.

Comment: The APHIS supplemental pest risk assessment and risk management analysis documents were not prepared in accordance with North American Plant Protection Organization (NAPPO) and the United Nations' Food and Agriculture Organization (FAO) risk assessment guidelines.

Response: All of the components of plant pest risk analysis as described by FAO (1995) and NAPPO (1995) are present in either the risk management analysis or the supplemental pest risk assessment. Despite the fact that the FAO and NAPPO documents are only in draft form, and despite the fact that these documents are guidelines and not standards, APHIS satisfied the requirements of each step suggested by the FAO and NAPPO documents. It is true, however, that the order in which the information is presented in the two APHIS documents is not along the general theoretical lines of: (1) Initiate risk analysis because of a new request for importation; (2) assess the base risk; (3) develop a risk mitigation program; and (4) conduct and monitor the risk mitigation program. The situation with Mexican avocado fruit is more complex because over the past few decades APHIS has considered repeatedly the risks of importing Mexican avocado fruit. The two APHIS documents cover risk assessment and risk management, but the various components of these two documents do not represent a simple chronological progression of events. The supplemental pest risk assessment includes a more complete assessment of the baseline risks than was presented in previous risk assessments (e.g., see attachments 1 (entomology risk assessment) and 2 (pathology risk assessment) in the risk management analysis). APHIS' risk analysis work started long before FAO prepared the first draft of its guidelines. APHIS has offered for public consideration a number of documents prepared on this issue over the years. Although the chronology of these documents does not match the order given in the FAO guidelines, all of the components of a complete pest risk analysis as recommended by FAO are available in the documents prepared by APHIS.

Comment: The criteria for the assignment of risk estimates found within the supplemental pest risk assessment are explained well, but the rationale for the risk estimate assigned to each of the quarantine pests is essentially absent. The summary conclusions are appropriate but should be explained clearly so that the reasoning and logic used to estimate risk can be easily and fully understood.

Response: Most of the estimates were based to some extent on expert judgment. APHIS did not elaborate on the components of the professional judgment used by team members because such elaboration would be a statement regarding the background and experiences of the scientists involved. The summary conclusions are not explained in detail, but we believe that our final assessment of the plant pest risk regarding each category of pest is well represented in tables 9 and 10 of the supplemental pest risk assessment.

Comment: The only Mexican avocado pest survey data made available in support of the proposed rule were 1993–1994 data from 129 groves in the Michoacan municipalities of Periban, Salvador Escalante, Tancitaro, and Uruapan. Current pest management practices in Michoacan avocado orchards emphasize prophylactic treatments with broad-spectrum pesticides (typically 12 treatments per year in export groves). No specifics were provided regarding what pesticides were used, how they were applied, and when treatments were applied in relation to the survey data. Given this, it is impossible to determine what impacts the pesticide treatments may have had on the data and what effect future alterations in pesticide use patterns may have on pest populations in the growing areas.

Response: As we noted in the proposed rule, some trapping was conducted while trees were being treated with pesticides. Clearly, such treatments will have an effect on pest populations, and that effect would have been reflected in the survey data. This sort of pesticide treatment is routine in Michoacan, and similar pesticide treatment will occur in orchards growing avocados for export to the United States, so we believe that trapping conducted during or after pesticide treatment provided accurate population data. This final rule requires that annual surveys and routine trapping be conducted in the production area as part of the avocado export program, so future alterations in pesticide use patterns would also be reflected in the pest population data gathered from those activities.

Comment: The key hypothesis that Hass variety avocados have a high level of natural resistance to *Anastrepha* spp. fruit flies is supported only by weak data and inference. The hypothesis is readily testable and should be thoroughly evaluated using proper scientific protocol before it is factored into the analysis. If sound data are collected to support the hypothesis of *Anastrepha* resistance, then the physiological basis for that resistance should be determined. Otherwise, changes in environmental or other factors (e.g., drought, tree stress, etc.) that affect fruit physiology could negate the resistance, as was the case with Sharwil avocados in Hawaii.

Response: APHIS' use of presumed host resistance in its systems approach is based on studies conducted in Mexico and Central America, some of which were conducted by the ARS, that have repeatedly shown avocados to be poor hosts of fruit flies and that have never pointed to Hass avocados as an *Anastrepha* fruit fly host. These studies are backed in practical terms by the experience of APHIS personnel at the U.S./Mexican border who have been cutting confiscated avocados, including Hass variety avocados.

Mexico is the world's largest producer and consumer of avocados; there are over 80,000 hectares of avocados planted in the State of Michoacan alone. The avocado is a large, economically significant crop in Mexico around which has developed an industry dedicated to the growing and marketing of avocados. Industry and university researchers in Mexico have prepared numerous publications regarding the identification and control of pests of avocados, yet there are no publications on the control of *Anastrepha* spp. fruit flies in Hass variety avocados. APHIS' own interception records over the past several years confirm that no *Anastrepha* spp. fruit flies have been found infesting Hass avocados. We believe, therefore, that the conditions set forth in the proposed rule and in this final rule adequately address the pest concerns associated with the importation of Hass avocados from

Mexico and would detect a problem if one were to exist.

Comment: Compliance is assumed in many aspects of APHIS' risk assessment process, failing to take into account human behavior (e.g., greed leading one to repack and transship Mexican avocados out of the approved area).

Response: Human error and purposeful deceit were considered continuously during the risk assessment process and during estimation of each of the probabilities. Some probability estimates were based almost exclusively on our consideration of human error and deceit. For example, in the supplemental pest risk assessment, P5, the probability that fruit would be transported to an area with suitable hosts and climate (i.e., transshipment to areas outside the approved States), ranged from 0.5 percent to 5 percent under the proposed program. Such transshipment could occur only as a result of human error or purposeful deceit, so our estimate of risk resulted directly from our consideration of the possibility of human error and the incentive for purposeful deceit.

Comment: APHIS should include the risk of infestation due to vehicle accidents in warm southern States and transshipment as part of its risk analysis.

Response: Scenarios such as accidents during transport and transshipment were included in the supplemental pest risk assessment and were considered as part of P5, the probability that fruit would be transported to an area with suitable hosts and climate, and P6, the probability that infested fruit in a suitable habitat leads to outbreak.

Comment: APHIS should convene an independent scientific panel to review the APHIS risk assessment plan and determine if the plan is in accord with accepted scientific principles. Until then, the proposal should be withdrawn.

Response: We heard the call for an independent scientific review of the proposed systems approach and risk reduction plans even before the proposed rule was published on July 3, 1995. In the proposed rule, we announced that 2 days of hearings would be held to focus exclusively on the APHIS risk assessment documents upon which the proposed rule was based in order to provide an opportunity for experts in relevant disciplines to present their views on those documents and the scientific issues raised by them. Those hearings, which were conducted on August 17 and 18, 1995, produced testimony from 25 speakers. In addition to that oral testimony, we received written comments from interested experts in various disciplines during the comment period. We believe, therefore, that scientists and independent scientific panels had ample opportunity during the 105-day comment period to present their opinions on the APHIS risk assessment plan.

Comment: The only realistic protection for the United States is to insist on ''certified infestation-free zones.'' APHIS should insist on additional studies, at least 3 years in duration, before proceeding with any change in the policy. This would be consistent with the NAPPO guidelines for the establishment of a pest-free zone. If APHIS is truly interested in maintaining the integrity of phytosanitary standards, it will demand further study resulting in the establishment of these pest-free zones.

Response: As we explained in the proposed rule and in this final rule, APHIS uses systems approaches to phytosanitary security to allow fruits and vegetables to be imported safely into the United States from countries that are not free of certain plant pests. Our experience with systems approaches for the importation of commodities and systems approaches for domestic commodities has demonstrated that such approaches can be used safely and successfully to allow for the importation or exportation of fruits and vegetables from countries or areas that are not free from pests. In this instance, we believe that the systems approach to phytosanitary security found in this final rule will prevent the introduction of plant pests into the United States from Michoacan. Therefore, we do not believe that it is necessary to establish Michoacan as a pest-free zone prior to importing Hass avocados.

Comment: The supporting documentation for the proposed rule mentions that large-scale fruit cutting was conducted in Mexico to determine pest prevalence in Michoacan's export avocado groves, but no data were offered to back up those claims. The data regarding fruit cutting should be made available to the public.

Response: This information may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, as several individuals did following the publication of the proposed rule. The cutting data are available in at least summary form for the period 1985 to 1991, and detailed information is available for groves and packinghouses for certain of those years.

Comment: A university researcher reported that she discovered immature avocado stem weevil larvae in an export grove in Michoacan during a 1994 trip to the region. APHIS' risk documents, however, state that none have been found.

Response: The researcher mentioned in the comment traveled to Michoacan as part of a joint APHIS/CAC team that went to Mexico on an information-gathering trip to look at orchards infested with stem weevils and seed weevils. The team visited a grove that appeared to be poorly managed and, within 5 minutes, found the avocado stem weevil to be present in trees within the orchard. The orchard was not certified for Sanidad Vegetal's export program. Later that day, however, a pest management consultant who had not visited the orchard in question speculated that it had once been an export orchard. It was that encounter with the consultant that led the researcher to conclude that she detected avocado stem weevils in an export grove.

Prior to APHIS' interest in the stem weevil, Sanidad Vegetal was not certifying export orchards as being free of stem weevils, so it is possible that some orchards that had previously been certified for the export program did have stem weevil infestations. In 1994, however, Sanidad Vegetal instituted surveys for the stem weevil, and all orchards certified for the U.S. export program will be required to be free from the pest. Sanidad Vegetal inspectors know how to survey for stem weevils, and the experience of the APHIS/CAC team illustrates that the pest is not difficult to detect.

Comment: The Monte Carlo model used in the supplemental pest risk assessment was unnecessary in the first place and only provides a veil of analytical objectivity; the model predicts what was initially assumed. The data upon which parameters for the model were estimated are either nonexistent or are not adequately documented. The results of the model cannot be accepted with any level of confidence.

Response: Monte Carlo simulation is a well-established and scientifically based tool of risk assessment. One of the primary utilities of this method is its ability to account for uncertainty in risk predictions. APHIS used Monte Carlo simulations because uncertainty existed with regard to the true value of some of the component probabilities. Monte Carlo simulations provided estimates of risk in the desired format, i.e., risk expressed as a range of values, each with an associated probability. Data are available that affect each of the estimates made in the risk assessment. Much of the information used by APHIS

to estimate risk can be found in the scientific sources listed in section IV of the supplemental pest risk assessment. Section IV of that document lists 58 separate sources of information, 53 of which are scientific references; the remaining 5 can be considered ''regulatory'' references. APHIS is confident that its characterization of risk is accurate. Although some commenters disagreed with our assessment of the risk, no specific evidence was provided that indicated that the risk assessment model should be changed or that the associated probability estimates should be reconsidered.

Systems Approaches

Comment: The term ''systems approach'' should be defined in the regulations.

Response: There is no need to define the term in the regulations because the term is not used in the regulations. The term ''systems approach'' is used in the preamble portion of the proposed rule and this final rule, as well as in the two risk documents, to describe an overlapping, redundant series of safeguards that, in this case, will be applied to the importation of avocados from Mexico. The safeguards themselves are set forth in the final regulations, but the term used to describe those safeguards collectively is not.

Comment: APHIS compares its proposed systems approach for Mexican avocados to the systems approaches used for the importation of Unshu oranges from Japan, peppers from Israel, and tomatoes from Spain. However, APHIS fails to mention that the Unshu oranges must be grown and packed in isolated, canker-free export orchards surrounded by disease-free buffer zones, or that the Spanish tomatoes and Israeli peppers must be grown in insect-proof plastic screenhouses. Measures such as orchard/buffer zone freedom from pests and enclosed growing areas vastly reduce the pest risks presented by those commodities; there is no equivalent degree of protection built into the proposed system for Mexican avocados.

Response: In the proposed rule, we explained that APHIS uses systems approaches to establish conditions whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. There is no ''one size fits all'' systems approach; specific measures are necessary to address specific pest risks, so different commodity/pest combinations will require different approaches. Just as the systems approaches for Unshu oranges, Spanish tomatoes, and Israeli peppers lower the pest risks associated with each commodity to an acceptable level, we believe that the required safeguards in this final rule will allow Hass avocados to be safely imported into the United States by lowering the risk of pest introduction to an acceptable level.

Comment: The proposed rule cites the systems approaches used for Unshu oranges from Japan, peppers from Israel, tomatoes from Spain, citrus from Florida and Texas, apples from Washington, and stonefruit from California. These systems were put into place after multiple years of data collection and analysis. The approach found in the proposed rule, on the other hand, is based on barely a year's worth of data that is flawed and generally incomplete; the systems approach is being offered as a substitute for obtainable knowledge. APHIS holds its domestic growers and trapping programs to a high standard of quality; it is certainly reasonable to expect that an import program of this magnitude be based on solid, supportable, long-term data.

Response: To characterize the systems approach for avocados as being the product of ''barely a year's worth of data'' in contrast to other programs that were put in place after multiple years of data collection and analysis is inaccurate. Mexican government and industry officials have been actively seeking permission to export avocados to the United States since the early 1970's; the importation program established by this final rule is based on data collected during those years, as well as on information gathered by APHIS through its own activities and research. We believe that the Mexican data, supplemented by our own data collected over those years, is of sufficient quality and quantity to provide the foundation upon which to base the safeguards found in this final rule.

Comment: Much is made about the fact that the nine mitigating measures are designed to ''individually and cumulatively reduce the risk of pests.'' However, four of the nine measures (trapping and field treatments, host resistance, post-harvest safeguards, and winter shipment) are specifically designed to control fruit flies. The remaining five safeguards do not act cumulatively to adequately address the threats posed by the seed weevil and other avocado-specific pests.

Response: First, we believe that winter shipment is a mitigating measure that has an effect on pests other than fruit flies because the avocado stem and seed pests, like the fruit flies, would not survive winter temperatures in the northeastern United States. More importantly, however, we disagree with the commenter's assertion that the safeguards do not have a cumulative effect on reducing the risk of the avocado seed and stem pests. Those safeguards determine whether the pests are present (field surveys), deny the pests opportunities to establish a presence (field sanitation), ensure that pests have not infested the avocado fruit (packinghouse inspection and fruit cutting, port-of-arrival inspection), and deny the pests the opportunity to become established in the United States should they somehow get in (limited U.S. distribution, winter shipping). Those six safeguards are each an individual means of detecting or preventing the presence of pests; together, we believe they will reduce the risk of pest introduction to an insignificant level.

Comment: A verification process for the systems approach must be put in place so we can tell if the program is being followed and if the program is effective.

Response: We believe that the necessary checks are already built into the process to allow us to determine whether the program is being followed. Throughout the growing, packing, and shipping processes, APHIS personnel will be on hand to monitor compliance with the regulations and to conduct sufficient inspections to determine the phytosanitary condition of the fruit. That monitoring and inspection will allow us to tell if the program is being followed and is effective.

Comment: APHIS' experience with the failed program to import Sharwil avocados from Hawaii should show APHIS that reliance on the assumed non-host status of a commodity and on systems approaches can result in little to no actual phytosanitary security.

Response: The Hawaiian Sharwil avocado program might be considered to have been a failure from a commercial perspective if one was interested only in moving Sharwil avocados from Hawaii to the mainland, since the program was canceled following the detection of pests on the avocados. From a quarantine perspective, however, the program could accurately be described as a success because the safeguards built into the program allowed us to detect the presence of pests and terminate the program before those pests could be disseminated into the continental United States. In terms of the pest/commodity interaction, the situation in Hawaii differs from the situation in Michoacan. The primary pest of concern for the Sharwil program was the Oriental fruit fly, which is present at very high levels in Hawaii's avocado

production area. Oriental fruit fly utilizes a variety of host fruits and will attack almost anything that is available due to its high population density. The situation in Michoacan is not comparable because *Anastrepha* spp. fruit flies are not present at high population levels in the export orchards and, when compared to Oriental fruit fly, *Anastrepha* spp. fruit flies have a restricted host range.

Comment: The risk management analysis describes the proposed program as a systems approach consisting of nine mitigation measures used to bring the identified pest risk to an acceptable level. However, only the required field sanitation and fruit fly treatments actually qualify as mitigation measures; the remaining components—trapping, fruit cutting, visual inspection, etc.—are in actuality monitoring tools. The proposed approach, therefore, would be more accurately (and more credibly) described as a process for monitoring the efficacy of cultivation, sanitation, and treatment procedures to allow for and attest to the movement of uninfested fruit only. Such an approach is not invalid, but it should be properly characterized in the final report.

Response: Although field sanitation and fruit fly treatments are the only two components of the systems approach that have a direct effect on the field populations of pests, we believe that all nine components can appropriately be characterized as mitigating measures because what is being mitigated is the risk that an infested shipment of avocados will enter the United States and result in pests becoming established in this country. That risk can be mitigated by monitoring the efficacy of cultivation, sanitation, and treatment procedures to allow for and attest to the movement of uninfested fruit as well as through field sanitation and fruit fly treatments.

Commercial Shipments

Comment: The proposed rule would require the avocados to be imported in commercial shipments only, but fails to define the term ''commercial shipment.''

Response: The background information of the proposed rule draws a distinction between commercial shipments and wild or ''backyard'' avocados, explaining that the two categories of produce are grown under very different conditions. The term is not defined in the proposed rule, however, largely because a definition for the term is already present in the regulations. Specifically, the following definition of the term *commercial shipment* appears in § 319.56–1 of the regulations (and thus applies to the regulations set forth in this final rule): ''A shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.''

Comment: The proposal requires that trucks transporting avocados from the packinghouse be sealed, but no mention is made as to where or by whom the seal may be broken. It appears, then, that a truck could be loaded with 500 boxes of avocados at a certified packing house, sealed, then be driven to a mango packinghouse, reopened, and the rest of the truck loaded with mangos or some other produce item. The truck then could be driven to the border crossing at Nogales, AZ, for avocado inspection. From Nogales, the mangos could be shipped to California or some other southwestern State and the avocados shipped under U.S. Customs bond on to the northeast. If the avocados contained any pests, they could easily transfer to the other product and be shipped anywhere.

Response: We intend that the refrigerated truck or refrigerated container in which the avocados are transported be sealed at the packinghouse and not opened until it reaches the United States. Mixed loads such as those envisioned by the commenter will not be permitted. The language in the regulations is not, as the commenter noted, clear on those points, so in this final rule we have added language to § 319.56–2ff(c)(3)(viii) to make it clear that the truck or container must remain unopened until it reaches the U.S. port of first arrival.

Seasonal Restrictions

Comment: The proposed rule states that the avocados may be imported from November through the month of February. Under proper storage conditions, wholesalers and distributors can hold avocados for several weeks past the end of February. Will businesses be required to dispose of their Mexican avocado inventory come March 1st?

Response: The November through February restriction applies to the importation of Mexican avocados, not to their distribution in the approved States. Under the provisions of the proposed rule, for example, a truckload of avocados could cross the border on the last day of February, take several days to arrive at a market in an approved State, and be first offered for sale by a wholesaler or distributor in early March. Therefore, businesses will not be required to dispose of their Mexican avocado inventory on March 1st of each year.

Comment: With controlled-atmosphere storage, Mexican avocados imported at the end of February could theoretically be sold into the month of April, when temperatures in some of the approved States could be high enough to enable pests to become established. Therefore, imports should be allowed only until mid-January to ensure that the temperatures in the approved States at the end of the retail sales period—not just the end of the importation window—are low enough to preclude the survival and establishment of the pests of concern.

Response: Even with some type of controlled-atmosphere storage, we do not believe it is likely that the shelf life of the Mexican-origin avocados could extend into the month of April. Even if one of the pests of concern were to infest the fruit, avoid detection, survive shipment, and finally escape into the environment during a period of mild weather, there would be no host material available to sustain a pest population.

Distribution Within the United States

Comment: The proposed requirement for boxes in which the avocados are shipped to be marked ''Distribution limited to the following States: * * *'' will be meaningless as a deterrent to transshipment; persons wishing to transship the avocados can easily repack the fruit in other boxes. At the very least, APHIS should require that each individual Mexican-origin avocado be marked with an indelible dye or bear a sticker denoting its origin.

Response: We agree with the numerous commenters who made this point and have added a stickering requirement to this final rule. Specifically, we will require that each avocado fruit be labeled with a sticker bearing the Sanidad Vegetal registration number of the packinghouse in which the avocado was prepared for shipment to the United States. We believe this stickering requirement will make it easier to identify Mexican-origin avocados at terminal markets and present an additional obstacle to transshipment of the fruit to non-approved States.

Comment: The limited distribution scheme is an unrealistic concept, given the open nature of the U.S. marketing and transportation systems. The restrictions will be ignored because of high consumer demand for avocados in

areas outside the approved States and the price disparity between California and Mexican avocados. The price disparity will be even greater when the $0.054 per-pound tariff cited in the proposed rule is eliminated.

Response: If the limited distribution requirement was the only means of risk mitigation available in the Mexican avocado import program, the open nature of the U.S. marketing and transportation systems would be a matter of concern. Limited distribution is, however, only one of a series of safeguards designed to prevent the introduction of pests into the United States through the importation of avocados from Mexico. We do not expect limited distribution to be foolproof, but we also do not expect that infested avocados will be entering the United States through legally imported commercial shipments in the first place. Further, we anticipate that unscrupulous distributors will be the exception, rather than the rule, so we believe that the restrictions on distribution of the avocados will be widely observed, rather than ignored. As an earlier commenter pointed out, domestically grown avocados are certainly available during the period when Mexican avocados will be imported, so the high consumer demand anticipated by the commenter in non-approved States could be met by domestic supply and by those avocados that are already being imported to all regions of the United States from Chile, the Dominican Republic, and the Bahamas.

With regard to the expected price differential between imported Mexican-origin avocados and domestic avocados, the commenter is correct in noting that the $0.054 per pound tariff will be eventually eliminated. Under the North American Free Trade Agreement, all fees and tariff rates on Schedule C commodities, including avocados, are to be eliminated within 10 years, with a gradual decline of 10 percent per year. Whether or not the price differential will give rise to a black market for avocados or lead established distributors to knowingly violate the law for the sake of profit is another matter. An unscrupulous distributor who wished to illegally transship Mexican avocados would have to pay the costs associated with obtaining a shipment of imported Mexican avocados at wholesale prices from a terminal market in an approved State, moving that shipment to a secure location, unloading the boxes from the truck or container, removing all the avocados from their packing boxes, peeling the sticker from each piece of fruit, perhaps adding a new sticker to each piece of fruit, repacking the fruit in new boxes, loading the boxes back onto the truck or container, and driving the load of avocados across the country to one of the expected high-demand markets (south Florida, Texas, and California), all of which would limit the profitability of such an illegal enterprise. We believe that this limited profit potential, when combined with other factors such as the ready availability of domestic and imported avocados in areas outside the approved States and the fact that persons involved in such illegal transshipment are liable to legal action, incarceration, or fines, makes it unlikely that large-scale transshipment will take place.

Comment: In the risk documents and the proposed rule, APHIS asserts that the Fruit and Vegetable Division of the Agricultural Marketing Service (AMS) would notify APHIS if Mexican-origin avocados showed up at terminal markets in non-approved States. The AMS would be in no position to render such assistance because their responsibility is to grade fruits and vegetables for export.

Response: The AMS does grade domestically marketed fruit, as well as fruit intended for export, so AMS personnel will indeed be present at terminal markets in non-approved States and will thus be in a position to assist APHIS in identifying misdirected avocados.

Comment: In the risk documents and the proposed rule, APHIS asserts that the AMS would notify APHIS if Mexican-origin avocados showed up at terminal markets in prohibited States. How will AMS personnel—or APHIS inspectors—be able to tell the difference between Mexican-origin Hass avocados and Hass avocados that originated in domestic groves or were imported from Chile?

Response: Domestically grown Hass avocados and Hass avocados imported from Chile will be clearly labeled and readily identifiable, since there is no reason for a distributor or other person to disguise their origin. Similarly, the Mexican avocados will be packaged and individually labeled to indicate that they originated in Mexico, so a person wishing to sell transshipped Mexican avocados in a terminal market in a non-approved State would have to go to some lengths to disguise the origin of the fruit. As discussed in the response to a previous comment, we do not believe that the level of profit that might be expected from selling transshipped Mexican avocados would be great enough to entice a significant number of people to engage in such illegal activity.

Comment: The commissioner of agriculture in one State and the governor of another have noted that consumers, processors, and distributors in their States have expressed interest in the availability of Hass avocados from Mexico and would like to see the list of approved States expanded to include their respective States.

Response: The placement of additional States on the list of approved States would have to be part of a subsequent rulemaking. The public must be given an opportunity to comment on the inclusion of additional States, and importations into the non-approved States were not considered in the supplemental pest risk assessment and risk management analysis prepared for July 1995 proposed rule, so we do not have sufficient information regarding the potential plant pest risk associated with importing Mexican avocados into other States. New States may be added in the future if APHIS receives a request to do so and the agency determines that avocados can be imported into that State without presenting a significant pest risk; if such a determination is made, a proposed rule to add the State would be published in the Federal Register.

Comment: Part of the rationale behind APHIS' limited distribution safeguard is the contention that there is no suitable host material to sustain the pests of concern, especially the avocado-specific pests. There is, however, the possibility that the avocado seed weevils and the avocado seed moth could become established in the northeastern United States by using red bay (*Persea borbonia*), a relative of avocado (*Persea americana*), as a host. Red bay is a host of *Heilipus apiatus*, which is closely related to the large avocado seed weevil *Heilipus lauri*.

Response: Although H. *apiatus* is related to H. *lauri*, *H. apiatus* is a stem borer, not a seed pest. It is very unlikely that *H. lauri*, *Conotrachelus aguacatae* and *C. perseae* could survive by feeding on the small seeds of red bay (fruit size 1–2 cm.). In addition, the seed moth is found only at lower elevations in the tropics, even though the host is grown commonly at higher elevations. In fact, all of the pests of concern become rare or are completely absent at the higher elevations. Although specific temperature threshold information for these pests may be scarce or absent, there is no reason to believe that these tropical or subtropical pests could survive the winters in the approved States.

Trust Fund Agreement and APHIS Participation

Comment: APHIS and Mexico need to recognize that APHIS is neither adequately staffed nor funded to properly deal with this proposed importation program. This limitation could be waived if all APHIS incurred costs were borne by Mexico.

Response: The proposed rule clearly stated that all costs associated with APHIS' participation in the program would be paid by the Mexican avocado industry association through a trust fund agreement with APHIS. Paragraph (b) of proposed § 319.56–2ff stated, in part, that the Mexican avocado industry association would be required to ''pay in advance all costs that APHIS expects to incur through its involvement in the trapping, survey, harvest, and packinghouse operations * * *'' Those provisions are the same in this final rule. The costs of inspecting imported agricultural commodities at the port of first arrival are recovered, when applicable, by user fees.

Comment: The Mexican avocado growers should be required to post a bond or to somehow insure or indemnify their product, so that in the event of a pest infestation, domestic avocado growers would receive some financial compensation for their losses.

Response: We believe that requiring Mexican growers to somehow indemnify their product would be unnecessary and ill-advised, largely because no country in the world requires the indemnification of agricultural products offered for importation; if the United States were to set a precedent and require such indemnification, it would be only a matter of time before our domestic agricultural producers would be required to indemnify their products offered for export. Any grower or farmer has little control over his or her produce once it has left the grove or farm, let alone once it has been exported to another nation. To ask that grower or farmer to insure his or her produce from the farm gate to the end consumer would be unfair at best, especially in this instance, given that the regulations prohibit the distribution of Mexican Hass avocados in U.S. avocado-growing States. Finally, requiring such indemnification would run counter to our obligations under current international trade agreements and would certainly be subject to challenge by Mexico and other potentially affected trading partners.

Safeguards in Mexico

Comment: Why does Sanidad Vegetal, an agency of the Mexican national government, have to hire, train, and supervise the personnel who will be involved in trapping and conducting the pest surveys? Mexico does not require the USDA to hire, train, and supervise the personnel engaged in similar activities in California or Washington, for example. Mexico accepts the results provided by State-level personnel, as should APHIS.

Response: The commenter is correct in pointing out that Mexico—and many other countries as well—accepts the plant-health-related work performed in the United States by State personnel. We have, therefore, modified the regulations in this final rule to allow the personnel who conduct the trapping and pest surveys in Michoacan to be hired, trained, and supervised either by Sanidad Vegetal, as was proposed, or by the Michoacan State delegate of the Secretaria de Agricultura, Ganaderia y Desarrollo Rural (Secretariat of Agriculture, Livestock, and Rural Development), who holds a position that is roughly equivalent to that of a State agriculture commissioner in the United States.

Comment: The supplementary pest risk assessment states that ''any proposed program would include * * * field surveys for specific avocado pests at the State, municipality, and grove levels,'' but the area surveys called for in the proposed rule appear to be only at the municipality and grove levels.

Response: The reference to State-level surveys in the supplementary pest risk assessment was an error. State-level surveys were not part of the Mexican work plan, nor were they considered in the risk management analysis or the proposed rule. More importantly, however, no estimates of risk or risk reduction were based on the expectation that State-level surveys would be conducted. We believe that the required municipality- and grove-level surveys, which focus on detecting pests in the production areas, will provide us the necessary pest population information.

Comment: The supplemental pest risk assessment states that one factor in the assessment that affects risk management is the assumption that all traces of stems and other plant material would be removed from the avocados before packing. The proposed regulations, however, do not mention removing stems.

Response: The statement to which the commenter is referring can be found on page 8 of the supplemental pest risk assessment. Freedom from stems and other kinds of plant material is one of the ''Quarantine 56 conditions'' that the risk assessment assumes will be in effect, which is indeed the case. Paragraph (a) of § 319.56–2 requires that ''all importations of fruits and vegetables must be free from plants or portions of plants, as defined in § 319.56–1.'' Plants or portions of plants is defined as ''leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from clean fruits and vegetables, or other commercial articles.'' We have added language to the packinghouse requirements in § 319.56–2ff(c)(3) to make it clear that stems, leaves, and other portions of plant must be removed from the avocado fruit.

Comment: The proposed rule calls for dead branches to be pruned and removed from the orchards, but provides no set schedule for those actions to occur. Without a more precise schedule, the practice may not effectively prevent stem weevil infestations. Tree pruning should be timed to remove dead or dying branches before adult stem weevil emergence in the spring or the fall. Spring removal and destruction of dead or dying branches would help to break the reproductive cycle and reduce the population level of any adult stem weevils that may be present in those orchards.

Response: No prescribed schedule was included because we intend for the removal of dead branches to be a continuing part of an orchard's management and upkeep. The regulations in this final rule require, as was proposed, that ''[d]ead branches on avocado trees in the orchard must be pruned and removed from the orchard.'' That requirement is one of the conditions under which any approved orchard must operate.

Comment: The proposed rule calls for avocado fruit that has fallen from the trees to be removed from the orchards prior to harvest. Given the fact that such fruit is more likely to be infested by pests, removal of fallen fruit should be part of a regular field sanitation routine, not merely be a pre-harvest event.

Response: We agree that removing fallen fruit as a regular practice would lower the risk of fruit fly attraction within an orchard and would thereby lower the overall fruit fly population in an orchard. Therefore, we have changed § 319.56–2ff(c)(2)(iii) in this final rule to require that fallen fruit be removed from export orchards at least once a week.

Comment: It will be all but impossible for the registered growers in Michoacan to patrol their approved orchards often enough to remove all the avocado fruit

that has fallen from the trees prior to harvest, and it is unrealistic to expect that pickers who are paid by the bin or by the pound will not place fruit from the ground into their field boxes during the harvest, thus increasing the risk that infested avocados will be exported to the United States. How will APHIS enforce these requirements?

Response: Although it is unlikely that any orchard could ever be kept completely free of fallen fruit, we believe that it is possible for a grower to keep up with most of the fallen fruit by following sound field sanitation practices. As noted in the response to the previous comment, we will require that fallen fruit be removed from the orchard on a weekly basis, rather than just before harvest. Because a finding of infested fruit will result in the suspension or withdrawal of an orchard's export certification, it is in a grower's best economic interests to prevent fallen fruit from being intermingled with harvested fruit. Inspections at the packinghouse prior to and during the culling process, along with subsequent inspections in the United States, are expected to alert us to the presence of pests, and frequent checks by APHIS and Sanidad Vegetal inspectors will help ensure that the requirements of the regulations are being observed.

Comment: It is highly unlikely that avocados in the approved orchards could be harvested by pickers, dumped into bins or other containers, loaded onto trucks, and covered in less than 3 hours after being picked. It is more likely that the fruit will be exposed for longer periods of time and thus exposed to potential fruit fly infestation. How will APHIS be able to supervise these requirements?

Response: We acknowledge that a grower may not be able to transport all his avocados to the packinghouse within 3 hours of harvesting them, so there are provisions for protecting the fruit until it is moved. Specifically, the regulations in this final rule require, as was proposed, harvested avocados to be ''moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.'' APHIS inspectors and Sanidad Vegetal personnel will be monitoring the export groves during harvest and will ensure that these and all the other requirements of the regulations are met.

Comment: The Mediterranean fruit fly (Medfly) has been found at high levels in the Mexican State of Chiapas, which is close to the State of Michoacan. In order to monitor potential Medfly movement into the Michoacan region, monitoring for Medfly at a higher trap density than called for in the proposed rule is needed.

Response: Given the history of Medfly's spread and the spread of other fruit flies, we believe that Medfly is unlikely to migrate the 650 miles from Chiapas to Michoacan. The trapping densities and trap types required in this final rule for Medfly monitoring in Mexico are the same as those used to monitor for Medfly in California, where much of the State's fruit production area lies within 650 miles of the recent Los Angeles Basin infestation.

Comment: Field surveys are defined by APHIS as the most effective safeguard for protection against avocado-specific pests, but these surveys rely almost exclusively on programs under the direction of Sanidad Vegetal. If this is to be the most effective line of defense against the introduction of the seed weevil, APHIS should be directly involved in implementing this program and not merely monitoring the process.

Response: With regard to the required safeguards, including field surveys, the regulations in § 319.56–2ff(c) clearly state that ''APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of those activities.'' APHIS personnel will be present in Michoacan in a supervisory and monitoring capacity to ensure that the required safeguards are being observed, not to conduct field surveys for the Mexican avocado industry.

Municipality Requirements

Comment: A survey should be required for the avocado seed moth, and sex lure or food bait traps should be used to monitor for the avocado seed moth.

Response: In this final rule, as in the proposed rule, the regulations in § 319.56–2ff(c)(1)(ii) require that each municipality be surveyed at least annually for the avocado seed moth and the other avocado seed pests. A sex lure or food bait is not available for use in trapping for the avocado seed moth, but we continue to believe that the annual survey required by the regulations will serve to alert us to the presence of this and other pests in the municipalities, and that the other safeguards in the regulations will ensure that shipments of avocados will be free of the pests of concern.

Comment: The proposed regulations call for at least 300 hectares of each municipality to be surveyed for seed weevils and seed moths at least annually. While the proposal states that ''portions'' of each registered orchard and areas with wild or backyard avocado trees must be included in the survey, the term ''portions'' is not defined and is, thus, open to interpretation. Additionally, there is no explanation of how a 300-hectare survey per municipality will yield a 95 percent confidence level of detection. How can a single annual survey of 300 hectares serve as the basis for calling a municipality free of seed weevils and seed moths?

Response: We did not specify a minimum size for the ''portions'' to be surveyed because the survey must include portions of each registered orchard and areas with wild or backyard avocado trees, and the number of those areas will vary between municipalities. However, the work plan in which Sanidad Vegetal will set forth the details of the survey activity will have to be approved by APHIS, and APHIS personnel will be supervising the surveys, so we will be able to ensure that Sanidad Vegetal continues its current practice of reflecting the size of an orchard in the size of the surveyed area, i.e., surveying larger orchards more widely than smaller orchards. The overall survey size of 300 hectares per municipality was selected to ensure that there would be a 95 percent or greater confidence level, independent of the size of the municipality, that the survey would detect the pests if they occur in 1 percent or more of the commercial growing areas within the municipality. The only way to approach a 100 percent confidence level would be to survey every tree, which is not practical. It should be noted that the municipality must be found free of the avocado seed pests—i.e., none found during the entire 300-hectare survey—and that the survey must be conducted during the growing season and prior to the harvest of the avocados. The nature and timing of this annual survey offers a high degree of assurance that the avocados exported to the United States will be free from avocado seed pests.

Comment: Field survey is a critical element. The survey protocol is set up to have a 95 percent confidence level of finding 1 percent infestation; this assumes an evenly distributed infestation, not the more likely scenario of certain groves being more likely infested than others and a spotty distribution of weevils within an infested grove.

Response: We believe that the field surveys required by the regulations, which will be supervised by APHIS, are already designed to address the uneven distribution thought likely by the commenter. The required surveys will include each registered orchard, so every grove from which avocados will

be exported to the United States will be inspected; areas with wild or backyard avocado trees will be surveyed as well. Within each registered orchard, the APHIS personnel supervising the surveys will ensure that the survey sites are randomly selected to provide a reliable means of detecting uniform or spotty distributions of pests within each orchard. (To make that requirement clear, we have added the words ''randomly selected'' to § 319.56–2ff(c)(1)(ii) in this final rule to describe the selection of survey sites within each orchard.)

Comment: The proposed regulations call for at least 300 hectares of each municipality to be surveyed for seed weevils and seed moths at least annually. Have any of those surveys been conducted yet? APHIS should have conducted its own survey to determine the municipalities to be free of the avocado seed pests and fruit flies before publishing the proposed rule.

Response: Seed pest surveys have been conducted routinely by Sanidad Vegetal for its own programs over the past several years, but the surveys called for by the regulations have not been conducted yet because Sanidad Vegetal and APHIS do not know which municipalities and orchards will register to participate in the avocado export program. When the work plan is submitted and the participating municipalities and groves are identified, APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of the surveys.

Sanidad Vegetal Avocado Export Program

Comment: APHIS claims in the proposed rule that over 5 million kilograms of avocados have been exported to Japan during the last 3 years under the Sanidad Vegetal Avocado Export Program with no recorded interceptions of the 8 pests of concern. APHIS failed to mention, however, that one quarter of all Mexican avocado shipments to Japan were fumigated after live pests were discovered. In addition, the Japanese inspectors do not routinely cut fruit as part of their inspection process. Finally, Japan and the other countries to which Mexican avocados are exported do not have domestic avocado industries, so there is significantly less risk for those countries from the start.

Response: It is Japanese plant protection policy to fumigate an imported commodity from any country when any live organism is found—regardless of the organism's quarantine or pest status—so it is not accurate to characterize the fumigation of Mexican avocados by Japan as being solely in response to the detection of live pests. What is of primary importance is the fact that the Japanese have not detected the presence of any of the eight pests of concern to APHIS. APHIS did not claim that Japanese plant protection officials cut fruit as part of their routine inspection. The Japanese have sampled and carefully examined approximately 50,000 avocados over the last 3 years, cutting the fruit if external signs of pests indicate the need to do so. Finally, there is less risk posed to a country without a domestic avocado industry, but only in terms of avocado-specific pests; such a country would still seek to identify and mitigate, as necessary, the risks presented by other pests such as *Anastrepha* spp. fruit flies.

Orchard and Grower Requirements

Comment: Under the proposed regulations, APHIS would allow an orchard to continue shipping even after more than one *Anastrepha* spp. fruit fly is discovered during a 30-day period, provided malathion bait sprays were applied. The proposed rule states that this protocol is similar to those used in Texas and Florida; however, Florida orchards are eliminated from their export program if two Caribbean fruit flies are discovered in an orchard. Why is there a disparity?

Response: In the proposed rule, we stated that the procedures for fruit fly trapping, increased trapping in response to a fruit fly detection, and pesticide treatments in response to additional detections in the Mexican avocado program were similar to the procedures used by APHIS in citrus fruit production areas of Florida and Texas where *Anastrepha* spp. fruit flies exist. The similarities can only carry so far, however, when there are differences in the pest of concern, the susceptibility of the commodity to infestation, or both. Accordingly, the program response to the capture of Caribbean fruit flies (*Anastrepha suspensa*) in a Florida citrus grove differs from the program response for the capture of *Anastrepha ludens,* A. *serpentina,* or *A. striata* in a Mexican avocado grove. APHIS believes that the systems approach used in each case, although different, adequately reduces the risk to an insignificant level in their respective pest situations.

Comment: The proposed regulations would require trapping for *Anastrepha* spp. fruit flies throughout the year in production areas. Research shows that Hass avocados are not fruit fly hosts; therefore, trapping for fruit flies should not be required in avocado production areas. If the requirement is maintained, Mexican avocados should be allowed entry into the United States without seasonal or geographic restrictions.

Response: We disagree with the commenter's contention that fruit fly trapping is unnecessary. Although we do believe that Hass avocados still on the tree are non-preferred hosts for *Anastrepha* spp. fruit flies, we nonetheless believe that it is prudent to require trapping in the production areas to allow us to monitor the population levels of the fruit flies. Significant increases in fruit fly populations in the production areas would increase pest pressure on the avocados, which would necessitate a reassessment or adjustment of the program's fruit fly risk mitigation measures. We continue to believe that the fruit fly trapping, along with the seasonal and geographic restrictions and the other elements of the program, are necessary to provide for the safe importation of avocados from Mexico.

Comment: The *Anastrepha* spp. trap density of 1 trap per 10 hectares is too low for effective monitoring. The biological reality is that adult fruit flies would move between various hosts in the region as different hosts become more or less attractive for oviposition. A proper regional trapping program should be established that includes buffer areas around orchards. Also, the attraction range of McPhail traps is small—a few feet or meters—compared to other trap types. Relying on traps of this type and trap densities at this low a level could allow fruit fly population levels to increase significantly without detection.

Response: The *Anastrepha* spp. fruit fly trapping is intended to indicate whether fruit fly populations are present in production areas, rather than in areas where wild or alternative host material may be grown, which is why the trapping is to be conducted in the orchards. We believe that the required trap density of 1 trap per 10 hectares will be sufficient to indicate the presence of fruit fly populations in the orchards. In the United States, the national detection protocol for *Anastrepha* ranges from 1 trap per 10 square miles to 5 traps per square mile; the Rio Grande Valley and Florida citrus protocol for *Anastrepha* ranges from 5 to 15 traps per square mile. The density required in the Mexican orchards—1 trap per 10 hectares—works out to approximately 25 traps per square mile, which is the same density required to maintain the fruit-fly-free zone in the Mexican State of Sonora. With regard to the type of traps used, we believe that some of the other traps currently available may be comparable to the McPhail trap, but none are better for monitoring for *Anastrepha* fruit flies.

Comment: Field trapping data can, and likely will, be modified to get the ''right'' answer.

Response: APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of all required activities in Mexico, including the trapping. We believe this routine supervision and monitoring will discourage any tampering with trapping data, especially considering that an orchard or even an entire municipality could be subject to suspension or expulsion from the export program if caught falsifying trapping data. Further, trained APHIS personnel will be present in the municipalities, orchards, and packinghouses throughout the growing season and harvest and would thus be in a position to notice the discrepancies between falsified data and actual conditions.

Comment: The proposed regulations call for certain actions to be taken if a fruit fly is trapped in an orchard, but the protocol for the number of malathion treatments to be used and when export shipments could be resumed in relation to fruit fly finds is unclear. Additionally, nothing is said with regard to actions that would be taken in the event of fruit fly larvae being found in avocado fruit.

Response: As stated in the proposed rule and in this final rule, the trapping of a single fruit fly in an export orchard will require the deployment of at least 10 additional traps in the 50-hectare area surrounding the trap in which the fruit fly was found, and any additional finds within 30 days in the 260-hectare area surrounding the first find will necessitate the application of malathion bait treatments in the affected orchard in order for the orchard to remain eligible to export avocados to the United States. Exports from the orchard would not be suspended based on fruit fly finds alone, so the resumption of export shipments in relation to fruit fly finds is not addressed in the regulations. If, however, the grower failed to apply malathion bait treatments when required, the orchard would lose its export certification and the grower would have to requalify for that certification before exports from the orchard could resume. The specific protocol for the number of malathion treatments that would have to be applied in the orchard is not spelled out in the regulations; rather, the applicable protocols would be detailed in the annual work plan prepared by Sanidad Vegetal and approved by APHIS that details the activities that Sanidad Vegetal will carry out to meet the requirements of the regulations. The detection of fruit fly larvae in avocado shipments at the packinghouse or during subsequent inspections will automatically result in the rejection of the infested shipment based on its failure to meet the requirement for freedom from pests and will trigger an evaluation of the export program.

Comment: Under the proposed regulations, APHIS would allow an orchard to continue shipping even after more than one *Anastrepha* spp. fruit fly is discovered during a 30-day period, provided malathion bait sprays were applied. The discovery of additional flies found within 1 month, or preferably one life cycle, should require, in addition to malathion and bait treatments, the suspension of any exports until 30 days or, again, preferably one life cycle, has passed with no new detections. This would help assure that any fruits that might contain fruit fly eggs or larvae are not shipped.

Response: We believe that the poor *Anastrepha* host status of Hass avocados, along with the application of malathion bait treatments, increased trapping, lower wintertime fruit fly activity, and the required post-harvest safeguards makes it unnecessary to suspend exports from a grove based on the trapping of more than one fruit fly within a 260-hectare area centered within the grove.

Packinghouse Requirements

Comment: The proposed rule would require 250 avocados per shipment to be selected, cut, and inspected at the packinghouse prior to the culling process. To reach a 95 percent confidence level of detecting a 1 percent infestation rate, at least 300 avocados should be inspected.

Response: We agree with the commenter. Depending on the size of the fruit and the number of field boxes, the size of a shipment could range between 1,000 and 4,000 avocados; hypergeometric tables indicate that the sample size needed to reach the 95 percent confidence level of detecting a 1 percent infestation would vary between 258 and 288 fruit. Therefore, we have changed the required sample size in § 319.56–2ff(c)(3)(iv) to 300 fruit.

Comment: No size is given for a ''shipment,'' yet the proposed regulations say to cut 250 fruit per shipment in the packinghouse prior to the culling process. With a large shipment, cutting 250 fruit could yield a near-zero confidence level of detecting 1 percent or greater infestation. Sample size must bear some relationship to the total lot size.

Response: As noted in the previous response, the size of a shipment could vary between 1,000 and 4,000 avocados, and hypergeometric tables indicate that a sample size of 288 avocados would be sufficient to detect a 1 percent infestation in a shipment of 4,000 avocados with 95 percent confidence. Because we will require 300 avocados to be sampled from each shipment, and because increasing the sample size above that level will not significantly increase the statistical probability of detecting a 1 percent infestation, we have not made any changes in response to that comment.

Comment: It is not unreasonable to expect that some growers in Mexico will take avocados from non-certified groves to a certified grove or an export packinghouse and attempt to pass the avocados off as having been grown in a certified grove. What safeguards will be in place to prevent this from happening?

Response: As stated in the proposed rule and in this final rule, a finding of any of the avocado seed pests *Heilipus lauri, Conotrachelus aguacatae, C. perseae,* or *Stenoma catenifer* in a municipality during an annual pest survey, orchard survey, packinghouse inspection, or other monitoring or inspection activity will result in the municipality's loss of its pest-free certification and the suspension of avocado exports from that municipality until APHIS and Sanidad Vegetal agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated. Similarly, a finding of the stem weevil *Copturus aquacatae* during an orchard survey or in a packinghouse will result in an orchard losing its export certification for the entire shipping season of November through February. Because avocado fruit from non-certified groves presents a greater pest risk than does fruit grown in certified groves, we believe that it is unlikely that the growers and packers in an approved municipality would allow their entire export operation to be jeopardized by allowing potentially infested fruit from non-certified orchards to be commingled with their export-quality fruit. In addition to that purely economic disincentive, APHIS and Sanidad Vegetal inspectors will also be present in the municipalities, orchards, and packinghouses during the shipping season to ensure that all requirements of the regulations are being observed.

Comment: It will be difficult for inspectors in packinghouses or at the border to detect the presence of stem weevils in avocados once the fruit has been washed because washing removes the white residue or ''sugaring'' that is

found on the fruit when stem weevils are present.

Response: Under the inspection system contained in the proposal and in this final rule, packinghouse inspection would occur after the fruit has been removed from the field boxes and before the fruit has been washed, so any white residue would still be visible. However, detecting the presence of stem weevils after washing is also possible with proper training, as is evidenced by the hundreds of instances in which APHIS inspectors at the El Paso, TX, border crossing have detected the pest in avocados confiscated from smugglers.

Shipping Requirements and Restrictions

Comment: Illinois should be eliminated from the list of approved States because of the large number of terminal markets in Chicago that regularly ship produce to unapproved States. It would be too difficult to prevent Mexican avocados from being shipped to unapproved States from Chicago.

Response: The fact that a distributor in one State may deal with a distributor in another State was not a significant consideration in the compilation of the list of approved States. Certainly, any distributor in any State who was determined to transport avocados outside of the approved States could likely do so, be he in Maine or Illinois. Illinois and the other approved States were requested as markets by Mexico because the cold winter climate and general unsuitability to tropical pest infestation of those States offered an additional safeguard for the proposed export program, reasoning with which APHIS agreed. Distributors in States on the southern and western periphery of the approved area are likely to deal with customers in neighboring States; if those States were eliminated from the list of approved States, we would simply be left with another group of States that border on non-approved States.

Comment: Ports of entry in Texas should not be limited to those listed in the proposed rule; rather, APHIS should issue permits that would be valid for multiple ports in order to preserve competition.

Response: The Texas ports of entry were selected because they are staffed by APHIS inspectors who are experienced with dealing with avocado shipments. We believe that the seven Texas ports of entry listed in the regulations will be adequate to meet the needs of importers who wish to receive their products through Texas. If there is a demonstrated need for additional ports of entry in Texas or circumstances otherwise warrant the addition of new ports of entry for Mexican avocados, such an addition to the list of ports would have to be proposed as part of a future rulemaking.

Comment: The proposed rule would require the avocados to be moved through the United States by air or in a refrigerated truck or rail car, as temperature is critical to the suppression of these known pests. I would think a temperature recording device showing that the avocados have been held under refrigeration at 40 degrees through the transporting period would be mandatory. I see no reason for a refrigeration requirement without a temperature and temperature recording requirement.

Response: The cooler temperatures in Michoacan and the cold temperatures in the approved States played a role in our assessment of pest risk, but the requirement for refrigerated trucks, containers, or rail cars was not specifically identified as a mitigating measure in the supplemental pest risk assessment or in the risk management analysis. By the time the avocados have entered the United States, keeping the temperature of the fruit low during transport contributes as much to maintaining fruit quality as it does to suppressing possible pest activity. The importer of the fruit would certainly expect that the fruit would be in the best possible condition upon its arrival in an approved State, and the person transporting the fruit would seek to meet that expectation. Therefore, we do not believe it is necessary for APHIS to require that temperature logs be maintained by the person transporting avocados imported into the United States from Mexico.

Comment: How will APHIS ensure that shipments of avocados are not diverted to non-approved States during transit?

Response: The avocados will be required to travel under a bond posted by the importer with the U.S. Customs Service. The bond serves to guarantee that the shipment will be delivered intact to the destination listed on the permit issued for its importation; if the shipment does not arrive at its destination, the fact that the in-bond papers have not been closed out will serve to notify Customs and APHIS that the permit requirements have been violated. Persons violating the conditions of the permit and the in-bond agreement are liable to forfeiture of the bond and significant civil and criminal penalties.

Comment: The shipping corridor should not extend as far to the north as was proposed; there are too many routes leading west in the northern area of the corridor.

Response: We believe that the routes that lead north and east from El Paso, TX, would likely be used by shippers, especially those with destinations in the western portion of the approved States. As noted in the response to the previous comment, significant penalties can be assessed on shippers who fail to observe the conditions of the permit.

Comment: Nogales, AZ, and El Paso, TX, should be eliminated as ports of entry for Mexican avocados bound for the northeastern United States. These ports are so far west that diversion of shipments to the high-demand California markets would be likely.

Response: Nogales and El Paso are each situated at the northern end of a major north-south Mexican highway and are significant hubs for U.S./Mexican trade. These ports are staffed with APHIS personnel experienced with handling avocado shipments and are currently used as ports of entry for avocados and other restricted products such as citrus fruit and mangoes that are moving through the United States to destinations outside the United States under the plant quarantine safeguard regulations in 7 CFR part 352. The permit and bond agreement under which the avocados will be shipped will clearly delineate the areas through which the avocados may be moved and, as noted in the responses to the previous two comments, significant penalties can be assessed on shippers who fail to observe the conditions of the permit.

Inspection

Comment: Inspection at the port of first arrival is a weak link in the systems approach. Given the risk presented, an inspection scheme of closer to 100 percent would be more appropriate than the current plan.

Response: Inspection at the port of first arrival is intended to accomplish two goals. First, inspectors check the documents accompanying the shipment to ensure that the avocados are from an approved orchard and were processed in an approved packinghouse and are accompanied by a phytosanitary certificate. The inspectors also ensure that the limited distribution statement appears on all boxes, that a U.S. Customs Service bond has been secured for the shipment, and that the in-bond papers indicate that the shipment is consigned to an importer in an approved State. Second, the inspectors will select a sample of fruit from each shipment and carefully cut and inspect those avocados to verify their pest-free status. Inspection at the port of first

arrival is essentially a redundant safeguard that serves to verify that all the regulatory requirements applicable to the importation of the avocados have been met.

Comment: Inspections are likely to be negatively impacted by the numbers of boxes coming through.

Response: Given the number of ports of entry and the expected volume of imported Mexican avocados, we do not believe that APHIS inspectors at the ports of entry will be faced with an overwhelmingly large number of shipments. In all cases, shipments of avocados being offered for entry into the United States will be inspected in accordance with the regulations.

Comment: The proposed regulations state that the avocados, upon arrival at the terminal market in the northeastern States, are subject to inspection. I would think an inspection would be mandatory and should reflect temperature and fruit condition on arrival.

Response: As noted in the response to the previous comment, we will inspect all shipments of avocados offered for importation into the United States from Mexico. APHIS personnel are not routinely assigned to terminal markets, so we cannot require that an additional inspection be conducted when the avocados arrive at their destination. Under the Federal Plant Pest Act (FPPA), APHIS does have the authority to inspect the avocados at the port of first arrival, at any stops in the United States en route to the northeastern States, and upon arrival at the terminal market in the northeastern States; the regulations in § 319.56–2ff(i) reflect that authority.

Other Comments

Comment: The proposed rule is silent with regard to issues of liability, which is a matter that could affect many businesses. For example, a distributer cannot police the product once it has been sold, but there are distributors in the approved States who routinely do business with customers who operate both inside and outside of the approved States. To the extent that there is potential enforcement action against wholesalers, brokers, and distributors, it should be clear as to the penalties for violating the regulations.

Response: Just as is the case with all apparent violations of APHIS regulations, the Agency's Regulatory Enforcement staff would examine the case and conduct an investigation to ascertain the facts of the case. Subsequent actions could range from warnings to civil penalties to recommendations for criminal prosecution, depending on the facts of each particular case.

Comment: There is a basic conflict of interest between APHIS' new mandate to facilitate international (import) trade and its historical mandate to prevent the introduction and establishment of exotic pests. The proposed rule is biased toward promoting trade to the detriment of pest exclusion and is a clear departure from established APHIS protocols for pests with major potential impact such as *Anastrepha* spp. fruit flies.

Response: APHIS' primary responsibility with regard to international import trade is now, and has been for many years, to identify and manage the risks associated with importing commodities. Because, as we have already noted, there is no such thing as zero risk in international trade, reducing risk to an insignificant level is the only realistic approach. If there is no practical way to mitigate a particular risk associated with a product, APHIS will prohibit that product's entry into the United States, as is our right under current international trade agreements; we have done so in the past and will continue to do so when warranted. However, when we determine that the risk can be reduced to an insignificant level, it is our responsibility under those same trade agreements to make provisions for the importation of that product. In terms of facilitating trade, APHIS' role is solely in the area of exports, i.e., working to eliminate obstacles to the exportation of commodities produced in the United States. The systems approaches for citrus from Florida and Texas, apples from Washington, and stonefruit from California that we cited in the proposed rule are examples of ways that we have found to answer the pest concerns of our trading partners in order to enable the exportation of domestically grown fruits and vegetables. Just as we seek to open foreign markets to our Washington apples or California stonefruit, however, we must also listen to the requests of other nations seeking to export their products to the United States.

Comment: Will APHIS provide for monitoring and trapping in the United States for the fruit flies and seed pests once Mexican avocados are allowed into the country? Are there procedures for such monitoring?

Response: APHIS already has an established national fruit fly monitoring program in place, and monitoring for certain other exotic pests is conducted by Federal and State agencies participating in the Cooperative Agricultural Pest Survey (CAPS) program. In addition to these formal programs, the day-to-day observations of homeowners, growers, and cooperative extension service agents also play a role in the detection of pests across the country.

Comment: What actions will the Federal government take if pests are introduced into the United States through the importation of avocados from Mexico? Will the Federal government pay for pest eradication if the introduced pests become established? Are there quarantine treatments available for use in the United States to qualify affected commodities for interstate movement and export if the introduced pests become established?

Response: APHIS' Domestic and Emergency Operations staff has prepared a draft emergency action plan that addresses the Federal response in the unlikely event that a pest outbreak occurs. As with any pest outbreak, APHIS would cooperate with any affected States in assessing the extent of an outbreak, applying mitigative measures to eliminate the pest if appropriate, and providing for continued agricultural trade from the area affected by the pest outbreak.

Comment: Due to government-wide budget cuts and frozen or reduced staffing levels, APHIS will be unable to enforce the proposed restrictions from the grove in Mexico to the final U.S. consumer. APHIS states that it would make ''resource adjustments'' to accommodate the proposed avocado import program, but APHIS officials have acknowledged that the agency is finding it difficult to meet its current program demands. Before the proposed rule can go forward, APHIS must demonstrate that it has sufficient resources to execute its responsibilities under the proposed system.

Response: As was stated in the proposed rule, import authorizations will not be provided for Mexican avocados if the level of resources decreases below the level needed to ensure that all imported regulated articles are subject to the level of inspection and monitoring necessary to prevent the introduction of plant pests into the United States. At the present time, it is difficult to provide the details on APHIS monitoring and supervision because we do not yet know the number and total acreage of orchards and the number of packinghouses in Michoacan that will be participating in the avocado export program. We can say, however, that APHIS personnel will be present during the harvest, shipping season, and during critical orchard survey and trapping activities to ensure that the

requirements of the regulations are being met.

Comment: I want to have confidence that if this proposal as written is not followed that immediate corrective action will be taken in Mexico and the United States. How can domestic growers have confidence that each element of this complex proposal will be stringently enforced in Mexico and in the United States? What penalties will be enacted for failure to adhere to the requirements?

Response: The introductory text of the regulations in § 319.56–2ff clearly states that fresh Hass avocados may be imported from Mexico into the northeastern United States only if the importation is authorized by a permit and only under the conditions set forth in the regulations; if those conditions are not met, the avocados may not be imported into the United States.

The growers, packers, and shippers in Michoacan have, at the very least, a financial interest in meeting the conditions of the regulations; failure to do so can result in the loss of their ability to export avocados to the United States for an entire shipping season. Beyond that, Sanidad Vegetal personnel will be in the production areas and packinghouses conducting surveys, trapping, and inspections to ensure that the requirements of the regulations are being met. Finally, APHIS inspectors will be present in Mexico and will be directly involved with Sanidad Vegetal in the monitoring and supervision of the required safeguards.

In terms of penalties that would apply for violations committed in the United States, the FPPA and the Plant Quarantine Act provide for a penalty of not more than $5,000 and imprisonment for not more than 1 year for any person who knowingly violates regulations promulgated under those acts, which is the case with the regulations in this final rule. Civil penalties of up to $1,000 per violation can be assessed for other violations of the regulations. In addition, the FPPA gives an APHIS inspector the authority to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article moving into or through the United States in violation of regulations promulgated under the FPPA.

Comment: Mexico allows the use of pesticides that are not allowed or strictly controlled in the United States, the residues of which will be harmful to U.S. consumers.

Response: As we noted in the proposed rule, the U.S. Food and Drug Administration (FDA) samples and tests imported fruits and vegetables for pesticide residues. If residue of a pesticide unapproved in the United States is found in a shipment of imported fruit or vegetables, the shipment is denied entry into the United States by the FDA.

Comment: APHIS should require that the avocados receive quarantine treatments such as fumigation, heat or cold treatments, or irradiation to eliminate the pests of concern while the avocados are still in Mexico.

Response: There are currently no approved quarantine treatments available for avocados to eliminate the pests of concern. There is no established protocol for the irradiation of avocados, and fumigation is not effective against all the pests, especially the seed weevils. Procedures such as cold treatment, hot water treatment, or hot forced air treatment cannot eliminate those seed pests without significantly degrading the quality of the fruit.

Comment: To comply with the National Environmental Policy Act (NEPA), APHIS should prepare an environmental impact report that takes into account the likelihood of pest establishment in growing areas in California and Florida and the effects that such an infestation will have, such as increased pesticide usage and the burning of infested avocado groves. What will the Federal government do to mitigate the negative impacts of those considerations?

Response: For the proposed rule, those issues were addressed in the supplemental pest risk assessment (e.g., the likelihood of pest establishment on pages 23–35 and environmental impacts on page 22). An environmental assessment and a finding of no significant impact have been prepared for this final rule.

Response to Petitions

On March 15, 1996, the USDA received a petition from the CAC asking that the Department: (1) Reopen the administrative record for the proposed rule for the purpose of receiving newly discovered evidence obtained by the CAC; (2) hold an additional public hearing to explore the newly discovered evidence; and (3) stay further administrative action on the proposed rule pending the outcome of an investigation of the conduct of a foreign agent of the Michoacan Avocado Commission (MAC). On April 12, 1996, the CAC notified USDA that it had obtained additional pest information that would form the basis for a supplemental petition that would be submitted to USDA after CAC had completed its analysis of the pest information.

In a letter dated April 17, 1996, the USDA asked the CAC to submit any substantive information supporting its petition; on April 29, 1996, the CAC complied with that request by delivering a copy of the pest survey information on which the March 15 petition was based. In a letter accompanying the April 29 submission of information, the CAC notified the USDA that a supplemental petition would be delivered to the Department the following week. The supplemental petition was delivered to USDA on May 3, 1996. In that supplemental petition, the CAC reiterated its request that the Department reopen the administrative record to receive new pest evidence and to hold an additional public hearing to explore the new evidence and asked that the Department require APHIS to prepare a new quantitative pest risk assessment based on all available data, including the new data submitted with the supplemental petition. In its May 3 supplemental petition, the CAC also stated that it would continue to seek additional data and that any significant new information would be used as the basis for a new filing to further supplement its petition.

On May 16, 1996, the CAC submitted a new filing in the form of a letter containing additional information intended to support and further supplement those first two requests that the USDA reopen the administrative record, conduct a new quantitative pest risk assessment based on all available data, and hold an additional public hearing on the proposed rule. In that May 16 letter, the CAC made the following additional claims: (1) Chemical treatment programs have failed to eliminate stem weevils in Uruapan, Michoacan, Mexico, and that orchards once found free are being reinfested; (2) local agricultural agencies in Michoacan in charge of field sanitation have not yet complied with procedures set forth by Mexico's Secretaria de Agricultura, Ganadaria y Desarollo Rural (SAGDR); and (3) certain packinghouses have been identified as candidates for handling avocados destined for export to the United States despite the fact that they are located in areas where pests are known to be present at high levels.

The CAC filed a third supplement to the March 15 petition on December 20, 1996, once again requesting that the USDA reopen the administrative record, conduct a new quantitative pest risk assessment based on all available data, and hold an additional public hearing on the proposed rule. This third filing

contained claims that: (1) Recent surveys show that orchards in Michoacan—including orchards in Sanidad Vegetal's export program—contain stem weevils and (2) Mexican avocado growers are withdrawing from government plant health programs and the regional association of avocado growers has withdrawn from the MAC.

In its March 15 petition and the May 3, May 16, and December 20, 1996, supplemental filings to that petition, the CAC presented information pertaining to three areas: The prevalence of pests in Michoacan; the activities of local, State, and national agricultural officials in Mexico; and the integrity of the rulemaking process. After carefully reviewing the petition and supplemental filings, we have concluded that the evidence offered by the CAC does not warrant our reopening the administrative record, holding additional hearings, delaying further administrative action on the proposed rule, or preparing a new quantitative pest risk assessment. Therefore, we are denying the CAC petition for the reasons explained below.

First, the CAC stated that the pest survey data it had obtained show that the fruit fly and weevil populations in Michoacan are substantially higher than indicated in earlier prevalence data supplied to USDA by the Mexican government. It follows, the CAC argues, that the USDA's supplemental pest risk assessment, risk management analysis, and the safeguards found in the proposed rule are inadequate because they were primarily based on incomplete pest data that understated the true level of quarantine pests in Mexico.

The CAC claims in its March 15 petition that results of surveys conducted between February 1995 and February 1996 contradict APHIS'' conclusion that certain municipalities within the State of Michoacan qualify as areas of low pest prevalence for the purposes of lifting the quarantine on Mexican avocados. (Copies of official Sanidad Vegetal records of the results of those surveys constitute the majority of the supporting information provided to USDA by the CAC on April 26, 1996.) The March 15 petition claims that the survey results reflect positive detection of stem weevils (*Copturas aguacatae*) in orchards currently enrolled in the avocado export program administered by Sanidad Vegetal and that detections occurred in orchards sampled during the November-December 1995 survey period. The December 20 supplemental filing repeats those claims based on surveys conducted between June and November 1996 that reportedly reflect stem weevil detections in export orchards and orchards that had previously been declared free from that pest. Similarly, in its May 3 supplemental filing, the CAC offers copies of official Sanidad Vegetal seed weevil survey records as evidence that heavy seed weevil infestations exist near Uruapan, which is one of the municipalities that Mexico has indicated will likely be offered for consideration as an approved municipality under the avocado export program described in the proposed rule. Uruapan itself is threatened with seed weevil infestation, the CAC claims, because avocados from the infested area are transported without restrictions or safeguards to packinghouses located in Uruapan. That pest survey information, the CAC claims, indicates that pest levels in Michoacan are higher than previously thought and USDA should, therefore, suspend further action on the proposed rule until new pest risk assessments and risk management analyses can be conducted. In its May 16 letter, the CAC further claims that chemical treatment programs have failed to eliminate stem weevils in Uruapan, Michoacan, thus leaving open the possibility that stem weevil populations will spread throughout the orchards of that municipality.

The proposed rule and its supporting documentation were not predicated on the absence or near-absence of pests throughout the entire State of Michoacan. APHIS acknowledges that the two small seed weevils and the stem weevil are known to exist in Michoacan, which is why the proposed rule contained weevil-specific safeguards to ensure that any avocados exported to the United States would not be infested with those pests. Under the program described in the proposed rule, the detection of a single stem weevil in an orchard would render that orchard ineligible to export avocados to the United States; the detection of any one of the seed weevils would render the entire municipality ineligible. If the seed and stem weevils are present in the growing areas of Michoacan in ''readily detectable numbers,'' as described in the petition, we are confident that surveys conducted or supervised by APHIS employees would detect those pests and prevent infested orchards and municipalities from being eligible to export avocados to the United States. Moreover, the export eligibility granted to orchards and municipalities must be renewed each year, and that eligibility may be withdrawn at any point during the November through February shipping season based on the detection of a stem weevil, in the case of an orchard, or a seed weevil, in the case of an entire municipality.

In its May 16 letter, the CAC asserts that 4 of the 15 packinghouses identified by SAGDR as ''candidates'' for packing and exporting avocados to the United States are located in areas where quarantine pests are present, and another 3 of the candidate packinghouses are located in an area where pest population levels are unknown due to operational problems within the local agricultural agency. As noted above, the proposed rule did not assume pest freedom or near-freedom in Michoacan; the system described in the proposed rule, therefore, contains several layers of protection to prevent the potential infestation of harvested fruit during its movement to and handling in packinghouses. Under the program described in the proposed rule, an export packinghouse must be listed on the annual work plan prepared by Sanidad Vegetal and approved by APHIS, so if we had any concerns about the location, condition, or operation of a particular packinghouse we could resolve those concerns as part of the approval process for the work plan. In order to prevent pests from entering the work areas where fruit is inspected, sorted, cleaned, and prepared for shipment, an export packinghouse would have to meet specific conditions regarding its construction and operation and would be prohibited from handling fruit from anywhere but a certified export orchard. The avocados themselves, when being moved from the export orchard to the packinghouse, would have to be protected from fruit fly infestation. It is important to note that the packinghouses identified by SAGDR are ''candidates'' for participation in the avocado export program; any packinghouse that failed to meet all of the requirements of the program would not qualify for participation in the program.

The CAC reports in its March 15 petition that it had obtained extensive and recent fruit fly trapping records from Tancitaro, Mexico, from trapping conducted between September 1995 and February 1996; the CAC did submit official Sanidad Vegetal fruit fly trapping records as supporting information for that petition. The petition notes that much of that trapping occurred during months that the proposed rule would allow avocados to be imported into the United States. The petition further maintains that fruit flies were found in each of the 33 orchards that were monitored, even though the orchards were extensively treated to control fruit flies.

The CAC is inaccurate in its claims that the fruit fly finds reflected in the data ''occurred despite a rigorous and documented program of chemical treatment to control fly infestations.'' Mexican agricultural officials have long claimed that the Hass avocado is not a fruit fly host, so there is no ''rigorous * * * program of chemical treatment'' to eliminate fruit flies in avocado groves in Michoacan. Although APHIS does not accept the Mexican claim that Hass avocados are not attacked by fruit flies, we do believe that the Hass avocado is a non-preferred host while still on the tree. Throughout this rulemaking, we have acknowledged that *Anastrepha* spp. fruit flies are present in Michoacan and could attack harvested Hass avocados and fruit that has fallen from the trees, which is why the proposed rule contained safeguards to reduce the risk presented by those pests. The proposed requirements, such as surveillance trapping, increased trapping in response to a single fruit fly detection, malathion bait treatments, covering of harvested avocados, fly-proof screens on packinghouses, and inspections, work together with the non-preferred host status of Hass avocado fruit attached to the tree to eliminate any significant risk from *Anastrepha.* The repeated fruit fly finds portrayed in the CAC's March 15 petition would not occur under the program described in the proposed rule, which requires trapping density to be increased if a single *Anastrepha* spp. fruit fly is trapped in an orchard and further requires malathion bait sprays to be applied if a second *Anastrepha* spp. fruit fly is trapped within 30 days and 260 hectares of the first finding.

In its petition, the CAC correctly points out that importation of Hass avocados from Mexico is possible only if the area of origin can be certified pest free for the three species of seed weevil and the seed moth and can be shown to be an area of low pest prevalence for the stem weevil and fruit flies. The CAC then asserts that its newly obtained data indicate that two of the municipalities in Michoacan cannot properly be characterized as areas of low pest prevalence for fruit flies or the stem weevil. As noted above, a municipality or orchard could gain approval to export avocados to the United States under the program described in the proposed rule only after extensive field surveys conducted or supervised by USDA employees demonstrate municipality freedom from the three species of seed weevils and the seed moth and orchard freedom from the stem weevil. That being the case, some municipalities and orchards in Michoacan may well be ineligible for participation in the program due to the presence of some or all of those pests. That potentiality does not, however, invalidate the entire program, as the CAC seems to suggest. The field surveys are intended to demonstrate that an area is free of certain pests; if that freedom cannot be demonstrated, the importation of avocados from that area will continue to be prohibited.

The second area discussed in the petition and the supplemental filings is the activities of local, State, and national agricultural officials in Mexico. One aspect of this is the CAC's claim that APHIS may be relying on incomplete pest data that understate the true level of quarantine pests in Michoacan. In its March 15 petition, the CAC claims that the pest survey and trapping data that the Mexican government supplied to APHIS are incomplete because the Mexican government decided to withhold one or more positive pest survey reports from the data provided to the USDA due to pressure applied by a ''well-connected grower.'' Judging from the information related in the CAC's March 15 petition and an accompanying declaration, however, the claim that information was withheld to mollify a powerful grower appears to be a mischaracterization of the nature of the incident. The information submitted by CAC shows that a state-level inspector detected weevils (it appears the petition is referring to stem weevils, although the species is not identified) in a grove, the grower sought to have the pest finding overturned or suppressed, but Sanidad Vegetal determined that an infestation did exist and should be documented. The petition hints that there is something unscrupulous about Sanidad Vegetal's subsequent decision not to forward the records for that orchard to the USDA for the purposes of precertifying the orchard for the proposed export program. However, if the records show that the orchard contains stem weevils that would render it ineligible for participation in the proposed export program, it would serve no purpose to pass those records on to the USDA with a request that the orchard be approved for participation in the proposed export program. Obviously, the orchard would not qualify for the program.

In its May 3 supplemental petition, the CAC claims that Mexico made a ''conscious decision to withhold damaging pest survey findings from the USDA.'' The CAC bases that claim on its interpretation of correspondence between APHIS and Sanidad Vegetal, particularly an August 19, 1994, request for data from APHIS and Sanidad Vegetal's September 23, October 10, and October 11, 1994, responses to that request. Once again, the CAC points out that Sanidad Vegetal did not forward all available survey results and other pest data from areas in which seed weevils, stem weevils, or fruit flies had been detected and portrays that lack of data as a deliberate deception on the part of Sanidad Vegetal. APHIS is well aware that those pests are present in Michoacan, and Sanidad Vegetal has not attempted to portray the situation otherwise; in fact, Sanidad Vegetal officials have taken visiting APHIS representatives into infested avocado groves in Michoacan to demonstrate methods of detecting seed weevils and stem weevils. In the August 1994 letter cited by the CAC, APHIS was seeking additional information to help it determine whether an export program based on the freedom of certain orchards and municipalities from seed and stem weevils would be feasible, and the data supplied by Sanidad Vegetal were responsive to that request.

In its May 16 letter, the CAC contends that operational problems ''plague'' SAGDR's local field sanitation agencies. To support that contention, CAC points to a letter from a SAGDR district chief to one of his district's local plant health boards. The letter, dated April 24, 1996, admonishes the local board for failing to submit any monthly activity reports since the board's formation on September 19, 1995, and informs the board that it faces the risk of being dissolved unless the reports are submitted promptly. The CAC claims that the letter, coupled with what is described by a CAC contact in Mexico as grower mistrust of government agencies, casts doubt on Mexico's ability to oversee the pest survey, trapping, and registration activities described in the proposed rule. Under this final rule, the personnel conducting the trapping and pest surveys must be hired, trained, and supervised by Sanidad Vegetal or by the Michoacan State delegate of SAGDR, and APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of those activities. The trapping and pest surveys are integral aspects of the avocado export program; if the scope and conduct of those activities in a particular municipality did not meet with APHIS' approval, the municipality, and all the orchards within that municipality, would be ineligible for participation in the program.

In its December 20 supplemental filing, the CAC contends that substantial numbers of Mexican avocado growers

are abandoning the Mexican government's plant health programs and that the regional association of avocado growers in Michoacan has withdrawn from the MAC. These developments, the CAC claims, provides evidence that the plant health infrastructure in Mexico is weakening at all levels, which will result in major problems that will threaten U.S. agriculture if the importation of Mexican avocados is authorized. We certainly agree that grower participation in government plant health programs is an important element in the control and prevention of plant pest problems in the avocado-producing municipalities of Michoacan, which is why the regulations in this final rule require that each orchard and grower wishing to export avocados to the United States must be registered with Sanidad Vegetal's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by Sanidad Vegetal. Therefore, any Michoacan growers who abandon the Mexican government's plant health programs will simply not be eligible to export avocados to the United States. Similarly, the regulations also clearly state that avocados may be imported only if the Mexican avocado industry association representing Mexican avocado growers, packers, and exporters—i.e., the MAC—has entered into a trust fund agreement with APHIS to pay in advance all estimated costs that APHIS expects to incur through its involvement in the trapping, survey, harvest, and packinghouse operations required as safeguards in Mexico. A document submitted by the CAC with its December 20 filing appears to indicate that dissension within the MAC has led a regional growers group to temporarily withdraw from the MAC. If that is indeed the case, it appears that some accommodation would have to be reached within the MAC for that organization to remain a viable entity capable of executing a trust fund agreement with APHIS. Without a trust fund agreement, avocados may not be exported under the regulations in this final rule.

Report language attached to the Department's 1997 appropriations bill directed the Secretary of Agriculture to review recent evidence of pest infestation in Mexico—i.e., the pest-related information submitted to APHIS by the CAC in its petition and supplemental filings—and determine whether the original data that APHIS relied upon is sound and complete. As discussed above, we have thoroughly examined all of the information submitted by the CAC and have determined that the original data upon which APHIS relied is sound and complete and serves as a reliable basis for this rule and the risk-mitigating safeguards it contains. Further, the pest surveys and fruit fly trapping required by this rule as a prerequisite to the approval of municipalities and orchards for participation in the avocado export program will provide the ongoing APHIS-supervised pest monitoring mentioned in the report language.

The third and final area, which is discussed only in the March 15 petition, is the CAC's claim that there is evidence to suggest that a foreign agent for the MAC engaged in activities that violated Federal conflict-of-interest laws and Federal lobbying laws. The petition also states that the same agent had substantive *ex parte* communications with USDA personnel prior to and after the Department's decision to issue the proposed rule. The petition contends that the illegal activities of the agent and USDA's apparent practice of permitting substantive *ex parte* communication between USDA and the supporters, but not the opponents, of the proposed rule have ''irreparably tainted the integrity and propriety'' of the rulemaking proceeding.

APHIS believes that the allegations in the petition regarding the agent's employment with the MAC and the nature of a contractual arrangement the agent may have had with the MAC do not bear upon on the integrity of this rulemaking proceeding. APHIS acknowledges that if the allegations are shown to be supported and it is determined that the agent violated conflict-of-interest laws or contracted for a ''success fee'' for lobbying on the behalf of a foreign client in violation of lobbying laws, those actions may indeed have serious ramifications for the agent. It does not follow, however, that the alleged activities of a single interested party would affect the manner in which USDA has conducted this rulemaking proceeding. Indeed, USDA was unaware of the alleged contractual and other arrangements until the allegations were made in the petition. The fact of the matter is that the alleged arrangements had absolutely no effect on the rulemaking proceeding or the decisions reached by APHIS with regard to this final rule.

A review of the calendars and daily activity logs of Department officials indicates that the petitioner's contention that USDA engaged in prohibited *ex parte* communication with the agent while denying requests for meetings from opponents of the proposed rule is incorrect. Those records indicate that courtesy visits were paid to USDA officials by both opponents and supporters of the proposed rule following the proposed rule's publication. Any written materials given to USDA officials during those visits were placed in the public rulemaking record, and those officials report that substantive issues pertaining to the proposed rule were not discussed.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for purposes of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities.

This rule will allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into the United States under certain conditions designed to prevent the introduction and dissemination of plant pests. In the July 1995 proposed rule, we invited comments concerning the potential effects on small entities of the proposed Mexican avocado importation program and noted that we were particularly interested in determining the number and kind of small entities that may incur benefits or costs from implementation of the program. Some commenters—mostly owners and employees of produce markets or retail operations, customs brokers, and representatives of other agricultural interests such as apple and citrus growers, packers, and shippers—stated that they expected to benefit from the proposed avocado import program through increased business or expanded export opportunities for other U.S. agricultural products.

Many other commenters took the opposite view, however. Slightly more than 60 percent of the 2,080 individuals who commented on the proposed rule identified themselves as working in the domestic avocado industry, either directly as growers, packers, and shippers, or indirectly as part of their work in associated fields (agricultural consultants, pest control advisors, nurserymen, etc.). Many of those commenters believed that they would be

negatively affected by the proposed avocado import program because of the wide price disparity between domestically produced avocados and the less expensive Mexican-origin avocados. Those commenters stated that they would be unable to compete in the approved States during the import period and that the low price of the Mexican product would encourage illegal transshipment of the Mexican avocados to areas outside the approved States. Several commenters criticized the initial regulatory flexibility analysis for failing to pay sufficient attention to Florida avocado production.

The initial regulatory flexibility analysis published in the proposed rule noted that we did not at that time have all the data necessary for a comprehensive analysis of economic effects, and thus invited comments concerning potential effects. The initial regulatory flexibility analysis was based on data available to us at the time it was written, and came to some broad conclusions about approximate effects based on a simple model employing some basic data about supply and price gleaned from the overall U.S. and Mexican avocado markets. Among the preliminary conclusions was a likely increase in the availability of fresh avocados to U.S. consumers by about 12 percent, reducing the average at-the-farm price for U.S. avocados to about $0.42 per pound. However, as several commenters pointed out, the marketing of avocados in the United States is very complex, with effects arising from established practices in the food marketing sector and the patterns of the wholesale and retail distribution structure. Commenters also pointed out that an accurate analysis should focus on price and supply data that are specific to the months when Hass avocados would be allowed entry, and should be based on the average values for those months over a multi-year period.

We have taken these and other comments into account and employed additional data supplied by commenters. We have obtained data on Mexican and U.S. production and exports covering a 5-year period (1990–1994). As a result, this final regulatory flexibility analysis examines more complex economic scenarios than the initial regulatory flexibility analysis and provides a more detailed analysis. By using improved models with more extensive, multi-year data, we have examined effects in both approved and non-approved States that take into consideration several possible reactions by both U.S. and Mexican businesses. We have provided analyses based on a range of U.S. imports of Mexican avocados. We have also examined several different possible responses by U.S. producers, ranging from partial to complete redirection of their product away from approved States during months when Hass avocados from Michoacan would be allowed entry.

This rule will directly affect avocado growers, particularly growers of Hass variety avocados, so its impact will be felt mainly in California. The United States produced an average of 189,244 tons [1] of avocados per year between 1990 and 1994; of this amount, California accounted for 91.4 percent, Florida 8.4 percent, and Hawaii the remaining 0.2 percent. The farm value of U.S. production ranged from $118 million to $255 million, of which 98 percent was for the fresh market. There were 7,203 avocado growers in the United States in 1992 (1 in Arizona, 5,973 in California, 604 in Florida, 610 in Hawaii, and 15 in Texas); 98.5 percent of these operations are considered to be small entities. (According to the standard set by the Small Business Administration for agricultural producers, a producer with less than $0.5 million annually in sales qualifies as a small entity.) California avocado producers, including small entities, derive a substantial degree of income from off-farm employment. According to a 1994 report by the Economic Research Service, 55 percent of operators of California avocado farms reported working off the farm at least 100 days a year. Approximately 44 percent reported working off the farm at least 200 days a year.

Florida is less likely to be affected because fewer growers there produce Hass variety avocados; most produce a lower-cost greenskin variety. In general, if two commodities are substitutable, a change in the price of one, *ceteris paribus*, causes a change in the same direction in the quantity purchased of the other. If the two commodities have comparable quality and are considered substitutable, then the differences between their prices would not be large (the degree of substitutability depends on the cross elasticities of demand between the two commodities). However, the data show that the prices received by farmers and the wholesale prices of greenskin variety avocados, which is the dominant variety grown in Florida, are substantially lower than prices received for Hass variety avocados. For example, the price received by avocado growers in California was $0.79 per pound in 1994, while the price received by Florida growers during the same year was $0.31 per pound. Similarly, the average wholesale market price for California Hass avocados was $1.72 per pound (average for Boston, Chicago, Los Angeles, New York, and Philadelphia) during the third week of December 1995, while the average wholesale price for the greenskin variety was $0.44 per pound. If the price differential was the only market signal of preference for the two products, then the Hass variety would be driven out of the market, but this is not the case. The wholesale price of the California Hass avocado is $1.96 per pound in Miami, while the price of the Florida greenskin variety is only $0.42 per pound.

U.S. exports averaged 11,583 tons between 1990 and 1994, while imports were about 19,119 tons. Over this period, about 94 percent of the U.S. production of avocados was consumed domestically. The largest importer of U.S. avocados is Canada. The other major markets for U.S. avocados include France, Japan, and the United Kingdom. The largest suppliers of imports to the United States are Chile and the Dominican Republic.

Mexico is the largest producer of avocados in the world, accounting for approximately 40 percent of world production. An average of 807,000 tons per year was produced between 1990 and 1994. Most of the avocado production in Mexico occurs in the State of Michoacan, accounting for approximately 77 percent of the total. The Hass variety accounts for 95 percent of the avocado production in Michoacan. Mexico is also one of the world's largest exporters of fresh avocados. Exports averaged 22,000 tons per year between 1990 and 1994. The average rate of export between 1990 and 1994 was about 2.75 percent of production, with the rest being consumed domestically.

Avocados are shipped from U.S. domestic sources throughout the year. Florida's peak marketing season is between July and December, while California's is between March and August. The 19 northeastern States and the District of Columbia (the approved States) receive between 12 and 18 percent of the shipments of California avocados annually. California shipments to the approved States during the period allowed in this final rule (November through February) account for only 2.3 to 4.6 percent (or about 3,900 to 4,850 tons) of total annual California avocado shipments. Imports account for about 42 percent of the supply in the approved States during those months; California avocados

[1] All tons in this analysis are short tons (2,000 pounds).

account for about 36 percent of the supply in the approved States during that same period. The remainder, about 22 percent of the supply, comes from Florida.

Mexican avocados could be sold at substantially lower prices than California avocados. However, consumer purchases may not be proportional to price changes, should they occur. Additionally, since many grocery stores and supermarkets are likely to be carrying avocados from only one source at any given time, consumers may not have the option of comparing price and quality of avocados from different areas. The retail price differentials might not be representative of the actual cost differences between avocados from the two sources, as retailers may not mark the exact price differential. This is evidenced by the small difference in wholesale prices between California Hass and Chilean Hass avocados. While the import price of Chilean Hass avocados was only $0.67 per pound, the wholesale price in the six major northeastern cities was about $1.46 per pound during the third week of December 1995. The average wholesale price of the California Hass avocado was $1.72 per pound during the same period. If a similar price pattern would hold for Mexican Hass avocados, wholesale prices will not differ as widely between Mexican avocados and others available on the domestic market as expected by some. The costs associated with illegal transshipment (e.g., relabeling the product and illegally transporting it outside the approved States) make it unlikely that price differences between domestic and Mexican-origin Hass avocados will be great enough to lead to transshipment of Hass avocados imported under this final rule.

Allowing importation of Hass avocados from Mexico is expected to have a variable impact upon domestic entities. The magnitude of the impact would depend upon the size of the pre-import supply, pre-import avocado price, and the elasticities of demand. In this final regulatory flexibility analysis, which was developed, in part, using price and production data submitted by commenters, two scenarios in which affected entities may be impacted by various levels of Mexican avocado imports are examined. In one scenario, California Hass avocado growers, in reaction to the entry of Mexican imports, redirect a percentage of the avocados they otherwise ship to markets in the approved States to markets in non-approved States (Table 1); in the other scenario, we examine the unlikely situation in which there is a complete redirection of California Hass avocados from markets in the approved States to markets in the non-approved States.

Based on data from 1990 through 1994, the average wholesale price in the approved States during the months of November through February—the 4 months that avocados can be imported into the approved States under this rule—was about $1.56 per pound and the available quantity was about 10,500 tons. The wholesale price and supply were $1.47 per pound and 26,500 tons, respectively, in the non-approved States. Price changes in the two scenarios are measured against their average levels.

The level of Hass avocado exports from Michoacan, Mexico, during November through February is currently about 9,400 tons. The import levels in the top row of Table 1 reflect a 10, 20, 30, 40, and 50 percent diversion of current Michoacan Hass avocado exports from other markets to markets in the approved areas of the United States.

TABLE 1.—THE IMPORTATION OF HASS AVOCADOS FROM MICHOACAN, MEXICO, TO APPROVED STATES: IMPACT IN THE UNITED STATES WITH A PARTIAL REDIRECTION OF U.S. GROWN HASS AVOCADOS FROM MARKETS IN APPROVED STATES TO MARKETS IN NON-APPROVED STATES (PRICE ELASTICITY IS –1.07).

	Percentage of current Michoacan exports diverted to the U.S. market				
	10	20	30	40	50
Imports (tons)	940	1,880	2,820	3,760	4,700
California Hass avocados diverted to non-approved States (tons)	153	306	459	612	765
Percent change in price:					
In the approved States	(8)	(16)	(25)	(33)	(41)
In non-approved States	(1)	(1)	(2)	(2)	(3)
Change in producer surplus (millions of dollars)	(1.37)	(2.70)	(3.99)	(5.24)	(6.44)
Change in consumer surplus (millions of dollars)	3.31	6.86	10.66	14.71	18.98
Total surplus (millions of dollars)	1.94	4.16	6.67	9.47	12.54

Table 1 summarizes the estimated economic impacts in the United States, based on a price elasticity of −1.07, which was estimated using data provided in comments by the California Avocado Commission.[2] The estimated economic impacts result from the entry of imported Mexican Hass avocados into markets in the approved States and from the estimated producer losses and consumer gains that would result from a partial redirection of U.S. grown Hass avocados from markets in the approved States to non-approved States. For example, a 10 percent diversion of present Michoacan exports from markets in other countries to the United States results in a price decrease of 8 percent in the approved States and a price decrease of 1 percent in the non-approved States. California producers would lose about $1.37 million, while consumers would gain about $3.31 million. The net benefit in this scenario would be about $1.94 million. If a 50 percent diversion of present Michoacan exports from other markets to the United States were to occur, there would be a resulting price decrease of about 41 percent in the approved States and about 3 percent in the non-approved States. Producers would lose about $6.44 million and consumers would gain about $18.98 million, resulting in a net benefit of about $12.54 million.

In sum, as a result of the importation of Mexican avocados to the approved States and partial redirection of domestically grown avocados, California Hass avocado producers would lose between $1.37 million and $6.44 million, i.e., about 0.5 percent to 5.4

[2] Garoyan, Leon, ''Proposed Rule for the Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico: An Analysis of the Impact on California's Avocado Industry,'' Management Research Associates, August 22, 1995. (Prepared for the California Avocado Commission (CAC) and attached as Exhibit 30 to the CAC's October 13, 1995, comments on the proposed rule.) The price elasticity of −1.07 was estimated using data from Appendix Table 1 of that report covering North East and East Central regions of the United States for the months of November to February between 1986 and 1994.

percent of their crop's farm value, while consumers in the approved and non-approved States would gain between $3.31 million and $19 million. Consumer gains are larger than producer losses in all cases.

In the unlikely scenario where complete redirection would occur, U.S. producers would abdicate the markets in the approved States to Mexican imports during the approved import period and would redirect their supply to markets in non-approved States. In this case, imports from Mexico would replace California Hass avocados in the approved States so that the actual supply in those markets would not change, and thus no impact would be expected in the approved States. The only impacts would be those in non-approved States. The extent of any actual decrease in prices would depend to a great degree upon the size of the price elasticity of demand and magnitude of the change in supply. For an elasticity of −1.07 and with a 10-percent diversion of present Michoacan exports from other countries to the United States, the resulting price decrease is 3 percent in the non-approved States. California producers would lose $2.31 million and consumers would gain $2.63 million. The net benefit in this case would be $0.32 million. A 50-percent diversion of present Michoacan exports from other countries to the United States results in a price decrease of 17 percent. Producers could lose $11.14 million and consumers could gain $14.03 million in the non-approved States. The net benefit in this case would be $2.89 million. For lower price elasticities, both losses and gains are higher. Thus, in the unlikely event of total redirection of domestically grown Hass avocado from approved States to non-approved States, California Hass avocado producers could lose between $2.31 million and $11.14 million, i.e. about 0.9 percent to 9.4 percent of their crop's farm value, while consumers in non-approved States could gain between $2.63 million and $14.03 million. In all cases, consumer gains outweigh grower losses.

The only significant alternative to this rule is to make no changes in the fruits and vegetables regulations, i.e., to continue to prohibit the importation of fresh avocados from Mexico. Prior to the publication of the proposed rule that preceded this rule, we had rejected that alternative because there appeared to be no pest risk reason to maintain the prohibition on the avocados in light of the safeguards that would be applied to their importation. In the course of this rulemaking, we have found no new evidence indicating that the importation of fresh Hass avocados under the conditions set forth in this rule will present a significant risk of plant pest introduction.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will allow fresh Hass avocado fruit to be imported into the United States from the Mexican State of Michoacan. State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule will be preempted while the avocados are in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of fresh Hass avocados from Michoacan, Mexico, under the conditions specified in this rule will not present a significant risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This final rule contains an information collection requirement that was not included in the proposed rule. Specifically, this final rule requires that fruit be labeled with a sticker that bears the Sanidad Vegetal registration number of the packing house. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this information collection requirement has been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the Federal Register providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. A new § 319.56–2ff is added to read as follows:

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Mexico to the northeastern United States.

Fresh Hass variety avocados (*Persea americana*) may be imported from Mexico into the United States for distribution in the northeastern United States only under a permit issued in accordance with § 319.56–4, and only under the following conditions:

(a) *Shipping restrictions.* (1) The avocados may be imported in commercial shipments only;

(2) The avocados may be imported only during the months of November, December, January, and February; and

(3) The avocados may be distributed only in the following northeastern States: Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York,

Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

(b) *Trust fund agreement.* The avocados may be imported only if the Mexican avocado industry association representing Mexican avocado growers, packers, and exporters has entered into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) for that shipping season. That agreement requires the Mexican avocado industry association to pay in advance all estimated costs that APHIS expects to incur through its involvement in the trapping, survey, harvest, and packinghouse operations prescribed in paragraph (c) of this section. These costs will include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The agreement requires the Mexican avocado industry association to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Mexican avocado industry association to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Mexican avocado industry association or held on account until needed.

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. Sanidad Vegetal must provide an annual work plan to APHIS that details the activities that Sanidad Vegetal will, subject to APHIS' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by Sanidad Vegetal or by the Michoacan State delegate of the Secretaria de Agricultura, Ganaderia y Desarrollo Rural (SAGDR).

(1) *Municipality requirements.* (i) The municipality must be listed as an approved municipality in the annual work plan provided to APHIS by Sanidad Vegetal.

(ii) The municipality must be surveyed at least annually and found to be free from the large avocado seed weevil *Heilipus lauri,* the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.* The survey must cover at least 300 hectares in the municipality and include randomly selected portions of each registered orchard and areas with wild or backyard avocado trees. The survey must be conducted during the growing season and completed prior to the harvest of the avocados.

(iii) Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) at the rate of 1 trap per 1 to 4 square miles. Any findings of Medfly must be reported to APHIS.

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with Sanidad Vegetal's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by Sanidad Vegetal. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed annually and found to be free from the avocado stem weevil *Copturus aguacatae.* The survey must be conducted during the growing season and completed prior to the harvest of the avocados.

(ii) Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of one trap per 10 hectares. If one of those fruit flies is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

(iii) Avocado fruit that has fallen from the trees must be removed from the orchard at least once every 7 days and may not be included in field boxes of fruit to be packed for export.

(iv) Dead branches on avocado trees in the orchard must be pruned and removed from the orchard.

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the Sanidad Vegetal registration number of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

(vi) The avocados must be protected from fruit fly infestation during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating that the avocados originated from a certified orchard.

(3) *Packinghouse requirements.* The packinghouse must be registered with Sanidad Vegetal's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by Sanidad Vegetal. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by Sanidad Vegetal for participation in the avocado export program.

(ii) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(iii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iv) Prior to the culling process, a sample of 300 avocados per shipment must be selected, cut, and inspected by Sanidad Vegetal and found free from pests.

(v) The identity of the avocados must be maintained from field boxes or containers to the shipping boxes so the avocados can be traced back to the orchard in which they were grown if pests are found at the packinghouse or the port of first arrival in the United States.

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the Sanidad Vegetal registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes. The boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement ''Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI.''

(viii) The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Prior to leaving the packinghouse, the truck or container must be secured by Sanidad Vegetal with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it reaches the port of first arrival in the United States.

(ix) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the work day must be kept in the screened packing area.

(d) *Certification.* All shipments of avocados must be accompanied by a phytosanitary certificate issued by Sanidad Vegetal certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri, Conotrachelus aquacatae, C. perseae,* or *Stenoma catenifer* are discovered in a municipality during an annual pest survey, orchard survey, packinghouse inspection, or other monitoring or inspection activity in the municipality, Sanidad Vegetal must immediately initiate an investigation and take measures to isolate and eradicate the pests. Sanidad Vegetal must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and Sanidad Vegetal agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If Sanidad Vegetal discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, Sanidad Vegetal must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and will be denied export certification for the entire shipping season of November through February.

(3) If Sanidad Vegetal discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, Sanidad Vegetal must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and will be denied export certification for the entire shipping season of November through February.

(f) *Ports.* The avocados may enter the United States at:

(1) Any port located in the northeastern States specified in paragraph (a)(3) of this section;

(2) The ports of Galveston or Houston, TX, or the border ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX; or

(3) Other ports within that area of the United States specified in paragraph (g) of this section.

(g) *Shipping areas.* Except as explained below in this paragraph for avocados that enter the United States at Nogales, AZ, avocados moved by truck or rail car may transit only that area of the United States bounded on the west by a line extending from El Paso, TX, to Denver, CO, and due north from Denver; and on the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh. All cities on these boundary lines are included in this area. If the avocados are moved by air, the aircraft may not land outside this area. Avocados that enter the United States at Nogales, AZ, must be moved to El Paso, TX, by the route specified on the permit, and then must remain within the shipping area described above in this paragraph.

(h) *Shipping requirements.* The avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in a refrigerated container on a truck or rail car. If the avocados are moved in a refrigerated container on a truck or rail car, an inspector must seal the container with a serially numbered seal at the port of first arrival in the United States. If the avocados are moved in a refrigerated truck or a refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of first arrival in the United States. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The avocados must be moved through the United States under Customs bond.

(i) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to the northeastern States, and upon arrival at the terminal market in the northeastern States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

Done in Washington, DC, this 31st day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–2825 Filed 2–4–97; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule and withdrawal of amendments to Interpretive Ruling and Policy Statement 94–1.

SUMMARY: The NCUA Board has withdrawn Interpretive Ruling and Policy Statement 96–2 (IRPS 96–2) that was published in 61 FR 59305 (November 22, 1996). The NCUA Board has determined that subsequent legal events make the withdrawal of IRPS 96–2 appropriate.

DATES: This rule is effective February 5, 1997.

FOR FURTHER INFORMATION CONTACT: John Ianno, Trial Attorney, Office of General Counsel or Michael J. McKenna, Acting Associate General Counsel, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: On November 14, 1996, the Board issued an interim final Interpretive Ruling and Policy Statement (IRPS 96–2) to permit federal credit unions to restructure their fields of membership consistent with court decisions limiting federal credit union's ability to serve eligible credit union members and new select groups. Two events have caused the Board to conclude that withdrawal of IRPS 96–2 is appropriate at this time. First, on December 4, 1996, the U.S. District Court for the District of Columbia issued an Order invalidating IRPS 96–2 and enjoining NCUA from implementing it. Second, on December 24, 1996, the U.S. Court of Appeals for the District of Columbia Circuit issued a partial stay of the District Court's earlier injunction which prevented federal credit unions from serving new members of select

employee groups which were within their existing field of membership. The NCUA Board will consider further regulatory action at an appropriate time depending on developments in the ongoing litigation concerning field of membership issues.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 23, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1 Chartering and Field of Membership Policy (IRPS 94–1) as amended by IRPS 96–1. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of Interpretive Ruling and Policy Statement (IRPS 94–1, as amended by IRPS 96–1) does not appear in the Code of Federal Regulations.

[FR Doc. 97–2830 Filed 2–4–97; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule (''the Rule'') requires that Table 1, in § 305.9, which sets forth the representative average unit energy costs for five residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy (''DOE'').

This document revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the Federal Register on November 18, 1996.[1]

DATES: The revisions to § 305.9(a) and Table 1 are effective March 7, 1997. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the **SUPPLEMENTARY INFORMATION** section, below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035 Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act (''EPCA''), 42 U.S.C. 6201.[2] The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in § 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE.

On November 18, 1996, DOE published the most recent figures for representative average unit energy costs. Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

How and when industry members must use (and not use) revised Table 1 in calculating cost disclosures for labeling and catalog sales is explained in detail in the paragraphs below. In sum:

- Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners are not permitted to use the DOE Cost figures published today to calculate the secondary operating cost figures on labels for their products until the Commission publishes new ranges of comparability for those products.
- Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters have no need for the DOE cost figures for making data submissions under 305.8. The energy use information they must submit and use as primary energy use descriptors on labels for these products is now in terms of energy consumption, not operating cost.
- Industry members must use the 1997 DOE cost figures published today to calculate operating cost representations in catalogs that are drafted and printed after May 6, 1997.
- Beginning May 6, 1997, manufacturers of clothes dryers, television sets, kitchen ranges and ovens, and space heaters must use the 1997 representative average unit costs for energy in all operating cost representations.

For Labeling of Products Covered by the Commission's Rule [3]

Manufacturers of covered products are not permitted to use the National Average Representative Unit Costs published today on labels for their products until the Commission

[1] 61 FR 58679.

[2] 44 FR 66466. Since its promulgation, the rule has been amended four times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), and certain lamp products (59 FR 25176, May 13, 1994). Obligations under the rule concerning fluorescent lamp ballasts, lighting products, and plumbing products are not affected by the cost figures in this notice.

[3] The July 1, 1994, amendments require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operating cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

publishes new ranges of comparability for those products.

Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures (8.41 cents per kilowatt-hour for electricity, 60.4 cents per therm for natural gas, $1.054 per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane) in determining the operating cost disclosures on the labels on their products. This is because the 1994 DOE cost figures were in effect when the 1994 ranges of comparability for storage-type water heaters were published, and those 1994 ranges are still in effect for those products.[4] Manufacturers of storage-type water heaters must continue to use the 1994 cost figures to calculate the estimated annual operating cost figures on their labels until the Commission publishes new ranges of comparability for storage-type water heaters.

Manufacturers of refrigerators, refrigerator-freezers, freezers, heat pump water heaters, and room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 National Average Representative Unit Costs (8.67 cents per kilowatt-hour for electricity, 63 cents per therm for natural gas, $1.008 per gallon for No. 2 heating oil, and 98.5 cents per gallon for propane) that were in effect when the current (1995) ranges of comparability for these products were published.[5] Manufacturers of refrigerators, refrigerator-freezers, freezers, heat pump water heaters, and room air conditioners must continue to use the 1995 DOE cost figures to calculate the operating cost disclosure disclosed on labels until the Commission publishes new ranges of comparability for heat pump water heaters, room air conditioners, or refrigerators, refrigerator-freezers, and freezers based on future annual submissions of data. In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

Manufacturers of clothes washers, dishwashers, and instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1996 National Average Representative Unit Costs for electricity (8.6 cents per kilowatt-hour), natural gas (62.6 cents per therm), propane (90 cents per gallon), and/or heating oil (92 cents per gallon) that were published by DOE on January 19, 1996,[6] and by the Commission on February 14, 1996,[7] and that were in effect when the 1996 ranges of comparability for these products were published.[8]

For 1997 Submissions of Data Under Section 305.8 of the Commission's Rule

Manufacturers no longer need to use the DOE cost figures in complying with the data submission requirements of § 305.8 of the Rule. Pursuant to amendments to the Rule published on July 1, 1994[9] (with extended compliance dates published on December 8, 1994),[10] the estimated annual operating cost is no longer the primary energy usage descriptor for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters. Under the amendments, the energy usage and the ranges of comparability for those product categories must be expressed in terms of estimated annual energy consumption (kilowatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil). Thus, the 1997 (and all subsequent) data submissions under 305.8 for these product categories (which are to enable the Commission to publish ranges of comparability) must be made in terms of estimated annual energy consumption, not cost. The energy efficiency descriptors for the other products covered by the Rule (room air conditioners, furnaces, boilers, central air conditioners, heat pumps, and pool heaters) are unaffected by the amendments mentioned above. The annual data submission requirements for those products, which are not based on the DOE cost figures, will continue to be in terms of energy efficiency.

For convenience, the annual dates for data submission are repeated here:

Fluorescent lamp ballasts	Mar. 1.
Clothes washers	Mar. 1.
Water heaters	May 1.
Furnaces	May 1.
Room air conditioners	May 1.
Pool Heaters	May 1.
Dishwashers	June 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.

For Energy Cost Representations Respecting Covered Products in Catalogs

Energy cost representations in catalogs that are drafted and printed while the 1997 cost figures are in effect must be derived using the 1997 energy costs beginning May 6, 1997.

For Energy Cost Representations Respecting Products Covered by EPCA But Not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 1997 representative average unit costs for energy in all operating cost representations beginning May 6, 1997.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

[4] The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On August 21, 1995 (60 FR 43367), and again on September 16, 1996 (61 FR 48620), the Commission announced that the 1994 ranges for storage-type water heaters would continue to remain in effect.

[5] The 1995 DOE cost figures were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296). The current (1995) ranges of comparability for heat pump water heaters were published on August 21, 1995 (60 FR 43367). The current (1995) ranges for refrigerators, refrigerator-freezers, freezers, and room air conditioners were published on November 13, 1995 (60 FR 56945). On September 16, 1996 (61 FR 48620), the Commission announced that the 1995 ranges for heat pump water heaters and room air conditioners would continue to remain in effect. On October 28, 1996 (61 FR 55563), the Commission announced that the 1995 ranges for refrigerators, refrigerator-freezers, and freezers would continue to remain in effect.

[6] 61 FR 1366.

[7] 61 FR 5679.

[8] The current ranges for clothes washers were published on June 13, 1996 (61 FR 29939); the current ranges for dishwashers and instantaneous water heaters were published on September 16, 1996 (61 FR 48620).

[9] 59 FR 34014.

[10] 59 FR 63688.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 continues to read:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1997)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.31¢/kWh [2 3]	$0.0831/kWh	$24.35
Natural Gas	61.2¢/therm [4] or $6.43/MCF [5 6]	0.00000612/Btu	6.12
No. 2 heating oil	0.99/gallon [7]	0.00000714/Btu	7.14
Propane	0.98/gallon [8]	0.00001073/Btu	10.73
Kerosene	1.16/gallon [9]	0.00000859/Btu	8.59

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,028 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 97–2802 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for oral use of tetracycline hydrochloride soluble powder in the drinking water of calves and swine for control and treatment of certain diseases caused by pathogens susceptible to tetracycline, and of chickens and turkeys for control of certain diseases caused by pathogens susceptible to tetracycline.

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–136, which provides for oral use of tetracycline hydrochloride soluble powder in the drinking water of calves and swine for control and treatment of certain conditions, and of chickens and turkeys for the control of certain conditions, as follows: (1) For calves for control and treatment of bacterial enteritis (scours) caused by *Escherichia coli*, and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae (Hemophilus spp.)*, and *Klebsiella* spp. susceptible to tetracycline; (2) for swine for control and treatment of bacterial enteritis (scours) caused by *E. coli*, and bacterial pneumonia associated with *Pasteurella* spp., *A. pleuropneumoniae (Hemophilus spp.)*, and *Klebsiella* spp. susceptible to tetracycline; (3) for chickens for control of chronic respiratory disease (CRD or air-sac disease) caused by *Mycoplasma gallisepticum* and *E. coli*; infectious synovitis caused by *M. synoviae* susceptible to tetracycline; (4) for turkeys for control of infectious synovitis caused by *M. synoviae* and bluecomb (transmissible enteritis or coronaviral enteritis) complicated by bacterial organisms susceptible to tetracycline.

Approval of Phoenix's ANADA 200–136 tetracycline hydrochloride soluble powder is as a generic copy of Fermenta's NADA 65–496 tetracycline hydrochloride soluble powder. ANADA 200–136 is approved as of December 17, 1996, and the regulations are amended in § 520.2345d(a)(1) (21 CFR 520.2345d(a)(1)) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, due to enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988, the paragraph concerning NAS/NRC status is outdated. Section 520.2345d is amended to remove paragraph (c).

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 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, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24 (d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 520

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 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2345d [Amended]

2. Section 520.2345d *Tetracycline hydrochloride soluble powder* is amended in paragraph (a)(1) by removing ''047864, 054273, and 057561'' and adding in its place ''047864, 054273, 057561, and 059130'' and by removing and reserving paragraph (c).

Dated: January 28, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–2819 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Chewables

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 Merck Research Laboratories, Div. of Merck & Co., Inc. The NADA provides for veterinary prescription use of ivermectin chewables in cats for the prevention of feline heartworm disease for a month after infection and removal and control of certain hookworm infections.

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Div. of Merck & Co., Inc., P.O. Box 2000, RY32–209, Rahway, NJ 07065–0914, filed NADA 141–078 that provides for oral use on veterinary prescription of Heartgard™ for Cats (ivermectin chewables) to prevent feline heartworm disease by eliminating the tissue stage of heartworm larvae *Dirofilaria immitis* for a month after infection and for the removal and control of adult and immature (L4) hookworms *Ancylostoma tubaeforme* and *A. braziliense.* The NADA is approved as of December 23, 1996, and the regulations are amended by revising 21 CFR 520.1193 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning December 23, 1996, because the NADA contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety required for approval and conducted or sponsored by the applicant.

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, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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.

List of Subjects in 21 CFR Part 520

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 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1193 is amended by revising the section heading and paragraph (a), and by adding new paragraph (d) to read as follows:

§ 520.1193 Ivermectin tablets and chewables.

(a) *Specifications*—(1) *Dogs.* Each tablet or chewable contains 68, 136, or 272 micrograms of ivermectin.

(2) *Cats.* Each chewable contains 55 or 165 micrograms of ivermectin.

* * * * *

(d) *Conditions of use in cats*—(1) *Amount.* Up to 2.3 kilograms (up to 5 pounds), 55 micrograms; 2.3 to 6.8 kilograms (5 to 15 pounds), 165 micrograms; over 6.8 kilograms (15 pounds), a combination of the appropriate chewables (recommended minimum dose of 24 micrograms of ivermectin per kilogram of body weight (10.9 micrograms per pound).

(2) *Indications for use.* To prevent feline heartworm disease by eliminating the tissue stage of heartworm larvae *Dirofilaria immitis* for a month (30 days) after infection, and for removal and control of adult and immature (L4) hookworms *Ancylostoma tubaeforme* and *A. braziliense.*

(3) *Limitations.* For use in cats 6 weeks of age and older. Administer once a month. The initial dose must be given within a month after cats first exposure to mosquitoes. The final dose must be given within a month after the cats last exposure to mosquitoes. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 28, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–2821 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Naltrexone Hydrochloride Injection

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 Wildlife Laboratories, Inc. The NADA provides for use of naltrexone hydrochloride sterile injection as an antagonist to carfentanil citrate immobilization in free-ranging or confined elk and moose (*Cervidae*).

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Wildlife Laboratories, Inc., 1401 Duff Dr., suite 600, Fort Collins, CO 80524, filed

NADA 141–074 that provides for the use of Trexonil™ Sterile Injection (50 milligrams of naltrexone hydrochloride per milliliter) as an antagonist to carfentanil citrate immobilization in free-ranging or confined elk and moose (*Cervidae*). The NADA is approved as of December 23, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.1465 to reflect the approval. The drug product is available on a prescription basis. The basis of approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning December 23, 1996, because no active ingredient of the drug (including any ester or salt of the active ingredient) has been previously approved in any other application filed under section 512(b)(1) of the act.

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, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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.

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: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.1465 is added to read as follows:

§ 522.1465 Naltrexone hydrochloride injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 50 milligrams of naltrexone hydrochloride.

(b) *Sponsor.* See 053923 in § 510.600(c) of this chapter.

(c) *Conditions of use in elk and moose*—(1) *Amount.* 100 milligrams of naltrexone hydrochloride for each milligram of carfentanil citrate administered. One-quarter of the dose should be administered intravenously and three-quarters of the dose should be administered subcutaneously.

(2) *Indications for use.* As an antagonist to carfentanil citrate immobilization in free-ranging or confined elk and moose (*Cervidae*).

(3) *Limitations.* Available data are inadequate to recommend use in pregnant animals. Avoid using during breeding season. Do not use in domestic food-producing animals. Do not use in free-ranging animals for 45 days before or during hunting season. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 28, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–2869 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

30 CFR Part 250

RIN 1010–AB99

Training of Lessee and Contractor Employees Engaged in Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: Their rule amends MMS regulations governing the training of lessee and contractor employees engaged in oil and gas and sulphur operations in the OCS. MMS is making this amendment to simplify the training options and to provide the flexibility to use alternative training methods.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Levine, Information and Training Branch, at (703) 787–1033.

SUPPLEMENTARY INFORMATION: On November 2, 1995, MMS published the proposed rule in the Federal Register (60 FR 55683). During the 90-day comment period that ended on January 31, 1996, MMS held a workshop. The workshop held on December 6, 1995, in New Orleans, Louisiana, received excellent participation from industry and training schools. We are highlighting the comments we received for the proposed rule in the ''Response to Comments'' section.

Response to Comments

MMS received 28 comments on the proposed rule. We appreciate the suggestions and comments that we received. We also appreciate the positive comments on our new ''plain English'' style of writing regulations.

We reviewed all of the comments, and in some instances, we revised the final language based on these comments. MMS grouped the major comments and organized them by regulation paragraph number or subject as highlighted in the comment table.

COMMENT TABLE

Requirement/subject	Comment	MMS response
250.210	''Alternative Training'' definition is restrictive	Disagree—MMS is not limiting the methods, we're only giving examples by using the term ''such as.''
250.210, 250.217, 250.222	Typographical errors appear in the Federal Register	Agree—We noted and corrected the errors.
250.214 (a) and (b)	MMS should add a 60-day grace period to the training limits.	Disagree—MMS wants to eliminate the cost and confusion caused by using the training ''windows'' of the past.
250.214(c)	The ''combination courses'' have too many hours	Disagree—Although the hours have slightly increased, we moved small tubing training to well workover.

COMMENT TABLE—Continued

Requirement/subject	Comment	MMS response
250.214	MMS needs a transition table for the training requirements since each student is on a different cycle.	Agree—MMS added a table to ensure the smoothest transition to the new training requirements [250.214(d)].
250.219	Clarify that temporary employees need training or a trained individual (not necessarily a supervisor) to supervise them.	Agree—Although MMS did not mean to imply that the trained individual must be classified as a supervisor, we adopted the suggestion.
250.220	Change ''* * * (who can evaluate their work) * * *'' to ''* * * (who is capable of evaluating the impact of the work done''.	Agree.
250.222	Is the only self-paced training that MMS allows computer-based?.	No, computer-based is only one form of self-paced training.
250.225(a)(2)	Delete ''* * * (instructors must complete training from an approved training organization) * * *''.	Agree.
250.225(j)	Specify simulator requirements for workovers	Agree.
250.226(a)	Schools should not need to maintain training records for 5 years because of the new training period.	Disagree—MMS may need 5 years of data and we wish to have the maximum under the statute of limitations.
250.228(a)	MMS should specify that the instructor should only run one simulator and have teams of three or less.	Agree.
250.229 Table (a) number 21	Include drilling supervisors in the functions	Agree.
250.229	One commenter wanted MMS to significantly expand the elements in well-servicing training and well workover.	Disagree—Considering the special nature of well servicing and workover, we feel that it is not appropriate to expand their training at this time.
No refresher training	Keep refresher training for well control because refreshers contain course flexibility to cover recent field developments.	Disagree—MMS deleted the refresher requirement and made the basic course more frequent. With more frequent basic courses you can still have the flexibility to cover field developments. Also, MMS does not prohibit refresher training.
Open-book tests	Clarify the policy on open-versus closed-book tests	Agree—We now specify that we allow open regulations and a formula sheet without examples for well-control tests (§ 250.227(a)(5)).
Third-parties	The majority of comments was against MMS having third-parties accredit schools. Those against having third-parties accredit schools cited additional costs, potential conflicts of interest, and additional management layers as their main concerns.	MMS agrees with the comments and elected not to have a third-party accredit training programs. Instead, we plan to move into a performance-based training program through a future rulemaking.
Testing-out	MMS should allow employees to take and pass a test in lieu of taking training.	Disagree—MMS and much of industry sees value in taking training even if an employee can pass the test. A future rulemaking will address performance measures.

Also, MMS is changing the term ''certify'' to ''accredit'' in this final rule because it is more accurate in the context of schools.

Executive Order (E.O.) 12866

This rule is not a significant rule under E.O. 12866.

E.O. 12988

The Department of the Interior (DOI) certified to the Office of Management and Budget (OMB) that this rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

Regulatory Flexibility Act

DOI determined that this rule will not have a significant effect on a substantial number of small entities.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no new reporting and information collection requirements. OMB approved the existing information collection requirements under OMB Control No. 1010–0078. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The reporting burden is estimated to average 13.5 hours per response. Responses are mandatory. Proprietary data are covered under 30 CFR 250.18.

Send comments regarding any aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053; 381 Elden Street; Herndon, Virginia 20170–4817 and to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of the Interior (1010–0078), 725 17th Street NW, Washington, D.C. 20503.

Takings Implication Assessment

DOI determined that this rule does not represent a governmental action capable of interfering with constitutionally protected rights. Thus, DOI does not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

DOI determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, therefore, an

Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: January 27, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) is amending 30 CFR part 250 to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. MMS is revising Subpart O to read as follows:

Subpart O—Training

Sec.

Subpart O—Training

§ 250.209 Question index table.

The table in this section lists frequently asked training questions and the location for the answers. The subjects are grouped as follows:

(a) General training requirements—§§ 250.211 through 250.216.

(b) Departures from training requirements—§§ 250.217 through 250.222.

(c) Training program accreditations—§§ 250.223 through 250.229 and § 250.233.

(d) MMS testing information—§§ 250.230 through 250.232.

Frequently asked questions	CFR citation
What is MMS's goal for well control and production safety systems training?	§ 250.211
What type of training must I provide for my employees?	§ 250.212
What documentation must I provide to trainees?	§ 250.213
How often must I provide training to my employees and for how many hours?	§ 250.214
Where must I get training for my employees?	§ 250.215
Where can I find training guidelines for other topics?	§ 250.216
Can I get an exception to the training requirements?	§ 250.217
Can my employees change job certification?	§ 250.218
What must I do if I have temporary employees or on-the-job trainees?	§ 250.219
What must manufacturer's representatives in production safety systems do?	§ 250.220
May I use alternative training methods?	§ 250.221
What is MMS looking for when it reviews an alternative training program?	§ 250.222
Who may accredit training organizations to teach?	§ 250.223
How long is a training organization's accreditation valid?	§ 250.224
What informaiton must a training organization submit to MMS?	§ 250.225
What additional requirements must a training organization follow?	§ 250.226
What are MMS's requirements for the written test?	§ 250.227
What are MMS's requirements for the hands-on simulator and well test?	§ 250.228
What elements must a basic course cover?	§ 250.229
If MMS tests employees at my worksite, what must I do?	§ 250.230
If MMS tests trainees at a training organization's facility, what must occur?	§ 250.231
Why might MMS conduct its own tests?	§ 250.232
Can a training organization lose its accreditation?	§ 250.233

§ 250.210 Definitions.

Terms used in this subpart have the following meaning:

Alternative training methods means self-paced or team-paced training that may use a computer-based system such as compact disc interactive (CDI), compact disc read only memory (CDROM), or Laser Discs.

Completed training means that the trainee successfully met MMS's requirements for that training.

Employees means direct employees and contract employees of lessees.

Floorhands means rotary helpers, derrickmen, or their equivalent.

I or *you* means the lessee or contractor engaged in oil, gas or sulphur operations in the Outer Continental Shelf (OCS).

Installing means both installing the original equipment and replacing the equipment.

Lessee means the person, organization, agent, or designee authorized to explore, develop, and produce leased deposits.

Maintaining means preventive maintenance, routine repair, and replacing defective components.

Operating means testing, adjusting, calibrating, and recording test and calibration results for the equipment.

Production safety systems employee means employees engaged in installing, repairing, testing, maintaining, or operating surface or subsurface safety devices and the platform employee who is responsible for production operations.

Supervisors means the driller, toolpusher, operator's representative, or their equivalent.

Training means a basic or an advanced class in well control for drilling, well completion/well workover, well servicing, and production safety systems.

Training organization means a party approved by MMS to teach well control for drilling, well completion/well workover, and well servicing, and production safety systems.

Well-completion/well-workover (WO) well control includes small tubing operations.

Well-servicing (WS) well control means snubbing and coil tubing.

Well-workover rig means a drilling rig used for well completion/well workover.

§ 250.211 What is MMS's goal for well control and production safety systems training?

The goal is to ensure that employees who work in the following areas receive training that results in safe and clean operations:

(a) Drilling well control;

(b) WO well control;

(c) WS well control; and

(d) Production safety systems.

§ 250.212 What type of training must I provide for my employees.

You must provide training for your employees according to the table in this section.

Type of employee	Training requirements	Comments
Drilling floorhand	Drilling well-control course.[1]	
	Complete a well-control drill at the job site within the time limit prescribed by company operating procedures.[2].	You must log the time it took to complete each drill in the driller's log and furnish the time to the floorhand.
	Participate in well-control drills under subpart D of this part.[2].	You must record the date and time it took to complete each drill in the driller's log.
	Receive copy of a drilling well-control manual.[2]	
Drilling supervisor	Drilling well-control course.[1]	
	Qualify to direct well-control operations.[1]	
WO floorhands	WO well-control course.[1]	
	Complete the qualifying test consisting of a well-control drill at the job site within the time limit set by company procedures.[2].	You must record the date and time it took to complete each drill in the operations log.
	Participate in weekly well-control drills under subparts E and F of this part.[2]	
	Receive a well-control manual.[2]	
WO supervisors	WO well-control course.[1]	
	Qualify to direct well-control operations.[1]	
WS work crews	At least one crew member is trained in WS well control.[1].	Trained employee must be in work area at all times during snubbing or coil tubing operations.
	At least one crew member must be qualified to direct well-control operations.[1]	
Production safety systems employees.	Must complete training that enables them to install, test, maintain, & operate subsurface safety devices.[1]	
Employees who work in well completion operations before or during tree installation.	Either WO well-control course or drilling well-control course.[1]	

[1] Employee may not work in the OCS unless this requirement is met.
[2] Employee must complete this requirement before exceeding 6 months of cumulative employment.

§ 250.213 What documentation must I provide to trainees?

You must give your employees documents that show they have completed the training course(s) required for their job. The employees must carry the documents or keep them at the job site.

§ 250.214 How often must I provide training to my employees and for how many hours?

(a) You must ensure that applicable employees complete basic or advanced well-control training at least every 2 years. For example, if your employees complete a well-control course on October 31, 1998, they must again complete the training by October 31, 2000.

(b) You must ensure that applicable employees complete basic or advanced production safety systems training at least every 3 years. For example, if your employees complete production safety systems training on October 31, 1998, they must again complete the training by October 31, 2001.

(c) You must ensure that your employees have at least the amount of training listed in the table in § 250.214(c). The maximum number of hours per day of well control or production safety instruction time is 9 hours.

TRAINING HOURS

Basic/advanced course	Surface option, minimum hours	Subsea option, minimum hours [1]	No options, minimum hours
Drilling (D)	28	32	.....
Well Completion/Workover (WO)	32	36	.....
Well Servicing (WS)	.....	.....	18
Combination D/WO	40	44	.....
Combination D/WS	44	48	.....
Combination WO/WS	48	52	.....
Combination D/WO/WS	55	59	.....
Production Safety Systems	.....	.....	30

[1] The subsea option includes the minimum hours from the surface option plus 4 hours.

(d) For the first training course after March 7, 1997, you must ensure that your employee follows the following transition schedule table for well control.

WELL CONTROL TRANSITION

If your employees	Then the employees must
A. Completed a basic course on or after [insert date 365 days prior to the effective date of the rule] or B. Completed a basic course before [insert date 365 days prior to the effective date of the rule].	A. Complete an appropriate basic course within 2 years to maintain certification, or B. Complete an appropriate basic course by [insert date 365 days after the effective date of the rule].[2]

[1] Example A: If the effective date of this regulation is November 1, 1996, and your employees completed a basic course in Drilling and Workover/Completion well control on December 9, 1995, your employees must complete a basic Drilling and Workover/Completion well-control course by December 9, 1997.

[2] Example B: If the effective date of this regulation is November 1, 1996, and your employees completed a basic course in Well Servicing [snubbing option] well control on November 15, 1994, your employees must complete a basic course in Well Servicing [snubbing option] by November 1, 1997.

(e) For the first training course after March 7, 1997, you must ensure that your employee follows the following transition schedule table for production.

PRODUCTION TRANSITION

If your employees	Then your employees must
A. Completed a basic course on or after [insert date 545 days prior to the effective date of the rule], or B. Completed a basic course before [insert date 545 days prior to the effective date of the rule]	A. Complete a basic course within 3 years to maintain certification, or B. Complete a basic course by [insert date 545 days after the effective date of the rule].

(f) After your employee completes the transition training specified in paragraph (d) or (e) of this section, the training cycle will be 2 years for well control and 3 years for production training (as shown in § 250.214 (a) and (b)).

§ 250.215 Where must I get training for my employees?

You must provide training by a training organization or program approved by MMS.

§ 250.216 Where can I find training guidelines for other topics?

You can find guidelines in the subparts shown in the following table:

Topic	Subpart of part 250
Pollution control	C
Crane operations	A
Welding and burning	D
Hydrogen sulfide	D

§ 250.217 Can I get an exception to the training requirements?

MMS may grant an exception to well control or production safety systems training if:

(a) MMS determines that the exception won't jeopardize the safety of your personnel or create a hazard to the environment; and

(b) You need the exception because of unavoidable circumstances that make compliance infeasible or impractical.

§ 250.218 Can my employees change job certification?

Only if you ensure that the employees complete training for the new job before entering on duty.

§ 250.219 What must I do if I have temporary employees or on-the-job trainees?

You must ensure that temporary employees and on-the-job trainees complete the appropriate training unless a trained individual is directly supervising the employee.

§ 250.220 What must manufacturer's representatives in production safety systems do?

A manufacturer's representative who is working on company supplied equipment must:

(a) Receive training by the manufacturer to install, service, or repair the specific safety device or safety systems; and

(b) Have an individual trained in production safety systems (who is also capable of evaluating the impact of the work done) accompany her/him.

§ 250.221 May I use alternative training methods?

(a) You may receive a 1-year provisional approval from MMS to use alternative training methods that may involve team or self-paced training using a computer-based system.

(b) You may receive up to 3 additional years (4 years total) from MMS to use alternative training methods (through onsite reviews).

§ 250.222 What is MMS looking for when it reviews an alternative training program?

(a) The alternative training must teach methods to operate equipment that result in safe and clean operations.

(b) MMS will determine, through onsite MMS reviews and unannounced audits during the provisional period, if the:

(1) Training environment is conducive to learning;

(2) Trainees interact effectively with the moderator or training administrator,

(3) Trainees function as a team (for well control only); and

(4) Tests are challenging and cover all important safety concepts and practical procedures to ensure safety.

(c) MMS may also speak with the trainees to determine if the trainees felt the training met their needs for their job.

§ 250.223 Who may accredit training organizations to teach?

MMS may accredit a training organization or program.

§ 250.224 How long is a training organization's accreditation valid?

An accreditation is valid for a maximum of 4 years. A training organization may apply to MMS before the fourth anniversary of the effective accreditation date. The training organization must state the changes (additions and deletions) to the last approved training curriculum and plan.

§ 250.225 What information must a training organization submit to MMS?

(a) Two copies of the detailed plan that includes the:

(1) Curriculum;

(2) Names and credentials of the instructors;

(3) Mailing and street address of the training facility and the location of the records;

(4) Location for the simulator and lecture areas and how the training organization separates the areas;

(5) Presentation methods (video, lecture, film, etc.);

(6) Percentage of time for each presentation method;

(7) Testing procedures and a sample test; and

(8) List of any portions of the course that cover the subsea training option instead of the surface training option.

(b) Two copies of the training manual.

(c) A cross-reference that relates the requirements of this supbart to the elements in the program.

(d) A copy of the handouts.

(e) A copy of the training certificate that includes the following:

(1) Candidate's full name;

(2) Candidate's social security number,

(3) Name of the training school;

(4) Course name (e.g., basic WS well-control course);

(5) Option (surface or subsea);

(6) Training completion date;

(7) Job classification (e.g., drilling supervisor); and

(8) Certificate expiration date.

(f) Course outlines identified by:

(1) Name (e.g., ''WS well-control course'');

(2) Type (basic or advanced); and

(3) Option (surface or subsea).

(g) Time (hours per student) for the following:

(1) Teaching;

(2) Using the simulator (for well control);

(3) Hands-on training (for production safety systems); and

(4) Completing the test (written and simulator).

(h) Special instruction methods for students who respond poorly to conventional training (including oral assistance).

(i) Additional materials (for the advanced training option) such as advanced training techniques or case studies.

(j) Information on the 3–D simulator or test wells:

(1) Capability for surface and/or subsea drilling well control, WO and completion training;

(2) Capability to simulate lost circulation and secondary kicks; and

(3) Types of kicks.

§ 250.226 What additional requirements must a training organization follow?

(a) The training organization must keep training records for each trainee for 5 years. For example, if a trainee completed a well-control course in 1996, the training organization may destroy the records at the end of the year 2001. The training organization must keep the following trainee record information:

(1) Daily attendance record including complete student sign-in sheet and makeup time;

(2) Written test and retest (including simulator test);

(3) Evaluation of the trainee's simulator test or retest;

(4) ''Kill sheets'' for simulator test or retest; and

(5) Copy of the trainee's certificate.

(b) Keep records of the training program for 5 years. The 5-year timeframe starts with the program approval date. For example, if a training program was accredited in 1995, at the end of the year 2000, the training organization may destroy the records for 1995. Keep the following training record information:

(1) Complete and current training program plan and a technical manual;

(2) A copy of each class roster; and

(3) Copies of schedules and schedule changes.

(c) Supply trainees with current copies of Government regulations on the training subject matter.

(d) Provide a certificate to each trainee who successfully completes training.

(e) Ensure that the subsea training option has an additional 4 hours of training and covers problems in well control when drilling with a subsea blowout preventer (BOP) stack including:

(1) Choke line friction determinations;

(2) Using marine risers;

(3) Riser collapse;

(4) Removing trapped gas from the BOP after controlling a well kick; and

(5) ''U'' tube effect as gas hits the choke line.

(f) Ensure that trainees who are absent from any part of a course make up the missed portion within 14 days after the end of the course before providing a written or simulator test to the trainee.

(g) Ensure that classes contain 18 or fewer candidates.

(h) Furnish a copy of the training program and plan to MMS personnel for their use during an onsite review.

(i) Submit the course schedule to the approving organization after approval of the training program, annually, and before any program changes. The schedule must include the:

(1) Name of the course;

(2) Class dates;

(3) Type of course; and

(4) Course location.

(j) Provide all basic course trainees a copy of the training manual.

(k) Provide all advanced course trainees handouts necessary to update the manuals the trainee has as a result of previous training courses.

(l) When each course ends, send MMS a letter and a class roster. The class roster must contain the following information for each trainee:

(1) Name of training organization;

(2) Course location (e.g., Thibodeaux, Louisiana);

(3) Trainee's full name;

(4) Name of course (e.g., Drilling well control or WS well control);
(5) Course type (i.e., basic or advanced training);
(6) Options (e.g., subsea);
(7) Date trainee completed course;
(8) Name(s) of instructor(s) teaching the course;
(9) The trainee's social security number;
(10) Trainee's employer;
(11) Actual job title of trainee;
(12) Job of each awarded certificate; and
(13) Test scores (including course element scores) for each successful trainee.

(m) Ensure that test scores for combination training have a separate score element for each designation and for each option. For example, training in subsea drilling and in WO would have separate test scores for the drilling, WO, and for the subsea portion.

§ 250.227 What are MMS's requirements for the written test?

(a) The training organization must:
(1) Administer the test at the training facility;
(2) Use 70 percent as a passing grade for each course element (drilling, well completion, etc.);
(3) Ensure that the tests are confidential and nonrepetitive;
(4) Offer a retest, when necessary, using different questions of equal difficulty;
(5) Allow open-book regulations and a formula sheet (without examples) for well control only; and
(6) Allocate no more than the following amount of time to the minimum instruction time: 1 hour for a single course, 2 hours for a combination of two basic courses, or 2.5 hours for a combination of three or more courses.

(b) A trainee who fails a retest must repeat the training and pass the test in order to work in the OCS in their job classification.

§ 250.228 What are MMS's requirements for the hands-on simulator and well test?

(a) The training organization must ensure that:
(1) The test simulates a surface BOP (or subsea stack for the subsea option) and the simulator is 3–D with actual gauges and dials.
(2) The instructor runs only one simulator and has a maximum of three students in each team.
(3) The simulator test time allocated to the minimum instruction time is 1 hour per course (i.e., 2 hours for a combination of two basic courses, etc.).
(4) The trainees are able to:
(i) Kill the well before removing the three;
(ii) Determine slow pump rates;
(iii) Recognizes kick warnings sings;
(iv) Shut in a well
(v) Complete kill sheets;
(vi) Initiate kill procedures;
(vii) Maintain appropriate bottomhole pressure;
(viii) Maintain constant bottomhole pressure;
(ix) Recognize and handle unusual well-control situations;
(x) Control the kick as it reaches the choke line; and
(xi) Determine if kick gas or fluids are removed.
(5) In the subsea option, the trainees are able to:
(i) Determine choke line friction pressures for subsea BOP stacks; and
(ii) Discuss and demonstrate procedures such as circulating the riser and removing trapped gas in a subsea BOP stack.
(6) Offer a retest, when necessary, using different questions of equal difficulty.

(b) A trainee who fails a retest must repeat the training and pass the test to work in the OCS in their job classification.

§ 250.229 What elements must a basic course cover?

See Table (a) of this section for well control and Table (b) of this section for production safety systems. The checks in Table (a) indicate the required training elements that apply to each job. Tables (a) and (b) follow:

TABLE (a).—WELL CONTROL

Elements for basic training	Drilling		WO		WS
	Super	Floor	Super	Floor	
1. Hands-on:					
Training to operate choke manifold		✔		✔	
Training to operate stand pipe		✔		✔	
Training to operate mud room vales		✔			
2. Care, handling & characteristics of drilling & completion fluids	✔	✔			
3. Care, handling & characteristics of well completion/well workover fluids & packer fluids			✔	✔	✔
4. Major causes of uncontrolled fluids from a well including:					
Failure to keep the hole full	✔		✔		
Swabbing effect	✔		✔		
Loss of circulation	✔		✔		
Insufficient drilling fluid density	✔		✔		
Abnormally pressured formations	✔		✔		
Effect of too rapidly lowering of the pipe in the hole	✔		✔		
5. Importance & instructions of measuring the volume of fluid to fill the hole during trips	✔		✔		
6. Importance & instructions of measuring the volume of fluid to fill the hole during trips including the importance of filing the hole as it relates to shallow gas conditions.	✔				
7. Filling the tubing & casing with fluid to control bottomhole pressure				✔	
8. Warning signals that indicate kick & conditions that lead to a kick	✔	✔	✔	✔	
9. Controlling shallow gas kicks and using diverters	✔				
10. At least one bottomhole pressure well control method including conditions unique to a surface subsea BOP stack.	✔		✔		
11. Installing, operating, maintaining & testing BOP & diverter systems	✔				
12. Installing, operating, maintaining & testing BOP systems			✔		
13. Government regulations on:					
Emergency shutdown systems					✔
Production safety systems					✔
Drilling procedures	✔				
Wellbore plugging & abandonment	✔		✔		✔
Pollution prevention & waste management	✔	✔	✔	✔	✔

TABLE (a).—WELL CONTROL—Continued

Elements for basic training	Drilling		WO		WS
	Super	Floor	Super	Floor	
Well completion & well workover requirements (Subparts E & F of 30 CFR part 250)			✔		✔
14. Procedures & sequentials steps for shutting in a well:					
BOP system	✔		✔		✔
Surface/subsurface safety system					✔
Choke manifold	✔		✔		
15. Well control exercises with a simulator suitable for modeling well completion/well workover.			✔		
16. Well control exercises with a simulator suitable for modeling drilling	✔				
17. Instructions & simulator or test well experience on organizing & directing a well killing operation.	✔		✔		
18. At least two simulator practice problems (rotate the trainees & have teams of 3 or less members).	✔		✔		
19. Care, operation, & purpose [& installation (for supervisors)] of the well control equipment.	✔	✔	✔	✔	
20. Limitations of the equipment that may wear or be subjected to pressure	✔		✔		✔
21. Instructions in well control equipment, including:					
Surface equipment	✔		✔		✔
Well completion/well workover, BOP & tree equipment	✔		✔		✔
Downhole tools & tubulars	✔		✔		
Tubing hanger, back pressure valve (threaded/profile), landing nipples, lock mandrels for corresponding nipples & operational procedures for each, gas lift equipment & running & pulling tools operation.	✔				✔
Packers	✔		✔		
22. Instructions in special tools & systems, such as:					
Automatic shutdown systems (control points, activator pilots, monitor pilots, control manifolds & subsurface systems).					✔
Flow string systems (tubing, mandrels & nipples, flow couplings, blast joints, & sliding sleeves).					✔
Pumpdown equipment (purpose, applications, requirements, surface circulating systems, entry loops & tree connection/flange).					✔
23. Instructions for detecting entry into abnormally pressured formations & warning signals.	✔				
24. Instructions on well completion/well control problems	✔				
25. Well control problems during well completion/well workover including:					
Killing a flow			✔		
Simultaneous drilling, completion & workover operations on the same platform			✔		
Killing a producing well			✔		
Removing the tree			✔		
26. Calculations on the following:					
Fluid density increase that controls fluid flow into the wellbore	✔		✔		
Fluid density to pressure conversion & the danger of formation breakdown under the pressure caused by the fluid column especially when setting casing in shallow formations.	✔				
Fluid density to pressure conversion & the danger of formation breakdown under the pressure caused by fluid column.			✔		
Equivalent pressures at the casing seat depth	✔				
Drop in pump pressure as fluid density increases; & the relationship between pump pressure, pump rate, & fluid density.	✔		✔		
Pressure limitations on casings	✔		✔		
Hydrostatic pressure & pressure gradient	✔		✔		
27. Unusual well control situations, including the following:					
Drill pipe is off the bottom or out of the hole/work string is off the bottom or out of the hole.	✔		✔		
Lost circulation occurs	✔		✔		
Drill pipe is plugged/work string is plugged	✔		✔		
There is excessive casing pressure	✔		✔		
There is a hole in drill pipe/hole in the work string/hole in the casing string	✔		✔		
Multiple completions in the hole			✔		
28. Special well-control problems-drilling with a subsea stack (subsea students) includes:					
Choke line friction determinations	✔		✔		
Using marine risers	✔		✔		
Riser collapse	✔		✔		
Removing trapped gas from the BOP stack after controlling a well kick	✔		✔		
''U'' tube effect as gas hits the choke line	✔		✔		
29. Mechanics of various well controlled situations, including:					
Gas bubble migration & expansion	✔		✔		
Bleeding volume from a shut-in well during gas migration	✔		✔		
Excessive annular surface pressure	✔		✔		
Differences between a gas kick & a salt water and/or oil kick	✔		✔		

TABLE (a).—WELL CONTROL—Continued

Elements for basic training	Drilling		WO		WS
	Super	Floor	Super	Floor	
Special well control techniques (such as, but not limited to, barite plugs & cement plugs).	✔		✔		
Procedures & problems involved when experiencing lost circulation	✔		✔		
Procedures & problems involved when experiencing a kick while drilling in a hydrogen sulfide (H_2S) environment.	✔		✔		✔
Procedures & problems—experiencing a kick during snubbing, coil-tubing, or small tubing operations and stripping & snubbing operations with work string.	✔		✔		
30. Reasons for well completion/well workover, including:					
Reworking a reservoir to control production			✔		✔
Water coning			✔		
Completing from a new reservoir			✔		✔
Completing multiple reservoirs			✔		✔
Stimulating to increase production			✔		✔
Repairing mechanical failure			✔		✔
31. Methods on preparing a well for entry:					
Using back pressure valves			✔		
Using surface & subsurface safety systems			✔		✔
Removing the tree & tubing hangar			✔	✔	✔
Installing & testing BOP & wellhead prior to removing back pressure valves & tubing plugs.			✔		✔
32. Instructions in small tubing units:					
Applications (stimulation operations, cleaning out tubing obstructions, and plugback and squeeze cementing).			✔		
Equipment description (derrick & drawworks, small tubing, pumps, weighted fluid facilities, and weighted fluids).			✔		
BOP equipment (rams, wellhead connection, and check valve)			✔		
33. Methods for killing a producing well, including:					
Bullheading			✔		✔
Lubricating & bleeding			✔		✔
Coil tubing			✔		✔
Applications (stimulation operations, initiating flow, & cleaning out sand in tubing)					✔
Equipment description (coil tubing, reel, injecting head, control assembly & injector hosit).					✔
BOP equipment (tree connection or flange, rams, injector assembly & circulating system).					✔
Snubbing			✔		✔
Types (rig assist & stand alone)					✔
Applications (running & pulling production or kill strings, resetting weight on packers, fishing for lost wireline tools or parted kill strings & circulating cement or fulid).					✔
Equipment (operating mechanism, power supply, control assembly & basket, slip assembly, mast & counterbalance winch & access window).					✔
BOP equipment (tree connection or flange, rams, spool, traveling slips, manifolds, auxiliary—full opening safety valve inside BOP, maintenance & testing).					✔
34. The purpose & use of BOP closing units, including the following:					
Charging procedures include precharge & operating pressure	✔		✔		
Fluid volumes (useable & required)	✔		✔		
Fluid pumps	✔		✔		
Maintenance that includes charging fluid & inspection procedures	✔		✔		
35. Instructions on stripping & snubbing operators & using the BOP system for working pipe in or out of a wellbore under pressure.	✔				

TABLE (b)—PRODUCTION SAFETY SYSTEMS

1. Government Regulations:
   - Pollution prevention & waste management
   - Requirements for well completion/well workover operations
2. Instructions in the following: (contained in, but not limited to, API RP 14C):
   - Failures or malfunctions in systems that cause abnormal conditions & the detection of abnormal conditions
   - Primary & secondary protection devices & procedures
   - Safety devices that control undesirable events
   - Safety analysis concepts
   - Safety analysis of each basic production process component
   - Protection concepts
3. Hands on training on safety devices covering, installing, operating, repairing or maintaining equipment:

TABLE (b)—PRODUCTION SAFETY SYSTEMS—Continued

- High-low pressure sensors
- High-low level sensors
- Combustible gas detectors
- Pressure relief devices
- Flow line check valves
- Surface safety valves
- Shutdown valves
- Fire (flame, heat, or smoke) detectors
- Auxiliary devices (3-way block & bleed valves, time relays, 3-way snap acting valves, etc.)
- Surface-controlled subsurface safety valves &/or surface-control equipment
- Subsurface-controlled subsurface safety valves

4. Instructions on inspecting, testing & maintaining surface & subsurface devices & surface control systems for subsurface safety valves
5. Instructions in at least one safety device that illustrates the primary operation principle in each class for safety devices:
   - Basic operations principles
   - Limits affecting application
   - Problems causing equipment malfunction & how to correct these problems
   - A test for proper actuation point & operation
   - Adjustments or calibrations
   - Recording inspection results & malfunctions
   - Special techniques for installing safety devices
6. Instructions on the basic principle & logic of the emergency support system:
   - Combustible & toxic gas detection system
   - Liquid containment system
   - Fire loop System
   - Other fire detection systems
   - Emergency shutdown system
   - Subsurface safety valves

§ 250.230 If MMS tests employees at my worksite, what must I do?

(a) You must allow MMS to test employees at your worksite.

(b) You must identify your employees by:

(1) Current job classification;

(2) Name of the operator;

(3) Name of the most recent basic or advanced course taken by your employees for their current job; and

(4) Name of the training organization.

(c) You must correct any deficiencies found by MMS. Steps for correcting deficiencies may include:

(1) Isolating problems by doing more testing; and

(2) Reassigning employees or conducting training (MMS will not identify the employees it tests).

§ 250.231 If MMS test trainees at a training organization's facility, what must occur?

(a) Training organizations must allow MMS to test trainees.

(b) The trainee must pass the MMS-conducted test or a retest in order for MMS to consider that the trainee completed the training.

§ 250.232 Why might MMS conduct its own tests?

MMS needs to identify the effectiveness of a training program that provides for safe and clean operations.

§ 250.233 Can a training organization lose its accreditation?

Yes, an accredited organization can lose its accreditation. MMS may revoke or suspend an organization's accreditation for noncompliance with regulations or conditions of its accredited program, or assess civil penalties under subpart N of this part.

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Minerals Management Service

30 CFR Part 250

RIN 1010–AC19

Unitization

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule amends the unitization regulations by removing the two model unit agreements—one for exploration, development, and production units and the other for development and production units. The model agreements will be available from the Regional Supervisor. The rule is written in ''plain English.'' We take this action to support the President's initiative to reform Government regulations. Our objective is to shorten the regulation and clarify the wording.

EFFECTIVE DATE: This rule is effective on March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Judith M. Wilson, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The rules on unitization in 30 CFR part 250, implementing section 5(a)7 of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978, are intended to prevent waste (defined in § 250.2), conserve natural resources (protection of marine life was incorporated into conservation in 1971; also refers to deterring unnecessary facilities), and/or protect correlative rights. The rules include provisions to:

- Explain the authority and requirements for unitization;
- Provide for compulsory or voluntary unitization;
- Explain requirements for competitive reservoir operations;
- Explain how a lessee may request a determination of whether a reservoir is competitive;
- Explain how to submit a joint development and production plan;
- Explain the process for voluntary unitization;
- Explain the process for compulsory unitization; and
- Explain the role of a model agreement.

This final rule does not intend any substantive changes to the regulations. It shortens existing regulations by removing the model unit agreements. The ''plain English'' clarifies the existing rule.

There are two model unit agreements—one for exploration, development, and production units and the other for development and production units. The model agreements will be available from the Regional Supervisor. The Regional Supervisor

can still approve variations from the model agreements for good cause. If MMS changes the model unit agreements, MMS will publish the revised model unit agreements in the Federal Register.

Comments

The Federal Register published the proposed rule on June 5, 1996 (61 FR 28525). During the 74-day comment period, MMS received 10 sets of comments on the proposed rule. Six commenters did not agree with using ''plain English'' and removing the model unit agreements from the *Code of Federal Regulations*. Overall, those who opposed ''plain English'' are comfortable with the existing language and understand it. One specific comment on the proposed rule language included that it did not clarify that ''Pugh'' concepts (State law authorizes unitized leases to be segregated) do not apply to the OCS, and it omitted potential hydrocarbon accumulations from the definition of a unit area. Commenters concerned about removal of the model unit agreements expressed a need to operate in a climate of greater certainty. The four remaining comments support the proposed rule change.

Response to Comments

We appreciate the comments we received on the proposed rule. While there was some opposition to using ''plain English,'' MMS supports the President's initiative, and we will continue to improve our regulations with ''plain English.'' ''Plain English'' allows us to express legal requirements clearly and accurately and communicate information to a wide audience.

We incorporated many of the specific editorial comments in an effort to further clarify the rule. Regarding the ''Pugh'' concept, the 1982 Department of the Interior (DOI) Solicitor's Opinion M–36927, concludes that the Secretary of the Interior does not have the legal authority to require segregation of unitized portions of leases from the remainder of leases. We clarified the language in the final rule to maintain that portions of leases, as well as whole leases, may be included in units.

It continues to be our policy that we may approve exploratory units before a successful exploratory well is completed when geophysical data reasonably support including a lease in the unit. The unit area is limited to the leases that encompass the productive area of a reservoir, for reservoir units, or to the leases containing all or part of a geologic structure, i.e., a potential hydrocarbon accumulation.

In § 250.191(2)(c), we retain the word ''minimum'' for the number of leases, or portions of leases, in a unit area. Industry suggested we use the word ''appropriate.'' Our policy is designed to minimize the number of unitized leases necessary for efficient exploration, development, and production.

The model unit agreements will be withdrawn. MMS will publish any ''permanent'' changes made to those agreements in the Federal Register for public notice and comment.

In this rulemaking, MMS is also correcting a typographical error in 30 CFR part 250. The error occurs in § 250.124(a)(3)(i). This technical amendment amends the sentence in paragraph (i) from ''All PSH or PSL'' to ''All PSH and PSL.'' This has always been the intent of the requirement.

Executive Order (E.O.) 12866

This rule is not a significant rule requiring the Office of Management and Budget (OMB) review under E.O. 12866.

Regulatory Flexibility Act

Since this amendment has no economic effects, DOI has determined that this rule will have no effect on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements in 30 CFR Part 250, Subpart M, Unitization, are approved by OMB as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB control number is 1010–0068. The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

MMS collects the information under regulations implementing the OCS Lands Act. MMS uses the information to determine if unitized operations will conserve natural resources, prevent waste, and protect correlative rights and Government interests. The information is required to obtain or retain a benefit as specified in the OCS Lands Act. MMS will protect information considered confidential or proprietary under applicable law and under regulations at 30 CFR 250.18 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

MMS estimates the annual reporting burden to be approximately 2,424 hours, an average of 45.7 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. MMS received no comments on the information collection aspects of the proposed rule during the public comment period.

You may direct comments on the burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Mail Stop 2053, Minerals Management Service, 381 Elden Street, Herndon, VA 20170–4817; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Desk Officer for the Department of the Interior (OMB No. 1010–0068), Room 10102, 725 17th Street NW., Washington, D.C. 20503.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, is not required.

Unfunded Mandates Reform Act of 1995

The DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

E.O. 12988

DOI has certified to OMB that this rule meets the applicable civil justice reform standards provided in sections 3(b)(2) of E.O. 12988.

National Environmental Policy Act

MMS has examined the rulemaking and has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: January 27, 1997.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

Subpart H—Oil and Gas Production Safety Systems

2. In § 250.124, paragraph (a)(3)(i) is revised as follows:

§ 250.124 Production safety-system testing and records.

(a) * * *

(3) * * *

(i) All PSH and PSL,

* * * * *

Subpart M—Unitization

3. Subpart M is revised to read as follows:

Subpart M—Unitization

Sec.

Subpart M—Unitization

§ 250.190 What is the purpose of this subpart?

This subpart explains how Outer Continental Shelf (OCS) leases are unitized. If you are an OCS lessee, use the regulations in this subpart for both competitive reservoir and unitization situations. The purpose of joint development and unitization is to:

(a) Conserve natural resources;

(b) Prevent waste; and/or

(c) Protect correlative rights, including Federal royalty interests.

§ 250.191 What are the requirements for unitization?

(a) *Voluntary unitization.* You and other OCS lessees may ask the Regional Supervisor to approve a request for voluntary unitization. The Regional Supervisor may approve the request for voluntary unitization if unitized operations:

(1) Promote and expedite exploration and development; or

(2) Prevent waste, conserve natural resources, or protect correlative rights, including Federal royalty interests, of a reasonably delineated and productive reservoir.

(b) *Compulsory unitization.* The Regional Supervisor may require you and other lessees to unitize operations if unitized operations are necessary to:

(1) Prevent waste;

(2) Conserve natural resources; or

(3) Protect correlative rights, including Federal royalty interests, of a reasonably delineated and productive reservoir.

(c) *Unit area.* The area that a unit includes is the minimum number of leases that will allow the lessees to minimize the number of platforms, facility installations, and wells necessary for efficient exploration, development, and production of mineral deposits, oil and gas reservoirs, or potential hydrocarbon accumulations. A unit may include whole leases or portions of leases.

(d) *Unit agreement.* You, the other lessees, and the unit operator must enter into a unit agreement. The unit agreement must: allocate benefits to unitized leases, designate a unit operator, and specify the effective date of the unit agreement. The unit agreement must terminate when: the unit no longer produces unitized substances, and the unit operator no longer conducts drilling or well-workover operations (§ 250.13) under the unit agreement, unless the Regional Supervisor orders or approves a suspension of production under § 250.10.

(e) *Unit operating agreement.* The unit operator and the owners of working interests in the unitized leases must enter into a unit operating agreement. The unit operating agreement must describe how all the unit participants will apportion all costs and liabilities incurred maintaining or conducting operations. When a unit involves one or more net-profit-share leases, the unit operating agreement must describe how to attribute costs and credits to the net-profit-share lease(s), and this part of the agreement must be approved by the Regional Supervisor. Otherwise, you must provide a copy of the unit operating agreement to the Regional Supervisor, but the Regional Supervisor does not need to approve the unit operating agreement.

(f) *Extension of a lease covered by unit operations.* If your unit agreement expires or terminates, or the unit area adjusts so that no part of your lease remains within the unit boundaries, your lease expires unless:

(1) Its initial term has not expired;

(2) You conduct drilling, production, or well-reworking operations on your lease consistent with applicable regulations; or

(3) MMS orders or approves a suspension of production or operations for your lease.

(g) *Unit operations.* If your lease, or any part of your lease, is subject to a unit agreement, the entire lease continues for the term provided in the lease, and as long thereafter as any portion of your lease remains part of the unit area, and as long as operations continue the unit in effect.

(1) If you drill, produce or perform well-workover operations on a lease within a unit, each lease, or part of a lease, in the unit will remain active in accordance with the unit agreement. Following a discovery, if your unit ceases drilling activities for a reasonable time period between the delineation of one or more reservoirs and the initiation of actual development drilling or production operations and that time period would extend beyond your lease's primary term or any extension under § 250.13, the unit operator must request and obtain MMS approval of a suspension of production under § 250.10 in order to keep the unit from terminating.

(2) When a lease in a unit agreement is beyond the primary term and the lease or unit is not producing, the lease will expire unless:

(i) You conduct a continuous drilling or well reworking program designed to develop or restore the lease or unit production; or

(ii) MMS orders or approves a suspension of operations under § 250.10.

§ 250.192 What if I have a competitive reservoir on a lease?

(a) The Regional Supervisor may require you to conduct development and production operations in a competitive reservoir under either a joint Development and Production Plan or a unitization agreement. A competitive reservoir has one or more producing or producible well completions on each of two or more leases, or portions of leases, with different lease operating interests. For purposes of this paragraph, a producible well completion is a well which is capable of production and which is shut in at the well head or at the surface but not necessarily connected to production facilities and from which the operator plans future production.

(b) You may request that the Regional Supervisor make a preliminary determination whether a reservoir is competitive. When you receive the preliminary determination, you have 30 days (or longer if the Regional Supervisor allows additional time) to concur or to submit an objection with supporting evidence if you do not concur. The Regional Supervisor will make a final determination and notify you and the other lessees.

(c) If you conduct drilling or production operations in a reservoir determined competitive by the Regional Supervisor, you and the other affected lessees must submit for approval a joint plan of operations. You must submit the joint plan within 90 days after the Regional Supervisor makes a final determination that the reservoir is competitive. The joint plan must provide for the development and/or production of the reservoir. You may submit supplemental plans for the Regional Supervisor's approval.

(d) If you and the other affected lessees cannot reach an agreement on a joint Development and Production Plan within the approved period of time, each lessee must submit a separate plan to the Regional Supervisor. The Regional Supervisor will hold a hearing to resolve differences in the separate plans. If the differences in the separate plans are not resolved at the hearing and the Regional Supervisor determines that unitization is necessary under § 250.191(b), MMS will initiate unitization under § 250.194.

§ 250.193 How do I apply for voluntary unitization?

(a) You must file a request for a voluntary unit with the Regional Supervisor. Your request must include:

(1) A draft of the proposed unit agreement;

(2) A proposed initial plan of operation;

(3) Supporting geological, geophysical, and engineering data; and

(4) Other information that may be necessary to show that the unitization proposal meets the criteria of § 250.190.

(b) The unit agreement must comply with the requirements of this part. MMS will maintain and provide a model unit agreement for you to follow. If MMS revises the model, MMS will publish the revised model in the Federal Register. If you vary your unit agreement from the model agreement, you must obtain the approval of the Regional Supervisor.

(c) After the Regional Supervisor accepts your unitization proposal, you, the other lessees, and the unit operator must sign and file copies of the unit agreement, the unit operating agreement, and the initial plan of operation with the Regional Supervisor for approval.

§ 250.194 How will MMS require unitization?

(a) If the Regional Supervisor determines that unitization of operations within a proposed unit area is necessary to prevent waste, conserve natural resources of the OCS, or protect correlative rights, including Federal royalty interests, the Regional Supervisor may require unitization.

(b) If you ask MMS to require unitization, you must file a request with the Regional Supervisor. You must include a proposed unit agreement as described in §§ 250.191(d) and 250.193(b); a proposed unit operating agreement; a proposed initial plan of operation; supporting geological, geophysical, and engineering data; and any other information that may be necessary to show that unitization meets the criteria of § 250.190. The proposed unit agreement must include a counterpart executed by each lessee seeking compulsory unitization. Lessees who seek compulsory unitization must simultaneously serve on the nonconsenting lessees copies of:

(1) The request;

(2) The proposed unit agreement with executed counterparts;

(3) The proposed unit operating agreement; and

(4) The proposed initial plan of operation.

(c) If the Regional Supervisor initiates compulsory unitization, MMS will serve all lessees of the proposed unit area with a proposed unitization plan and a statement of reasons for the proposed unitization.

(d) The Regional Supervisor will not require unitization until MMS provides all lessees of the proposed unit area written notice and an opportunity for a hearing. If you want MMS to hold a hearing, you must request it within 30 days after you receive written notice from the Regional Supervisor or after you are served with a request for compulsory unitization from another lessee.

(e) MMS will not hold a hearing under this paragraph until at least 30 days after MMS provides written notice of the hearing date to all parties owning interests that would be made subject to the unit agreement. The Regional Supervisor must give all lessees of the proposed unit area an opportunity to submit views orally and in writing and to question both those seeking and those opposing compulsory unitization. Adjudicatory procedures are not required. The Regional Supervisor will make a decision based upon a record of the hearing, including any written information made a part of the record. The Regional Supervisor will arrange for a court reporter to make a verbatim transcript. The party seeking compulsory unitization must pay for the court reporter and pay for and provide to the Regional Supervisor within 10 days after the hearing three copies of the verbatim transcript.

(f) The Regional Supervisor will issue an order that requires or rejects compulsory unitization. That order must include a statement of reasons for the action taken and identify those parts of the record which form the basis of the decision. Any adversely affected party may appeal the final order of the Regional Supervisor under 30 CFR part 290.

[FR Doc. 97–2822 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 255 and 340

Confidentiality of Medical Quality Assurance (QA) Records and Delegation of Authority to Deputy Secretary of Defense; Removal

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's Confidentiality of Medical Quality Assurance (QA) Records and the organizational charter on the Delegation of Authority to Deputy Secretary of Defense codified in the CFR. The parts have served the purpose for which they were intended in the CFR and are no longer necessary.

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION: DoD Directive 6040.37, ''Confidentiality of Medical Quality Assurance (QA) Records'' was revised by a July 9, 1996 version. DoD Directive 5105.2, ''Delegation of Authority to the Deputy Secretary of Defense'' was revised by a January 24, 1997 version. Copies of the Directives may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects

32 CFR Part 255

Armed forces, Health care, Health records, Privacy.

32 CFR Part 340

Organization and functions.

PARTS 255 AND 340—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 255 and 340 are removed.

Dated: January 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2753 Filed 2–4–97; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP–5F4578/R–2277; FRL–5585–8]

RIN 2070–AB78

Glufosinate Ammonium; Tolerances for Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites: 2-acetamino-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, in or on various raw agricultural commodities (RACs), derived from transgenic field corn and transgenic soybeans. AgrEvo USA Co. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of l996 (FQPA) requesting the tolerances.

EFFECTIVE DATE: This regulation becomes effective February 5, 1997. The tolerances expire and are revoked automatically without further action by EPA on July 13, l999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PP–5F4578/R–2277], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [PP–5F4578/R–2277]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IX. of this preamble.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 25, 1995 (60 FR 54689)(FRL–4982–4), EPA issued a notice pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by AgrEvo USA Co., Little Falls One, 2711 Centerville Rd., Wilmington, DE 19808. The petition requested that 40 CFR 180.473 be amended by adding tolerances for residues of glufosinate ammonium and its metabolites 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, in or on the following RACs: corn, field, grain at 0.2 part per million (ppm); corn, field, forage at 4.0 ppm; corn, field, silage at 3.5 ppm; corn, field, fodder at 5.5 ppm; soybean seed at 2.0 ppm; and soybean hulls at 6.0 ppm. In the Federal Register of July 31, l996 (61 FR 39964)(FRL–5384–7), EPA issued a notice of an amendment to the petition. The tolerances requested were changed to residues of glufosinate-ammonium and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphico-propionic acid expressed as glufosinate free acid equivalents, in or on the following RACs: corn, field, grain, at 0.2 ppm; corn, field, forage, at 4.0 ppm; corn, field, fodder, at 6.0 ppm; soybeans, at 2.0 ppm; aspirated grain fractions, at 25.0 ppm; eggs, at 0.05 ppm; poultry, meat at 0.05 ppm; poultry, fat at 0.05 ppm; and poultry, meat by-products (mbyp) at 0.10 ppm. The revised petition also requested that a maximum residue level be established for the same residues in or on the processed commodity under section 701 of FFDCA: soybean hulls at 5.0 ppm.

In the Federal Register of November 18, l996 (61 FR 58684) (FRL–5572–7), EPA issued a third Notice of Filing to amend the petition to bring the petition in conformity with FQPA (Pub. L. 104-170). The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with FQPA. In this instance the petitioner proposed to amend 40 CFR 180.473 by establishing tolerances for residues of glufosinate ammonium in or on the following RACs: corn, field, grain, at 0.2 ppm; corn, field, forage, at 4.0 ppm; corn, field, fodder, at 6.0 ppm; soybeans, at 2.0 ppm; soybean hulls, at 5.0 ppm; aspirated grain fractions, at 25.0 ppm; eggs, at 0.05 ppm; poultry, meat at 0.05 ppm; poultry, fat at 0.05 ppm; and poultry, mbyp at 0.10 ppm. The residues of glufosinate-ammonium were defined as butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolites: 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid expressed as glufosinate free acid equivalents.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing. The Notice of Filings were incorrectly stated for eggs and the poultry commodities because the residue chemistry data showed only the parent chemical and one metabolite, 3-methylphosphinico-propionic acid. The subject regulation is therefore amended accordingly. The data submitted in the

petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. A battery of acute toxicity studies placing technical glufosinate-ammonium in Toxicity Categories II and III.

2. A 90-day feeding study in rats at dietary intakes of 0, 0.52, 4.1, 32, or 263 mg/kg/day with a no-observed-effect level (NOEL) of 4.1 mg/kg/day. The lowest-observed-effect level (LOEL) was established at 32 mg/kg/day based on increased absolute and relative kidney weights.

3. A 90-day feeding study in mice at dietary intakes of 0, 16.6, 67.1, or 278 mg/kg/day with a NOEL of 16.6 mg/kg/day and an LOEL of 67.1 mg/kg/day based on increased absolute and relative liver weights (both sexes) and an increase in serum potassium levels (males).

4. Three teratology studies in rats at doses from 0.5 to 250 mg/kg/day with no teratogenic effects occurring up to and including 250 mg/kg/day. A NOEL for developmental toxicity was 50 mg/kg/day, based upon an increase in the incidence of dilated renal pelvis and hydroureter in fetuses at 250 mg/kg/day. The maternal NOEL was 10 mg/kg/day, based on the finding of hyperactivity and vaginal bleeding of dams at 50 mg/kg/day.

5. A teratology study in rabbits at doses of 0, 2, 6.3, or 20 mg/kg/day with no teratogenic effects occurring up to and including 20 mg/kg/day, and a maternal NOEL of 6.3 mg/kg/day and a developmental NOEL of 20 mg/kg/day, the highest dose tested.

6. A two-generation reproduction study in rats at dietary concentrations of 0, 40, 120, or 360 ppm with an NOEL for reproductive effects at 120 ppm (equivalent to 12 mg/kg/day) based upon reduced number of pups in the high-dose group. The NOEL for parental toxicity was 40 ppm (4 mg/kg/day) based upon increased kidney weights in the high-dose group.

7. A 12-month feeding study in dogs at doses of 0, 2, 5, or 8.5 mg/kg/day. The NOEL was 5.0 mg/kg/day based upon the death of one male and one female dog at 8.5 mg/kg/day with no other treatment-related toxicity.

8. A mouse carcinogenicity study at doses of 0, 2.8, 10.8, or 22.7 mg/kg/day in males and 0, 4.2, 16.2, or 64.0 mg/kg/day in females for 104 weeks with no carcinogenic effects observed under the conditions of the study up to and including 64 mg/kg/day and a systemic NOEL of 10.8 and 16.2 for males and females, respectively, based on the dose-related increase in mortality.

9. A chronic feeding/carcinogenicity study in rats at dietary doses of 0, 2.5, 8.8, or 31.5 mg/kg/day (males) and 0, 2.4, 8.2, or 28.7 mg/kg/day (females) with an NOEL of 2.1 mg/kg/day for systemic effects based on an increase in kidney weights in females at the two higher doses. There were no treatment-related carcinogenic effects at any dose level. The study was determined to be unacceptable because a high enough dose was not tested.

10. Acceptable studies on gene mutation (*Salmonella*, *E coli.*, and mouse lymphoma assays), structural chromosomal aberration (*in vivo* micronucleus assay in mice), and other genotoxic effects (unscheduled DNA synthesis assay with rat hepatocytes) yielded negative results.

11. Pharmacokinetic and metabolism studies in rats indicated that approximately 80 to 90 percent of the orally administered dose of glufosinate ammonium remained unabsorbed and was eliminated in the feces. Approximately 10 to 15 percent was eliminated in the urine. The major metabolic pathway is oxidative deamination yielding the metabolite, 3-methyl-phospinico propionic acid.

II. Method of Determining Risks

1. *Human dietary exposure.* Residues in the agricultural commodities harvested from the crop cultured with the aid of the pesticide are determined by chemical analysis. To account for the diversity of growing conditions, culture practices, soil types, climatic conditions, crop varieties and methods of use of the pesticide, data from studies that represent the resulting commodities are collected and evaluated to determine an appropriate level of residue that would not be exceeded if the pesticide is used as represented in the studies. The conduct of the field trial and guidelines for determining the residues are given in EPA ''OPPTS Test Guidelines, Series 860, Residue Chemistry, August l996''(see 61 FR 44308, August 28, 1996, for availability of document)(FRL–5390–7).

The method of chemical analysis proposed for determining the residues in the various commodities is evaluated by a method ''try-out'' in EPA laboratories. If the method is found to be acceptable the Agency accepts the claim that a method of analysis is available for determining residues. The method must be appropriate for enforcement purposes. The presence of the pesticide or degradates of the pesticide in potable water may also be a source of dietary exposure that must be considered in establishing a tolerance level for a agricultural commodity.

The Reference Dose (RfD) is assumed to be the exposure at or below which daily aggregate exposure over a lifetime will not pose an appreciable risk to human health. To assure the adequacy of the RfD, the Agency uses an uncertainty factor in deriving it. The factor is usually 100, based on the assumption that certain segments of the human population could be as much as 100 times more sensitive than the species represented by the toxicology data.

If the pesticide is determined to be a human carcinogen, the toxicological end-point must be determined based on the nature of the carcinogenic response and a knowledge of its mode of action. The Agency uses a weight of evidence in classifying the potential of the pesticide as a human carcinogen. Glufosinate-ammonium has not been determined to be a human carcinogen, therefore a derived RfD was used as the toxicological end-point in the dietary risk assessments and the subject action. Available data show no indication that it is carcinogenic, however this Agency is requiring a repeat rat carcinogenicity study.

2. *Non-dietary exposure.* Margins of Exposures (MOEs) are determined for non-dietary exposures based on toxicological end-points and measured or estimated exposures. Dermal absorption studies are required for pesticidal chemicals that have serious toxic effects as identified by oral or inhalation studies, for which a significant route of human exposure is dermal and for which the assumption of 100% absorption does not produce an adequate margin of safety. Glufosinate ammonium has not been identified as having a serious toxic effects by either oral or inhalation routes of exposure. A rat glufosinate ammonium dermal absorption study at doses of 0.1, 1.0 and 10 mg/rat on 6 square centimeters of skin showed maximum levels of absorption between 4 to 10 hours. The absorption at 0.1 was 42.5 to 50.8% of the applied radioactivity, whereas at 10.0, 26% of the dose was absorbed.

The petitioner has informed EPA that a dermal absorption study was submitted to the State of California for the formulated product, that is to be registered for use in the culture of transgenic corn and soybeans. The petitioner stated that the data indicated that the dermal absorption by rats following 0.5- to 24-hour dermal exposures at dose levels of 12 to 1,218 micrograms per square centimeter averaged approximately 6%, with an upper limit of 19%. The only values

greater than 10% were following 24-hour exposures at dose level of 1,218 micrograms per square centimeter. The petitioner also stated that *in vitro* data with the same formulation suggest that the rate of penetration in rats is about 3 to 29 times higher than in humans, depending on the dose level.

An acceptable rat oncogenicity study is required and is one of the reasons for designating these tolerances ''time-limited'' with an expiration date. Without an acceptable rat oncogenicity study the risk from the many non-dietary uses can not be determined precisely. Also, without appropriate dermal absorption data EPA cannot determine the risks from the non-dietary use exposures. As an interim policy in safety decisions, EPA is using a default assumption based on the information available from similar pesticides. A maximum of 20% of the RfD is being assigned for all non-dietary uses of glufosinate ammonium in the risk analysis associated with this final rule.

III. Aggregate Exposures

1. *Food and feed uses.* The primary source for human exposure to glufosinate ammonium will be from ingestion of both raw and processed agricultural commodities as proposed in the November 18, 1996 Notice for Filing cited above and as established already by 40 CFR 180.473.

2. *Potable water.* There is presently no EPA Lifetime Health Advisory level for glufosinate ammonium and its degradates as drinking water contaminates. At the dosage of proposed uses and existing uses, the level of contamination of drinking water is not expected to be significant in the analysis of risk from the proposed and existing uses of this pesticide. At the maximum application rate of 0.75 lb per acre, the Agency does not expect residues to reach ground water.

3. *Non-dietary uses.* Glufosinate ammonium is registered for use as a post-emergent herbicide for non-food use-sites, such as areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of-way, roadsides, railroads, and other public areas and similar industrial and nonfood crop areas. The exposure from these uses are expected to be dermal in nature. Results of an acute dermal toxicity study indicate that there is dermal absorption of glufosinate ammonium. This Agency has no quantitative data on dermal absorption for the formulation of this chemical. Without these data the Agency cannot determine the risk from exposure to children and adults, nor determine the aggregate risk to the public exposed by these non-food uses of this pesticide. For this reason, the Agency is using a maximum default assumption of 20% of the RfD (0.004 mg/kg bwt/day) as the exposure from these uses.

The petitioner has argued in their Notice of Filing that these non-food use exposures are not expected to pose any acute toxicity concerns and that the average homeowner would not expect to use pesticide products containing glufosinate ammonium more than four times per year, therefore such exposure would not ''normally be factored into a chronic exposure assessment.'' They did not address the matter of aggregate risk from the chronic effects of all such exposures, nor the need for such exposure data for determining the aggregate exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* The mechanism of toxicity is believed to be caused by an interference with neurotransmitter function of glutamate, to which it is a close structural analog. No other substance with this mechanism of toxicity has been identified; for this reason, only exposures to glufosinate ammonium and its metabolites and degradates have been identified for quantitation in the risk assessment for the proposed tolerances.

IV. Determination of Safety for U.S. Population and Non-Nursing Infants

A. The U.S. Population

Based on a NOEL of 2.1 mg/kg bwt/day from a 2-year rat chronic toxicity study that demonstrated increased absolute and relative kidney weights in males as an endpoint effect, and using an uncertainty factor of 100 the Agency has determined a RfD of 0.02 mg/kg bwt/day for this assessment of risk. Based on the available toxicity data and the available exposure data identified above, the proposed tolerances will utilize 3.7% of the RfD. Existing tolerances utilize 2.07% of the RfD; therefore, the subject proposed tolerances for use of glufosinate ammonium in the culture of transgenic corn and soybeans will result in a cumulative total use of 25.77% of the RfD, when the 20% default assumption for the non-food use exposures is included.

B. Non-Nursing Infants

Exposure to non-nursing infants as a result of the use of glufosinate ammonium in the culture of transgenic corn and soybeans will result in the use of 17.2% of the RfD. Existing exposures from established tolerances utilize 10.6% of the RfD. The cumulative exposure will be 47.8% of the RfD, when the 20% default assumption for the non-food uses are included.

C. Nonfood Uses

Exposure from nonfood uses of glufosinate ammonium and from contaminated potable water sources have not been precisely addressed in this assessment. However, EPA does not foresee that these exposures will result in a cumulative level that exceeds the RfD. EPA concludes that there is reasonable certainty that no harm will result from the aggregate exposures to residues and degradates of glufosinate ammonium.

V. Determination of Safety for Infants and Children

Risk to infants and children was determined by use of three teratology studies in rats that had a NOEL for developmental toxicity of 2.24 mg/kg/day, based on an increase in the incidence of dilated renal pelvis with dyroureter in the fetuses at 10 mg/kg/day and a maternal NOEL also 2.24 mg/kg/day and a teratology study in rabbits that had a NOEL of 20 mg/kg/day for developmental effects and a maternal NOEL of 6.3 mg/kg/day, and a two-generation reproduction study in rats that had a NOEL of 12 mg/kg/day for reproductive effects. The effect was reduced number of pups in the high-dose group. The NOEL for parental toxicity was also 12 mg/kg/day based upon increased kidney weights in the high-dose group.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that such additional factor is not necessary to protect the safety of infants and children. Based on current data requirements, the data base relative to pre- and post-natal toxicity is complete. The NOEL of 2.1 mg/kg bwt/day from a 2-year rat chronic toxicity study is lower than the NOELs from the developmental studies in rats and rabbits. In the reproduction study, the NOEL was about 6 times greater than the NOEL used for establishing the RfD. Effect of

pups in the reproduction study did not indicate a greater sensitivity for infants and children. Therefore, EPA concludes that an additional uncertainty factor is not necessary to protect the safety of infants and children and that the RfD at 0.02 mg/kg/day is appropriate for assessing aggregate risk to infants and children. The percent of the RfD that will be utilized by the aggregate exposure to glufosinate ammonium will range from 29.098 for children 7-12 years old, up to 48.303 for non-nursing infants. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

VI. Other Considerations

A. Endocrine Effects

An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic toxicology studies described in Unit I. in this document. There were no observed pathology of the endocrine organs in these studies. There is no evidence at this time that glufosinate ammonium causes endocrine effects.

B. Metabolism in Plants and Animals

The metabolism of glufosinate ammonium in plants and animals is adequately understood for the purposes of these tolerances. The only crop residue found after the preemergence use is the metabolite 3-methylphosphinico-propionic acid, which is found in only trace quantities. With the exception of corn grain, the principal residue identified in the metabolism studies after post-emergence use of glufosinate ammonium was 2-acetamido-4-methylphosphinico-butanoic acid, with lesser quantities of glufosinate and 3-methylphosphinico-propionic acid. In corn grain, which exhibits much lower total radio-labeled residues than the other commodities, the principal residue identified was 3-methylphospinico-propionic acid, with lesser amounts of 2-acetamido-4-methylphosphinico-butanoic acid.

C. Analytical Method

There is a practical analytical method for detecting and measuring levels of glufosinate ammonium 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. The proposed analytical method for determining residues is high-pressure liquid chromatography. EPA has provided information on this method to the Food and Drug Administration. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone umber: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5937.

D. International Tolerances

The following Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for glufosinate ammonium have been established: maize, at 0.1 ppm, maize forage, at 0.2 ppm, and soya bean (dry) at 0.1 ppm. These tolerances are for use-patterns for no-till systems of culture of non-transgenic corn and soybeans. AgrEvo USA Co. states that a petition for the same tolerances as proposed in the November 18, l996 EPA Notice of Filing is pending with the Joint Meeting of the Food and Agriculture Organization Panel of Experts on Pesticide Residues in Food and the Environment and the World Health Organization Expert Group on Pesticide Residues to establish Codex MRLs for use of glufosinate ammonium in the culture of transgenic corn and soybeans. The proposed tolerances for corn and soybean commodities are greater than the MRLs established by the Codex Alimentarius Commission because glufosinate ammonium is applied as a post-emergence herbicide in the culture of transgenic corn and soybeans; whereas the Codex MRLs are for preemergence applications of this herbicide in the culture of these crops. Studies showed the level of residues from the post-emergence use was greater.

E. Data Gaps

A data gap currently exists for a rat carcinogenicity study. All tolerances are time-limited because of this data gap. The time limitation allows for development and review of the data. A repeat rat carcinogenicity study has been required and is expected to be submitted and reviewed prior to the expiration date of these tolerances. A mouse carcinogenicity and a rat carcinogenicity study have been reviewed and showed no evidence of carcinogenicity. However, the EPA Peer Review Committee determined that the rat study was flawed in that the study was not conducted at the maximum tolerated dose. Based on the toxicological data and the levels of exposure, EPA has determined that the existing tolerances and the proposed tolerances will be safe.

VII. Summary of Findings

The analysis for glufosinate ammonium using tolerance level residues shows that the existing uses on apples, grapes, and tree nut group and the proposed uses on transgenic corn and soybeans will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to glufosinate ammonium residues at levels below 100% of the RfD for chronic effects. Based on the information cited above, the Agency has determined that the establishment of the time-limited tolerances by amending 40 CFR 180.473 will be safe; therefore, the time-limited tolerances are established as set forth below.

VIII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 7, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ADDRESSES section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(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). 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

IX. Public Docket

A record has been established for this rulemaking under docket control number [PP–5F4578/R–2277]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operation Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

X. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, l993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, l994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 17, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.473, by adding alphabetically the following commodities and tolerances to paragraph (a) and adding paragraph (c) to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
* * * * *		
Eggs	0.05	July 13, 1999.
* * * * *		
Poultry, fat	0.05	July 13, 1999.
Poultry, mbyp	0.10	July 13, 1999.
Poultry, meat	0.05	July 13, 1999.
* * * * *		

* * * * *

(c) Time-limited tolerances are established for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-,monoammonium salt), and its metabolites 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid in or on the following raw agricultural commodities derived from transgenic corn and soybeans that are tolerant to the herbicide glufosinate ammonium, as provided below. These tolerances shall expire and be automatically revoked on July 13, l999.

Commodity	Parts per million	Expiration date
Aspirated Grain Fractions	25.0	July 13, 1999.
Corn, field, forage	0.4	July 13, 1999.
Corn, field, grain	0.2	July 13, 1999.
Corn, field, stover	6.0	July 13, 1999.
Soybean, hulls	5.0	July 13, 1999.
Soybeans	2.0	July 13, 1999.

[FR Doc. 97–2838 Filed 2–4–97; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV–960–1060–00–24 1A]

RIN 1004–AC61

Adoption Fee for Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Land Management (BLM) revises its procedures used to set adoption fees for Wild Horses and Burros. The purpose of the amendment is to allow BLM more flexibility in establishing adoption fees, to recover a higher proportion of the associated cost, and encourage adoptions consistent with the basic goals of the Wild Horse and Burro adoption program. The rule also allows BLM to use competitive methods.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Lili Thomas, (702) 785–6457 or Bob Barbour, (202) 452–7785.

SUPPLEMENTARY INFORMATION:

I. Background

In the 1950's a group concerned with the welfare of America's diminishing wild horse herds formed under the leadership of Velma Bronn Johnson. Better known as ''Wild Horse Annie,'' this woman from Nevada, along with many others, worked to ensure a place for wild horses and burros on Federal rangelands.

In 1971, Congress passed The Wild Free-Roaming Horse and Burro Act. To keep the ecological balance and maintain healthy rangelands, wild horses and burros are periodically removed and placed in the Adopt-A-Horse or Burro Program. This successful program, begun in 1973, has offered animals for ''adoption'' to qualified private individuals who agree to provide them humane treatment. Through the Adopt-a-Horse or Burro Program BLM placed over 150,000 animals in private care since 1976.

The current adoption fee of $125 for wild horses and $75 for wild burros was set in 1982. This fee is supposed to recapture some adoption cost, and assure a prompt adoption of animals after their removal from public lands. The adoption fee was originally set using the market price of horses in 1982. In the early 1980's the value of horses and burros was low because of an overabundance of these animals in the market. Currently the market value of the lowest quality domestic horse is about $300, well above the fee BLM charges. Additionally, since 1982, BLM's costs to feed, provide veterinary care and transport wild horses and burros have increased significantly. A flexible adoption fee system will shift some of the cost of the adoption from the general taxpayer to the individuals who benefit directly from this program. Future adoption fees will reflect market value of the animals and strike a balance between supply and demand. The increased cost per animal will help insure that the adopters are adopting the animal for itself rather than future financial gain before or after title is received.

Under this system BLM may offer horses and burros to the public at competitive adoptions. Animals not selected by the public through a competitive adoption would be available at the established adoption fee. The BLM Director may reduce or waive the adoption fee for animals that are unadoptable at the base fee. BLM is not changing the qualification requirements for adoption of a wild horse or burro. Adopters must meet the requirements of 43 CFR part 4750 before BLM allows them to participate in an adoption event.

Before each adoption event BLM will provide information on how the adoption will be conducted and the method to be used in establishing adoption fees.

II. Discussion of Final Rule and Response to Comments

The BLM received 25 comments in response to the proposed rule which was published in the Federal Register on July 10, 1996 (61 FR 36333). Five of the comments did not relate specifically to the adoption fee issue or involved other aspects of the Wild Horse and Burro program. Fourteen comments favored the changes BLM is making to increase the flexibility of the adoption fee system. Those in favor of the proposal expressed the view that cost to the American taxpayer should be reduced and the beneficiaries of the program should pay a reasonable price for the benefits they receive. Several believed that a competitive bidding system is a reasonable means to determine the price to adopt an individual animal. Seven of those who expressed favorable comments about an increased fee also voiced opposition to what they perceived as a requirement for use of competitive adoptions. Most of those who expressed concern about the competitive bidding aspect of the proposed rule favored an across-the-board increase in fees for all animals.

BLM is making the regulatory change to provide flexibility in the establishment of adoption fees and to allow the public to decide what they will pay to adopt an individual animal. One element of this increased flexibility involves appropriate use of competitive adoptions. Because of the comments received, BLM revised the regulation at 43 CFR 4750.4–2(b) to clarify that competitive adoptions are one way of establishing adoption fees, but not the only way.

Six comments expressed opposition to the proposed change. The primary reason for this opposition was a concern that under a competitive system only people who are well off could own a more desirable horse. BLM believes it is appropriate to allow individual adopters to decide through a competitive

adoption how much they will pay for a wild horse or burro. Several of those who expressed opposition to the proposed rule were concerned that fees for wild burros would be too high and animals would not be adopted. A high demand exists for wild burros and BLM does not anticipate a problem placing these animals. Furthermore, in the event that we cannot adopt individual animals through the competitive process, we retain the option of offering them at the base fee of $125. Under new § 4750.4–2(c), we can lower the fee even further.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule does not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment, and that have been found to have no such effect in procedures adopted by a Federal agency, and for which neither an environmental assessment nor an environmental impact statement is required. The environmental effects of the rule are too broad and speculative to lend themselves to meaningful analysis and will be subject to the National Environmental Policy Act of 1969, 43 U.S.C. 4332 (2)(C) process on a case-by-case basis.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The cost of complying with the requirements of the final rule is indistinguishable from the requirements imposed by the existing adoption fee regulations. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule affects only individuals who may choose to adopt a wild horse or burro, assuming they meet the requirements of 43 CFR part 4750. Because the definition of ''small entity'' does not include individuals, the rule will not affect small entities.

Federal Paperwork Reduction Act

The provisions for collection of information contained at 43 CFR part 4710 have previously been approved by the Office of Management and Budget and assigned clearance number 1004–0042. This rule does not contain additional information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely effect small governments.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Authors

The principal authors of this proposed rule are Lili Thomas of the Wild Horse and Burro National Program Office and Bob Barbour of the Regulatory Affairs Group, BLM, assisted by Kim Fondren of the Office of the Solicitor, Department of the Interior.

List of Subjects 43 CFR Part 4700

Animal Welfare, Horses, Penalties, Public Lands, Range Management, Reporting and recordkeeping requirements, Wildlife.

For the reasons stated in the preamble, BLM is amending Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

2. BLM amends part 4700 by revising § 4750.4–2 to read as follows:

§ 4750.4–2 Adoption fee.

(a) Does BLM Charge an Adoption Fee for Wild Horses and Burros?

You must pay an adoption fee for each wild horse or burro you adopt. Usually BLM will charge you a $125 base fee. BLM will not charge you an adoption fee for orphan foals.

(b) Can BLM increase the adoption fee?

Yes, BLM may increase the adoption fee. BLM may hold competitive adoption events for wild horses or burros. At competitive adoptions, qualified adopters set adoption fees through competitive bidding. For these adoptions, the fee is the highest bid received over the base fee of $125. Horses or burros remaining at the end of a competitive adoption event will be available for adoption at the established adoption fee.

(c) May BLM reduce or waive the adoption fee?

(1) The BLM Director may reduce or waive the fee when wild horses or burros are un-adoptable at the base adoption fee.

(2) A reduction or waiver of the adoption fee is available only if you are willing to comply with all regulations relating to wild horses and burros.

[FR Doc. 97–2797 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 96–90, FCC 97–17]

Broadcast License Terms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: We issue this *Report and Order* (''R&O'') to implement Section 203 of the Telecommunications Act of 1996 (''Telecom Act'') (Broadcast

License Terms). Section 203 eliminates the statutory distinction between the maximum allowable license terms for television stations and radio stations, and provides that such licenses may be for terms ''not to exceed 8 years.'' Amendment of the Commission's Rules is necessary to conform them to Section 203 of the Telecom Act. In a *Notice of Proposed Rule Making* published on April 23, 1996, we sought comment on our request to amend our rules to extend broadcast license terms to 8 years, as well as on our request for implementing this change within the framework of existing license renewal cycles.

EFFECTIVE DATE: The rule changes contained in this *Report and Order* will become effective March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Somers, Mass Media Bureau, Policy and Rules Division, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No. 96–90, FCC 97–17, adopted January 23, 1997, and released January 24, 1997. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), (202) 857–3800, 1919 M Street, NW., Room 246, Washington, DC 20554.

I. Synopsis of Report and Order Extending License Terms for Broadcast Facilities

1. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (''Telecom Act'').[1] Section 203 of the Telecom Act modifies the previous statutory provisions regarding license terms for broadcast stations in two principal ways.[2] First, it eliminates the statutory distinction between the maximum allowable license terms for television stations and radio stations. Second, Section 203 provides that such licenses may be for terms ''not to exceed 8 years,'' thus increasing the previous allowable statutory maximum terms of 5 years for television stations and 7 years for radio stations.

2. On April 12, 1996, we issued a Notice of Proposed Rule Making *(''NPRM'')*[3] to implement these new statutory provisions regarding broadcast license terms. Specifically, we sought comment on our proposals to extend broadcast license terms to 8 years, to treat all but experimental broadcast stations uniformly for purposes of license terms, and to maintain the existing synchronization of the broadcast license renewal cycle based on 8-year license terms by extending the terms of recently renewed licenses. In this *Report and Order,* the Commission adopts these proposals.

II. Background

3. Section 307(c) of the Communications Act of 1934, as amended, (''Communications Act'') 47 U.S.C. 307(c), authorizes the Commission to establish the period or periods for which licenses shall be granted or renewed. Prior to the enactment of the Telecom Act, Section 307(c) provided that the licenses of television stations, including low power TV stations, could be issued for a term of no longer than 5 years. It further provided that license terms for radio stations, including auxiliary facilities, could be issued for a period not to exceed 7 years. These were the maximum allowable license terms and the Commission had the discretion to grant or renew a broadcast license for a shorter period if the public interest, convenience, and necessity would be served by such action. Consistent with these statutory provisions, § 73.1020 of the Commission's Rules currently states that ''[r]adio broadcasting stations will ordinarily be renewed for 7 years and TV broadcast stations will be renewed for 5 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term.'' 47 CFR 73.1020. Section 73.1020 also sets forth a renewal schedule for broadcast stations based on the geographical region of the country in which each station is located.[4]

4. Section 203 of the Telecom Act amends Section 307(c) of the Communications Act to read as follows:

> Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

III. Discussion

5. *Comments.* Most commenters, including the National Broadcasting Company (''NBC''), Capital Cities/ABC, Inc. (''ABC''), the National Association of Broadcasters (''NAB''), and the Association of Local Television Stations (''ALTV''), support our proposal for 8-year license terms and agree with the rationale set forth in the *NPRM.* Two parties, the Media Access Project and the Center for Media Education (''MAP/CME''), filed joint comments disagreeing with our proposal and rationale for 8-year license terms. According to MAP/CME, the Commission should exercise its discretion to extend license terms only if it adds quantitative requirements for locally originated programming addressing community issues, news, and children's educational programming. MAP/CME also assert that the Commission's rationale improperly focuses on the best interests of broadcasters rather than on the public interest. We address these comments in the course of the substantive discussion below.

6. *License Terms for Full Service Broadcast Stations.* The Telecom Act eliminated the statutory distinction between television and radio services for purposes of establishing the maximum allowable license terms. In this regard, the legislative history states:

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[1] Public Law 104–104, 110 Stat. 56 (1996).

[2] The statutory provisions governing the license terms for broadcast stations are contained in Section 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. 307(c).

[3] *Notice of Proposed Rule Making* in MM Docket No. 96–90, FCC 96–169, (released April 12, 1996), 61 FR 17864 (April 23, 1996).

[4] Section 74.15 of the Commission's Rules, 47 CFR 74.15, sets forth the license terms and renewal cycles for other classes of broadcast facilities. Licenses for experimental broadcast stations are issued for 1-year terms under § 74.15(a). Under § 74.15(b), licenses for auxiliary broadcast stations or systems are issued for a period running concurrently with the license of the associated broadcast station with which it is licensed. Licenses for FM and TV booster stations are issued for a period running concurrently with the license of the primary stations with which they are used pursuant to § 74.15(c). Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in the renewal cycle portion of § 74.15(d) depending on the geographic area in which the stations are located. Under our current rules, low power TV and TV translator stations are ordinarily renewed for 5 years, and FM translator stations are ordinarily renewed for 7 years. Section 73.733 of the Commission's Rules, 47 CFR 73.733, sets forth the license terms for international broadcasting stations, which are normally issued for a term of 7 years.

''By applying a uniform license term * * * for all broadcast station licenses, the Committee simply recognizes that there is no reason for longer radio license terms than for television licenses. The Committee intends that applying a uniform license term * * * for radio and television licenses will enable the Commission to operate more efficiently in the awarding of new or renewed licenses for all broadcast licenses.'' H.R. Rep. No. 104–204, Section 304, 104th Cong., 1st Sess. 122 (1995). The *NPRM* proposed to eliminate the current distinction in our rules between the license terms for full service broadcast television stations and radio stations.[5] No commenter takes issue with this proposal. Indeed, eliminating this distinction would help to streamline the licensing process and better utilize the administrative resources of both licensees and the Commission. Accordingly, we hereby amend Section 73.1020 of the Commission's Rules, 47 CFR 73.1020, to eliminate any distinction between full service television and radio stations for purposes of establishing the maximum allowable license terms.

7. In addition to eliminating the distinction between full service television and radio station licenses, we also believe it is in the public interest to adopt our proposal in the *NPRM* to provide that these licenses ordinarily have the maximum 8-year term authorized under the Telecom Act. While the statutory language provides the Commission discretion in this area, the Act's legislative history indicates a clear Congressional intent that the Commission adopt the maximum 8-year license term. Indeed, the Conference Report states that Section 203 of the Telecom Act ''extends the license term for broadcast licenses to eight years for both television and radio.'' [6] Extending broadcast license terms will reduce the burden to broadcasters of seeking more frequent renewal of their licenses and the associated burdens on the Commission. This is in accord with longstanding Congressional and Commission policy in favor of reducing regulatory burdens wherever appropriate.[7] By reducing such burdens, we will allow broadcasters to operate more efficiently in an increasingly competitive marketplace, and thus help ''assure the maximum service to the public at the lowest cost and with the least amount of regulation and paperwork.'' [8] Given this, and the clear Congressional intent in enacting Section 203 of the Telecom Act, we will ordinarily provide broadcasters with the maximum 8-year term. This decision is consistent with past Commission practice; our current rules provide for the maximum license terms in accordance with previous statutory maximum terms of 5 years for television stations and 7 years for radio stations.[9]

8. MAP/CME opposes extending broadcast license terms to eight years. It asserts that longer license terms will undermine meaningful public review of broadcasters' performance, especially when considered in conjunction with the new two-step license renewal process mandated under Sections 204 (a) and (c) of the Telecom Act which eliminates comparative renewal hearings and directs the Commission to grant a broadcaster's renewal if certain public interest renewal standards are met.[10] While we acknowledge MAP/CME's concerns, on balance, we believe adopting the maximum terms provided by statute is in the public interest and is consistent with Congressional intent. We do not intend that this action should affect licensees' compliance with public interest obligations and our ability to monitor such compliance. Hence, we remind broadcasters that their public interest responsibilities extend throughout the entire license term.[11] Additionally, the public will continue to have the ability to scrutinize station performance or to bring to the Commission's attention any shortcomings in performance by filing petitions to deny and informal objections at renewal time. Likewise, the public's right to file complaints with the Commission at any time during the license term is unaffected by longer license terms. To the extent MAP/CME believes it is necessary to revise license renewal standards to provide a better measure to evaluate licensee performance in the absence of comparative renewal challenges, that issue is not before us in this proceeding.[12]

9. MAP/CME also asserts that the Commission's rationale for extending license terms improperly focuses on what best serves the interests of broadcasters, rather than on the best interests of viewers and listeners.[13] In addition, MAP/CME challenges NBC's assertions that longer license terms will create more stability among broadcasters and result in more capital investment in public service and innovative programming. MAP/CME asserts that NBC's claimed public benefits are entirely hypothetical and that there is no evidence from past deregulation that broadcasters will invest additional money in improved programming.[14] As noted above, however, eliminating unnecessary regulatory burdens can allow the competitive marketplace to operate more efficiently, which in turn can enhance the opportunity to further the public interest through improved service delivered to the public. We believe Congress, in providing us

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[5] *NPRM* at ¶ 6.

[6] S. Conf. Rep. 104–230, 104th Cong. 2d Sess. 164 (1996).

[7] See S. Conf. Rep. 104–230, 104th Cong. 2d Sess. 1 (1996) (purpose of Telecom Act is ''* * * to provide for a pro-competitive, de-regulatory national policy framework * * *.''); S. Conf. Rep. 96–878, 96th Cong. 2d Sess. 1 (1980) (purpose of Regulatory Flexibility Act is ''to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations''). See also *Review of Prime Time Access Rule*, 11 FCC Rcd 546 (1995) (repealing prime time access rule as no longer necessary to serve the public interest).

[8] *Deregulation of Radio*, 84 FCC 2d 968, 971 (1981), *recon.* 87 FCC 2d 797 (1981), remanded on other grounds *sub nom. Office of Communications of the United Church of Christ* v. *FCC*, 707 F.2d 1413 (D.C. Cir. 1983). Most commenters support extending broadcast license terms to 8 years. See National Association of Broadcasters (''NAB'') Comments at 1–2; Capital Cities/ABC, Inc. (''CC/ABC'') Comments at 1–2; NBC Comments at 2; Association of Local Television Stations (''ALTV'') Reply Comments at 3–6. Commenters point out that longer license terms may encourage more long-term planning and capital investments in the industry. They further believe that 8-year license terms may promote more innovations in programming and service, as stations will have a longer period in which to develop a record of performance with previously untested or novel formats. See, *e.g.*, NBC Comments at 2.

[9] The 5 and 7 year terms for new licenses and license renewals were enacted into law pursuant to the Omnibus Budget Reconciliation Act of 1981. Public Law 97–35, 95 Stat. 357. That legislation amended Section 307 of the Communications Act, extending the maximum allowable 3-year license term previously prescribed for both radio and television stations.

[10] MAP/CME Comments at 3–4. The Commission recently implemented the new two-step renewal process. See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996* (Broadcast License Renewal Procedures), FCC No. 96–172 (released April 12, 1996).

[11] This reminder applies to radio as well as television broadcasters, although the extension of the radio license term from 7 to 8 years is a small one compared to the extension of television license terms from 5 to 8 years. We note in this regard that in its recent decision adopting revised children's television rules, the Commission stated that it would monitor industry compliance with the Children's Television Act of 1990 (''CTA'') by requiring commercial broadcast television stations to place in their public inspection files quarterly reports regarding their compliance with the CTA and, for an experimental period of three years, to file these children's programming reports with the Commission on an annual basis. *Report and Order* in MM Docket No. 93–48, FCC 96–335, at ¶ 140 (released Aug. 8, 1996). The Commission also stated that Commission staff will conduct selected individual station audits during this time period to assess station performance under the new children's television rules. *Id.*

[12] See also *infra* paragraph 10.

[13] MAP/CME Comments at 3–5.

[14] MAP/CME Reply Comments at 4–5.

authority to do so, made the same reasonable judgment that lengthening broadcast license terms is an appropriate deregulatory measure that would lead to public benefits. If, after some experience with the new 8-year license term, MAP/CME believes the new term is adversely affecting the public interest, it may bring its concerns to our attention at that time.

10. Finally, MAP/CME argues the Commission should extend broadcast license terms to the maximum 8-year period only if it adds quantitative requirements for locally-originated programming addressing community issues, news, and children's educational programming.[15] As noted above, see paragraph 8, we believe that MAP/CME's proposal is beyond the scope of this proceeding.

11. In sum, we find that the 8-year term, on balance, would serve the public interest. Accordingly, we amend our rules to provide that broadcast licenses ordinarily have the maximum 8-year term authorized under the Telecom Act. As stated in the *NPRM*, we believe that this result will reduce the burden on broadcasters and is consistent with both past Commission practice and the legislative history of the Telecom Act. We believe this change in broadcast license terms on balance is consistent with the public interest since licensees will continue to be subject to scrutiny by both the public and the Commission. In keeping with this concern, we reiterate that Section 203 of the Telecom Act, as well as our revised rules, explicitly reserve the Commission's authority to grant individual licenses for less than the statutory maximum if the public interest, convenience, and necessity would be served by such action.

12. *Other Classes of Broadcast Stations.* Section 203 of the Telecom Act states in part: ''the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations * * *.'' While this provision provides us authority to designate different license terms for particular classes of stations (provided that they do not exceed 8 years), we proposed in the *NPRM* to treat all but experimental broadcast stations uniformly.

13. As proposed in the *NPRM*, we will track the approach we take with full-service stations and adopt an 8-year license term for FM and TV translator facilities and low power TV stations, as well as for international broadcasting stations. This approach is consistent with our current practice of treating these different classes of stations uniformly.[16] We believe that each of these services will benefit from the stability and reduced administrative burden which will result from a longer license term. Because of the tentative nature and limited purpose of experimental stations, however, it would not be appropriate to grant such stations longer license terms and they will continue to be licensed for one-year terms. Commenters agreed with this approach.[17]

14. We will also continue our practice, set forth in § 74.15 (b) and (c) of our Rules, of tying the license terms for auxiliary and booster facilities to the license terms of the broadcast stations with which they are associated. Our current practice of tying the license terms of all auxiliary and booster facilities with the main station license eases the administrative burden on both Commission staff and broadcast station licensees, who would otherwise need an intricate record-keeping system to ensure that all licenses were renewed at the appropriate time.

15. ABC/Capital Cities seeks clarification concerning auxiliary facilities used by television and radio networks. ABC believes it would be preferable for all licenses of a given network entity in the same state to come up for renewal at the same time to eliminate potential discrepancies that may exist under the current system. It requests that the Commission specify in § 74.15(b) of the Commission's Rules that television network auxiliary licenses shall have terms running concurrently with television broadcast stations located in the same state, and that radio network auxiliary licenses shall have terms running concurrently with radio broadcast stations located in the same state. ABC/Capital Cities also urges that the renewal terms for video microwave licenses issued under § 74.15(f) of the Commission's Rules run concurrently with the terms of television network auxiliary licenses granted under Subparts D and H of Part 74 of the Commission's Rules.[18]

16. We agree with the ABC/Capital Cities proposals concerning television and radio network auxiliary licenses and video microwave licenses. We believe that these proposals are consistent with both the Telecom Act and the *NPRM* and would simplify the license renewal process and eliminate potential confusion about renewal dates by treating these different classes of broadcast licenses uniformly. Accordingly, network auxiliary stations and video microwave licenses will generally be linked to the license terms of full-service broadcast stations in the same state, and will ordinarily be granted for a term of 8 years.[19]

17. *Implementation of Amended License Term Provisions.* Section 203 of the Telecom Act and the legislative history are silent as to whether existing broadcast station licenses may be modified immediately to conform to any new license terms that may be adopted.

18. As we noted in the *NPRM* the implementation issue is important because of the logistics involved in renewing broadcast licenses. Under §§ 73.1020 and 74.15 of the Commission's Rules, all of the licenses for a particular class of broadcast stations expire at fixed intervals over a 3-year period. To stagger the processing of renewal applications and thus perform this task more efficiently, the country is divided into 18 different regions containing 1 or more states for purposes of establishing synchronized schedules for radio and television license renewals. The radio renewal schedule and the television renewal schedule operate on separate and distinct cycles that do not run concurrently. Accordingly, once all radio licenses have been renewed as scheduled, there is a 50-month hiatus before the radio renewal cycle begins again. Similarly, once all television licenses have been renewed as scheduled, there is a 26-month hiatus before the television renewal cycle begins again.

19. Because of the cyclical nature of this process, any change in the length of the license term implemented in the middle of a renewal cycle could undermine the synchronization of the whole renewal process. In 1981, when Congress last amended the length of broadcast license terms, two factors allowed us to avoid any such synchronization problems. First, under

[15] MAP/CME Comments at 2–4; MAP/CME Reply Comments at 2.

[16] See *Report and Order* in MM Docket No. 92–168, 9 FCC Rcd 6504 (1994).

[17] See NBC Comments at 3.

[18] ABC/Capital Cities Comments at 4.

[19] Network auxiliary licenses and video microwave licenses are processed in the Gettysburg office of the Commission's Wireless Telecommunications Bureau. We will implement the linkage proposed by ABC, and the new 8-year license terms for these network auxiliary and microwave facilities, as the licenses for these facilities come up for renewal. Commission staff will process these renewals so that, over the course of time, the license terms for these facilities will be linked to the license terms of full-service broadcast stations in the same state and share the same 8-year term, except for those facilities which serve more than a single state. In those instances where multiple states are served by a facility, the license term will continue to be based on the date of initial license grant rather than the license terms of full-service broadcast stations for a particular state.

the statute in effect at that time, both radio and television licenses had 3-year maximum terms and the renewal cycles for radio and television ran concurrently. Furthermore, the renewal cycles for both radio and television had not yet begun when the rules implementing the amended statute took effect. Accordingly, pursuant to the explicit Congressional mandate contained in the amended statute, Public Law 97–35, 95 Stat. 357,736 (1981), the Commission applied the longer license terms prospectively as stations came up for renewal following the legislation's enactment. See Order, *Amendment of Section 73.1020 of the Commission's Rules,* 88 F.C.C. 2d 355, 356 (1981).

20. There is, however, a significant difference between the renewal situation in 1981 and the current situation. By the time the Telecom Act of 1996 was enacted in February 1996, the renewal cycle had already begun for radio stations in several regions of the country. Specifically, the licenses for radio stations in Maryland, the District of Columbia, Virginia, West Virginia, North Carolina, and South Carolina have either already been renewed under the previous license term guidelines, or are still pending. Similarly, renewal applications for radio stations in Florida, Puerto Rico, the Virgin Islands, Alabama, Georgia, Arkansas, Louisiana, and Mississippi were already on file with the Commission at the time the 1996 Act was enacted, and may be ripe for grant before the conclusion of this proceeding. The practical effect of this situation is that radio licenses that have already been renewed for the current maximum allowable 7-year term will have shorter terms than radio licenses renewed later in the renewal cycle, which would become subject to the 8-year term we now adopt. When the previously granted 7-year licenses expire the radio renewal process will no longer be synchronized. This may also be the case for some television licenses given that the current television renewal cycle is now underway.[20]

21. NAB, NBC, ABC/Capital Cities, and ALTV all agree that maintaining the synchronization of the renewal process is crucial and should be facilitated by Commission rule.[21] NAB states that synchronization allows the Commission to predict its staffing needs with greater precision and is convenient for the public since all stations serving a market will generally come up for renewal at the same time. NAB further states that if the Commission has determined that the public interest would be served by granting a renewal, a one-year extension of the license term would not raise any additional public interest question.[22] NBC states that if this proceeding is still pending when the television renewal cycle begins, the Commission should adopt the same plan it has proposed for radio license and by rule extend previously granted television licenses to 8-year terms.[23]

22. We agree with these commenters, and believe that maintaining the predictability, administrative efficiencies, and fairness inherent in the existing synchronized schedule of renewal cycles would serve the public interest. We therefore adopt, as proposed in the *NPRM*, an 8-year license term, to be implemented as follows. For broadcast renewal applications granted after the effective date of a decision in this proceeding, we will ordinarily grant the renewed license for the maximum proposed term of 8 years.[24] For renewal applications that have been filed as part of the current renewal cycle (*e.g.*, the cycle beginning October 1, 1995 for radio stations, and October 1, 1996 for television stations) and that have been granted only the maximum 7-year or 5-year license term provided under our current rules because they were processed prior to a decision in this proceeding, we will extend the already renewed 7-year or 5-year license term for such stations to the proposed 8-year term. We consequently direct the staff to modify the terms of such licenses to afford these licensees the newly authorized 8-year term and to ensure synchronization of such licenses with future renewal cycles. The Commission adopted a similar approach in 1983 when it extended existing common carrier and satellite licenses from 5 to 10 years.[25] As noted in that decision, the Commission's authority to modify the provisions of existing licenses by rule making had been upheld on several occasions.[26] We believe that this approach is consistent with the discretion we are given by the Telecom Act to prescribe rules governing the period or periods for which licenses are granted for particular classes of stations.

IV. Paperwork Reduction Act of 1995 Analysis

23. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose or propose no modified information collection requirement on the public.

V. Final Regulatory Flexibility Analysis

24. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in *Implementation of Section 203 of The Telecommunications Act of 1996 (Broadcast License Terms) Sections 73.1020 and 74.15, Notice of Proposed Rule Making in MM Docket No. 96–90 (''NPRM'').*[27] The Commission sought written public comments on the proposals in the *NPRM* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA'').[28]

A. Need For and Objectives of Action 25

25. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (''Telecom Act''). Section 203 of the Telecom Act modifies the previous statutory provisions contained in 47 U.S.C. 307(c) regarding license terms for broadcast stations in two principal ways. First, it eliminates the statutory distinction between the maximum allowable license terms for television stations and radio stations. Second, Section 203 provides that such licenses may be for terms ''not to exceed 8 years,'' thus increasing the previous statutory maximum terms of 5 years for

[20] The first group of television licenses, which expired on October 1, 1996, include the renewal applications for television stations in Maryland, the District of Columbia, Virginia, and West Virginia. In addition, license renewal applications for television stations in North Carolina, South Carolina, Florida, Puerto Rico, and the Virgin Islands, are currently on file, or will be on file with the Commission, prior to the conclusion of this proceeding, and at least some of these applications may be granted by that time. Accordingly, the synchronization problems previously discussed in the radio license context may also be a problem with some television license renewals.

[21] NAB Comments at 3; NBC Comments at 3–4; Capital Cities/ABC Reply Comments at 2; ALTV Reply Comments at 5–6.

[22] NAB Comments at 2–3.

[23] NBC Comments at 3–4.

[24] We will, as required by the Telecom Act, reserve the right to grant renewals in particular cases for less than the maximum term if the public interest would be served by such action.

[25] See *Report and Order* in CC Docket No. 83–371, 53 R.R. 2d 1514 (1983).

[26] See, *e.g., Committee For Effective Cellular Rules* v. *FCC,* 53 F.3d 1309 (D.C. Cir. 1995); *WBEN, Inc.,* v. *FCC,* 396 F.2d 601 (2d Cir.), *cert. denied,* 393 U.S. 914 (1968); *see also National Broadcasting Co.* v. *United States,* 319 U.S. 190 (1943); *California Citizens Band Association* v. *United States,* 375 F.2d 43 (9th Cir. 1967), *cert. denied,* 389 U.S. 844 (1967).

[27] *Notice of Proposed Rule Making* in MM Docket No. 96–90 (Released April 12, 1996).

[28] Subtitle II of CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. 601 *et seq.*

television stations and 7 years for radio stations. The purpose of this *Report and Order* is to amend the Commission's Rules to conform to the provision of Section 203 of the Telecom Act.

B. Significant Issues Raised by the Public in Response to the Initial Analysis

26. No comments were received specifically in response to the IRFA contained in the *NPRM*. However, commenters generally addressed the effects of the proposed rules on broadcast stations. Most commenters, including the National Association of Broadcasters (''NAB''), National Broadcasting Company (''NBC''), Association of Local Television Stations, Inc. (''ALTV''), and Capital Cities/ABC, Inc. (''Capital Cities/ABC''), supported the proposed rules, believing that longer license terms for both radio and television broadcast stations would reduce the administrative burden on broadcast licensees. The Media Access Project and the Center for Media Education (''MAP/CME'') opposed the proposed rules and supported the creation of additional regulatory requirements on broadcast licensees as a prerequisite to allowing longer broadcast license terms. As discussed in Section V of this FRFA, we have addressed these concerns.

C. Description and Number of Small Entities To Which the Rule Will Apply

i. Definition of a ''Small Business''

27. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern.[29] Similarly, entities engaged in radio broadcasting, SIC Code 4832—Radio Broadcasting Stations, have a maximum of $5 million in annual receipts to qualify as a small business concern. 13 CFR 121.101 *et seq.* This standard also applies in determining whether an entity is a small business for purposes of the RFA.

28. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television radio stations, and auxiliary services, we did not propose an alternative definition in the IRFA.[30] Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *Report and Order*.

ii. Issues in Applying the Definition of a ''Small Business''

29. As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

30. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

31. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

32. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the

[29] This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[30] We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry* in GN Docket No. 96–113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96–216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. The comment and reply comment deadlines in that proceeding have not yet elapsed. Additionally, in our *Order and Notice of Proposed Rule Making* in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) Based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule making.

applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether radio and television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

iii. Estimates Based on Census Data

33. The rules amended by this *Report and Order* will apply to full service television and radio stations, FM and TV translator facilities, low power TV stations (''LPTV''), television and radio auxiliary and booster facilities, international broadcasting stations, television and radio network auxiliary facilities, and video microwave facilities.

34. There were 1,509 television stations operating in the nation in 1992.[31] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[32] For 1992 [33] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[34]

35. The rule changes will also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[35] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[36] Included in this industry are commercial religious, educational, and other radio stations.[37] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[38] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[39] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[40] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[41] As of December 1996, official Commission records indicate that 12,140 radio stations are currently operating.[42]

36. Thus, the rule changes will affect approximately 1,550 television stations, approximately 1,194 of which are considered small businesses.[43] Additionally, the rule changes will affect 12,140 radio stations, approximately 11,605 of which are small businesses.[44] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

37. We recognize that the rule changes may also affect minority and women-owned stations, some of which may be small entities. In 1995, minorities owned and conrolled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.[45] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.[46]

38. The rule changes also affect radio translator and booster stations, television translator stations, experimental radio stations and television stations, and LPTV stations. The Commission has not developed a definition of small entities applicable to radio or television booster and translator stations, or experimental radio or television stations. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radio and television stations. Under this definition, FM booster and translator radio stations and experimental radio stations (SIC Code 4832) that would qualify as small businesses would be those radio broadcasting facilities with maximum revenues of $5 million. Similarly, under this definition, television translator stations, television experimental stations, and LPTV stations (SIC Code 4833) would be those television broadcasting facilities with maximum revenues of $10.5 million.

39. There are currently 2,720 FM translator and booster stations, 4,952 TV translator stations, and 1,954 LPTV stations which will be affected by the new license term rules.[47] Neither the FCC nor the Department of Commerce collects financial information on these

[31] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[32] FCC News Release No. 64958, Sept. 6, 1996.

[33] Census for communications establishments are performed every five years ending with a ''2'' or ''7''. See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 31.

[34] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped a $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[35] 13 CFR 121.201, SIC 4832.

[36] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 6, Appendix A–9.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[41] FCC News Release No. 31327, Jan. 13, 1993.

[42] FCC News Release, Broadcast Station Totals as of December 31, 1996.

[43] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1,550 TV stations to arrive at 1,194 stations categorized as small businesses.

[44] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[45] Minority Commercial Broadcast Ownership in the United States, U.S. Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[46] See Comments of American Women in Radio and Television, Inc. in MM Docket No 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Cenus). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking*, 10 FCC Rcd 2788, 2797 (1995).

[47] FCC news release, *Broadcast Station Totals as of December 31, 1996.*

broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As we indicated earlier, 96% of radio stations and 78% of TV stations are designated as small businesses. Given this situation, these stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

40. We have no compilation of data on how many experimental stations are small entities. We will therefore assume that all are small entities as defined by the SBA. We believe, however, that this assumption greatly overstates the number of experimental stations that are small businesses since some of the licensees of experimental stations may have aggregate revenues that are above the revenue definition of small businesses.

iv. Alternative Classification of Small Stations

41. An alternative way to classify small radio and television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (''EEO'') rule for broadcasting.[48] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[49] We estimate that the total number of broadcast stations with 4 or fewer employees is 4,239.[50]

D. Projected Compliance Requirements of the Rule

42. This *Report and Order* imposes compliance with new license terms for broadcast stations in accordance with the amended rules set forth in the *Report and Order.* Compliance will be implemented as follows. For broadcast renewal applications granted after the effective date of a decision in this proceeding, we will ordinarily grant the renewed license for the maximum proposed term of 8 years.[51] For renewal applications that have been filed as part of the current renewal cycle (*e.g.,* the cycle beginning October 1, 1995 for radio stations, and October 1, 1996 for television stations) and that have been granted only the maximum 7-year or 5-year license term provided under our current rules because they were processed prior to a decision in this proceeding, we will extend the already renewed 7-year or 5-year license term for such stations to the proposed 8-year term. We consequently direct the staff to modify the terms of such licenses to afford these licensees the newly authorized 8-year term and to ensure synchronization of such licenses with future renewal cycles.

43. The *Report and Order* imposes no new reporting or recordkeeping requirements. To the contrary, broadcasters will have fewer filings to make, since initial license terms will be for longer periods and renewal filings will be made less frequently. These changes will result in greater economic efficiency for broadcasters, especially those classified as small entities, since administrative burdens on broadcast licensees will be reduced.

E. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent With the Stated Objectives

44. The action taken does not impose additional burdens on small entities. To the contrary, it lessens burdens on both small and large entities by lengthening broadcast license terms to the maximum extent authorized by statute.

45. MAP/CME opposes extending broadcast license terms to eight years because of concerns about the potential effects of such an action on the public interest obligations of broadcasters. MAP/CME believes that longer license terms, together with the elimination of comparative renewals, focus on the interests of broadcasters and will result in no meaningful public review of broadcasters' performance. MAP/CME also believes that the Commission should extend broadcast license terms to the maximum 8-year period only if it adds quantitative programming requirements as part of broadcasters' public interest obligations.[52]

46. Like MAP/CME, we are concerned about the public interest obligations of licensees. We are also cognizant of Congressional intent to reduce regulatory burdens while at the same time providing for meaningful review of licensee performance. In this *Report and Order* we have addressed these public interest and regulatory concerns. On balance, we find that the 8-year term would serve the public interest. Accordingly, we amend our rules to provide that broadcast licenses ordinarily have the maximum 8-year term authorized under the Telecom Act. As stated in the *NPRM,* we believe this change in broadcast license terms is consistent with the public interest since licensees will continue to be subject to scrutiny by both the public and the Commission. In keeping with this concern, we reiterate that Section 203 of the Telecom Act, as well as our revised rules, explicitly reserve the Commission's authority to grant individual licenses for less than the statutory maximum if the public interest, convenience, and necessity would be served by such action.[53]

47. Pursuant to the RFA, 5 U.S.C. 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. We conclude that there is no adverse economic impact on such entities. To the contrary, extending broadcast license terms would benefit small business entities (*e.g.,* small radio stations, auxiliary stations and LPTV stations), by reducing the administrative burdens on such entities, thereby allowing them to operate more efficiently in the competitive marketplace.

F. Report to Congress

48. The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996,

[48] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, sec. 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, sec. 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See *Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970).

[49] See, *e.g.,* 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making* in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at ¶21.

[50] We base this estimate on a compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[51] We will, as required by the Telecom Act, reserve the right to grant renewals in particular cases for less than the maximum term if the public interest would be served by such action.

[52] See ¶¶ 8–11, *supra.*

[53] See1 ¶¶ 9–12, *supra.*

codified at 5 U.S.C. 801(a)(1)(A). This FRFA is also published in this Federal Register summary.

Ordering Clauses

49. Accordingly, it is ordered that, pursuant to the authority contained in Sections 154, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, and 307, Sections 73.733, 73.1020, and 74.15 of the Commission's Rules, 47 CFR 73.733, 73.1020, and 74.15, are amended as set forth in the Rule changes section of this Federal Register summary.

50. It is further ordered that the Commission staff take appropriate administrative actions to extend broadcast licenses already granted or renewed as part of the current renewal cycle (*i.e.*, the cycle beginning October 1, 1995 for radio stations and October 1, 1996 for television stations), for the previously allowable maximum terms, to the new maximum 8-year term.

51. It is further ordered that, pursuant to the Contract with America Advancement Act of 1996, the amendment set forth in the attachment to this summary shall be effective March 7, 1997.

52. It is further ordered that the Secretary of the Commission shall send this *Report and Order* to the Small Business Administration for review.

53. It is further ordered that this proceeding is terminated.

List of Subjects

47 CFR Part 73

Radio broadcasting, Radio, Television broadcasting, Television.

47 CFR Part 74

Radio, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, and 307.

2. Section 73.733 is revised to read as follows:

§ 73.733 Normal license period.

All international broadcast station licenses will be issued so as to expire at the hour of 3 a.m. local time and will be issued for a normal period of 8 years expiring November 1.

3. Section 73.1020 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 73.1020 Station license period.

(a) Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located. If issued after such date, it will run to the next renewal date determined in accordance with this section. Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of normally issued initial and renewal licenses will be 3 a.m., local time, on the following dates and thereafter at 8-year intervals for radio and TV broadcast stations located in:

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

2. Section 74.15 is amended by revising the introductory text of paragraph (d) and paragraph (f) to read as follows:

§ 74.15 Station license period.

* * * * *

(d) Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in § 73.1020 of this chapter for full service stations operating in their State or Territory, or if issued after such date, to the next renewal date determined in accordance with § 73.1020 of this chapter. Lower power TV and TV translator station and FM translator station licenses will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant. The time of expiration of all licenses will be 3 a.m. local time, on the following dates, and thereafter to the schedule for full service stations in their states as reflected in § 73.1020 of this chapter:

* * * * *

(f) Licenses held by broadcast network-entities under Subpart F will ordinarily be issued for a period of 8 years running concurrently with the normal licensing period for broadcast stations located in the same area of operation. An application for renewal of license (FCC Form 313–R) shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. If the prescribed deadline falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter.

* * * * *

[FR Doc. 97–2755 Filed 2–4–97; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[FRL–5684–1]

Acquisition Regulation: Limitation of Future Contracting

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising its acquisition regulation (48 CFR Chapter 15) to clarify that the existing coverage regarding ineligibility of Headquarters policy support contractors to enter into EPA response action contracts, unless otherwise authorized by the contracting officer, also renders EPA response action contractors ineligible for award of Headquarters policy support contracts, unless otherwise authorized by the contracting officer.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, U.S. Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published in the Federal Register (61 FR 57623) on November 7, 1996, providing for a 60-day comment period.

Interested persons have been afforded an opportunity to participate in the making of this rule. No comments were received.

B. Executive Order 12866

This rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review was required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs. Therefore, no regulatory flexibility analysis was prepared.

E. Unfunded Mandates

This rule will not impose unfunded mandates on state or local entities, or others.

F. Regulated Entities

EPA contractors are entities potentially affected by this action. Specifically, those entities competing under solicitations for negotiated procurements will be affected.

Category	Regulated entity
Industry	EPA Contractors.

List of Subjects in 48 CFR Part 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1552.209–74 is amended by revising the clause heading and redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j), and by adding a new paragraph (e) to read as follows:

1552.209–74 Limitation of future contracting.

* * * * *

Limitation of Future Contracting (ARCS) (Mar 1997)

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

3. Section 1552.209–74, Alternate I is amended by revising the heading and redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j), and by adding a new paragraph (e) to read as follows:

Limitation of Future Contracting Alternate I (TCRR) (Mar 1997)

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work, including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

4. Section 1552.209–74, Alternate II is amended by revising the heading and redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j), and by adding a new paragraph (e) to read as follows:

Limitation of Future Contracting Alternate II (TAT) (Mar 1997)

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work, including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

5. Section 1552.209–74, Alternate III is amended by revising the heading and redesignating paragraphs (c), (d), (e), and (f) as (d), (e), (f), and (g), and by adding a new paragraph (c) to read as follows:

Limitation of Future Contracting Alternate III (ESAT) (Mar 1997)

* * * * *

(c) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work, including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

6. Section 1552.209–74, Alternate IV is amended by revising the heading and redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j), and by adding a new paragraph (e) to read as follows:

Limitation of Future Contracting Alternate IV (TES) (Mar 1997)

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

7. Section 1552.209–74, Alternate VI is amended by revising the heading and redesignating paragraphs (e), (f), (g), (h), (i), and (j) as (f), (g), (h), (i), (j), and (k), and by adding a new paragraph (e) to read as follows:

1552.209–74 LIMITATION OF FUTURE CONTRACTING ALTERNATE VI (SITE SPECIFIC) (MAR 1997)

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical

support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

Dated: January 27, 1997.

Diane M. Balderson,

Acting Director, Office of Acquisition Management.

[FR Doc. 97–2846 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 62, No. 24
Wednesday, February 5, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–123–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA C–212 series airplanes. This proposal would require the implementation of a corrosion prevention and control program either by accomplishing specific inspections or by revising the maintenance inspection program to include such a program. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Comments must be received by March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–123–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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 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 96–NM–123–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–103, Attention: Rules Docket No. 96–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion: Background

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of continuing to operate older technology airplanes rather than retire them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Working Group (AAWG) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AAWG was to sponsor groups to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Inspection Documents (SID); and
5. Assess repair quality.

Development of Relevant Service Document

CASA has completed its work on Item 2 and has developed a baseline program

for controlling corrosion on the CASA Model C–212 fleet. The program is contained in CASA Document CPCP C–212–PV01, ''C–212 Corrosion Prevention and Control Program Document,'' dated March 31, 1995. (Hereafter, this publication is referred to as ''the Document.'') The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, classified this Document as mandatory and issued Spanish Airworthiness Directive 01/96, dated April 30, 1996, in order to assure the continued airworthiness of these airplanes in Spain.

Detailed Description of the Document

Section 2 of the Document defines three levels of corrosion: Level 1 corrosion is that which does not exceed certain limits; Level 2 corrosion is that which exceeds those limits; and Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 4 of the Document provides general rules for developing and applying a corrosion prevention and control program. Among other things, these guidelines provide an outline of the baseline program, a general description of ''Implementation Ages'' and (repetitive) ''Intervals,'' and description of situations necessitating a fleet inspection.

Section 5 addresses establishing a ''baseline program,'' whose main objective is to control corrosion to a Level 1 or better. Specifically:

Section 5.1. describes the procedures that entail each of the corrosion inspections to be accomplished in each area of the airplane zones as part of the baseline program. As defined in this section, a ''corrosion inspection'' includes, among other actions:

a. Gaining access for inspection,

b. Performing the actual inspection for corrosion,

c. Removing corrosion,

d. Clearing blocked drains, and

e. Applying corrosion inhibitors and/or water displacement fluid.

Section 5.2. describes the baseline program instructions, including an explanation of the form used to describe the program and a definition of the ''levels of inspection'' to be accomplished. The different inspection levels defined are: General Visual Inspection (GVI), Detailed Inspection (DET), and Special Detailed Inspection (SDET).

Section 5.3. contains the baseline corrosion and prevention and control program, including description of each airplane zone, description of the areas of each airplane zone to be inspected, the inspection level, the Implementation Age (IA), and the (repeat) Interval. Unless otherwise indicated, the inspections of each aircraft zone are required on all CASA Model C–212 series airplanes whose age has reached or exceeded the IA specified for that area. For airplanes that have not reached or exceeded the IA of the specific area, the particular inspection has to be performed before the airplane has reached the IA for the specific area, or before the (repeat) Interval of the inspection area is exceeded. For airplanes that have already reached or exceeded the IA of the specific area, the particular inspection has to be performed before the (repeat) Interval of the inspection is exceeded.

Section 6 of the Document includes a flow diagram that provides guidance for determining the level of corrosion detected during the required inspections of airplane zones.

Section 7 of the Document establishes the procedures for reporting to CASA the results of the inspections conducted under the corrosion prevention and control program.

Section 8 of the Document contains a glossary of terms and definitions. The Document also contains appendices that provide guidelines for evaluating corrosion damage.

FAA's Conclusion

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations 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 Proposed Requirements of the Rule

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention and control program that is equivalent to or better than the program specified in the Document previously described. Operators would be permitted to accomplish this either by performing the specific inspections described in the Document (the ''task-by-task method''), or by revising their FAA-approved maintenance program to include such a program.

Paragraph (a): Option 1, The Task-by-Task Method

Paragraph (a) of the proposal sets forth the proposed compliance times for the initial corrosion inspections of each area of the affected airplane zones. These compliance times are measured from a date one year after the effective date of the final rule. (The proposed compliance times are consistent with those of other similar AD's that the FAA has issued on this subject.) Generally, operators would be required to complete the initial inspection before reaching the IA for the area, as detailed in the Document. The inspection would be required to be repeated at a time interval not to exceed the (repeat) Interval for that area, as detailed in the Document.

Paragraph (a) includes paragraph (a)(1)(iv), which states that, once the initial compliance period has been established for each airplane area, accomplishment of the initial inspections by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of the final rule. The FAA recognizes that this may cause a hardship on some small operators; in those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. (A note to this effect is included in the proposal.)

Operators should note that the proposal does not contain a paragraph specifically to address repair actions. The FAA considers that any repairs would be carried out necessarily as a part of each inspection action, as it is defined in the Document. As discussed previously, the procedures that entail a ''corrosion inspection,'' as defined in Section 5.1. of the Document, include not only the inspection itself, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well. Paragraph (a) contains a note to reference the portion of the Document that defines an inspection, and to emphasize the importance of these corrective actions.

Paragraph (b): Option 2, Revising the Maintenance Program

Paragraph (b) of the proposal provides for an optional method of complying with the rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document or an equivalent program approved by the FAA.

Recordkeeping Under Option 2

Paragraph (b) also would require that, subsequent to the accomplishment of the initial inspection, any extensions of the repeat inspection Intervals specified in the Document must be approved by the FAA.

Any operator electing to comply with proposed paragraph (b) would be permitted to use an alternative recordkeeping method to that otherwise required by Federal Aviation Regulations (FAR) section 91.417 or section 121.380, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. In response to questions raised previously concerning recordkeeping and record retention requirements as they relate to the programmatic approach proposed in this AD action and other similar proposals that have been issued applicable to other airplane models, the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this proposal, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording ''the identification of the current inspection status of the aircraft.'' Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., ''C'' check) at which each inspection specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each required inspection on each airplane. Once this cross-reference system has been established, this recording provision of FAR sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) of the FAR concerns ''records necessary to show that all requirements for the issuance of an airworthiness release under FAR section 121.709 have been met.'' Section 91.417(a)(1) contains a similar requirement. These are also referred to as ''dirty fingerprint records.'' This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time an inspection is performed in accordance with the corrosion prevention and control program, the operator would be required to make a ''dirty fingerprint'' record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention:

FAR sections 121.380(b)(1) and 91.417(b)(1) require that the ''dirty fingerprint'' records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) (current status of AD's and current inspection status) be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed previously by operators regarding the recordkeeping obligations imposed by section 121.380 with regard to similar rulemaking on corrosion prevention and control programs, the FAA has included in this proposal certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. [The FAA has developed guidance material that will contain information to be considered by FAA Principal Maintenance Inspectors (PMI) when reviewing proposals for alternative recordkeeping methods.]

Paragraph (c): Increasing Inspection Intervals

Paragraph (c) of the proposal provides for increasing the IA or (repeat) Interval by up to 10% (but not to exceed 3 months) in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

This provision is intended to provide flexibility to operators in the maintenance scheduling of individual airplanes on a case-by-case basis. It is not intended to allow operators to escalate repetitive inspection intervals for their entire fleets.

Paragraph (d): Reporting Requirements

Paragraph (d)(1) of the proposal sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is determined to exist on an airplane in the operator's fleet, the operator would be required to accomplish one of the following actions within 7 days after such a determination is made:

1. submit a report of the determination to the FAA and conduct the relevant corrosion inspection in the affected area on the remainder of the Model C–212 series airplanes in the operator's fleet (within the 7-day period); or

2. submit, for approval by the FAA, either:

—A proposed schedule for performing the relevant corrosion inspection in the affected area on the remainder of the operator's Model C–212 series fleet; or

—Data substantiating that the Level 3 corrosion was an isolated occurrence.

Paragraph (d)(2) of the proposal specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model C–212 series fleet is detected in a timely manner.

Paragraph (d)(3) of the proposal would require that, within the time schedule approved by the FAA, the

operator must accomplish the inspections in the affected areas on the remaining airplanes in its Model C–212 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e): Procedures for Adjusting the Program

Paragraph (e) would require that, upon finding corrosion exceeding Level 1 during a repetitive inspection, an operator must adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 30 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that if corrosion is found and it is not considered representative of the operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an airplane area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f): Provisions Regarding Newly Acquired Airplanes

Paragraph (f) of the proposal concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. This paragraph differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first inspection in each airplane area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first inspection in each airplane area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The proposed rule would require that the specified procedures be accomplished before any operator places into service any airplane subject to the requirements of the proposed AD.

Paragraph (g): Reporting Level 2 and Level 3 Corrosion Findings

Paragraph (g) of the proposal would require that reports of Level 2 and Level 3 corrosion be submitted to CASA within certain time periods after such corrosion is detected. Operators are not relieved, however, from reporting corrosion findings as required by FAR section 121.703 (14 CFR 121.703).

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD. It would take an average of approximately 7 work hours per inspection to accomplish the inspections of the 59 airplane areas called out in the Document; this represents a total average of 413 work hours. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators over a 4-year average inspection cycle is estimated to be $1,015,980, or $24,780 per airplane.

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

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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:

CASA: Docket 96–NM–123–AD.

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

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references CASA Document Number CPCP C–212–PV01,''Corrosion Prevention and Control Program Document,'' dated March 31, 1995, for inspections, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term ''the FAA'' is defined differently for different operators, as follows:

—For those operators complying with paragraph (a), OPTION 1, of this AD, *the FAA* is defined as ''the Manager of the Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.''

—For those operators operating under Federal Aviation Regulations (FAR) part 121 or 129 (14 CFR part 121 or part 129), and complying with paragraph (b), OPTION 2, of this AD, *the FAA* is defined as ''the cognizant Principal Maintenance Inspector (PMI).''

—For those operators operating under FAR part 91 or 125 (14 CFR part 91 or part 125), and complying with paragraph (b), OPTION 2, of this AD, *the FAA* is defined as ''the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office.''

To prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion damage, accomplish the following:

(a) *Option 1.* Except as provided in paragraph (b) of this AD: Complete each of the corrosion inspections specified in section 5.3 of CASA Document Number CPCP C–212–PV01, ''Corrosion Prevention and Control Program Document,'' dated March 31, 1995 (hereafter, referred to as ''the Document), in accordance with the procedures defined in the Document and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 3: A ''corrosion inspection'' as defined in Section 5.1. of the Document includes, among other things, gaining access for inspection, performing the actual inspection for corrosion, removing corrosion, clearing blocked drains, applying corrosion inhibitors and/or water displacement fluid, and other follow-on actions.

Note 4: Corrosion inspections completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion inspection requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed when performing a Special Detailed Inspection (DET), in accordance with Section 5.3 of the Document, the standards and procedures used must be acceptable to the FAA Administrator in accordance with FAR section 43.13 (14 CFR section 43.13).

(1) Complete the initial corrosion inspection of each area of each airplane zone specified in Section 5.3 of the Document as follows:

(i) For airplane areas that have not yet reached the ''Implementation Age'' (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the (repeat) ''Interval.''

(ii) For airplane areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the (repeat) Interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 15 years or older as of one year after the effective date of this AD, initial compliance must occur for all airplane areas within one (repeat) Interval, or within 4 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) Notwithstanding paragraphs (a)(i)(i), (a)(1)(ii), and (a)(1)(iii), in all cases, once the initial compliance period has been established for each airplane area, accomplishment of the initial corrosion inspections by each operator must occur at a minimum rate equivalent to one airplane per year.

Note 6: This minimum rate requirement may cause a hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provision of paragraph (h) of this AD.

(2) Repeat each corrosion inspection at a time interval not to exceed the (repeat) Interval specified in the Document for that inspection.

(b) *Option 2.* As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion inspection of each airplane area must be completed in accordance with the compliance schedule specified in paragraph(a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR section 91.417 (14 CFR 91.417) or section 12.380 (14 CFR 121.380) for the actions required by this AD, provided it is approved by the FAA and is included a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion inspection, extensions of the (repeat) Intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for a (repeat) Interval to be increased by up to 10%, but not to exceed 3 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any corrosion inspection conducted in accordance with paragraph (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion inspection in the affected airplane area(s) on all Model C–212 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion inspection(s) in the affected airplane area(s) on the remaining Model C–212 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 7: Notwithstanding the provisions of Section 2 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it ''can be attributed to an event not typical of the operator's usage of airplanes in the same fleet,'' this paragraph requires that data *substantiating* any such finding be submitted to the FAA (ref. Note 2 of this AD) for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion inspections in the affected airplane areas of the remaining Model C–212 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial corrosion inspection conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 30 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any newly acquired airplane that is subject to the requirements of this AD, a schedule for the accomplishment of the corrosion inspections required by this AD must be established in accordance with either paragraph (f)(1) or (f)(2) of the AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion inspection in each airplane area to be performed by the operator must be accomplished in accordance with either the previous operator's schedule or the new operator's schedule, whichever would result in the earlier accomplishment date for that inspection. After each corrosion inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion inspection for each airplane area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Within 7 days after the date of detection of any Level 3 corrosion, and within 3 months after the date of detection of any Level 2 corrosion, submit a report to CASA of such findings, in accordance with Section 7 of the Document.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on January 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2851 Filed 2–4–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209817–96]

RIN 1545–AU19

Treatment of Obligation-Shifting Transactions; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule; change of date and location of public hearing.

SUMMARY: This document changes the date and location of the public hearing on proposed regulations relating to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or similar agreements and another party claims deductions related to that income.

DATES: The public hearing is being held on Wednesday, May 14, 1997, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by April 23, 1997.

ADDRESSES: The public hearing originally scheduled in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC is changed to room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register on Friday, December 27, 1996 (61 FR 68175), announced that a public hearing on proposed regulations relating to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or similar agreements and another party claims deductions related to that income would be held on Tuesday, April 29, 1997, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC and that requests to speak and outlines of oral comments should be received by Tuesday, April 8, 1997.

The date and location of the pubic hearing has changed. The hearing is scheduled for Wednesday, May 14, 1997, beginning at 10:00 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. We must receive the requests to speak and outlines of oral comments by Wednesday, April 23, 1997. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–2756 Filed 2–4–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206 and 208

RIN 1010–AC09

Meeting on Proposed Rule—Oil Valuation Establishment; Federal Royalty and Federal Leases Royalty Oil Sales

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Minerals Management Service (MMS) will hold public meetings in Denver, Colorado, and Houston, Texas, to discuss a proposed rulemaking regarding the valuation of crude oil and royalty oil sales produced from mineral leases on Federal land. The proposal was published in the Federal Register on January 24, 1997 (62 FR 3741). The proposed rule would replace existing valuation regulations and represents the recommendations of the MMS Oil Valuation Rulemaking Committee. This proposed rule also contains a new MMS form and solicits comments on this information collection. Comments on this rule must be submitted to MMS by March 25, 1997. The purpose of these meetings is to explain the proposed changes to the regulations governing the valuation for royalty purposes of crude oil produced from Federal leases and allow all interested parties to discuss the

proposed rulemaking. Interested parties are invited to attend and participate at these meetings.

DATES: Public meetings will be held in Houston on February 25, 1997, from 10 a.m. to 4 p.m. Central time; and in Lakewood, Colorado on March 4, 1997, from 10 a.m. to 4 p.m. Mountain time.

ADDRESSES: The Houston Meeting will be held in the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032 Phone: (281) 987–6802.

The Denver Meeting will be held in the Veterans Affairs Building, 155 N. Van Gordon St., Lakewood, Colorado 80228 Phone: (303) 914–5800.

To make reservations contact Mary Kay Reynolds at (303) 275–7252 at least 2 days prior to the meeting you will be attending.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax number (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. For building security measures, each person may be required to present a picture identification to gain entry to the meeting.

The meeting will be organized into two sessions:

- MMS presentation of proposed rule, 10 a.m. to noon
- Public commenting on proposed rule, 1 p.m. to 4 p.m.

Members of the public may make statements during the meeting and are encouraged to file written statements for consideration.

Dated: January 30, 1997.

Lucy R. Querques,

Associate Director for Royalty Management.

[FR Doc. 97–2801 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[CGD 94–032 and 94–048]

RIN 2115–AE87 and 2115–AE88

Tank Vessel and Facility Response Plans, and Response Equipment for Hazardous Substances

AGENCY: Coast Guard.

ACTION: Notice of workshop and public meeting; request for comments.

SUMMARY: At the request of the Coast Guard, The Keystone Center is conducting a workshop to discuss specific issues related to the Coast Guard's development of proposed response plans regulations for certain tank vessels operating on the navigable waters of the United States or any marine transportation-related (MTR) facility, that, because of its location, could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. The purpose of the public meeting is to summarize the highlights of the workshop, and provide the general public the opportunity to respond to any findings or recommendations discussed during the workshop.

DATES: The workshop will be held Wednesday, February 26, 1997, from 8:30 a.m. until 5:30 p.m., and Thursday, February 27, 1997, from 8:00 a.m. until 5:00 p.m. The public meeting will be held Thursday, February 27, 1997, from 7:00 p.m. until 9:00 p.m. Written statements and requests to make oral presentations must be received on or before February 26, 1997.

ADDRESSES: The location of the workshop and public meeting is the Nassau Bay Hilton, 3000 NASA Road 1, Houston, Texas 77058, telephone 1–800–634–4320. The workshop will be facilitated by The Keystone Center, a non-profit, public policy organization that specializes in developing creative problem-solving processes to assist diverse parties in addressing issues of importance to society. Written materials may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection and copy at the same address.

FOR FURTHER INFORMATION CONTACT: Lieutenant C. R. Thomas, Office of Standards Evaluation and Development (G–MSR), telephone (202) 267–1099, fax (202) 267–4547. The telephone number is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: The President is required by the Oil Pollution of 1990 (OPA 90) to issue regulations requiring the preparation of hazardous substance response plans. The Coast Guard has been delegated the responsibility to develop these regulations. The Coast Guard commenced the regulation development process through public meetings and the publication of an advanced notice of proposed rulemaking (ANPRM) (61 FR 20084) on May 3, 1996. The ANPRM solicited comments on 96 questions to assist in the development of separate notices of proposed rulemaking (NPRM) for vessels and marine transportation-related facilities (MTR). The Coast Guard has reviewed the comments received via the public meetings and the ANPRM, and has determined that this workshop is necessary for further development of the NPRM.

Agenda of Workshop

The tentative agenda includes the following:

Wednesday, February 26, 1997

8:30 a.m.—9:00 a.m.—*Introduction*
9:00 a.m.—12:15 p.m.—*Session I—Role and Contents of First Responders Guides*

This session will explore how a ''First Responders Guide'' may be utilized to provide concise guidance to address immediate threats following a chemical release. Discussion points will include the usefulness of such a guide, recommended contents, and current industry standards of a similar nature.

Wednesday, February 26, 1997

1:15 p.m.—5:30 p.m.—*Session II—Role and Capabilities of Decision Support Systems*

This session will address how these regulations may reflect a non-prescriptive, performance based approach that aligns response with actual risk. One ''risk management'' tool that will be explored in this session is the use of a ''decision support system.'' For the purposes of the workshop, ''decision support system'' refers to any protocol that ensures required information is obtained by the responsible party in an expeditious manner. During this session, participants will assess the feasibility of integrating this concept into the regulatory scheme.

Thursday, February 27, 1997

8:00 a.m.—12:00 p.m.—*Session III—Chemical Removal Technology*

This session will explore the range of viable containment, recovery, source control or chemical treatment options appropriate to reduce the risk to public health and the environment.

Thursday, February 27, 1997

1:00 p.m.—5:00 p.m.—*Session IV—Public Responder versus Private Responder Issues*

This session will examine the roles of local, public responders and the role of private, contracted responders within the context of hazardous substance response plan regulations.

Thursday, February 27, 1997

7:00 p.m.—9:00 p.m.—*Public Meeting*

Discussion of workshop highlights and open public comment.

Procedural

The workshop is open to the public; however, in order to provide a forum for balanced discussion on specific issues, The Keystone Center has invited a limited number of individuals to be actual participants in the various sessions. In sessions I through IV, the facilitator of the conference will schedule a period of time when the public may present limited, oral comments. As noted in the agenda, the public meeting is open to all individuals to make any comments or respond to points made during the workshop. Persons wishing to make oral presentations during the public meeting should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than Thursday, February 20, 1997. Written material may be submitted prior to, during, or up to 30 days after the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the workshop, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Joseph J. Angelo,

Director of Standards.

[FR Doc. 97–2865 Filed 2–4–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE027–1006; FRL–5684–2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, conditionally, the State Implementation Plan (SIP) revisions submitted by the State of Delaware to meet the 15 Percent Rate of Progress Plan requirements of the Clean Air Act. EPA is proposing to conditionally approve the SIP because the 15 Percent Plan, submitted by Delaware, will result in significant emission reductions in volatile organic compounds (VOCs) from the 1990 baseline and thus, will provide progress toward attainment of the ozone standard. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 7, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M. Street, SW., Washington, D.C. 20460; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III address above. Information can also be requested via e-mail (quinto.rose@epamail.epa.gov); however, comments must still be submitted in writing.

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(1) of the Clean Air Act as amended in 1990 (CAAA), requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide volatile organic compound (VOC) emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The CAAA also sets limitations on the creditability of certain types of reductions. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the reid vapor pressure (RVP) of gasoline promulgated prior to 1990.

Furthermore, the CAAA does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

In addition, section 172(c)(9) of the CAAA requires that contingency measures be included in the plan revision to be implemented if reasonable further progress is not achieved or if the standard is not attained.

On February 17, 1995, the Delaware Department of Natural Resources & Environmental Control (DNREC) submitted revisions to its SIP. One of those revisions pertains to the 15% Rate of Progress Plan (RPP) for the State of Delaware. Kent and New Castle are the two counties for which Delaware is required to develop a 15% RPP. The other SIP revisions submitted on February 17, 1995 are the subject of separate rulemaking notices.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA regional offices listed in the **ADDRESSES** section of this document.

EPA's Analysis

EPA has reviewed Delaware's submittal for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. More detailed support for approval of Delaware's submittal is contained in a Technical Support Document (TSD), which is available from the Region III office listed above.

A. Accurate Emission Inventory

Sections 172(c)(3) and 182(b)(1) of the CAAA require that nonattainment plan provisions include a comprehensive,

accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the approval of such inventories is necessary to an area's rate of progress plan and attainment demonstration, the emission inventory must be approved prior to or with the rate of progress plan submission.

On January 24, 1996, EPA approved Delaware's 1990 base year inventory (61 FR 1838). Therefore, Delaware has a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment areas.

B. Calculation of the Adjusted Base Year Inventory

The CAAA specifies the emission baseline from which the 15 percent reduction is calculated. This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(D) excludes from the baseline the emissions that would be eliminated by Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and Reid Vapor Pressure (RVP) regulations (55 FR 23666, June 11, 1990), which require maximum RVP limits in nonattainment areas during the peak ozone season.

The adjusted base year inventory is determined by starting with the emission inventory, and taking out all biogenic emissions as well as emissions from sources located outside of the designated nonattainment boundary. The resulting inventory is termed rate of progress base year inventory. The rate of progress base year inventory is then adjusted by subtracting the expected FMVCP and RVP emissions reductions in order to derive the adjusted base year inventory.

The FMVCP and RVP emissions reductions are determined using the on-road mobile source emissions modeling software, Mobile 5a, provided by EPA.

Provided below is a tabular summary of the emission inventories calculated as described above.

Emissions inventory	Tons per day
A. 1990 Base Year Inventory	196.529
B. 1990 Rate of Progress Inventory	145.843
C. FMVCP and RVP Emission Reductions between 1990 and 1996	9.590
D. 1990 Adjusted Base Year Inventory (B–C)	136.253

C. Required Reductions

The adjusted base year inventory is multiplied by 0.15 to calculate the amount of the required rate of progress emission reduction. The amount of reductions necessary to meet the contingency plan requirement is 3 percent of the adjusted base year inventory. Therefore the adjusted base year inventory is multiplied by 0.03 to calculate the amount of required reductions for the contingency plan requirement.

Shown below is a table summarizing the amount of required reductions for the rate of progress and contingency plans.

Inventory	Tons per day
1990 Adjusted Base Year Inventory	136.253
Reduction for Rate of Progress Requirement	20.438
Reduction for Contingency Requirement	4.088

Therefore, to meet the rate of progress requirement, Delaware's plan must provide at least a 20.438 tons per day (tpd) reduction, net of growth, in VOC emissions. In addition, to meet the contingency requirement, Delaware's plan must provide at least a 4.088 tpd reduction, net of growth, in VOC emissions.

The 20.438 tpd is the amount of VOC emissions by which Delaware must reduce its 1990 Adjusted Base Year Inventory in order to meet the 15 percent requirement. The 20.438 tpd required reduction does not include the amount of projected growth in emissions by 1996 that must be offset in the 15% RPP.

As previously stated, under section 182(b)(1)(D) of the CAAA, the following reductions are not creditable towards the rate of progress reductions: (1) FMVCP regulations promulgated by January 1, 1990; (2) RVP regulations; (3) RACT corrections; and (4) inspection and maintenance (I/M) corrections. Thus, the total expected reductions comprise the amount of reductions necessary to meet the rate of progress requirement and the expected reductions from the four noncreditable programs just described.

Delaware has documented the correct amount for the total expected reductions in the nonattainment area by showing each step, discussing any assumptions made, and stating the origin of the number used in the calculations.

D. Projected Emission Inventory

The 15% reduction in VOC emissions net of growth required by the CAAA amounts to 45.441 tons/day for Kent and New Castle Counties. These emissions will be accomplished by implementation of new VOC control measures between 1990 and 1996. In order to show that the reductions associated with these new control measures are adequate to meet the 15% reduction requirement, the 1990 baseline emissions are projected to 1996. The inventory that results from projecting 1990 baseline emissions to 1996 including growth and new controls is called the 1996 Control Strategy Projection Inventory. The total amount of VOC emissions in the 1996 Control Strategy Projection Inventory must be equal to or less than the 1996 Target Level of VOC emissions in order to show that the new control measures will be adequate to meet the 15% rate of progress requirement. The target level of VOC was calculated to be 115.815 tons VOC/day, and the total 1996 Control Strategy Projection Inventory for VOC is 115.336 tons VOC/day. Therefore, the control measures that are included in the 1996 Control Strategy Projection are adequate to meet the 15% rate of progress requirement.

E. Control Measures

The total emissions reduction for Kent and New Castle is 45.920 tons per peak ozone season day. The amount of VOC reduction that Delaware needs to meet the 15% rate of progress requirement is 45.441 tons/day. Therefore, the control measures listed in the tables below are adequate to meet the 15% rate of progress requirement.

CONTROL MEASURES AND EXPECTED VOC EMISSIONS REDUCTIONS

Control measures	Creditable/non-creditable	Expected emissions reductions (tons VOC/day)
Point Source Controls		
RACT Catch-ups in Kent County:		
Solvent Metal Cleaning	Creditable	0.582
Surface Coating of Metal Furniture	Creditable	0.039

CONTROL MEASURES AND EXPECTED VOC EMISSIONS REDUCTIONS—Continued

Control measures	Creditable/non-creditable	Expected emissions reductions (tons VOC/day)
Leaks from Synthetic Organic Chemical, Polymer, and Resin Mfg Equipment	Creditable	0.004
Subtotal for RACT in Kent County		0.625
New RACT Regulations:		
Bulk Gasoline Marine Tank Vessel Loading Facilities	Creditable	1.896
SOCMI Reactor Processes and Distillation Operations	Creditable	0.024
Batch Processing Operations	Creditable	0.406
Offset Lithography	Creditable	0.078
Aerospace Coatings	Creditable	0.008
Industrial Cleaning Solvents	Creditable	0.499
Non-CTG RACT	Creditable	0.359
Subtotal for New RACT Regulations		3.270
Benzene Waste Rule	Creditable	1.733
Sanitary Landfills	Creditable	0.158
Irreversible Process Changes	Creditable	1.381
Total Point Source Reductions		7.167
Stationary Area Source Controls		
RACT Catch-ups in Kent County:		
Solvent Metal Cleaning	Creditable	0.134
Cutback Asphalt	Creditable	0.025
Subtotal for RACT in Kent County		0.159
New RACT Regulations:		
Stage I Vapor Recovery	Creditable	0.629
Emulsified Asphalt	Creditable	0.052
Motor Vehicle Refinishing	Creditable	1.242
Offset Lithography	Creditable	0.070
Aerospace Coatings	Creditable	0.030
Subtotal for New RACT Regulations		2.023
Stage II Vapor Recovery	Creditable	1.740
Open Burning	Creditable	3.992
Total Stationary Area Source Reductions		7.9141
Off-Road Mobile Source Controls:		
Reformulated Fuel	Creditable	0.509
Total Off-Road Mobile Source Reductions		0.509
On-Road Mobile Source Controls:		
FMVCP and RVP	Noncreditable	24.120
Tier I Vehicle Emissions Standards	Creditable	0.170
For Kent County: a. Low Enhanced I/M, b. Pressure and ATP	Creditable	1.420
Pressure & ATP in New Castle County	Creditable	2.180
Reformulated Fuel	Creditable	2.440
Total On-Road Mobile Source Reductions		30.330
TOTAL REDUCTIONS FROM ALL CONTROL MEASURES		45.920

Contingency Measures

For ozone areas classified as moderate or above, states must include in their submittal, under section 172(c)(9) of the CAAA, contingency measures to be implemented if Reasonable Further Progress (RFP) is not achieved or if the standard is not attained by the applicable date. The General Preamble to Title I, (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the state is needed. Therefore, EPA interprets the CAAA to require states with moderate and above ozone nonattainment areas to include sufficient contingency measures in the RPP submittal, so that upon implementation of such measures, additional emissions reductions of up to three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. Contingency measures must be fully adopted so that, upon failure to meet a milestone, the contingency measures may be implemented without any further rulemaking activities by the state.

Analysis of Specific Contingency Measures

The following is a discussion of each of the contingency measures that have

been included in the SIP submittal and an analysis of their acceptableness.

1. *Stage II Vapor Recovery.* The CAAA requires states with moderate and above ozone nonattainment areas to submit a SIP revision requiring owners or operators of gasoline dispensing systems to install and operate a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. Delaware's Stage II Vapor Recovery program, Section 36 of Delaware Air Regulation 24, includes state inspections of affected facilities every three years. Delaware took credit for VOC emissions reductions from a Stage II Vapor Recovery program with triennial inspections as part of its required 15% reduction. Emissions reduction from this type of program are estimated using a rule effectiveness value. The rule effectiveness increases, if the program is conducted with annual state inspections. That is, the program is more effective at reducing VOC emissions with the higher inspection frequency. Therefore, Delaware plans to implement an annual inspection program for Stage II Vapor Recovery as a contingency measure.

2. *Open Burning.* Delaware has adopted revisions to its open burning regulation which include more stringent restrictions than the previous version. A portion of the VOC emissions reductions resulting from the open burning regulation will be used as contingency measures.

EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES IN TONS PER PEAK OZONE SEASON DAY

Contingency measures	VOC emissions reductions
Stage II Vapor Recovery with Annual Inspections	0.619
Open Burning	3.469
Total	4.088

Proposed Action

EPA has evaluated the Delaware 15% RPP SIP submittal for consistency with the CAAA, EPA regulations, and EPA policy. The 15% RPP SIP submittal will achieve enough reductions to meet the 15 percent rate of progress requirements of section 182(b)(1) of the CAAA. In addition, the contingency plans in the SIP submittal will achieve enough emission reductions, if implemented, to meet the three percent reduction requirement under 172(c)(9) of the CAAA. EPA is proposing conditional approval of this plan revision under section 110(k)(3) and Part D.

EPA believes that approval of the control measures in the 15% RPP will strengthen the Delaware SIP. Therefore, EPA is proposing conditional approval of the control measures in the 15% Rate of Progress and Contingency Plans.

All of the control measures which produce creditable reductions in VOCs have been approved by EPA with one exception. Delaware has amended provision of its vehicle inspection and maintenance (I/M) program for pressure testing and anti-tampering. EPA is, today, via a separate rulemaking, also proposing conditional approval of Delaware's amendments to its enhanced I/M SIP. As credits from that program are part of the 15% plan, EPA must conditionally propose approval of the 15% plan SIP as well.

EPA is proposing to conditionally approve Delaware's enhanced I/M SIP if Delaware commits within 30 days of EPA's proposal to correct the deficiencies identified in our proposed rulemaking notice on the I/M SIP by a date certain within 1 year of the final conditional ruling. If Delaware corrects the deficiencies by that date, and submits a new enhanced I/M SIP revision, EPA will conduct rulemaking to fully approve the revision. Each of the conditions must be fulfilled by Delaware and submitted to EPA as an amendment to Delaware's I/M SIP revision. If such commitment is not made within 30 days, EPA is proposing in the alternative to disapprove the I/M SIP revision. If Delaware does make a timely commitment, but the conditions are not met by the specified date within 1 year, EPA is proposing that the rulemaking will convert to a final disapproval. EPA would notify Delaware by letter that the conditions have not been met and that the conditional approval of the enhanced I/M SIP has converted to a disapproval. Once Delaware satisfies the condition of its I/M rulemaking and receives full approval, EPA will fully approve the 15% plan SIP. Conversely, if the I/M rulemaking converts to a final disapproval, EPA's conditional approval of the 15% plan SIP would also convert to a disapproval.

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

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. 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 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/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action, Delaware 15% Rate of Progress Plan, 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 private sector, result from this action.

The Administrator's decision to approve or disapprove the Delaware 15% Rate of Progress Plan SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the CAAA, and EPA regulation in 40 CFR part 51.

List of Subjects in 40 CFR Parts 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental regulations, Nitrogen oxide, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 24, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–2848 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[DE–28–1007; FRL–5684–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: EPA is proposing conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires the implementation of a low enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Kent and New Castle. The intended effect of this action is to propose conditional approval of the Delaware enhanced motor vehicle I/M program. EPA is proposing conditional approval because Delaware's SIP revision is deficient in certain aspects with respect to the requirements of the Clean Air Act and EPA's I/M program regulations. EPA regards the following deficiencies of the Delaware program as those most significantly affecting the program's operation: Lack of legal authority, finalized program regulations, certain testing and quality control procedures, waiver requirements; program evaluation requirements, sufficient quality control procedures and requirements; complete equipment specifications; specific enforcement requirements; certain public information and consumer enforcement requirements; certain public information and consumer protection requirements; sufficient enforcement authority; sufficient test documentation through test memoranda and procedural memoranda. EPA is currently working with the State on correcting these deficiencies. Delaware conducted a public hearing on December 18, 1996 on additional revisions to the Delaware I/M SIP which are intended to remedy some of the deficiencies noted in this notice. However, today's rulemaking applies to Delaware's I/M SIP submissions of February 24, 1995 and November 30, 1995 which are currently pending before EPA. EPA expects that Delaware will work, promptly to remedy these items, through future submissions necessary to meet the I/M rule requirements. In this notice, EPA cites its concerns with the Delaware I/M program. While some of these concerns are less significant to the program's immediate success, they still need to be corrected so as to achieve the program's full air quality protection potential. This action is taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 7, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Delaware Department of Natural Resources and Environmental Control, Air Quality Management Section, Division of Air and Waste Management, 89 Kings Highway, PO Box 1401, Dover, Delaware, 19903.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E. at 215566–2183 at the EPA Region III address above, or via e-mail at Wentworth.Paul@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III office.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO_X) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle I/M program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create toxic contaminants, about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities. Of all highway vehicles, passenger cars and light-duty trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles traveled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel will continue. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Today's cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10

to 30 percent of cars are causing the majority of the vehicle-related pollution problem. Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

Effective I/M programs, however, can identify these problem cars and assure their repair. I/M programs ensure that cars are properly maintained during customer use. I/M produces emission reduction results soon after the program is put in place. The Clean Air Act as amended in 1990 (herein referred to as the Act) requires that most polluted areas adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the ''basic'' I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value [1] with urbanized populations of 100,000 or more in the Northeast Ozone Transport Region (OTR).

''Basic'' and ''enhanced'' I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and by requiring them to be repaired. An ''enhanced'' program covers more of the vehicles in operation, employs inspection methods that are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area to have an I/M program that incorporates this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373, herein referred to as the November 1992 Rule. Flexibility amendments to this rule, which provided for a low enhanced I/M performance standard were published on September 18, 1995 (60 FR 48029) and additional I/M flexibility amendments for qualified areas in the OTR were published on July 25, 1996 (61 FR 39031).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, any area having a 1980 Bureau of Census-Defined urbanized area populations of 200,000 or more and that is either: (1) Designated as serious or worse ozone nonattainment or (2) moderate or serious CO attainment areas with a design value greater than 12.7 ppm. shall implement enhanced I/M in the 1990 Census-defined urbanized area. The Act also established the OTR in the Northeastern United States which includes the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New York, New Jersey, Delaware, Maryland, and Northern Virginia and the District of Columbia. Sections 182(c)(3) and 184(b)(1)(A) of the Act require the implementation of enhanced I/M programs in all metropolitan statistical areas (MSAs) located in the OTR that have a population of 100,000 or more people.

EPA's rules for I/M established a low and high enhanced standard. The high enhanced I/M program achieves a greater reduction in emissions (approximately 36%) and uses a highly technical test method. The low enhanced I/M performance standard provides flexibility for nonattainment areas that are required to implement enhanced I/M programs but which can meet the Act's emission reduction requirements for reasonable further progress (commonly referred to as 15% plans) and attainment from other sources without the stringency of the high enhanced I/M performance standard (60 FR 48029). All other provisions of the November 5, 1992 I/M rule, except as revised in 60 FR 48029 for extension of waivers and expenditure requirements, remain applicable to states available for low enhanced I/M. 40 CFR 51.35(g) provides that states may select the low enhanced performance standard if they have an approved SIP for 15%. In today's Federal Register EPA is also proposing conditional approval of Delaware's 15% plan.

The I/M regulation also establishes requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for the high enhanced I/M program is different from the low enhanced program in that the high enhanced performance standard is based on high-technology transient test, known as IM240, for new technology vehicles (i.e, those with closed-loop control and especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO_X cutpoints, and evaporative system integrity (pressure) test and an evaporative system performance (purge) test. The low enhanced performance standard, however, allows for idle testing in place of high-tech testing.

Under the November 1992 I/M Rule enhanced I/M programs were required to initially begin phased-in implementation by January 1, 1995, with final full implementation slated for January 1, 1996. Due to recent EPA rule changes, and the flexibility afforded by the National Highway Systems Designation Act of 1995 (NHA), EPA believes, as explained below, that all states should be afforded extra time to begin full implementation of their enhanced I/M programs.

II. Background

Delaware is part of the OTR and contains the following portions of the MSA that have a population of 100,000 or more: The MSA containing Kent and the MSA containing New Castle Counties. Section 182(c)(3) and 184(b)(1)(A) of the Act requires all states in the OTR region which contain MSAs or parts thereof with populations of 100,000 or more, to submit a SIP revision for an enhanced I/M program. Furthermore, both Kent and New Castle Counties are part of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. Section 51.351(g) of the November 1992 I/M rule as amended by 60 FR 48029 provides that states may select the low enhanced performance standard if they have an approved SIP for 15%. As previously stated, EPA is, today, also proposing

[1] The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

conditional approval of Delaware's 15% plan.

On February 17, 1995 the Delaware Department of Natural Resources and Environmental Control (DNREC) officially submitted to EPA a revision to the Delaware SIP for an I/M program in Delaware, Kent and New Castle Counties. The submittal consisted of a copy of the final regulations in Regulation Numbers 26 and 33 of the Delaware Regulations Governing the Control of Air Pollution, by way of Secretary Order number 95–A–0012. On November 30, 1995 Delaware officially submitted the performance standard evaluation as a supplement to the February 17, 1995 SIP submittal. The performance standard evaluation provides for a low enhanced I/M program. Regulation 26 provides for the requirement that all repairs be done by a certified repair technician. Regulation 33 provides for pressure test and anti-tampering checks on vehicles in Kent and New Castle Counties.

EPA's summary of the requirements of the November 1992 I/M Rule as found in 40 CFR 51.350 through 51.373, and EPA's analysis of Delaware's submittal are outlined below. A more detailed analysis of Delaware's submittal is contained in a Technical Support Document (TSD) dated 11/27/96 which is available from the Region III office, listed in the **ADDRESSES** section. Parties desiring additional details on the federal I/M regulation are referred to the November 5, 1992 Federal Register notice (57 FR 52950) or 40 CFR 51.350–51.37, as well as the I/M Flexibility Amendments in the September 18, 1995 Federal Register notice (60 FR 48029) and the additional I/M flexibility amendments for qualified areas in the OTR, published on July 25, 1996 at (61 FR 39031)

III. EPA's Analysis of Delaware's Low Enhanced I/M Program

As discussed above, section 182(c)(3), 184(b)(1)(A), 87(a)(6) and 187(b)(1) of the Act require that States adopt and implement regulations for an enhanced I/M program in certain areas. Based upon EPA's review of Delaware's submittal, EPA believes Delaware has not completely satisfied all aspects of the Act and the November 1992 I/M Rule. EPA has cited the deficiencies of Delaware's low enhanced I/M program, below. EPA proposes to conditionally approve the SIP if Delaware commits within 30 days of this proposal to correct the deficiencies identified by this document by a date certain within 1 year of the final conditional ruling. If Delaware corrects the deficiencies by that date, and submits a new SIP revision, EPA will conduct a rulemaking to fully approve the revision. Each of the conditions must be fulfilled by Delaware and submitted to EPA as an amendment to Delaware's I/M SIP revision. If such commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If Delaware does make a timely commitment, but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA would notify Delaware by letter that the conditions have not been met and that the conditional approval has converted to a disapproval.

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Act and 40 CFR 51.350 require all areas that are classified as serious or worse nonattainment areas and states in the OTR which contain MSAs or parts thereof with populations of 100,000 or more to implement an enhanced I/M program. Areas classified as marginal for ozone or moderate for CO shall meet the requirements of a basic I/M program. Delaware is part of the OTR. Kent and New Castle are Delaware counties that fall under the November 1992 I/M Rule. Kent and New Castle Counties are classified as severe nonattainment for ozone and are implementing a low enhanced I/M program.

The federal I/M regulation requires that legislation authorizing the program shall not sunset prior to the attainment deadline. Delaware's legislation, 7 Delaware Code, Chapter 67, Section 6702 provides authority to implement the program. However, this legislation is open ended and does not specify a date certain up to which the program is to continue. EPA needs confirmation through a commitment or statement by an authorized Delaware official that the program shall remain in effect for as long as required by law.

Federal I/M regulation requires that SIPs include a list of the ZIP codes of all areas covered by the I/M program. This is not contained in the current Delaware SIP submittal. EPA needs to receive a submitted document that details the ZIP codes of all areas covered by the I/M program.

Therefore, EPA proposes to conditionally approve the Delaware SIP based upon a commitment from Delaware within 30 days, to provide a statement from an authorized official that the authority to implement Delaware's I/M program as stated above will continue through to attainment and to provide ZIP code information for the affected counties under the I/M program. Additional information needed to remedy the deficiencies in this section is explained in § 51.350 of the I/M Rule and the list in the TSD prepared by EPA on this rulemaking.

Enhanced I/M Performance Standard—40 CFR 51.351

In accordance with the Act and with the November 1992 I/M Rule, the enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emissions control device, evaporative system function checks, stringency, waiver rate, compliance rate, and evaluation date. The emission levels achieved by the Delaware's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emissions factor model. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_X and HC. The Delaware submittal must meet the low enhanced I/M performance standard for HC and NO_X in Kent and New Castle Counties.

The Delaware submittal includes a modeling demonstration of the performance standard that uses the following program design parameters. EPA here notes that not all of Delaware's parameter assumptions are acceptable, and as a condition of this rulemaking Delaware must remodel its program and demonstrate compliance with the I/M performance standard:

Parameter	Delaware's program
Network Type	Centralized test-only.
Start Date	1983 for existing programs; 1995 for area subject to the 1990 CAA.

Parameter	Delaware's program
Frequency	Biennial.
Model Years	1968 and beyond.
Vehicle type coverage	Light duty gasoline vehicles (LDGV), Light duty gasoline trucks 1 & 2 (LDT1, LDT2).
Exhaust emission test type	Idle testing of all covered vehicles.
Emission standards	Hydrocarbons: 220 ppm as hexane carbon monoxide: 1.2%.
Emission control	Pressure test and visual check of fuel inlet restrictor, gas cap, catalytic convertor For: 1968+ LDGV, 1970+ LDGT1 & LDGT2.
Evaporative System	Pressure decay test for above vehicle types.
Stringency rate	20% Pre 1981 models.
Waiver rate	3%.
Compliance rate	96%.
Evaluation dates	1996, 1999, 2002, 2005, and 2007.

The federal I/M rule requires on-road testing of at least 0.5% of the subject vehicle population, or 20,000 whichever is less, as a supplement to the periodic inspection required by the rule. Delaware does not have adopted regulations that implement an on-road testing program. Delaware will need to adopt regulations requiring on-road testing. Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations that implement an on-road vehicle testing program as called out in § 51.351(b) of the November 1992 I/M Rule. Additional information needed to remedy the deficiencies in this section is explained in § 51.351 of the I/M Rule and the list in the TSD.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the federal I/M regulations. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a State monitored or administered mass emissions test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program. In addition to these requirements, Delaware is required, in accordance with this section of the November 1992 I/M Rule, to provide in the biennial report, the results of undercover surveys of inspector effectiveness related to identifying vehicles in need of repair. Also, Delaware is required, in its biennial reports, to provide local fleet emissions factors in assessing the actual effectiveness of the I/M program.

The November 1992 I/M Rule requires that SIPs include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, and the legal authority enabling the evaluation program.

Delaware has legal authority to operate a motor vehicle program as stated in 7 Delaware Code, Chapter 60, Section 6010. However, Delaware's submittal contains no narrative description, regulations or procedures to address program evaluation; the network type is not specified; and there is no commitment that Delaware will in fact evaluate the program.

Regarding program evaluation elements, EPA needs to see evidence through procedures and or regulation that the following elements are addressed: (1) A provision for the first biennial evaluation to be reported to EPA by July 1997; (2) a description of the evaluation schedule, protocol, sampling methodology, data collection and analysis, and the resources and personnel for the evaluation program.

Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, and the legal authority enabling the evaluation program. Additional information needed to remedy the deficiencies in this section is explained in § 51.353 of the I/M Rule and the checklist in the TSD.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires Delaware to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from Delaware or local general fund is not acceptable unless doing otherwise would be a violation of Delaware's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, pubic education and assistance and other necessary functions.

Delaware's SIP submittal does not provide a description of resources. EPA is aware that Delaware has funding through the 1993 House Bill 360 which dedicated 2.8 million dollars from state traffic fines/violations to be used for the enhanced I/M program. However, a copy of the enabling legislation for these funds was not included in Delaware's submittals pending before EPA. EPA needs to receive a copy of the document under official cover as well as additional details on how the program is funded. It is not clear what monies are used for current program operation, pressure test equipment, and where funding will come from to purchase equipment to perform the required mass based transient test. Delaware needs to provide these details.

Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date

certain, within 1 year of the final conditional rulemaking, a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase, of equipment. This submission must also include information on the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions. Additional information required to remedy the deficiencies in this section is explained in § 51.354 of the I/M Rule and in the TSD.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency, however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

Delaware has stated that its program is a biennial testing program, but Delaware does not have adopted regulations or a narrative description of the program test frequency or what mechanisms are in place to insure short wait times for the motorist during program operation. Furthermore, the Delaware SIP does not identify safeguards to ensure vehicles will be tested on schedule. The Delaware SIP provides no regulations that require testing stations to test any subject vehicle presented for a test during the station's operating hours.

Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a description of the test year selection scheme, and how the test frequency is integrated into the enforcement process. This description must include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program must be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours. Additional information needed to remedy the deficiencies in this section is explained in § 51.355 of the I/M Rule and in the TSD.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries, and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in state or local I/M area.

The federal I/M program regulation requires that SIPs include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but that may not be registered in the area. There must also be a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

Delaware's current submission provides no breakdown by model year and weight. Since only gasoline powered internal combustion engines are subject to the program as provided in Delaware regulations 26 and 33, fuel type is not an issue. Additionally, the Delaware SIP submittal pending before EPA does not provide for an accounting for registered vehicles and those required to be registered in order to provide an estimate of unregistered vehicles subject to the I/M program. It is assumed that fleet vehicles are covered in the current regulations, however, no provisions for fleet testing are in the regulations and no authority to provide for fleet testing is given. There are no provisions to address testing vehicles registered in other program areas. The Delaware SIP sumittal does not address the federal fleet inspection program. Delaware's regulations provide for vehicle exemptions from its I/M program, however, the Delaware SIP submittal does not include an estimate of vehicles or a percentage of the subject fleet and no accounting is made in Delaware's emissions reduction analysis.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a description of vehicles covered by Delaware's I/M program, broken down by model year and weight; an accounting for registered vehicles and those required to be registered in order to provide an estimate of unregistered vehicles subject to the I/M program. Delaware also needs to submit provisions in its regulations that provide for fleet testing; testing vehicles registered in other program areas; and provide the legal authority or rules necessary to implement fleet testing. With regard to the fleet inspection program, Delaware needs to develop regulations and procedures that address fleet inspections and account for this in its vehicle coverage and in the modeling of the performance standard. Delaware also needs to provide information on exempted vehicles regarding number, fleet percentage and account for them in its emissions reduction analysis. Additional information needed to remedy deficiencies noted in this section is explained in § 51.356 of the I/M Rule and in the TSD.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled ''High-Tech I/M Test Procedures, Emissions Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, dated April 1994. The federal I/M regulations also require vehicles that have been altered from their original certified configuration (i.e., engine or fuel switching) to be tested in the same manner as other subject vehicles.

Delaware has provided detailed test procedures for each test as well as pass/

fail standards for each applicable model year for each test. However, Delaware needs to assure certain procedures conform with procedures contained in Appendix B to Subpart S of the November 5, 1992 November 1992 I/M Rule. Also regulations/procedures need to be provided that: (1) Ensure that initial tests are performed with no prior repair or adjustment at the facility; (2) provide access to permit owner observation; (3) provide for rejection of vehicles with missing components or unsafe conditions; (4) provide for appropriate retesting of primary and secondary components; and (5) address fuel and engine switching. Delaware must ensure that its evaporative test standards match EPA approved standards.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures that address the above deficiencies. Additional information needed to remedy the deficiencies in this section is explained in § 51.357 of the I/M Rule and in the TSD.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that SIP submissions include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

Delaware's submission contains written technical specifications that addresses pass/fail criteria, calibration adjustments and quality control for idle testing. However no test specifications are provided for the idle or pressure tests. The State's submission does not describe equipment acceptance testing criteria and procedures. The test equipment is capable of testing all subject vehicles, however written test equipment specifications are not contained in the submission. Additionally, there is no commitment to update test equipment and no description of the test system configuration.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures that address the general deficiencies noted above. Additional information needed to remedy the deficiencies in this section is explained in § 51.358 of the I/M Rule and in the TSD.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emissions measurement equipment is calibrated and maintained properly and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Delaware has provided a description of quality control measures for emissions measurement equipment, however, the remaining requirements of this section have not been addressed. These include but are not limited to: A quality control procedures manual or related document; proper calibration measures and associated record keeping; preventive maintenance measures/provisions for proper recording of quality control information. In addition, the Delaware SIP does not contain provisions for maintenance, calibration and insuring test accuracy; equipment specifications; for steady-state and evaporative test equipment.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies noted above. Additional information needed to remedy the deficiencies in this section is explained in § 51.359 of the I/M Rule and the checklist in the TSD.

Waivers & Compliance via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulations allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the appropriate test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver assurance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Delaware has provisions in its regulations for issuance of waivers and has demonstrated that it has the necessary legal authority to issue the waivers and administrate the waiver system. It establishes the minimum dollar expenditure amounts for waivers to be issued in the areas that are required to implement the basic I/M program. However, in Kent and New Castle Counties, where the low enhanced program applies, the same basic waiver rate is in place. This does not meet the minimum requirement of $450 which is a statutory requirement of the Act.

Time extensions are part of Delaware's rule provisions, but these provisions only partially fulfill the requirements regarding time extensions under this section. The Delaware SIP provides for the performance of a documented physical and functional analysis and for the cut point requirements which are consistent with EPA requirements. However, the Delaware SIP contains provisions that only partially fulfill the requirements for the quality control of waiver issuance.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies mentioned above. Additional information needed to remedy the deficiencies in this section is explained in § 51.360 of the I/M Rule and in the TSD.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. SIPs shall provide information concerning the enforcement process, legal authority to implementation and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

As a condition for this approval, Delaware needs to provide EPA with the specific details of its Motorist Compliance Enforcement program. Although Delaware has a registration denial system, under the basic I/M program, no details have been provided. The SIP submittal must include a commitment to maintain a specified enforcement level to be used for modeling purposes.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies noted above. Additional information needed to remedy the deficiencies noted above is explained in § 51.361 of the I/M Rule and in the TSD.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

Although Delaware has motorist compliance enforcement oversight procedures/regulations, they were not provided in the SIP submittal, specifically, 7 Delaware Code, Chapter 67 for enforcement procedures. These need to be provided to EPA along with the procedures manual.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies noted above. Additional information needed to remedy the deficiencies noted above is explained in § 51.362 of the I/M Rule and in the TSD.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct, and prevent fraud, waste and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all State I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

As a condition for approval, Delaware needs to provide the EPA details of its existing quality assurance program that fulfill the detailed requirements listed in § 51.363 of the I/M rule.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.363 of the I/M Rule and in the TSD.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors, and inspectors shall include swift, sure, effective and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

7 Delaware Code, Chapter 60, section 6010 provides general authority to Secretary to adopt regulations necessary to implement program. However, Delaware has provided no procedures that address any requirements of this section. No specific regulation is provided for enforcement against stations, inspectors, or contractors, nor is a penalty schedule provided. Delaware has not demonstrated that it has existing regulations under the basic I/M program.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations, rules and procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.364 of the I/M Rule and in the TSD.

Data Collection Section—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR § 51.359.

Delaware's SIP did not address data collection. Delaware needs to either demonstrate that it has existing data procedures that meet the requirements of this section or develop and submit regulations/provisions/procedures that meet this requirement.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.365 of the I/M Rule and in the TSD.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by Delaware and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and which summarize activities performed for each of the following programs: Testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year and shall provide statistics for the period from January to December of the previous year. A separate biennial report shall be submitted to EPA which addresses changes in program design, regulations,

legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or have been corrected.

Delaware's SIP did not address data analysis and reporting provisions. Delaware needs to either show EPA that it has existing data analysis procedures that meet the requirements of this section or develop and submit regulations/provisions/ procedures that meet this requirement.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.366 of the I/M Rule and in the TSD.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulations requires all inspectors to be formally trained and licensed or certified to perform inspections.

Regulation 26, Section 8 and Regulation 33, Section 8 requires certification of motor vehicle officers. These regulations also have provisions stipulating that motor vehicle officers complete a training course approved by the Delaware Division of Motor Vehicles. However, no description of the training course is given in the submission.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.367 of the I/M Rule and in the TSD.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection.

Delaware needs to provide provisions/measures that it will implement to protect the consumer and provide for public awareness.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.368 of the I/M Rule and in the TSD.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation and a description of the repair technician training resources available in the community.

EPA understands that the Delaware Department of Natural Resources and Environmental Control (DNREC) is jointly developing a technician training course with the Delaware Community College. The Delaware SIP must include information on this program as well as provisions for monitoring performance of repair facilities.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.369 of the I/M Rule and in the TSD.

Compliance with Recall Notices—40 CFR 51.370

The federal regulation requires that Delawares establish methods to ensure that vehicles which are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Delaware must address all the provisions for recall notices under the federal regulation and noted in the TSD and as required under § 51.370 of the November 1992 I/M Rule.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies in this Section. Additional information needed to remedy the deficiencies in this section is explained in § 51.370 of the I/M Rule and in the TSD.

On-Road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emissions test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

No legal authority to implement an on-road testing program was included in the Delaware SIP. The general authority to implement a program may be sufficient to require on-road testing, however, Delaware has no regulations in place to implement on-road testing.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.371 of the I/M Rule and in the TSD.

State Implementation Plan Submittals/ Submission Deadlines—40 CFR 51.372 through 51.373

Delaware's submittal contains the following: (1) The legislative authority to implement the program; (2) Regulation 33 that adds a requirement for a pressure test and anti-tampering checks on light duty vehicles 1968 and newer and light duty trucks 1970 and newer in Kent and New Castle Counties; (3) Regulation 26 that adds a requirement that repairs on 1981 and later model year vehicles be performed by certified repair technicians to qualify for a waiver. This program became effective on January 1, 1997; and (4) the low enhanced performance standard evaluation. Delaware has indicated that its pressure test and anti-tampering program was effective as of January 1, 1995.

Delaware has demonstrated that the program meets the low-enhanced performance standard. Delaware has shown that program will achieve an air quality benefit. However, there are some specific administrative requirements of the rule that they have not addressed. Delaware has not adequately addressed: The waiver requirements; on-road testing requirements; program evaluation using mass based transient test procedure; specifics on network type and test frequency; sufficient quality control procedures and requirements; complete equipment specifications; specific enforcement requirements; public information and consumer protection requirements; sufficient enforcement authority; sufficient test document through test memoranda and procedural memoranda.

EPA understands that Delaware has adopted certain legislation and procedures that were not included in the submittals pending before EPA. Once legislation, regulations and/or procedures have gone through the adoption process, they will need to be officially submitted to EPA as a SIP revision supplement to the I/M SIP. Where new regulations/procedures are developed, the public notice and hearing process in section 110 of Act must be followed. EPA has a list of missing procedural manuals and enabling legislation in the TSD prepared on this rulemaking. EPA believes that most of the noted deficiencies can be addressed through regulation amendments and procedure manuals. The one exception is the lack of provisions establishing a $450 waiver limit as prescribed in the Act. All states with enhanced programs are required to have this limit. EPA also remains concerned about how Delaware can maintain a 3% waiver limit using a $200/$75 waiver amount. EPA believes that the extension of the waiver deadline called out in the I/M rule, as revised in 60 FR 48029, will afford Delaware the opportunity to improve technician training so that by 1998, the majority of vehicles would be repaired below the CPI adjusted $450 minimum waiver amount. Nevertheless, Delaware must take corrective action to address the waiver requirements and must also must take corrective action if the waiver rate exceeds that provided for in the Delaware SIP.

Therefore, EPA proposes to conditionally approve the Delaware SIP based upon a commitment from Delaware within 30 days, to adopt and submit final regulations to EPA and cure all of the deficiencies related to this section of the November 1992 I/M Rule as explained above, by a date certain within 1 year. If Delaware fails to make the commitment, EPA proposes in the alternative to disapprove the SIP. If Delaware fails to meet the condition by the date specified, EPA proposes to convert this rule making to a disapproval at that time by letter.

EPA's review of the material indicates that with the conditions described above, Delaware has adopted a low enhanced I/M program in accordance with the requirements of the Act. EPA is proposing to conditionally approve the Delaware I/M SIP revision which was submitted to this office on February 24, 1995 and November 30, 1995 subject to the conditions described above. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional offices listed in the Addresses section of this notice.

Proposed Action

EPA proposes to conditionally approve the SIP if Delaware commits within 30 days of this proposal to correct the deficiencies identified by this document by a date certain within 1 year of the final conditional ruling. If Delaware corrects the deficiencies by that date, and submits a new SIP revision, EPA will conduct rulemaking to fully approve the revision. Each of the conditions must be fulfilled by Delaware and submitted to EPA as an amendment to Delaware's I/M SIP revision. If such commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If Delaware does make a timely commitment, but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA would notify Delaware by letter that the conditions have not been met and that the conditional approval has converted to a disapproval.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C., 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the requirements that Delaware is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. 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. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on Delaware's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of Delaware's submittal would not affect its state-enforceability. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, EPA certifies that should this approval convert to a disapproval, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing requirements nor would it substitute a new federal requirement.

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

This action has been classified as a Table 3 action for signature by the

Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

If Delaware fails to meet any of the conditions of this approval action, the EPA Regional Administrator would directly make a finding, by letter, that the conditional approval had converted to a disapproval and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the Federal Register announcing that the SIP revision has been disapproved.

The Administrator's decision to approve or disapprove the Delaware I/M SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 24, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–2847 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 72, 73, 74, 75, 77, and 78

[FRL–5684–6]

RIN 2060–AF43, AF46, and AF47

Acid Rain Program; Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period on proposed rule.

SUMMARY: On December 27, 1996 (61 FR 68340), the Environmental Protection Agency (EPA) promulgated a proposed rule revising the permits, allowance system, sulfur dioxide opt-ins, continuous emission monitoring, excess emissions, and appeal procedures rules. The proposed rule streamlines the Acid Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions and the adverse health and ecological impacts of acidic deposition. EPA is extending the comment period so that comments on the proposed rule are due on February 10, 1997.

DATES: Comments on the December 27, 1996, proposed rule must be received on or before February 10, 1997.

ADDRESSES: *Comments.* Comments should be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, S.W., Washington, D.C. 20460.

Docket. Docket No. A–95–56 containing supporting information used to develop the proposal is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, at (202) 233–9074, U.S. Environmental Protection Agency, 401 M Street, S.W., Acid Rain Division (6204J), Washington D.C. (concerning revisions of parts 73 and 75); Dwight C. Alpern, Attorney-advisor, at (202) 233–9151 (same address) (concerning all other revisions); or the Acid Rain Hotline, at (202) 233–9620.

SUPPLEMENTARY INFORMATION: On January 24, 1997, EPA received a request that the period for submission of comments on the December 27, 1996, proposed rule be extended for 14 more days. EPA has considered the extension request as well as the importance of completing this rulemaking expeditiously. In light of these considerations, EPA extends the comment period to February 10, 1997.

Dated: January 28, 1997.

Brian J. McLean,

Director, Acid Rain Program, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–2844 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300451; FRL–5584–6]

Formic Acid; Proposed Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of the biochemical pesticide formic acid in or on honey and beeswax when used to control tracheal mites in bee colonies and applied in accordance with accepted apiarian practices.

DATES: Comments, identified by the docket control number [OPP–300451], must be received on or before March 7, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public record by EPA without prior notice. The public record is available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number, [OPP–300451]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit IV. of this preamble.

FOR FURTHER INFORMATION CONTACT: By mail: Diana M. Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 5–W57, CSI, 2800 Crystal Drive, Arlington, VA, (703) 308–

8367; e-mail:
horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 6, 1996 (61 FR 40841), EPA issued a notice (FRL–5389–1) that IR–4, Cook College, P.O. Box 231, Rutgers, The State University of New Jersey, New Brunswick, NJ 08903–0231, on behalf of Mann Lake, Ltd., County Road 40 and First St., Hackensack, MN, 56452, had submitted pesticide petition (PP) 6E4700 under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a, proposing to amend 40 CFR part 180 by exempting tolerances for residues of the biochemical pesticide formic acid in or on honey and beeswax. This document represents an EPA proposal to establish exemptions from the requirement of a tolerance for residues of the biochemical pesticide formic acid in or on honey and beeswax, when applied as a honeybee miticide in accordance with accepted apiarian practices. EPA is proposing this regulation pursuant to section 408(e)(1)(B) of FFDCA.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170, 110 Stat. 1489) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption. Section 408(c)(3)(B) provides for circumstances where no need exists for a practical method for detecting and measuring levels of pesticide chemical residue in or on food.

In light of FQPA, EPA is engaged in an intensive process, including consultation with registrants, States, and other interested stakeholders, to make decisions on the new policies and procedures that will be appropriate as a result of enactment of FQPA. This process will generally delay the review of food use applications, particularly those involving exposure to children. EPA will publish a notice in the Federal Register soon summarizing the requirements of FQPA, indicating how EPA intends to meet those requirements, and describing actions necessary to assure that EPA complies with the law. However, EPA also intends to continue to issue tolerances and exemptions in the interim pending publication of that notice. EPA also intends to issue interim guidance to States and others on how EPA will implement section 408 in the near future.

In deciding to issue tolerances and exemptions early in the process of FQPA implementation, EPA recognizes that it will be necessary to make decisions about the new FFDCA section 408, including the new safety standard. In establishing tolerances and exemptions during this interim period before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on tolerances and exemptions that clearly qualify under the law.

II. Risk Assessment and Statutory Findings

Consistent with section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. Formic acid occurs naturally in honey at levels up to 138 parts per million (ppm), with natural concentrations found most often in the 9 to 100 ppm range, depending upon the source of the nectar. It is also a natural component of cheeses (9 to 28 ppm), peaches (6.5 ppm), and other foods. In addition, the product label requires that formic acid treatment be discontinued at least 4 weeks before the beginning of surplus honey flow. This will effectively discontinue formic acid use 6 weeks before honey harvest. Residue studies suggest that this interval is sufficient to preclude residues of formic acid above background levels naturally found in honey. The U.S. Food and Drug Administration (FDA) permits formic acid to be used as a synthetic flavoring agent in foods (21 CFR 172.515), and has included ethyl formate in its listing of substances (21 CFR 184.1295) added directly to human food, which have been found to be Generally Recognized as Safe (GRAS).

EPA has reviewed the toxicology data base for formic acid and has sufficient data to assess the hazards and to make a determination on aggregate exposure, consistent with section 408(c)(2), for the exemption from the requirement of a tolerance. EPA's assessment of the exposure, including dietary exposure, and risks associated with establishing this exemption follows.

A. Toxicological Profile

The mammalian toxicological data considered in support of the exemption from the requirement of a tolerance for formic acid include the following studies available in the published literature: Acute oral LD_{50} studies in rats, mice, and dogs; acute inhalation studies in rats and mice, eye and skin irritation studies in rabbits, subchronic inhalation studies in rats and mice, and an Ames/*Salmonella* mutagenicity assay with and without rat liver S9 activation.

The results of these studies indicate that formic acid has very low toxicity by the oral route. Formic acid has an acute oral LD_{50} of 1,100 mg/kg in rats; 700 mg/kg in mice; and 4,000 mg/kg in dogs, However, formic acid is a severe eye irritant, and corrosive to the skin. The inhalation LC_{50} is 15 gm/m^3 in rats and 6,200 mg/m^3 in mice. At 100 ppm the vapors are ''immediately dangerous to life and health'' for humans, causing respiratory irritation, tearing, coughing and headache followed in 6 to 8 hours by pulmonary edema, dizziness, frothy expectoration, and cyanosis (bluish skin discoloration due to lack of oxygen in the blood). Breathing lower concentrations over time can lead to erosion of the teeth, local tissue death in the jaw, bronchial irritation with chronic cough, frequent attacks of bronchial pneumonia, and gastrointestinal disturbances. The OSHA standard for occupational exposure is 5 ppm. Formic acid was not mutagenic in the Ames/*Salmonella* assay.

B. Aggregate Exposure

The potential dietary exposure of the general public to formic acid residues

resulting from its use in bee hives for the control of tracheal mites is not expected to raise background levels naturally found in honey and beeswax. In general, other potential sources of exposure to pesticide residues are those found in drinking water and exposure from residential uses of pesticides. Since this use of formic acid is not expected to result in environmental residues of any kind, and since there are no other registered pesticidal uses of formic acid, either residential or otherwise, exposure from these additional sources is not expected. The public is exposed to formic acid through its use as a direct food additive and because, as mentioned, it is a naturally occurring substance in honey (and other foods).

Because of the very low oral toxicity of formic acid and because of the fact that its presence in the diet is, for the most part, as a naturally-occurring food ingredient, EPA does not believe that there is any reason to be concerned about the potential for cumulative effects of formic acid and other substances that have a common mechanism of toxicity.

C. Safety Determinations

1. *U.S. population in general.* Formic acid occurs naturally in honey at varying levels depending upon the nectar source available to the bees. Data from oral studies shows formic acid to be of very low toxicity. The FDA allows the use of formic acid as a synthetic flavoring agent in foods, and has listed ethyl formate as GRAS. This use of formic acid is permitted only if the level in food of the added formic acid is far below the natural background levels of formic acid in honey. Use of formic acid against bee mites according to label directions is not expected to raise residues above background levels naturally occurring in honey and beeswax, or result in environmental residues of any kind. In addition, there currently exist no other registered pesticidal uses of formic acid.

Because there are essentially no residues resulting from the proposed pesticidal use, EPA believes there are no dietary risk concerns with such use. Further, even taking into account natural sources of formic acid in the diet and formic acid's use as a food additive, EPA has concluded that aggregate exposure to residues of formic acid in food over a lifetime will not pose appreciable risks to human health. Thus, EPA finds that there is a reasonable certainty that no harm will result from aggregate exposure to formic acid residues. Accordingly, EPA determines that exempting formic acid from the requirement for a tolerance is safe. However, given the corrosive nature of formic acid, as it is applied in the beehive, potential acute effects resulting from occupational exposure are of concern to the Agency and will be addressed by precautionary labeling required for registration.

2. *Infants and children.* EPA has determined that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of formic acid. For the reasons given above, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to formic acid residues.

D. Other Considerations

The Agency proposes to establish exemptions from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for formic acid.

E. Response to Comments

Four comments were received in response to the notice of the petition. Three of the commenters urged the Agency to proceed with registration and to grant the tolerance exemption for formic acid. The emergency situation which exists among apiarists nation-wide due to the impacts of tracheal mites on bee survival and honey production was cited in support of the registration and tolerance exemption. In addition, it was noted that formic acid is currently used in parts of Europe and in Canada, and that tons of European honey are imported into the United States annually. Finally, it was noted that formic acid is naturally occurring in honey to a variable degree, depending upon the source of the nectar. One commenter expressed concern regarding impacts of formic acid on bee egg hatchability, larval survivability, and bee behavior, noting a lack of studies designed to assess these potential impacts. Although these last comments relate primarily to whether the pesticide should be registered under FIFRA, EPA will explain here its response. The Agency is aware of formic acid use experience in Canada, where dehydrated eggs, dead young larvae, and dead queens were observed, when 85 percent formic acid was applied, or when application occurred at extremely high temperatures. However, minimal negative impact was noted when 65 percent formic acid was applied. Proposed label statements warn of potential queen rejection and a possible slight increase in bee mortality if formic acid is applied at temperatures above 90° F. Finally, section 6(a)(2) of FIFRA requires the registrant to submit to the Agency any factual information regarding unreasonable adverse effects on the environment that might be caused by a registered pesticide.

F. Conclusion

Based on the information and data considered, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

III. Public Comments

Under FFDCA, section 408(e)(2), EPA must provide for a public comment period before issuing a final tolerance or tolerance exemption under 408(e)(1). The public comment period is to be for 60 days unless the Administrator for good cause finds that it is in the public interest to reduce that comment period. Based on several factors, EPA believes there is good cause for reducing the comment period on these exemptions. First, notice was already provided, in accordance with the FFDCA prior to its recent amendment, for the exemption for formic acid. The Agency believes that the comments received in response to that notice have been adequately addressed. In addition, residues resulting from this use of formic acid are not expected to exceed background levels naturally found in honey and beeswax. Given the emergency situation that currently exists among beekeepers regarding bee mortality resulting from tracheal mite infestations, the Agency is allowing a 30-day instead of a 60-day public comment period for these proposed tolerance exemptions.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket control number, [OPP–300451]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IV. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300451] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

V. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted 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 General Accounting Office prior to publication in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: January 28, 1997.

Janet L. Anderson,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 180— [AMENDED]

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

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

2. By adding new § 180.1178 to read as follows:

§ 180.1178 Formic acid; exemption from the requirement of a tolerance.

The biochemical pesticide formic acid is exempted from the requirement of a tolerance in or on honey and beeswax when used to control tracheal mites in bee colonies, and applied in accordance with accepted apiarian practices.

[FR Doc. 97–2712 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, and 3570

RIN 1004–AC49

[WO–130–1820–00 24 1A]

Leasing of Solid Minerals Other Than Coal and Oil Shale

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed regulations, re-opening of comment period.

SUMMARY: On October 18, 1996, the Bureau of Land Management (''BLM'') published a document in the Federal Register announcing a proposed rule to reorganize the solid minerals regulations in 43 CFR parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, and 3570 (61 FR 54384). The purpose of the proposed rule is to eliminate redundant language, streamline the regulations, and clarify the responsibilities of interested parties. The 60-day comment period for the proposed rule expired on January 16, 1997. After receiving requests for more time to comment, BLM is re-opening the comment period for 30 days.

DATES: Submit comments by March 7, 1997.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the Internet to WOComment@wo.blm.gov. Please include ''attn: AC49'', and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at (202) 452–5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 452–5084, or Annetta Cheek, (202) 452–5099.

Dated: January 30, 1997.

Ted Hudson,

Acting Regulatory Affairs Group Manager.

[FR Doc. 97–2767 Filed 2–4– 97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 51, 61 and 69

[CC Docket Nos. 96–45, 96–262, and 96–98; DA 97–56]

Implementation of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Request for comment on staff analysis of economic cost proxy models.

SUMMARY: The Common Carrier Bureau of the Federal Communications Commission here seeks comment on

issues raised by its January 9, 1997 Staff Analysis of economic cost computer models submitted in connection with several pending proceedings implementing the Telecommunications Act of 1996.

DATES: Comments in response to the Public Notice are due February 3, 1997,[1] and replies are due February 14, 1997.

ADDRESSES: Commenters must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David A. Konuch, 202–418–0199 or Brad Wimmer, 202–418–1847.

SUPPLEMENTARY INFORMATION: Released: January 9, 1997.

Commission Staff Releases Analysis of Forward-Looking Economic Cost Proxy Models

Comment Date: February 3, 1997.

Reply Comment Date: February 14, 1997

1. This past year, the Commission has undertaken proceedings on universal service, interstate access charge reform, and local exchange competition to overhaul our current regulations in light of the Telecommunications Act of 1996. In each proceeding the Commission has examined the use of cost proxy models as a regulatory tool to estimate forward-looking economic costs of providing telephone service. Today the Commission Staff released a staff analysis intended to stimulate discussion of criteria for the evaluation, and use, of forward-looking cost proxy models in determining universal service support payments, cost-based access charges, and interconnection and unbundled network element pricing. The Common Carrier Bureau (''Bureau'') here is seeking comment on the issues raised in the paper. The record gathered in response to this paper may at a future date be associated with the official record of certain pending rulemakings to which it may be relevant and may be used to support Commission determinations in those rulemakings. These rulemakings are Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Access Charge Reform, CC Docket No. 96–262, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98.

2. The staff's analysis begins with a methodological discussion of the criteria for evaluating an economic cost model. These criteria include: (1) Adherence to a forward-looking costing methodology; (2) the ability to measure the cost of a narrowband network; (3) consistency with independent cost evidence; (4) potential for independent evaluation of model algorithms and input assumptions; and (5) flexibility to vary user input choices. The Bureau seeks comment on these design criteria, and other issues, including whether a proxy model should estimate the cost of a network capable of delivering broadband services as well as traditional narrowband services. In commenting on the above issues and any others that commenters regard as useful in evaluating the models, commenters should identify the criteria they believe are the most important and the basis for their position. Further, commenters should discuss whether and to what extent the models in the record, or any models submitted subsequently, satisfy these criteria.

3. The paper also contains a detailed analysis of the structure and input requirements of existing proxy models. With regard to model structure, the paper examines various issues including: (1) The use of existing local exchange carrier wire centers; (2) the geographic unit of analysis used by model proponents in designing their networks; (3) the specification of demand for business and special access lines; and (4) the specification of network elements included in a model and the services those elements are capable of providing. The paper also analyzes the engineering assumptions made by existing models submitted in one or more of the rulemakings listed above in determining levels of forward-looking investment, with particular attention directed to feeder and distribution routes, fill factors, investment in structures, and switching investment. Finally, the paper considers those models' treatment of capital expenses, operating expenses, and joint and common costs. Commenters should use this analysis as a basis for their comments on existing proxy models. For instance, do the models include loop plant investment sufficient to meet demand? In addition, based on its analysis thus far, the Commission staff believes that varying any one of a number of input factors of the models, such as the cost of capital or the depreciation rate, may greatly affect the resulting prices or support payment amounts. The Bureau seeks comment on this view, and on which inputs are most critical to the soundness of the prices generated by the models. Should the Commission take steps to set specific inputs such as depreciation rates, capital costs, treatment of taxes, joint and common costs, and expenses, and, if so, how?

4. The staff's analysis attempts to identify the modeling assumptions and inputs that are most likely to have a significant impact on estimated costs. Where appropriate, commenters should indicate whether they agree or disagree with this analysis. In the case of model input choices, commenters can, if desired, recommend either specific input values or specific methodologies that could be used to select an appropriate input. In some cases, the staff analysis indicates areas in which alternative modeling approaches would be desirable, and commenters are asked to describe in detail such alternatives whenever possible. While commenters are invited to address any aspect of existing or future proxy models, particular attention should be paid to the following areas identified in the staff analysis: (1) The appropriate choice of fill factors and the treatment of structure costs; (2) methodologies for determining the appropriate forward-looking cost of capital and rate of depreciation; (3) alternative methodologies that models could use to estimate forward-looking operating expenses; and (4) sources of independent evidence that could be used to choose model inputs and verify model outputs.

5. The staff's analysis also considers several questions about the potential uses of models in pending proceedings on universal service, access reform and element pricing. For instance, could a single model, or combination of models, be used for multiple regulatory objectives, i.e., in determining cost-based access charges as part of a prescriptive approach to access reform and in setting both interconnection and unbundled element prices and universal service support levels? The Federal-State Universal Service Joint Board has already recommended that the models before it undergo refinement before they may be used to set universal service support levels. Similarly, the staff's analysis suggests that each of the models would need to be modified before it alone could be used to set cost-based access charges or to estimate network facilities' costs, and the Bureau seeks comment on this view. As an alternative to choosing a single model or set of models, could a hybrid model be developed that would employ the most successful features and assumptions contained in individual models? The Bureau also seeks comment on the different design assumptions that commenters believe can or should be

[1] Note: This document was received at the Office of the Federal Register on January 28, 1997.

used in models used for different purposes. For instance, commenters that believe the modeling of the economic cost of providing network facilities or access costs can or should differ from the modeling of the economic costs of providing the services receiving universal service support should describe their reasons, including in part the differences in network investments required. Specifically, they should identify any costs included in unbundled elements that are directly attributable to unsupported services. More broadly, the Bureau seeks comment on whether the various inputs to the models, such as rate of return and depreciation, can or should differ for these different purposes.

6. The Bureau looks forward to receiving comments and working with all interested parties in developing reasonable approaches to using economic cost models as tools in resolving the various critical telecommunications policy issues described above. The comments should be filed on or before February 3, 1997, with reply comments due February 14, 1997. Commenters must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Comments should reference CPD Docket No. 97–2. Commenters should send one copy of their comments to the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, N.W., Washington, D.C. 20037. Comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

7. Parties are also asked to submit comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Wanda M. Harris, Competitive Pricing Division, Common Carrier Bureau, 1919 M Street, N.W., Room 518, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

List of Subjects

47 CFR Part 36

Communications common carriers, Telephone, Uniform System of Accounts.

47 CFR Part 51

Communications common carriers, Telephone.

47 CFR Part 61

Communications common carriers, Tariffs, Telephone.

47 CFR Part 69

Access charges, Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2502 Filed 2–4–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960805216–7013–04; I.D. 121796B]

RIN 0648–AH06

Fisheries of the Northeastern United States; Regulatory Amendment to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule and request for comments to implement a regulatory amendment to the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries. This proposed regulatory amendment would revise the allocation and management of the commercial scup quota.

DATES: Public comments must be received on or before March 7, 1997.

ADDRESSES: Comments on this proposed rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Scup Regulatory Amendment.''

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator, Northeast Region, NMFS, at the address above, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of the regulatory amendment are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) adopted an FMP for the Scup Fishery for NMFS review in November 1995. To reduce the number of separate regulations issued by the Federal Government, however, the proposed scup FMP was incorporated into the Summer Flounder FMP as Amendment 8 to that FMP. Amendment 8 was approved by NMFS on July 29, 1996 (61 FR 43420, August 23, 1996). The Commission then adopted a plan with measures that are identical to those in Amendment 8. The Commission plan would confer to States responsibility of managing their quota for the scup industry in their state and can implement and enforce landing limits. In addition, quota monitoring and closures upon quota attainment would be state compliance measures under the Commission plan, as stated in the Atlantic Coastal Fisheries Cooperative Management Act.

Due to the seriously overfished status of the stock, the Council had requested, and the Secretary of Commerce (Secretary) implemented, emergency regulations to enact a minimum mesh requirement and minimum fish size for the fishery. These measures were in effect from March 22, 1996, until regulations implementing Amendment 8 were published on September 23, 1996.

Amendment 8 established target annual exploitation rates for rebuilding the stock that are to be reached through a total allowable catch (TAC) for the scup fishery that includes both landings and discards. The TAC is divided into a commercial TAC and a recreational TAC. Discard estimates are then subtracted from each of those allocations. The result is an annual

commercial quota and recreational harvest limit. The commercial quota for the fishing year beginning on January 1, 1997, is allocated on a coastwide basis. When the Council and the Commission adopted Amendment 8 for submission, they stated their intent to begin a process to better define the system that would be used to distribute the commercial quota. However, to begin the rebuilding of the resource, they decided to submit Amendment 8 before the coastwide quota system was refined so that regulations could be implemented as quickly as possible.

The current regulations allow the commercial quota system to operate without restrictions to control the rate of harvest, e.g., trip limits or seasonal allocations. Without specific restrictions, it is possible that large, offshore vessels fishing in the first portion of the year will fill the annual quota quickly, closing the fishery before other participants have an opportunity to fish on the stock. Therefore, the Council and the Commission have developed another system to allow for a more equitable distribution of the quota to the commercial sector.

The proposed measure would implement a commercial quota system in which the TAC would be allocated into two winter periods: January–April (45.11 percent) and November–December (15.94 percent), and one summer period: May–October (38.95 percent). The discard estimates for each period would be subtracted from the TAC for each period, to derive the commercial quota for each period. The two winter periods would each be allocated to the coastal states from Maine to North Carolina on a coastwide basis, during which coastwide landing limits would be in effect. During the summer period, a state-by-state quota system would be in effect, and the quota would be managed in the same manner as the state-by-state quota system currently in effect in the commercial summer flounder fishery.

Issues of Concern

Concerns have been raised to NMFS about the lack of gear-specific discard estimates that may result in inequitable treatment between the inshore and offshore fisheries. Some argue that because the discard estimates are based on offshore trawler discard data, and the offshore trawler discard rates are greater than the discard rates for the inshore fishery, this would penalize the summer inshore fishery. The summer inshore fishery uses predominantly different gear types than the offshore fishery. The public is encouraged to submit comments on this issue.

NMFS also is concerned that the implication of *de minimus* status is not defined in the amendment. It is not possible to ascertain what *de minimus* means to a state, versus a state that does not share that distinction, with regard to implementation of the regulations. Therefore, NMFS invites comments on that provision.

Proposed Measures

The regulatory amendment would implement in 1997 a commercial quota system in which the TAC would be allocated into three periods: Winter I (January–April), Summer (May–October) and Winter II (November–December). The discard estimates for each period would be subtracted from the TAC for that period, to derive the commercial quota for each period. Based on historical data, the quota would be allocated to each period as follows: 45.11 percent to Winter I, 38.95 percent to Summer, and 15.94 percent to Winter II. During the two winter periods, the commercial fishery would operate under a coastwide quota with landing limits. These landing limits would be set annually by the Monitoring Committee. In Winter I, the coastwide landing limit may be decreased when a specified percentage of the quota is attained for that period. Landing limits would be specified annually through the process established in the FMP and could not be altered once adopted by NMFS. The quota for the two winter periods would be allocated to the coastal states from Maine to North Carolina. Fishing for or landing scup would be prohibited when the quota is attained. NMFS will implement the closures for federally permitted vessels and dealers, and the states would take complementary action for their state-permitted vessels and dealers. As stated above, quota monitoring and closures upon quota attainment by the states would be compliance measures enforceable by the states.

During the Summer period, a state-by-state quota would be in effect. Based on historical data, the quota for that period would be allocated among the states based on their percentage share of commercial landings from May to October for the years 1983 through 1992. Each state would be closed to the landing of scup when its individual allocation of quota is attained. Any overages in the quota harvest that occurs during each of the winter periods would be deducted from that period's allocation the following year. Any overages in the quota harvest that occurs in a state during the Summer period would be deducted from that state's Summer period allocation the following year.

The regulatory amendment also would confer *de minimus* status annually upon any state in which commercial scup landings during the Summer period for the last preceding calendar year for which data are available were less than 0.1 percent of the total Summer period's quota. If implemented, this action would make the FMP, which is jointly administered by both the Council and the Commission, consistent with the Commission plan, which allows for such status for states. States that have been conferred *de minimus* status would be allowed to harvest up to 0.1 percent, even though they have historically harvested less than 0.1 percent.

The coastwide quota for 1997 specified under Amendment 8 will be implemented prior to issuance of the regulations proposed in this regulatory amendment. (The proposed specifications for the 1997 scup fishery were published at 61 FR 64854, December 9, 1996.) This regulatory amendment specifies that any quota harvested during that time in excess of the proposed 1997 Winter I allocation would be deducted from the quota allocation for the November–December 1997 (Winter II) period. Landings in excess of both Winter 1997 periods would be deducted from 1998 Winter periods. This action would not affect the summer allocation in either year.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would revise the manner in which the commercial quota for the scup fishery is allocated, but would not alter the total quota. The impact of the commercial quota on the commercial fishery was completely described in the certification that accompanied the proposed specifications for the 1997 scup fishery, and is not repeated here.

Currently, regulations specify that the scup quota be allocated to the commercial fishery on a coastwide basis. No restrictions exist to control the rate of harvest (e.g., seasonal closures or trip limits). Without restrictions, it is possible that the quota would be harvested early in the year by larger, offshore vessels, resulting in market gluts, irregular

supplies, and exvessel price fluctuations. Additionally, the current system does not recognize the seasonal nature of the scup fishery (i.e., large vessels fishing offshore in the winter, and small vessels fishing inshore in the summer). According to the NMFS weighout database (database), approximately 525 fishing vessels landed scup during 1995. It is concluded that most of these were fishing offshore. There is no estimate on the number of vessels taking part in the inshore fishery, as they could be, for the most part, state licensed and may not be completely represented in the database. The database is used to estimate the numbers of participants because prior to 1997, no permit requirement existed for this fishery in the exclusive economic zone. However, all of the known participants would readily fall under the definition of a small business, having annual receipts of less than $2.0 million.

The proposed amendment endeavors to mitigate the impacts of unrestricted harvest and untimely closures by establishing a commercial quota system in which the total allowable catch (TAC) would be allocated into three seasonal periods: Winter I (January–April), Summer (May–October) and Winter II (November–December). The discard estimates for each period would be subtracted from the TAC for each period to derive the commercial quota for each period. During the two winter periods, the commercial fishery would operate under a coastwide quota with landing limits. During the summer period, a state-by-state quota would be in effect.

While the quota for 1997 is based on reported historical landings, no quota was ever implemented for this fishery prior to 1997. This new quota may result in the closure of the fishery, which, if it occurs, could impact those small entities. More complete impacts may be compiled during the comment period of the proposed rule, which specifically requests comments on this issue. The Mid-Atlantic Fishery Management Council concluded that a substantial number of these small entities (greater than 20 percent) operating in the commercial scup fishery could be directly or indirectly affected by the measures proposed in this regulatory amendment. However, based on available data, the economic impact of this quota is not expected to be significant. When compared to 1994 revenues, the quota in 1997 would decrease the total revenues $1.87 million. It is not expected that any entities would be expected to cease operations because of the 1997 quota and no change is expected in compliance costs for these entities.

Historical data indicate that a decrease in landings generally leads to an increase in the exvessel price for scup. The RIR analysis for this regulatory amendment included examination of the proposal to address the seasonal nature of the scup fishery and allow for a more equitable distribution of commercial quota over the year, versus the coastwide quota. The intent of this regulatory amendment is to preserve the historical pattern of commercial harvest of scup by seasons to reduce the impact on small entities. The analysis found that the proposed amendment resulted in a more consistent supply, and more stable prices for the commercial sector. Based on unpublished NMFS weighout data (Maine through Virginia) in 1994, total commercial landings for scup were estimated at 8,840,900 lb. The 1997 quota would reduce commercial scup landings by 2,840,900 lb when compared to the 1994 commercial landings. The effect on the overall scup exvessel price, given the potential reduction in landings from the implementation of the quota proposed in this amendment, would depend on the elasticity of demand for scup. Since no study has estimated the exvessel demand function for scup, revenue changes from the implementation of the new quota were calculated by taking the exvessel price for scup (value divided by pounds) for 1994, and multiplying this value by the potential change in landings. Assuming the 1994 exvessel price of $0.66 per pound, the 1997 quota would yield a decrease in revenues of $1,874,994 from the 1994 period. However, based on preliminary unpublished NMFS weighout data (Maine through Virginia), scup commercial landings were estimated at 5,947,253 lb and valued at $5,096,863 ($0.85 per pound) in 1995. It appears that the decrease in landings from 1994 to 1995 has increased exvessel price for scup during this period. Given preliminary scup landings for 1995, the 1997 quota would be expected to slightly increase exvessel revenue relative to 1994 landings.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The management measure that provides for a state request for a quota transfer has been approved by OMB under control number 0648–0202, and is estimated to take 1 hour per response.

The response estimate shown includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments to NMFS and OMB (see **ADDRESSES**) regarding this burden estimate, including its accuracy, whether the collection of information is necessary for the proper performance of NMFS' functions, suggestions on how to enhance the quality, utility, and clarity of the information to be collected, and how to reduce or minimize the burden of the collection of information on those who must respond.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 30, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium permit must also agree not to land summer flounder, scup, or black sea bass, respectively, in any state after NMFS has published a notification in the Federal Register stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup or black sea bass, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required

by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. latitude, any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS, Southeast Region Snapper-Grouper fisheries, may surrender their moratorium black sea bass permit by certified mail addressed to the Regional Director and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. latitude. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

* * * * *

3. In § 648.14, paragraphs (a)(89) through (a)(96) are redesignated as paragraphs (a)(90) through (a)(97), respectively, and a new paragraph (a)(89) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(89) Fish for, catch or retain scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the landing limit established pursuant to §§ 648.120 (b)(2) and (b)(3).

* * * * *

4. In § 648.120, paragraph (b)(1) is revised, paragraphs (b)(2) through (b)(8) are redesignated as paragraphs (b)(5) through (b)(11), respectively, new paragraphs (b)(2) through (b)(4) are added, paragraphs (c) and (d) are revised, and paragraphs (e) and (f) are added to read as follows:

§ 648.120 Catch quotas and other restrictions.

* * * * *

(b) * * *

(1) The commercial quota for each of the three periods specified in paragraph (d)(1) of this section, to be set from a range of 0 to the maximum allowed to achieve the specified exploitation rate. The commercial quota will be established by estimating the annual Total Allowable Catch (TAC), allocating it into the three periods, and deducting the discard estimates for each period.

(2) Landing limits for the Winter I and Winter II periods.

(3) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(4) Those states eligible for *de minimus* status, based upon commercial scup landings for the last preceding calendar year for which data are available.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC shall review these recommendations and, based on these recommendations and any public comment, recommend to the Regional Director measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Director shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the Federal Register by October 15 to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, landing limits for the Winter I and Winter II periods, the percentage of landings attained during the Winter I fishery at which the landing limits will be reduced, a recreational harvest limit and additional management measures for the commercial fishery. NMFS will publish a proposed rule in the Federal Register by February 15 to implement additional management measures for the recreational fishery, if the Regional Director determines that such measures are necessary to assure that the specified exploitation rate will not be exceeded. After considering public comment, NMFS will publish a final rule in the Federal Register to implement the annual measures.

(d) *Distribution of Commercial Quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer—May–October	38.95
Winter II—November–December	15.94

(2) The Winter I and Winter II commercial quotas will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) The Summer commercial quota will be allocated to the coastal states from Maine through North Carolina, based upon the following percentages:

SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.13042
New Hampshire	0.00004
Massachusetts	15.49117
Rhode Island	60.56588
Connecticut	3.39884
New York	17.05295
New Jersey	3.14307
Delaware	0.00000
Maryland	0.01288
Virginia	0.17787
North Carolina	0.02688
Total	100.00000

(4) All scup landed for sale in any state during either Winter I or Winter II shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested. All scup landed for sale in a state during the Summer period shall be applied against that state's summer commercial quota, regardless of where the scup were harvested.

(5) All scup landed for sale in any state during the period January 1, 1997, through [effective date of the final regulations], shall be applied against the coastwide commercial quota for the 1997 Winter I period, regardless of where the scup were harvested. Any landings during that time in excess of the 1997 Winter I commercial quota will be subtracted from the 1997 Winter II period's allocation. Any overage beyond the 1997 Winter II allocation will be deducted from subsequent winter periods.

(6) Beginning in 1997, any overages of the commercial quota landed in any state, including those granted *de minimus* status, during the Summer period will be deducted from that state's Summer period quota for the following year. Beginning in 1998, any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

(7) Based upon any changes in the landings data available from the states for the base years 1983–92, the Commission and the Council may recommend to the Regional Director that the states' shares specified in paragraph (d)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Director shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the Federal Register to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the Federal Register to implement the changes in allocation.

(e) *De minimus status.* Any state in which commercial scup landings during the Summer period for the last preceding calendar year for which data are available were less than 0.1 percent of the total Summer period's quota could be granted *de minimus* status by the NMFS upon the recommendation of the Council by way of a recommendation from the Monitoring Committee.

(1) The *de minimus* status will be valid only for that Summer period for which the specifications are in effect and will be effective upon filing by NMFS of the final specifications for the commercial scup fishery with the Office of the Federal Register.

(2) The total quota allocated to each *de minimus* state will be set equal to 0.1 percent of the total Summer period allocation and will be subtracted from the summer quota before the remainder is allocated to the other states.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for scup may request approval from the Regional Director to transfer part or all of its Summer period quota to one or more states. Two or more states implementing a state commercial quota for scup may request approval from the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for scup must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Director shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Director shall consider whether:

(i) The transfer or combination would preclude the overall Summer period quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder, Scup, and Black Sea Bass FMP and the Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the Summer period for which the request was made and will be effective upon the filing by NMFS of a notification of approval of the quota transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notification of approval of the quota transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the Summer period, the overage will be deducted from the following Summer period's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous Summer period. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall Summer period quota specified in paragraph (d) of this section.

5. Section 648.121 is revised to read as follows:

§ 648.121 Closures.

(a) *Winter closures.* The Regional Director will monitor the harvest of commercial quota for each Winter period based on dealer reports, state data, and other available information, and shall determine the date when the commercial quota for a Winter period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the Federal Register advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) *Summer closure.* The Regional Director will monitor the Summer period state commercial quota based on dealer reports, state data, and other available information, and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the Federal Register advising a state that, effective upon a specific date, its Summer period commercial quota has been harvested and notifying vessel and dealer permit holders that no Summer period commercial quota is available for landing scup in that state for the remainder of the period.

[FR Doc. 97–2795 Filed 2–4–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 24
Wednesday, February 5, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities; Proposed Collection; Comment Request; Model Food Stamp Forms, Periodic Reporting, Notice of Late/Incomplete Report, etc.

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The information collection requirements described below are limited to that which is necessary to comply with Sections 3, 5, 6, 11 and 13 of the Food Stamp Act of 1977, governing the application, certification, and ongoing eligibility of food stamp households.

DATES: Written comments must be submitted on or before April 7, 1997.

ADDRESSES: Comments may be sent to Judith M. Seymour, Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. 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 has 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.

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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the pertinent forms should be directed to Judith M. Seymour (703) 305–2494.

SUPPLEMENTARY INFORMATION:

Title: Model Food Stamp Forms, Periodic Reporting, Notice of Late Incomplete Reports, etc.

OMB Number: 0584–0064.

Form Numbers: FCS–385, 386, 387, 394, 396, 437, 439, 441, 442.

Expiration Date: 04/30/97.

Type of Request: Extension of a currently approved information collection.

Abstract: Title 7 CFR Part 273 of the Food Stamp Program (Program) regulations sets forth the requirements for food stamp household application, certification, and continued eligibility for food stamp benefits.

Ending use of FCS-designed certification related forms. Section 835 of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended section 11(e)(2) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2020(e)(2), to revoke the mandate that the Food and Consumer Service (FCS) develop a model application form which States are required to use. Prior to this amendment, FCS approval was required for use of a State-designed deviation from the model application form. Section 11(e)(2)(B)(ii) of the Act now makes State agencies responsible for developing an application for participation requiring information necessary to comply with the certification provisions of the Act. In the past, FCS undertook the task of developing and updating several forms relating to certification of Program applications and distributed them to State agencies. States had the option of using these forms or developing their own as long as they met the requirements described in the Program regulations. Because FCS is no longer responsible for designing uniform certification forms, include a model application form, FCS is proposing to discontinue all the FCS model certification forms. State agencies are expected to design their own forms to document the certification activities described in the regulations. The information collection, reporting, or recordkeeping burden associated with each application/certification action remains in effect and will continue to be reported to OMB.

In addition, while this notice addresses the proposed burden associated with extending OMB approval of all line items currently covered under OMB No. 0584–0064, we intend to separate the burden described and submit two separate information collection packages to OMB for approval. One package will include only application and certification related burden as described in items 1 through 11 below and will be entitled ''Application and Certification of Food Stamp Program Households.'' The remaining burden (items 12 through 14) will be submitted to OMB for approval separately in order to capture burden associated with all fraud related activities under one separate and distinct OMB approval number. The FCS model notices associated with these fraud activities will also be discontinued. State agencies will design their own notices.

The estimated burden hours associated with Program applications is derived from using a base figure of 18,300,000 which is the average number of applications received each year based on data obtained from the FCS–366B report submitted by State agencies to FCS. The 18,300,000 estimated figure includes both those applications which are approved for participation and those that are rejected. Thus, the actual number of application forms filed will always exceed the number of households actually participating in the program.

The actual number of households currently receiving food stamps is approximately 10,900,000 (hereafter referred to as the caseload) as reported by the FCS–388 report. This figure is used in computing burden associated with participating households. This figure is also the basis for determining burden imposed on local agency staff who deal with households on a daily basis. Due to a lack of data on the number of local staff and/or the number of food stamp cases each staff person handles in a given year. FCS assumes

there is one local agency worker per applicant/participating household. Proposed estimated information collection and recordkeeping burden hours associated with burden approved under OMB No. 0584–0064 are outlined below and adjusted to reflect recent data:

(1) *Application burden.* State agencies must design an application which contains the information necessary to comply with the eligibility requirements of the Act. Households must complete an application in order to obtain benefits. The number of burden hours assumes that all applicants will complete the entire application because no data is available on the number of households that complete only part of the application. Number of respondents is equal to the number of initial and recertification applications received annually as reported by State agencies on form FNS–366B, Program Activity Statement. The data assumes, on average, that each applicant will file either one initial or one recertification application yearly. Household burden to complete an application is estimated to be 13.274 minutes (or .2290 hours).

(2) *Calculating food stamp eligibility through use of a worksheet.* An application worksheet is used by eligibility workers to make income and resource eligibility determinations and calculate benefit levels for households. A worksheet will be used with 80% (14,640,000) of all applications received; 25% (2,289,000) of all change in circumstances report forms received (as discussed below); and 16% (3,348,480) of all monthly report forms received (as discussed below). Based on these estimates, the total average number of worksheets processed annually is estimated to be 20,277,480. Average time to complete a worksheet is estimated at 27.837 minutes (or .4640 hours).

(3) *Monthly reporting burden.* State agencies have the option to require certain households to report information on a monthly basis. These households must complete a monthly report form, designed by the State agency, in order to meet the monthly reporting requirements. The estimated number of households who submit monthly reports is 16% of the total number of households participating in the Program (1,744,000). This amount is multiplied by 12 months to determine the total number of monthly reports. Burden to complete this form is estimated to be 9.702 minutes (or .1617 hours) per form.

(4) *Explaining monthly reporting to households.* Where State agencies have opted for monthly reporting, the process must be explained to affected households. Eligibility workers will explain the monthly reporting process at least once to 16% of the total number of households participating in the Program (1,744,000). Explaining monthly reporting is estimated to be a burden of 4.998 minutes (or .0833 hours) per household.

(5) *Households reporting changes in circumstances.* Households not required to monthly report, including those subject to less frequent periodic reporting, must report certain changes in household circumstances as they occur anything during the certification period. It is estimated that one change report form will be submitted annually by non-monthly reporting households which represents about 84% of the total caseload (9,156,000). Estimated time to complete this form is 9.703 minutes (or .1617 hours).

(6) *Notice to monthly reporting households of late/incomplete monthly reports.* Monthly households must be given additional time to file a late report or to provide missing information or verification. It is estimated that 5% (1,046,400) of the monthly reports expected to be received (10,928,000) will be late or incomplete resulting in the use of such a notice. Reporting burden is estimated to be 6.69 minutes (or .1115 hours) per notice.

(7) *Informing households about action taken on their food stamp case.* Each household that submits an initial application or a re-application must receive notification of the action taken by the State agency. The notice contains one of three actions: notice of eligibility, denial notice, or notice of pending status. Estimates are based on the need to provide this notice to 18,300,000 households annually. It is estimated that it takes a caseworker 6.69 minutes (or .1115 hours) to prepare this form.

(8) *Notifying households of the expiration of their certification periods.* Households must be provided with a notice of expiration regarding the certification process and the need to reapply for benefits. It is estimated that 10% of the caseload (those certified for less than 6 months) will submit two re-applications a year; 24% of the caseload (those certified for six months) will submit one re-application; and 66% of the caseload (those certified for more than six months) will submit either an application for recertification or an initial application. Only half (3,598,500) of the households certified for more than six months will be applying for recertification. Eligibility workers will generate notices of expiration an average of .745 times per household, for a total of 8,120,500 (10,900,000×.745). The estimated preparation time for this form is 4.998 minutes (or .0833 hours) per form.

(9) *Informing households about a reduction in their food stamps.* Non-monthly reporting households which submit a change in circumstances report form must receive a written notice of any action to reduce or terminate benefits in advance of the date the action will become effective. It is estimated that 50% of change reports received will result in reduction or termination of benefits which require eligibility workers to provide this notice. On average, caseworkers will generate 4,578,000 of these notices annually with a preparation time of 9.96 minutes (or .1666 hours) for each notice.

(10) *Adequate notice to monthly reporting households.* Monthly reporting households must receive written notice that their benefits will be or have been increased, reduced or terminated. It is estimated that 30% of the monthly reports (6,083,244) received by caseworkers will result in an increase, a reduction or a termination of benefits. The remaining 70% of monthly reports have no change in benefits, so no notice is necessary. It is estimated that it takes caseworkers 6.69 minutes (or .1115 hours) to prepare this notice.

(11) *Sponsored aliens.* Recently enacted legislation has affected the food stamp eligibility of ''sponsored aliens,'' that is, aliens lawfully admitted for permanent residence in the United States. Section 421 of Pub. L. 104–193 requires that all of an alien sponsor's income and resources and all the sponsor's spouse's income and resources be attributed to the alien until he becomes a U.S. citizen or has worked 40 qualifying quarters for any period beginning after December 31, 1996. In addition, Section 421 requires that the alien not have received any Federal means-tested public benefit during this period in order to be eligible to begin receiving a Federal means-tested public benefit such as food stamps. At the same time, various other sections of P.L. 104–193 establish new participation requirements for aliens in general and more restrictive conditions for alien immigrants in particular. For Food Stamp Program purposes, during the period that P.L. 104–193 requires the attribution of the sponsor's income, any sponsored alien without 40 qualifying quarters would already be ineligible for food stamps pursuant to Section 6(f) of the Act, 7 U.S.C. § 2015(F). However, Section 510 of Pub. L. 104–208 requires State agencies to recertify currently participating alien households during the period April 1, 1997 to August 22, 1997. Information obtained from the Immigration and Naturalization Service

by FCS showed that approximately 100,000 aliens were approved each year as lawful permanent residents. Of the 100,000 aliens approved for lawful permanent residence each year, it is assumed that 5% will actually apply for food stamps at least once during any given year. The potential number of annual responses is estimated to be 5,000. Burden is estimated to be 30 minutes (or .5000 hours) per response.

(12) *Demand Letter for Overissuance.* State agencies are required to establish a claim and send a demand letter for repayment when food stamp benefits are overissued either as a result of a household error, State agency error, or an intentional Program violation. A demand letter is used for this purpose. Based on data reporting the number of new claims established for FY 1995 (form FCS–209), State agencies generated demand letters for about .07 percent of the caseload. On average, 7.698 minutes (or .1283 hrs.) is required to compose a demand letter.

(130 *Advance Notice of Administrative Disqualification Hearing.* Household members suspected of committing an intentional Program violation must be provided with advance notice of a State agency's intent to disqualify them from participation in the Program which, among other things, announces the date of disqualification hearing, the charge against the household, summarizes the evidence, and explains the consequences of a guilty finding by the hearing officials. Based on reports of the number of disqualification hearings held in FY 1995 (form FCS–336B), State agencies generate this notice for about .004 percent of the caseload at a rate of 15 minutes (or .2500 hrs.) per notice.

(14) *Action Taken on Administrative Disqualification Hearing.* Household members subject to an administrative disqualification hearing must receive written notice of a guilty or not guilty finding by the hearing official. The notice also explains, among other things, the reason for the decision and the date program disqualification, if appropriate, will take effect. Data contained in the FCS–366B report indicates that, State agencies generate this notice for .002 percent of the caseload annually at a rate of 9.996 minutes (or .1666 hrs.) per notice.

Recordkeeping Burden

Case records: Local agencies are required to maintain client case records for three years and to perform duplicate participation checks on individual household members to reduce the possibility of duplicate participation. The burden estimates for casefile maintenance are based on an estimated number of casefiles, the number of records in the casefiles and assumes one recordkeeper per State (53 State welfare agencies). Using this methodology, average burden per recordkeeper is estimated to be 685,466.038 hours (36,329,700 hours/53 recordkeepers).

Monitoring Duplicate Participation: The estimated annual recordkeeping burden to perform duplicate participation checks is based on the average number of persons (2.442) in each food stamp household. The estimated number of applications is 18,300,000. The estimated average number of persons who must be checked is 44,688,600 (18,300,000×2.442). Burden is estimated to be 15 seconds or (or.0042 hours) per eligibility worker, which results in an estimated annual recordkeeping burden of hours of 187,692.120 (44,688,600×.0042). The average burden hours per recordkeeper is estimated to be 9,947,682.360 (187,692.120 hours×53 recordkeepers).

Affected Public: State and local governments; potential program applicants and currently participating households.

Estimated Number of Respondents: 18,305,000.

Estimated Number of Responses per Respondent: 5.9461573.

Estimated Total Annual Burden on Respondents: 22,681.621 hours.

	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours (Calculations may not be exact due to rounding)
7 CFR 273.1, 273.3, 273.5, 273.6, 273.7 Food Stamp Application				
Existing	18,700,000	1.00	.2290	4,282,923
Proposed	18,300,000	1.00	.2290	4,191,310
Difference				−992,223
7 CFR 273.2, 273.10, 273.11 Application Worksheet				
Existing	11,100,000	1.798	.4640	9,258,122
Proposed	10,900,000	1.793	.4640	9,067,903
Difference				−19,022
7 CFR 273.12, 273.21 Monthly Reporting				
Existing	11,100,000	1.920	.1617	3,446,150
Proposed	10,900,000	1.920	.1617	3,384,058
Difference				−62,093
7 CFR 273.12, 273.12 Explaining Monthly Reporting to Households				
Existing	11,100,000	.160	.0833	147,941
Proposed	10,900,000	.160	.0833	145,275
Difference				−2,666

	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours (Calculations may not be exact due to rounding)
7 CFR 273.21 Notice of Late/Incomplete Report to Monthly Reporting Households				
Existing	11,100,000	.096	.1115	118,816
Proposed	10,900,000	.096	.1115	116,674
Difference				−2,141
7 CFR 273.2 Informing Households about Action Taken on Food Stamp Case				
Existing	18,700,000	1.00	.1115	2,085,050
Proposed	18,300,000	1.00	.1115	2,040,450
Difference				−44,600
7 CFR 273.2 Notifying Household that Certification Period Will End				
Existing	11,100,000	.745	.0833	688,849
Proposed	10,900,000	.745	.0833	676,438
Difference				−12,412
7 CFR 273.12, 273.21 Households Reporting Changes				
Existing	11,100,000	.840	.1617	1,507,691
Proposed	10,900,000	.840	.1617	1,480,525
Difference				−21,166
7 CFR 273.13 Notifying Household about a Reduction in Food Stamps				
Existing	11,100,000	.420	.1666	776,689
Proposed	10,900,000	.420	.1666	762,695
Difference				−13,994
7 CFR 273.21 Adequate Notice to Monthly Reporting Households				
Existing	11,100,000	.576	.1115	712,886
Proposed	10,900,000	.576	.1115	700,042
Difference				−12,844
7 CFR 273.11 Sponsored Aliens				
Existing	5,000	1	.5000	2,500
Proposed	5,000	1	.5000	2,500
7 CFR 273.18 Demand Letter for Overissuance				
Existing	11,100,000	.069	.1283	98,880
Proposed	10,900,000	.071	.1283	99,291
Difference				+557
7 CFR 273.17 Advance Notice of Administrative Disqualification Hearing				
Existing	11,100,000	.004	.2500	11,095
Proposed	10,900,000	.004	.2500	11,163
Difference				+68
7 CFR 273.16 Action Taken on Administrative Disqualification Hearing				
Existing	11,100,000	.002	.1666	4,234
Proposed	10,900,000	.002	.1666	2,724
Difference				−1,510

Dated: January 27, 1997.

William E. Ludwig,

Adminstrator, Food and Consumer Service.

[FR Doc. 97–2832 Filed 2–4–97; 8:45 am]

BILLING CODE 3410–30–M

National Agricultural Statistics Service

Notice of Intent To Request a Revision of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request a revision to a currently approved information collection, the June Agricultural Survey.

DATES: Comments on this notice must be received by April 11, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: June Agricultural Survey.

OMB Number: 0535–0089.

Expiration Date of Approval: July 31, 1999.

Type of Request: To revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The June Agricultural Survey collects information on planted acreage for major crops, livestock inventories, and on-farm grain stocks. The survey establishes a base for estimating crop production and value for the remainder of the crop year. Information from this survey is used by government agencies in planning, farm policy analysis, and program administration. In order to maximize its utility, this information collection is being resubmitted to add acreage, equine, and computer ownership/usage questions and to eliminate selected cattle and hog questions. NASS will ask for OMB approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 83,000.

Estimated Total Annual Burden on Respondents: 18,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000.

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.

Signed at Washington, D.C., January 30, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97–2831 Filed 2–4–97; 8:45 am]

BILLING CODE 3410–20–M

COMMISSION ON CIVIL RIGHTS

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Mississippi Delta

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Pub. L. 103–419, 108 Stat. 4338, as amended, and 45 CFR Section 702.3, that a public hearing of the U.S. Commission on Civil Rights will commence on Thursday, March 6, through Saturday, March 8, 1997, beginning daily at 8:30 a.m., in the Mississippi Room at the Ramada Inn, 2700 U.S. Highway 82 East, Greenville, Mississippi 38704.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, under 45 CFR 702.2, related particularly to voting rights, public education, and equality of economic opportunity in the Mississippi Delta region in order to examine underlying causes of racial and ethnic tensions in the United States.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR Section 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 367–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–2925 Filed 2–3–97; 10:53 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

1998 Dress Rehearsal Integrated Coverage Measurement (ICM) Address Listing Activities

ACTION: Proposed collection: Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 7, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David C. Whitford, Bureau of the Census, Room 3785, Washington, DC 20233, (301) 457–4035.

SUPPLEMENTARY INFORMATION

I. Abstract

The Bureau of the Census developed the ICM approach for measuring coverage during the decennial census. The Independent Listing will obtain a complete housing unit inventory of all addresses within the 1998 ICM Dress Rehearsal sites just before the 1998 Dress Rehearsal commences. Currently, we are planning on using two Independent Listing forms, DX–1302 and DX–1302A. The DX–1302 will contain experimental questions designed to enhance our address listing procedures. We will compare the results using Form DX–1302 with those from a control listing form that did not contain the experimental questions, Form DX–1302A, to see if the experimental questions improved our coverage of addresses. The Independent Listing will undergo a quality assurance operation to ensure that the work performed is of acceptable quality and to verify that the correct block was visited.

The listings will be matched to the census list of addresses; the unmatched cases will be sent to the field for reconciliation using the Housing Unit Follow-up Form, DX–1303. For quality assurance purposes, a sample of the follow-up cases will be verified to ensure that the follow-up enumerators visit the block clusters, resolve the cases, and correctly follow procedures. The resultant address listing will be used in the next phase of the ICM, the ICM Person Interview. The forms and procedures to be used in this phase of the ICM in the 1998 Dress Rehearsal will be included in a separate submission.

II. Method of Collection

Person to person interview.

III. Data

OMB Number: Not available.

Form Number: DX–1302 and DX–1302A, Independent Listing Form; and DX–1303, Housing Unit Follow-up Form.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 31,176 Housing units (hus).

Estimated Time Per Response: 2 minutes (Independent Listing) and 3 minutes (Housing Unit Follow up).

Estimated Total Annual Burden Hours: Total=1,539 Hours.

Independent Listing=1,039 hrs (2 min.×31,176 hus).

Independent Listing QA=52 hrs (2 min.×1,559 hus).

Housing Unit Follow up=390 hrs (3 min.×7,794 hus).

Housing Unit Follow-up QA=58 hrs (3 min.×1,169 hus).

Estimated Total Annual Cost: $649,000.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; ''ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–2757 Filed 2–4–97; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 012997A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team will hold a public meeting.

DATES: The meeting will begin at 10 a.m. on February 11, 1997 and continue from approximately 8 a.m. to 5 p.m. each day through February 14, 1997.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting, which is primarily a work session of the Salmon Technical Team, is to draft the stock status report, ''Preseason 1: Stock Abundance Analysis for 1997 Ocean Salmon Fisheries''. The final report will be distributed to the public and reviewed by the Council at its March 1997 meeting in Portland, OR.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 29, 1997.

Bruce Morehead,

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

[FR Doc. 97–2766 Filed 2–4–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110796I]

Taking of Endangered and Threatened Marine Mammals Incidental to Commercial Fishing Operations; Commonwealth of Massachusetts

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

ACTION: Notice of denial of application for a small take exemption.

SUMMARY: On October 17, 1996, the Director of the Massachusetts Division of Marine Fisheries submitted to NMFS an application for a general incidental take permit under the Endangered Species Act (ESA) for northern right whales incidental to commercial fishing activities within Massachusetts' territorial waters and a small take authorization for the same species and activity under the Marine Mammal Protection Act (MMPA). For the reasons discussed in this document, that application has been denied.

ADDRESSES: Copies of the application, letter, and/or Federal Register notices mentioned in this document may be obtained by writing to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–2337, or by telephoning one of the contacts listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

Kenneth R. Hollingshead or Victoria Cornish, NMFS (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1996 (61 FR 64500), NMFS noted that the Commonwealth of Massachusetts (Massachusetts) had submitted an application under the MMPA for a small take of northern right whales (*Eubalaena glacialis)* incidental to commercial fishing activities within Massachusetts, territorial waters, in particular Cape Cod Bay, during the months of February through May. This application was in response to an order dated September 24, 1996, in *Strahan* v. *Linnon* wherein the presiding District Court judge ordering Massachusetts to apply, under the MMPA, for a small take of northern right whales. In its letter, Massachusetts also requested a general incidental take permit for the northern right whale under either section 7(b)(4) or section 10(a)(1)(b) of the ESA. NMFS stated in that Federal Register notice that while the Agency does not consider the application to be complete in either its discussion of the interaction, or planned mitigation, and while it does not plan to begin processing the application until it is complete and Massachusetts has submitted its Take Reduction Plan (TRP) for northern right whales, NMFS was offering the public an advance opportunity to review and comment on the application and the issues. However, no comments were received during the 30-day comment period.

Issues

For a discussion of the issues, please refer to the notice of receipt of the application (61 FR 64500, December 5, 1996).

Determination

On January 28, 1997, in a letter to Massachusetts, NMFS determined that it was not appropriate to consider authorizing the State's potential incidental take of right whales by commercial fishing through a permit application process. NMFS may issue authorizations for the incidental taking of endangered and threatened species under section 101(a)(5)(E) of the MMPA upon its own initiative to fishers operating in commercial fisheries if negligible impact findings can be made. NMFS may revaluate determinations under this provision if there is a significant change in the information used in making the original determinations. NMFS also reevaluates its negligible impact determinations after 3 years, as required by statute.

In making negligible impact determinations, NMFS considers the serious injury and mortality from all commercial fishery operations. On August 31, 1995 (60 FR 45399), NMFS stated that it was unable to make a negligible impact determination with respect to impacts of commercial fisheries on right whales. Although Massachusetts has developed a TRP since the August 1995 notice was issued, NMFS has concluded that no significant new information has been submitted to cause the Agency to reconsider this determination. Since NMFS cannot make a negligible impact determination, an incidental take authorization under section 101(a)(5)(E) is not appropriate.

In regard to Massachusetts' application for an incidental take permit under section 7(b)(4) of the ESA, NMFS does not consider it appropriate for a state or private party to apply for an Incidental Take Statement under section 7(b)(4) of the ESA as this section applies only to Federal actions. Issuance of a section 101(a)(5)(E) permit is considered a Federal action, however, and would be subject to consultation. If appropriate, a section 7 Incidental Take Statement would be issued in association with this consultation. Therefore, an incidental take permit under section 10 is determined to be unnecessary. While NMFS has determined that the Massachusetts application for an incidental take under section 7 or 10 is inappropriate, NMFS has encouraged Massachusetts to provide information regarding state fishing activities that would be useful in conducting appropriate consultations.

Accordingly, for the reasons stated above, on January 28, 1997, NMFS informed Massachusetts that it was inappropriate to proceed, as requested by Massachusetts, to process MMPA and ESA applications.

Dated: January 30, 1997.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–2794 Filed 2–4–97; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 10, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2987 Filed 2–3–97; 2:08 pm]

BILLING CODE 6351–01–M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 3, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2988 Filed 2–3–97; 2:08 pm]

BILLING CODE 6351–01–M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 24, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2989 Filed 2–3–97; 2:08 pm]

BILLING CODE 6351–01–M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, February 19, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2990 Filed 2–3–97; 2:08 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Military Health Care Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: On January 28, 1997 (62 FR 4036), the Department of Defense published a notice announcing a meeting of the Military Health Care Advisory Committee. This meeting has been POSTPONED until mid-March, due to scheduling conflicts which have not permitted full attendance by Committee members. All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor, or Commander Sidney Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

Dated: January 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2751 Filed 2–4–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on March 10, 1997 and from 8:30 a.m. to 4:30 p.m. on March 11, 1997. The meeting will be held at The Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, Florida 32233. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statement for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than February 21, 1997.

Dated: January 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2750 Filed 2–4–97; 8:45 am]

BILLING CODE 5000–04–M

Organizations, Functions, and Authority Delegations

AGENCY: Department of Defense, Defense Office of Hearings and Appeals.

ACTION: Notice.

SUMMARY: The General Accounting Office Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to waive debts arising out of the erroneous payment of pay and allowances. The OMB Director subsequently delegated the authorities listed below to the Department of Defense (DOD). The Secretary of Defense further delegated this authority to the Defense Office of Hearings and Appeals (DOHA). This notice announces DOHA's intent to issue regulations implementing this new authority in the near future and that, in the meantime, DOHA will use the procedures and practices applicable to the waiver of debts before the effective date of the transfer of authority, December 18, 1996, which are published in title 4, Code of Federal Regulations, Chapter 1, Subchapter G.

EFFECTIVE DATE: February 5, 1997.

ADDRESSES: Comments may be mailed to the Defense Legal Services Agency, Defense Office of Hearings and Appeals, Chairman, Claims Appeals Board, P.O. Box 3656, Arlington, VA 22303.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, Chairman, Claims Appeals Board, 703–696–8524, ext. 150.

SUPPLEMENTARY INFORMATION: Pursuant to the General Accounting Office Act of 1996, some functions of the Comptroller General were transferred to the Director of OMB. *See* Sec. 101, Pub. L. 104–316, 110 Stat. 3826. Subsequently, in a determination order dated December 17, 1996, the Director delegated authority to approve the waiver of debts arising from the erroneous payment of pay and allowances to various components within the Executive branch. This order delegated to the Department of Defense the authority to:

a. Waive erroneous payments of Department of Defense civilian employees described at section 103(d);

b. Waive recovery of erroneous overpayments described at section 105(b);

c. Waive recovery of erroneous overpayments described at section 116; Before the effective date of the transfer, these claims were subject to the procedures prescribed by the Comptroller General at 4 CFR Chapter 1, Subchapter G (1996). Until DOHA issues its own regulations implementing its new claims authority, DOHA's policy will be to apply these procedures and the U.S. General Accounting Office's practices to claims submitted to DOHA for settlement. As an exception, the authority to issue decisions in review of settlements will be exercised by a Claims Appeals Board on behalf of the Secretary of Defense.

For each application for waiver of a debt exceeding $1,500, or for an appeal of an Agency's decision on a waiver under that amount, the claimant should submit the application to the agency out of whose activity the claim arose, and it is the agency's responsibility to forward the claim to DOHA with its comments. Claimants may submit their applications directly to DOHA. However, claimants are advised that submitting their applications directly to DOHA may delay consideration of their applications because DOHA will not settle a claim without first notifying the agency of the

application and requesting an administrative report from the agency. Applications should be sent to: Defense Legal Services Agency, Defense Office of Hearings and Appeals, Claims Appeals Board, P.O. Box 3656, Arlington, VA 22203–1995.

Dated: January 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2752 Filed 2–4–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Draft Environmental Impact Statement (EIS) on the Disposal & Reuse of the Savanna Army Depot Activity, Savanna, IL

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this Draft Environmental Impact Statement (DEIS) is the disposal of the Savanna Army Depot Activity (SVAD), Savannah, Illinois, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The DEIS addresses the environmental consequences of the disposal and subsequent reuse of the Depot's 13,062 acres. Alternatives examined in the DEIS include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

Disposal of the Depot property is the Army's primary action. Reuse of the property is a secondary action that will be taken by others. The EIS also analyzes the potential environmental effects of reuse by means of evaluating intensity-based probable reuse scenarios. Appropriate to the Depot are low, medium-low, and medium intensity reuse scenarios reflecting the range of activities that could occur after disposal of the property.

A scoping meeting was held at the SVAD on June 27, 1996. Public notices requesting input and comments from the public were issued in the regional area surrounding the SVAD.

DATES: Written public comments and suggestions received on or before March 24, 1997 will be addressed in the Final Environmental Impact Statement.

ADDRESSES: A copy of the Draft EIS may be obtained by writing to Mr. Glen Coffee at the Corps of Engineers, Mobile District (ATTN: CESAM–PD–E), 109 St. Joseph St, Mobile, AL 36628–001, or by facsimile at (334) 690–2424.

Dated: January 30, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–2803 Filed 2–4–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Submission for OBM review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 7, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 30, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: The Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 101–392)—State Plan.
Frequency: Biennially.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 54.
Burden Hours: 13,284.
Abstract: P.L. 101–392 requires State Boards for Vocational Education to submit a 3-year State plan the first year of the Act and a 2-year plan in succeeding years, with annual revisions as the Board deems necessary to receive federal funds. Program staff review the plans for compliance and quality.

[FR Doc. 97–2763 Filed 2–4–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–727–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

January 30, 1997.

Take notice that on January 23, 1997, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective February 17, 1997:

First Revised Volume No. 1

Third Revised Sheet No. 127
Original Sheet No. 127–A

Kern River states that the purpose of this filing is to comply with the Commission's Order Authorizing Blanket Construction (Order) issued on December 23, 1996 in Docket No. CP96–727–000. In the instant filing, Kern River is modifying its tariff to define the circumstances under which Kern River will offer to make contributions in aid of construction available to shippers who construct facilities needed to take delivery of gas from, or to measure gas delivered by, Kern River.

Any person desiring to be heard or to make any protest with reference to said filing should on or before February 7, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., 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 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests 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 must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2774 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–81–001]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

January 30, 1997.

Take notice that on January 24, 1997 K N Interstate Gas Transmission Company Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–B, the following revised tariff sheets to be effective January 1, 1997:

First Revised Sheet No. 36
Substitute Original Sheet No. 89

KNI states that these tariff sheets are being submitted to comply with the Commission's December 31, 1996 Order in this proceeding.

KNI states that copies of the filing were served upon KNI's mainline jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2777 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–236–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 30, 1997.

Take notice that on January 27, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective February 27, 1997, except for Original Sheet No. 273–A which has a proposed effective date of October 1, 1995.

Northwest states that this filing is submitted to make several minor revisions to Northwest's tariff, including: (1) Canceling Rate Schedule T–1, (2) incorporating a revenue crediting mechanism related to revenue credits received from Questar Pipeline Company for storage at Clay Basin, (3) updating Northwest's list of marketing affiliates, (4) removing provisions requiring a prepayment fee if firm service is requested, (5) changing from monthly to annual distribution of penalty revenue credits applicable to unauthorized overrun or underrun penalties, (6) removing obsolete tariff provisions and (7) making other general ''housekeeping'' changes.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2778 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–209–000]

Transwestern Pipeline Company; Notice of Request Under Blanket Authorization

January 30, 1997.

Take notice that on January 27, 1997, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Post Office Box 1188, Houston, Texas 77251–1188 filed a request with the Commission in Docket No. CP97–209–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate a new delivery point which would accommodate interruptible natural gas deliveries to GPM Gas Corporation (GPM) authorized in blanket certificate issued in Docket No. CP82–534–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transwestern proposes to install and operate a new delivery point, located in Sherman County, Texas, at GPM's request which would provide compressor fuel and starting gas for use at its plant. The proposed volumes to be delivered would be 500 MMBtu on a peak day and 182,500 MMBtu on an annual basis. Transwestern estimates the cost of constructing the delivery point would be $16,500.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be

deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2776 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–198–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 30, 1997.

Take notice that on January 17, 1997, as supplemented on January 28, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP97–198–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate delivery facilities in South Dakota under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to construct an additional one-inch tap at an existing tap site to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) for ultimate use by additional residential customers. Williston Basin states that the existing tap and the additional one-inch tap will be manifolded together and used to serve Montana-Dakota, for ultimate use by the residents of the Mountain Shadow Estates mobile home park. Williston Basin estimates the current maximum daily quantity at the existing tap to be 200 Mcf per day. Williston Basin further estimates that after the additional one-inch tap is installed, the maximum daily delivery quantity will be 1,100 Mcf per day. Williston Basin states that the volumes to be delivered are within the contractual entitlements of the customer. In addition, Williston Basin estimates the cost of construction to be $1,000, of which will be fully reimbursed by Montana-Dakota.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2775 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–647–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1998 Expansion Project and Request for Comments on Environmental Issues

January 30, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the 1998 Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Great Lakes Gas Transmission Limited Partnership (Great Lakes) requests authority to construct and operate the following:

1. Three 36-inch-diameter loops totalling about 71.5 miles of pipeline:

a. Loop 1—about 22.0 miles long, extending from St. Vincent Compressor Station at milepost (MP) 0.7 to MP 22.7 in Kittson County, Minnesota;

b. Loop 2—about 26.7 miles long, extending from MP 132.5 to MP 159.2 in Clearwater, Beltrami, and Hubbard Counties, Minnesota; and

c. Loop 3—about 22.8 miles long, extending from MP 283.5 to MP 306.3 in Carlton County, Minnesota and Douglas County, Wisconsin;

2. Two 7,400 horsepower compressor units and appurtenant facilities at the St. Vincent Compressor Station and Farwell Compressor Station in Kittson County, Minnesota and Clare County, Michigan, respectively;

3. A replacement aerodynamic assembly at the Thief River Falls Compressor Station in Marshall County, Minnesota; and

4. Minor permanent above ground ancillary facilities;

a. three crossover assemblies at the new loop ends at MPs 22.7, 159.2, and 306.3 in Kittson and Hubbard Counties, Minnesota, and Douglas County, Wisconsin, respectively;

b. the expansion of four existing mainline valve sites at MPs 16.3, 150.0, 283.5, and 299.3 in Kittson, Beltrami, and Carlton Counties, Minnesota, and Douglas County, Wisconsin, respectively; and

c. removal of the existing end-of-loop valve and crossover assembly by MP 132.5 in Clearwater County, Minnesota.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, please write to the Secretary of the Commission at the address on page 4 of this notice.

Land Requirements for Construction

Construction of the proposed facilities would require about 867 acres of land. Following construction, about 222 acres would be maintained as new permanent right-of-way. The remaining 645 acres of land would be restored and allowed to revert to their former use.

Construction Timing

Great Lakes proposes to construct loopline facilities in two phases: a 1997/1998 winter phase and a 1998 summer phase. Loop 2 would be constructed during the 1997/1998 winter phase beginning November 15, 1997, and would be completed by March 1, 1998. Therefore, wetlands would be frozen during the crossings.

Loops 1 and 3 would be constructed during the 1998 summer phase beginning July 1, 1998, with an in-service date November 1, 1998.

The compressor station additions and modifications would be installed during the period of March 1, 1998, and November 1, 1998.

[1] Great Lakes Gas Transmission Limited Partnership's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under the general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Great Lakes. This preliminary list of issues may be changed based on your comments and our analysis.

- Effect on three federally listed endangered or threatened species, Bald eagle, Piping plower, and Timber wolf, and state special concern species.
- Eleven perennial waterbodies would be crossed and three of them are coldwater fisheries (two are trout stocking fisheries).
- Four waterbodies would be crossed that are over 100 feet wide (South Branch Two Rivers, Mississippi River, Schoolcraft River, and Nemadji River).
- Effect on Mississippi Headwaters State Forest land.
- Effect on residences that are potentially within 50 feet of the proposed construction work area.
- Several prehistoric and historic archaeological sites may be affected by the project (only 30 percent of the cultural resources surveys have been completed to date).

Public Participation

- You can make a different by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:
- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, DC 20426.
- Reference Docket No. CP96–647–000.
- Mail your comments so that they will be received in Washington, DC on or before March 3, 1997.

If you wish to receive a copy of the EA, please write to the Secretary of the Commission at the address on page 4 of this notice.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your scoping comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2773 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–16–000 and CP96–16–001]

Transcontinental Gas Pipeline Corporation; Notice of Meeting

January 30, 1997.

On February 6, 1997, Office of Pipeline Regulation Staff will meet with representatives of Transcontinental Gas Pipe Line Corporation (Transco) to discuss pre-filing matters for a compliance filing on compressor station architectural design required by Commission Order issued December 2, 1996 in Docket No. CP96–16–000 and 001. Transco requested this pre-filing meeting by letter filed January 29, 1997 in the subject docket.

The meeting will be at 10:00 AM at the Commission's headquarters, 888 First Street NE, Washington, DC.

Kevin P. Madden,

Director, Office of Pipeline Regulation.

[FR Doc. 97–2772 Filed 2–4–97; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Transmission Rate Design Development

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice canceling a planned technical conference.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern) will *not* conduct the Technical Conference that was anticipated to be convened as noted in the Federal Register (61 FR 53732) on October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of

Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6696.

SUPPLEMENTARY INFORMATION: Following Department of Energy (DOE) guidance in its response to the Federal Energy Regulatory Commission's April 24, 1996, Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities), Southwestern Power Administration (Southwestern) is reviewing its rate design structure to ensure compliance with the intent of Order 888 for open access wholesale electric transmission rates. A Public Forum was convened Tuesday, October 29, 1996, in Southwestern's offices in Tulsa, Oklahoma. The Forum was held to explain the goals of the rate design review process and identify areas of specific concern. At the Forum and through a formal comment period, Southwestern sought comments and opinions regarding potential approaches to the rate design of ancillary services and the unbundling of the generation and transmission rates.

A transcript of the Public Forum was made. For a fee, copies of the transcript may be obtained from the transcribing service.

An interested parties list was also developed for those parties that were unable to attend the Public Forum, but wanted to receive any mailings regarding this issue in the future.

It was anticipated that a Technical Conference would need to be convened before the end of February 1997 to review specific comments and encourage discussions to help ensure a better understanding of the technicalities of the issues being reviewed (e.g. Development of Ancillary Services). In October 15, 1996, Federal Register Notice (61 FR 53732), Southwestern provided notification of its plan to convene a conference to review, in detail, the technical comments received to help determine how the technicalities could best be incorporated into the rates for transmission services. The Comments received were not technical in nature and virtually all are consistent with Southwestern's anticipated approach to unbundling transmission and generation rates. Therefore, with only minimal benefits expected to be gained from holding a technical conference, Southwestern will *not* conduct such a conference.

Southwestern proposes to pursue the unbundling of its transmission services in conjunction with its normal repayment process. As part of this process, a formal comment period will be provided to allow interested parties to provide comments and suggestions regarding the rates being developed.

We look forward to your continued interest and participation in the ongoing process of rate development.

Issued in Tulsa, Oklahoma, this 27th day of January, 1997.

Michael A. Deihl,

Administrator.

[FR Doc. 97–2826 Filed 2–4–97; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5685–4]

Proposed Settlement, Acid Rain Opt-in-Rule Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement of *Alcoa Generating Corporation* v. *United States Environmental Protection Agency*, No. 95–1292 (D.C. Cir.).

This case involves a challenge to the final rule, entitled ''Opting into the Acid Rain Program,'' which, *inter alia*, established provisions that allow certain sulfur dioxide emitting combustion sources that are not otherwise subject to the Acid Rain Program to voluntarily become subject to, or ''opt into,'' the Acid Rain Program and receive marketable emission allowances.

For a period of thirty (30) days following the date of publication of this notice, the environmental Protection Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Jacqueline Jordan, Cross-Cutting Issues Division (2322), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7622. Written comments should be sent to Jonathan Averback, Air and Radiation division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and must be submitted on or before March 7, 1997.

Dated: January 27, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–2842 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5683–2]

Clean Water Act Section 303(d) Total Maximum Daily Load (TMDL) Program; Draft TMDL Program Implementation Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: EPA's Assistant Administrator for Water hereby makes available for public comment a Draft TMDL Program Implementation Strategy. The TMDL program addresses waters that do not meet State water quality standards even after pollution sources have implemented required pollution controls. CWA section 303(d) requires States to identify these waters and develop TMDLs for them, with oversight from the Environmental Protection Agency (EPA). A TMDL allocates pollutant loadings among pollution sources in a watershed, and is a basis for taking the actions needed to restore a waterbody.

The Draft TMDL Program Implementation Strategy explains EPA's vision, priorities and the steps the Agency will take to help States meet TMDL program requirements. The Strategy identifies issues for which EPA may develop guidance and/ or make regulatory changes. The Strategy also describes activities that are currently underway, have been recently initiated, or for which EPA will direct a greater portion of its available program resources.

EPA will use this Draft Strategy to explain the Agency's current plans to fully implement the TMDL program and to facilitate broad-based public discussion on how the TMDL program can be improved. EPA has provided the Draft Strategy as background information to the recently formed TMDL Federal Advisory Committee Act (FACA) Committee. The Committee will develop recommendations concerning needed changes to this Draft Strategy as well as all TMDL related policies, guidance regulations, and priorities.

DATES: EPA is accepting comments on the Draft TMDL Program Implementation Strategy for 90 days following the date of publication of this notice.

ADDRESSES: Please direct comments on, and requests for, the Draft TMDL Program Implementation Strategy to the following: Environmental Protection Agency, Assessment and Watershed Protection Division, Office of Water (4503F), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Theresa G. Tuaño, Assessment and Watershed Protection Division, Watershed Branch, at the address given above; telephone 202/260–7059. The Draft TMDL Program Implementation Strategy is also available on the EPA Office of Water Home Page on the Internet at the following address: http://www.epa.gov/owowwtr1/tmdl/index.html. Please refer to the Home Page for instructions on submitting electronic comments.

SUPPLEMENTARY INFORMATION:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 97–2575 Filed 2–4–97; 8:45 am]

BILLING CODE: 6560–50–P

[OPPTS–00208; FRL–5582–5]

Notice of Availability of FY 1997 Grant Funds for the Establishment of a Pollution Prevention Information Network

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting grant proposals to establish a national network of pollution prevention information centers. EPA anticipates that between $750,000 and $1 million will be available. The purpose of this request for proposals is threefold: (1) To create new centers for the collection, synthesis and dissemination of pollution prevention information for States not currently served by a pollution prevention regional center, (2) to support existing regional pollution prevention information centers and (3) to coordinate work among new and existing centers in order to: minimize duplication of effort in information collection and synthesis, and training for the promotion of pollution prevention technologies, and establish information standards and peer review that will facilitate information exchange among centers. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

DATES: Applications must be postmarked by April 28, 1997.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the grant guidance and application package or to obtain more information regarding this program, please contact Beth Anderson at (202) 260–2602. You may also forward your requests and questions via the Internet to: anderson.beth@epamail.epa.gov or mail your request to Beth Anderson at the Office of Pollution Prevention and Toxics, Mail Code 7409, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Scope and Purpose of this Grant Competition

1. *The Pollution Prevention Act of 1990.* This solicitation is made under the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101-508), which established as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention (P2) as the use of other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

Section 6606 of the Act authorizes EPA to establish a source reduction clearinghouse to compile information on management, technical and operational approaches to source reduction. The Act States that EPA should use the clearinghouse to:

(1) Serve as a center for source reduction technology transfer.

(2) Mount active outreach and education programs by the States to further the adoption of source reduction technologies.

(3) Collect and compile information reported by States receiving grants under section 6605 on the operation and successes of State source reduction programs.

2. *Purpose of national pollution prevention information network.* Currently there are few limited mechanisms or systems to coordinate the development, review, and dissemination of pollution prevention information among Federal, State, local agencies, and universities involved in promoting source reduction technologies. Access to pollution prevention (P2) information and assistance varies across the United States. In addition, not all programs providing assistance to small businesses have access to pollution prevention information that may be useful and relevant to their clientele. As a result, the purpose of this request for proposals is three fold: (1) To create new centers for the collection, synthesis and dissemination of pollution prevention information for States not currently served by a pollution prevention regional center, (2) to support existing regional pollution prevention information centers, and (3) to coordinate work among new and existing centers in order to: minimize duplication of effort in information collection and synthesis, and training for the promotion of pollution prevention technologies, and establish information standards and peer review that will facilitate information exchange among centers.

The development of a P2 information network of centers would allow State P2 information needs to be addressed on a regional basis and allow for improved information exchange. A coordinated network would facilitate information exchange and decrease duplicative research that might be conducted in each State by standardizing formats for P2 information (such as case studies or vendors) and developing systems to: coordinate information needs, determine types of P2 information that need to be developed, coordinate the production of relevant P2 information, disseminate this information among small business assistance providers, and evaluate the effectiveness of the

information being disseminated in changing business practices to incorporate pollution prevention.

EPA believes that investing in coordinating and standardizing P2 information collection, synthesis, and publication will benefit State P2 technical assistance providers as well as other small business assistance programs, such as the Small Business Development Centers and the National Institutes of Standards and Technology (NIST) Manufacturing Extension Partnerships. Regional P2 information centers could benefit a variety of small business assistance programs by allowing for specialization in expertise, where this expertise can be shared nationally. Regional centers could be more responsive to the common information needs of the States being served and allow States to focus resources on issues unique to each State. EPA wants this competitive grant process to:

(1) Improve access to P2 information for all State business assistance programs.

(2) Increase the availability of P2 technical assistance to all States, by sharing the research, synthesis, and training in current P2 information nationally.

(3) Increase and improve partnerships among State entities serving small businesses by providing a forum for defining and meeting common program objectives.

EPA believes that some of the benefits of a coordinated P2 information network would be: uniform access to high quality information across all industrial sectors and localities, minimized duplication of effort in developing P2 materials, improved leveraging of existing resources, and improved quality and focus of P2 information available through the use of standard formats and peer review.

3. *EPA's prior efforts to promote P2 information sharing.* On August 20 and 21, 1992, EPA sponsored a subcommittee meeting of the ''National Advisory Council for Environmental Policy and Technology, State and Local Programs Committee.'' At this meeting, the delivery of P2 technical information to State and local technical assistance programs was discussed in the context of the national data base, Pollution Prevention Information Exchange System (PIES) and the Pollution Prevention Information Clearinghouse (PPIC) that EPA was operating. This initial meeting raised issues of information quality, roles for a national clearinghouse, and priority information needs or functions for P2 technical assistance programs.

In October 1993, EPA funded a proposal from the National Roundtable of State Pollution Prevention Programs (now called the National Pollution Prevention Roundtable (NPPR)) to ''develop a design and management plan for a national network of pollution prevention information providers.'' In February 1995, NPPR submitted its final report. In this report, based on the results of survey and telephone interviews, the functions of an information network that would best support pollution prevention technical assistance programs were:

- Make information readily accessible and easy to search.
- Collect and update technical information.
- Identify experts or other sources of information.
- Provide technical information in a synthesized format (which might include case studies, process information, bibliography, vendor information, etc.).

In October 1994, EPA funded a 3–year pilot proposal to establish a model program for interstate cooperation on pollution prevention information sharing. Three organizations agreed to participate in the pilot to coordinate information collection, synthesis, peer review, and dissemination: Northeast Waste Management Officials Association (NEWMOA), the Illinois Hazardous Waste Research and Information Center (now called the Illinois Waste Management and Research Center (WMRC)), and the Wisconsin Solid and Hazardous Waste Education Center (SHWEC). Under this pilot program, State focus groups were formed to determine pollution prevention information needs. In September 1995, the States in the Northeast approved a 5–year plan to aid in the collection, organization, and distribution of pollution prevention technical information in the Northeast. The Great Lakes States developed a management plan for the Great Lakes Pollution Prevention Information Clearinghouse and set up a listserve system (P2TECH) to assist pollution prevention technical assistance programs (P2TAPs) nationwide in finding answers to technical assistance problems. Four pollution prevention technical information packets will be written and peer-reviewed to summarize P2 technical solutions for the subject industry or process topic. In addition, these three programs have collaborated on three different data bases: vendor, bibliographic, and case study, data bases.

4. *Existing P2 Information Centers.* There are several existing centers (in addition to the three listed above: WMRC, NEWMOA, and SHWEC) that serve clients outside their State boundaries, although the kinds of services or information offered varies with each center. The Waste Reduction Resource Center in Raleigh, North Carolina receives some funds from EPA's Regions 3 and 4 and serves States in those two regions with P2 information, site visits, and training. The Pacific Northwest Pollution Prevention Research Center (Seattle, WA) receives funds from EPA's region 10 and provides a data base on P2 research that is available nationally. The Institute for Advanced Manufacturing Sciences (Cincinnati, OH) also provides a nationally available data base for pollution prevention and cost effective technologies relevant in the metal finishing, metal painting and printing operations. Other States may be at a disadvantage because of the lack of a regional P2 information center. Such a regional center could coordinate State P2 information needs and training, rather than requiring each State to develop its own P2 materials and training.

II. Eligibility

1. *Applicants.* In accordance with the Pollution Prevention Act of 1990, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally recognized Indian tribes. For convenience, the term ''State'' in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. These organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

2. *Availability of FY 97 funds.* With this publication, EPA is announcing the availability of between $750,000 and $1 million in grant/cooperative agreement funds for FY 1997. These awards will be made through a competitive process for amounts not to exceed $350,000. Projects may last up to 3 years.

3. *Matching requirements.* Under the Pollution Prevention Act of 1990, the Federal Government will provide up to half of the total allowable costs of the project, and the State will provide the remainder. For example, a project

costing $200,000 could be funded by a grant for up to $100,000 from the Federal government. The State is responsible for providing the remainder. State contributions may include cash, in-kind goods and services, and third party contributions.

III. Types of Proposals Being Solicited

1. *General*. Funds awarded under the Act must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention implementation efforts region-wide. Proposed projects should serve the needs of the State programs they support and should focus on one or more of the following areas: compiling information that can be shared among States or regions of the country; providing a means of sharing P2 expertise, resources, or training; information collection, synthesis and peer review of new P2 documents; and information dissemination (electronic or hard copy).

2. *Types of proposals*. EPA is soliciting two different types of grant proposals. The first type of proposal (type 1) would describe activities designed to coordinate work among new and existing centers in order to: minimize duplication of effort in information collection and synthesis, and training for the promotion of pollution prevention technologies, and establish information standards and peer review that will facilitate information exchange among centers. The second type of proposal (type 2) would: (1) create new centers for the collection, synthesis, and dissemination of pollution prevention information for States not currently served by a pollution prevention regional center, or (2) support existing regional pollution prevention information centers.

Only one grant will be awarded for purpose of coordinating work among P2 information centers (type 1). Since this type of proposal will involve working with existing P2 information centers, letters of support for the proposal should be included from at least three centers currently providing P2 information to a number of States. The remaining awards will be made to new or existing centers (type 2). One proposal may combine both types of proposals (type 1 and type 2). For instance: an existing P2 information center can request funding to provide for oversight and coordination of other P2 information centers as well as funding to support P2 information collection, synthesis, and dissemination. In this case, the proposal should contain both letters of support from other P2 information centers as well as from the States being served by the center.

1. *Type 1 Proposals*. There are various actions that could be taken to achieve the purposes of a type 1 proposal. Coordination and oversight of P2 information collection and dissemination encompasses all centers, existing centers or new centers. This coordination function would contribute to P2 information exchange and dissemination by developing standard formats for commonly used information such as case studies or vendor information. A standard format would specify the key information that should be captured, in a case study for instance, to ensure content is useful for technical assistance providers. Dissemination of P2 information would be served if there were one central point for collection and dissemination of information. For example, case studies from each State could be submitted to one entity, key information put into a uniform case study format and then disseminated. Currently, State grant funds may be used to collect case study information or create P2 manuals for businesses in each State without knowledge of similar efforts in other States. Coordination would also serve to decrease duplication of effort where States or regions develop training for State personnel or businesses. Such training materials and expertise could be shared among regions. Coordination of P2 centers could also enhance the possibility of a local program being able to focus resources on one or two specific industries because they could rely on other centers to provide P2 information on industries not within their focus.

The first type of proposal, addressing the coordination and oversight of the P2 information network, should include letters from at least three P2 information centers which serve more than 3 States, supporting the proposal, since cooperation among these centers will be essential to the success of such a proposal. The goals and objectives must be clearly identified and the proposal should describe the strategy for the following activities:

(1) Standardization of P2 information format and procedures used to compile and share P2 information.

(2) Establishment of a procedure for peer review that ensures quality, timeliness, and effectiveness of center P2 publications.

(3) Coordination of P2 technical information and training being developed by various centers to avoid duplication of effort and build on existing information resources.

2. *Type 2 Proposals*. The second type of proposal describes activities that provide a P2 information center, which would serve at least 3 or more States, to coordinate P2 information collection, synthesis, dissemination, and training. This could allow States to utilize existing information and training materials for promoting P2 without each State developing their own materials. These regional centers (not necessarily corresponding to EPA Regions) could act as a hub for receiving and disseminating P2 information for their local State clients. Some of the advantages of such a center are: regional environmental issues which cross State boundaries could be addressed; programs and innovations could be shared among neighboring States; and the center could be held accountable and be evaluated by those States. This type 2 proposal, addressing the need for States to share information and training expertise, should include letters from the States supporting the existence or creation of a P2 information center.

3. *Activities in both types of proposals*. The goals and objectives for both types of proposals must be clearly identified and the proposal should describe a strategy for:

(1) Convening an advisory group, including State or local agencies and businesses, that will identify P2 information and training needs and evaluate the usefulness of center services.

(2) Collecting, synthesizing, writing, peer reviewing, and distributing new P2 technical material to promote the use of P2 in industries and other sectors (agriculture, service, etc.) where such P2 information is lacking.

(3) Sharing P2 expertise, training materials, and P2 information with other small business assistance centers in order to minimize duplication of effort and promote the availability of P2 technologies and solutions to small businesses.

IV. Process for Evaluation of Proposals

Proposals accepted under this program must qualify as pollution prevention projects and must address pollution in all media: air, land, and water. The proposal should contain Standard Form 424 Application for Federal Assistance and Standard Form 424A with information on the proposed budget and match. A one-page cover sheet that summarizes the type of proposal being submitted, the objectives of the proposal, and support for the proposal from other states or P2

information centers should be included to assist reviewers.

A national panel, comprised of EPA representatives from both Headquarters and the Regions, will evaluate each proposal. Acceptable proposals, meeting the eligibility requirements in Unit II. of this document, will be reviewed according to the following criteria:

(1) Feasibility of the activities being proposed, taking into account the commitments from other States or programs that will be participating in the proposal.

(2) Qualifications and experience of the project manager and staff committed to working on the proposal.

(3) Appropriateness and/or adequacy of the proposed budget and time line for the activities being conducted in the proposal.

(4) Adequacy of the provisions for ensuring responsiveness to the P2 information needs of the States.

Dated: January 29, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–2840 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5684–7]

Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On September 11, 1995 (60 FR 47172), the EPA announced the establishment of the Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee under the Clean Air Act Advisory Committee (CAAAC). The CAAAC was established on November 8, 1990 (55 FR 46993) pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app I). The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a regional haze program.

DATES: Notice is hereby given that the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs will hold its next public meeting on Thursday, February 20, 1997 (from 9 a.m. to 6 p.m.) and Friday, February 21, 1997 (from 8 a.m. to 3 p.m.).

ADDRESSES: The public meeting will be held at the Hyatt Regency, 400 New Jersey Avenue, N.W., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: For further information on the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs, please contact Mr. William F. Hamilton, Designated Federal Officer, at 919–541–5498, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, MD–12, Research Triangle Park, NC 27711. When a draft agenda is developed, a copy can be downloaded from the Ozone/Particulate Matter/ Regional Haze FACA Bulletin Board, which is located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN) or by contacting Ms. Denise M. Gerth at 919–541–5550.

Dated: January 29, 1997.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–2843 Filed 2–4–97; 8:45 am]

BILLING CODE: 6560–50–P

[FRL–5685–3]

National Drinking Water Advisory Council, Consumer Confidence Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Consumer Confidence Working Group of the National Drinking Water Advisory Council (established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*)), will be held on February 20, 1997, from 9:00 a.m. to 5:00 p.m. and February 21, 1997, from 9:00 a.m. to 2:00 p.m. at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314. The meeting is open to the public, but seating may be limited.

This is an organizational meeting of the Working Group. Members are meeting to define the scope of the Working Group's deliberation, discuss desired outcomes and outline significant issues for consideration at subsequent meetings. Statements from the public will be taken at the end of the meeting, as time allows.

For more information, please contact Francoise M. Brasier, Designated Federal Officer, Consumer Confidence Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, D.C. 20460. The telephone number is (202) 260–5668. The e-mail address is brasier.francoise@epamail.gov.

Dated: January 30, 1997.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97–2841 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5684–7]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a meeting of the Valuation Subcommittee of the US EPA Science Advisory Board's (SAB) Integrated Risk Project, previously announced in the Federal Register on January 10, 1997 (Volume 62, No. 7, pages 1453–1454), has been cancelled. This meeting, originally scheduled for February 19 through 21, 1997, will be rescheduled at a later date which will be announced in the Federal Register.

Further information can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington DC 20460, telephone (202) 260–8414, fax (202) 260–7118, or Internet at: Pozun.Diana@ EPAMAIL.EPA.GOV, or Mr. Thomas Miller, Designated Federal Official for the Valuation Subcommittee IRP, at the above address, via telephone (202) 260–5886, fax (202) 260–7118, or via the Internet at: miller.tom@EPAMAIL.EPA.GOV.

Dated: January 28, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–2845 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5685–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Daylight Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below.

Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. The Human Exposure and Health Subcommittee (HEHS) of the Science Advisory Board's (SAB) Integrated Risk Project will hold a public teleconference on Friday, February 21, 1997, from 3:00 p.m. to 5:00 p.m. (Eastern Standard Time). The teleconference will be hosted in the SAB Conference Room 2103 of the Mall, U.S. Environmental Protection Agency Headquarters Building at 401 M Street SW, Washington, DC 20460. For easy access, members of the public should use the EPA entrance next to the Safeway.

Purpose of the Meeting

The main purpose of the meeting is to continue planning future directions and activities for the Subcommittee, particularly on the topic of producing a ranking of human health risks. This meeting will focus on data requirements re environmental stressors and health endpoints to support a Delphi-type approach to risk ranking. The Subcommittee's activities are part of an SAB project to update the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection.

A limited number of telephone lines will be available for use by members of the public.

For Further Information—Members of the public desiring additional information concerning the teleconference or who wish to submit comments should contact Mr. Samuel Rondberg, Designated Federal Officer for the HEHS, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202)260–2559; by fax at (202) 260–7118 or via the INTERNET at: rondberg.sam@epamail.epa.gov. After February 10, 1997, copies of the draft meeting agenda will be available from Ms. Mary Winston at (202) 260–8414, by fax at (202) 260–7118, and by INTERNET at: winston.mary@epamail.epa.gov. Information regarding accessing the teleconference is available by contacting Ms. Winston at the above numbers.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Rondberg in writing by letter, by fax, or by INTERNET (at INTERNET address above) no later than 12 noon (Eastern Standard Time) Monday, February 17, 1997, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral comments will be limited to five minutes per person.

2. The Ecological Risk Subcommittee (ERS) of the Science Advisory Board's Integrated Risk Project will hold a teleconference meeting on February 24, 1997 from 2:00–4:30 pm eastern time. The purpose of the meeting is to continue development of a methodology for assessing the relative risks from ecological stressors. The Subcommittee will be discussing an approach for disaggregating an environmental effect that results from multiple stressors to determine the relative contribution of the various stressors. A limited number of lines will be available for members of the public who wish to call in. For more information on the teleconference meeting, contact Ms. Constance Valentine, SAB Staff Secretary, at (202) 260–8414, Fax (202) 260–7118, or via the Internet at Valentine.Connie@epamail.epa.gov. Anyone wishing to provide oral comments to the Subcommittee must contact Ms. Stephanie Sanzone, Designated Federal Official for the Subcommittee, no later than 4:00 p.m. on February 19, 1997, at (202) 260–6557, or via the Internet at Sanzone.Stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral comments will be limited to five minutes per person.

3. The Steering Committee of the Science Advisory Board's Integrated Risk Project will hold a teleconference meeting on March 10, 1997 from 1:00—4:00 p.m. eastern time. The purpose of the meeting will be to discuss integration of the subcommittee efforts, peer review options for the final report, and an outline for the integration chapter of the final report. A limited number of lines will be available for members of the public who wish to call in. For more information on the teleconference meeting, including an agenda, contact Ms. Constance Valentine, SAB Staff Secretary, at (202) 260–8414, Fax (202) 260–7118, or via the Internet at Valentine.Connie@epamail.epa.gov. Anyone wishing to provide oral comments to the Steering Committee must contact Ms. Stephanie Sanzone, Designated Federal Official for the Subcommittee, no later than 4:00 p.m. on March 5, 1997, at (202) 260–6557, or via the Internet at Sanzone.Stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral comments will be limited to five minutes per person.

Dated: January 30, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–2849 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30392A; FRL–5582–3]

Meiji Milk Products Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Meiji Milk Products Company, to register pesticide products Phytohealth J08 Post-Harvest Fungicide and Phytohealth M14 Post-Harvest Fungicide involving a changed use pattern of the active ingredient sodium bicarbonate 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: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of September 27, 1995 (60 FR 49838; FRL–4971–4), which announced that Meiji Milk Products Co., Ltd. Kyobashi, 2-3-6, Chou-ku, Tokyo, 104 Japan, had submitted applications to register the pesticide products Phytohealth J08 Post-Harvest Fungicide and Phytohealth M14 Post-Harvest Fungicide (EPA File Symbols 67748–R and 67748–E), both containing the active ingredient sodium bicarbonate at 80.0 percent, which involves a changed use pattern of the active ingredient.

The applications for Phytohealth J08 Post-Harvest Fungicide and Phytohealth M14 Post-Harvest Fungicide (EPA Registration Numbers 67748–1 and 67748–2, respectively), for use to control green mold on citrus fruits after harvest during storage and transport, were approved on December 16, 1996. This represents a changed use pattern for the active ingredient, sodium bicarbonate.

The Agency has considered all required data on risks associated with

the proposed use of sodium bicarbonate, 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 sodium bicarbonate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Pesticide Fact Sheet on sodium bicarbonate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). 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, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 27, 1997.

Janet L. Andersen,

Director, Biopesticides Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–2839 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–340106; FRL 5582–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on August 4, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent To Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 13 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before August 4, 1997 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000228–00061	Riverdale 2,4-D Granules	2,4-D 2-Ethylhexyl ester	Lakes & ponds for control of certain aquatic weeds
000228–00156	MCPA L.V. Ester	MCPA, isoctyl ester	Rice
000432–00041	Brittle Extract of Cube Root	Rotenone	Domestic pet use
000432–00046	Rotenone Crystalline	Rotenone; Cube Resins other than rotenone	Domestic pet use
000432–00525	Powdered Cube Root	Rotenone	Domestic pet use
006458–00001	Cube Powder	Rotenone; Cube Resins other than rotenone	Domestic pet use
006458–00005	Cube Extract	Rotenone; Cube Resins other than rotenone	Domestic pet use
042750–00005	Albaugh Lo-Vol 4D Herbicide	2,4-D 2-Ethylhexyl ester	Terrestrial uses, ditch-banks
042750–00006	Albaugh Lo-Vol 6D Herbicide	2,4-D 2-Ethylhexyl ester	Terrestrial uses, ditch-banks
042750–00016	Albaugh 2,4-D Gran 20 Herbicide	2,4-D 2-Ethylhexyl ester	Weed control in lakes & ponds, terrestrial uses

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
042750–00017	Albaugh VISKO-RHAP 2D	2,4-D 2-Ethylhexyl ester	Terrestrial uses, aquatic weed control in drainage ditches, ponds, lakes, marshes, aquatic weeds, aquatic applications
042750–00022	Albaugh SEE 2,4-D	2,4-D 2-Ethylhexyl ester	Terrestrial uses, aquatic weed control, sugarcane, drainage ditch banks, aquatic applications
045639–00168	Thiodan Technical	Endosulfan	Alfalfa (grown for forage), artichokes, field corn, watercress, barley, oats, rye, wheat, peas (seed crop only), soybeans, bean cannery residue, sugar beets, safflower, sunflower

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000228	Riverdalae Chemical Co., 425 West 194th Street, Glenwood, IL 60425.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
006458	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
042750	Albaugh Inc., 1517 N. Ankeny Blvd., Suite A, Ankeny, IA 50021.
045639	AgrEvo USA Co., Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 10, 1997.

Oscar Morales,

Acting Director, Program Management Support Division, Office of Pesticide Programs.

[FR Doc. 97–2499 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–F

[PF-697; FRL–5584–4]

American Cyanamid Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing regulations establishing tolerances for residues of 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile, (chlorfenapyr) in or on cottonseed. This notice includes a summary of the petition that was prepared by the petitioner, American Cyanamid Company.

DATES: Comments, identified by the docket control number [PF-697], must be received on or before March 7, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov or by submitting disks. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by the docket control number [PF-697]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The official record for this notice, as well as the public version described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing.

Information submitted as comments concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). The CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Edwards (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 207, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6386,

e-mail:
edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition from American Cyanamid Company. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish tolerances for the insecticide, 4-bromo-2-(4-chlorophenyl)-1(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile, (chlorfenapyr), in or on the raw agricultural commodity cottonseed.

The proposed analytical method is capillary gas chromatography using an electron capture detector.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, American Cyanamid Company included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of American Cyanamid; EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

The American Cyanamid Company has petitioned EPA, under pesticide petition number PP–5F4456, for a permanent tolerance of 0.5 parts per million (ppm) for the residues of chlorfenapyr in or on cottonseed. As cottonseed processed commodities fed to food animals may be transferred to milk and edible tissues, tolerances are also proposed for the following ruminant food items:

Milk: 0.01 ppm

Milk fat: 0.15 ppm

Meat: 0.01 ppm

Meat by-products (including fat): 0.10 ppm

Section 408(b)(2)(A) of the amended FFDCA allows EPA to establish a tolerance if it determines that the tolerance is ''safe,'' i.e., ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposure, and all other exposures for which there is reliable information.''

All of the studies required for the proposed use pattern have been completed according to EPA requirements. American Cyanamid believes that the available information indicates there is a reasonable certainty that no harm will result from various types of exposure.

The following is a summary of the information on chlorfenapyr submitted to the EPA which supports the establishment, under section 408(b)(2)(D) of the amended FFDCA, of the proposed tolerances in or on cottonseed and in food items derived from ruminants exposed to processed cottonseed commodities.

A. Residue Chemistry

1. *Plant metabolism*. American Cyanamid believes that the nature of the residues of chlorfenapyr in plants is adequately understood and that the residue of concern in cotton consists of the parent molecule. Expressed on a whole seed basis, the parent compound accounted for 59-68% of the total radioactive residue (TRR).

2. *Analytical method*. Section 408(b)(3) of the amended FFDCA requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. The gas chromatographic (GC) analytical method, M2216.01, which is proposed as the enforcement method for the residues of chlorfenapyr in cottonseed, has been validated at the EPA laboratories in Beltsville, MD and has a limit of detection (LOD) of 0.05 ppm and a limit of quantitation (LOQ) of 0.5 ppm.

3. *Magnitude of residue*. Extensive cotton field trials were conducted over multiple growing seasons in all major cotton growing regions of the U.S. Residues of chlorfenapyr were ≤0.32 ppm and ≤0.31 ppm in/on cottonseed samples harvested 21 and 28 days, respectively following the last of 5 foliar broadcast applications for a total of approximately 2x the proposed current maximum seasonal application rate of 1.05 lbs active ingredient/acre/season (ai/acre/season). These field trial data are adequate to support the proposed tolerance of 0.5 ppm in/on cottonseed harvested 21 days following the last application. Processing studies have also demonstrated that there is no concentration of chlorfenapyr residues apparent in crude or refined oils or in the meal and hull and no tolerances are needed for these commodities.

B. Toxicological Profile

American Cyanamid has conducted a full battery of acute and chronic toxicology studies to characterize any potential toxic effects of chlorfenapyr. The data base is complete, valid, and reliable and all meet EPA requirements. The following are important conclusions from these studies:

1. *Acute toxicity*. Based on the EPA's toxicity category criteria, the acute toxicity category for chlorfenapyr technical and the 3SC formulation is Category II or moderately toxic (signal word WARNING) and the acute toxicity category for the 2SC formulation is Category III or slightly toxic (signal word CAUTION). Males appear to be more sensitive to the effects of chlorfenapyr than females. The acute toxicity profile indicates that absorption by the oral route appears to be greater than by the dermal route. The following are the results from the acute toxicity tests conducted on the technical material:

Rat oral LD_{50}	441/1152 milligram/kilogram of body weight (mg/kg b.w.)(M/F).	Tox. Category II
Rabbit dermal LD_{50}	>2000 mg/kg b.w.(M/F)	Tox. Category III
Acute inhaltion LC_{50}	0.83/>2.7 mg/L (M/F)	Tox. Category III
Eye irritation	Moderately irritating	Tox. Category III
Dermal irritation	Non-irritating	Tox. Category IV
Dermal sensitization	Non-sensitizer	Non-sensitizer
Acute neurotoxicity	NOEL 45 mg/kg b.w.	Not an acute neurotoxicant

2. *Genotoxicity*. Chlorfenapyr technical (94.5% active ingredient (ai)) was examined in a battery of *in vitro* and *in vivo* tests to assess its genotoxicity and its potential for carcinogenicity.

These tests are summarized below:

Microbial/Microsome Mutagenicity Assay	Non-mutagenic
Mammalian Cell CHO/HGPRT Mutagenicity Assay	Non-mutagenic
In Vivo Micronucleus Assay	Non-genotoxic
In Vitro Chromosome Aberration Assay in CHO	Non-clastogenic
In Vitro Chromosome Aberration Assay in CHLC	Non-clastogenic
Unscheduled DNA Synthesis (UDS) Assay	Non-genotoxic

3. *Reproductive and developmental toxicity*. Chlorfenapyr is neither a reproductive or developmental toxicant and is not a teratogenic agent in the Sprague-Dawley rat or the New Zealand white rabbit. This is demonstrated by the results of the following studies:

Rat oral teratology	NOEL for maternal toxicity 25 mg/kg b.w./day NOEL for fetal/developmental toxicity 225 mg/kgb.w./day
Rabbit oral teratology	NOEL for maternal toxicity 5 mg/kg b.w./day NOEL for fetal/developmental toxicity 30 mg/kg b.w./day
Rat two-generation reproduction	NOEL for parental toxicity/growth and offspring development 60 ppm (5mg/kg b.w./day) NOEL for reproductive performance 600 ppm (44 mg/kg b.w./day)

4. *Subchronic toxicity*. The following are the results of the subchronic toxicity tests that have been conducted with chlorfenapyr:

28-Day rabbit dermal	NOEL 100 mg/kg b.w./day
28-Day rat feeding	NOEL <600 ppm (<71.6 mg/kg b.w./day)
28-Day mouse feeding	NOEL <160 ppm (<32 mg/kg b.w./day)
13-Week rat dietary	No observed adverse effects level (NOAEL) 150 ppm (11.7 mg/kg b.w./day)
13-Week mouse dietary	NOEL 40 ppm (8.2 mg/kg b.w./day)
13-Week dog dietary	NOAEL 120 ppm (4.2 mg/kg b.w./day)

5. *Chronic toxicity*. Chlorfenapyr is not oncogenic in either Sprague-Dawley rats or CD-1 mice and is not likely to be carcinogenic in humans. The following are the results of the chronic toxicity tests that have been conducted with chlorfenapyr:

1-Year neurotoxicity in rats	NOEL 60 ppm (2.6/3.4 mg/kg b.w./day M/F)
1-Year dog dietary	NOEL 120 ppm (4.0/4.5 mg/kg b.w./day M/F)
24-Month rat dietary	NOEL for chronic effects 60 ppm (2.9/3.6 mg/kg b.w./day M/F) NOEL for oncogenic effects 600 ppm (31/37 mg/kg b.w./day M/F)
18-Month mouse dietary	NOEL for chronic effects 20 ppm (2.8/3.7 mg/kg b.w./day M/F) NOEL for oncogenic effects 240 ppm (34.5/44.5 mg/kg b.w./day M/F)

6. *Endocrine effects*. Collective organ weights and histopathological findings from the two-generation rat reproduction study, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that chlorfenapyr would be associated with endocrine effects.

7. *Animal metabolism*. A metabolism study was conducted in Sprague-Dawley rats at approximately 20 and 200 mg/kg b.w. using radiolabeled chlorfenapyr. Approximately 65% of the administered dose was eliminated during the first 24 hours (62% in feces and 3% in urine) and by 48 hours following dosing, approximately 85% of the dose had been excreted (80% in feces and 5% in urine). The absorbed chlorfenapyr-related residues were distributed throughout the body and detected in tissues and organs of all treatment groups. The principal route of elimination was via feces, mainly as unchanged parent plus minor *N*-dealkylated, debrominated, and hydroxylated oxidation products.

The metabolic pathway of chlorfenapyr in the laying hen and the lactating goat was also similar to that in laboratory rats.

8. *Metabolite toxicology*. The parent molecule is the only moiety of toxicological significance which needs

regulation in plant and animal commodities.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. The potential dietary exposure has been calculated from the tolerance of chlorfenapyr in/on cottonseed at 0.5 ppm. This exposure assessment is based on very conservative assumptions, namely 100% of all cotton is treated with chlorfenapyr and that the residues of chlorfenapyr in cottonseed are at the tolerance level. As there are no other established U.S. permanent tolerances for chlorfenapyr, the only dietary exposure to residues of chlorfenapyr in or on food will be limited to residues in cottonseed meal and food and feed items derived from cottonseed. As cottonseed meal is a dairy and beef cattle feed item, a cold feeding study with dairy cattle was conducted. Since this study demonstrated that measurable residues of chlorfenapyr may occur in milk, meat, and meat by products, appropriate residue tolerances for these items are proposed. The contribution of all these tolerances to the daily consumption uses less than 1% (actual 0.62%) of the reference dose (RfD) for the overall U.S. population and less than 2% (actual 1.8%) and less than 1% (actual 0.81%) of the RfDs for children aged 1-6 and for non-nursing infants, respectively.

ii. *Drinking water*. There is no available information about chlorfenapyr exposures via levels in drinking water. There is no concern for exposure to residues of chlorfenapyr in drinking water because of its extremely low-water solubility (120 parts per billion (ppb) at 25° C). Chlorfenapyr is also immobile in soil and does not leach because it is strongly absorbed in all common soil types. In addition, the label explicitly prohibits applications near aquatic areas. American Cyanamid believes that there is a reasonable certainty that no harm will result from dietary exposure to chlorfenapyr, because dietary exposure to residues on food will use only a small fraction of the RfD (including exposure of sensitive subpopulations), and exposure through drinking water is expected to be insignificant.

2. *Non-dietary exposure*. There is no available information quantifying non-dietary exposure to chlorfenapyr. However, based on the physico-chemical characteristics of the compound, the proposed use pattern and available information concerning its environmental fate, non-dietary exposure is expected to be negligible. The vapor pressure of chlorfenapyr is less than 1 x 10^{-7}millimeters (mm) of mercury (Hg); therefore, the potential for non-occupational exposure by inhalation is insignificant. Moreover, the current proposed registration is for outdoor, terrestrial uses which severely limit the potential for non-occupational exposure.

D. Cumulative Effects

The pyrrole insecticides represent a new class of chemistry with a unique mechanism of action. The parent molecule, AC303,630 is a pro-insecticide which is converted to the active form, CL303,268, via rapid metabolism by mixed function oxidases (MFOs). The active form uncouples oxidative phosphorylation in the insect mitochondria by disrupting the proton gradient across the mitochondrial membrane. The production of adenosine triphosphate (ATP) is inhibited resulting in the cessation of all cellular functions. Because of this unique mechanism of action, American Cyanamid believes that it is highly unlikely that toxic effects produced by chlorfenapyr would be cumulative with those of any other pesticide chemical.

In mammals, there is a lower titer of MFOs, and chlorfenapyr is metabolized by different pathways (including dehalogenation, oxidation, and ring hydroxylation) to other polar metabolites without any significant accumulation of the potent uncoupler, CL303,268. In the rat, approximately 85% of the administered dose is excreted in the feces within 48 hours, thereby reducing the levels of AC303,630 and CL303,268 that are capable of reaching the mitochondria. This differential metabolism of AC303,630 to CL303,268 in insects, versus to other polar metabolites in mammals, is responsible for the selective insect toxicity of the pyrroles.

E. Safety Determination

1. *U. S. population*. The RfD of 0.03 mg/kg b.w./day for the residues of chlorfenapyr in cotton is calculated by applying a 100-fold safety factor to the overall no observed effect level (NOEL) of 3 mg/kg b.w./day. This NOEL is based on the results of the chronic feeding studies in the rat and mouse and the two-generation reproduction study in the rat (see Unit I.E.2. of this document). Therefore, the combined exposure for the proposed chlorfenapyr tolerances in cottonseed, milk, and meat (0.0001866 mg/kg b.w./day) will utilize approximately 0.62% of the RfD for the general U.S. population.

2. *Infants and children*. The theoretical maximum residue contribution (TMRC) in milk consumed by a non-nursing infant (<1 year of age) is 0.0002435 mg/kg b.w./day. This will use less than 1% (actual 0.81%) of the RfD for non-nursing infants. The TMRC in milk consumed by a child (1-6 years of age) is 0.0003886 mg/kg b.w./day. The combined TMRC for the proposed chlorfenapyr tolerances in meat and milk consumed by a child 1-6 years of age is 0.0005415 mg/kg b.w./day, which is less than 2% (actual 1.8%) of the RfD. Therefore, American Cyanamid believes that the results of the toxicology and metabolism studies support both the safety of chlorfenapyr to humans based on the intended use as an insecticide-miticide on cotton and the granting of the requested tolerances in cottonseed, milk, milk fat solids, meat, and meat by-products.

Based on the conservative assumptions used in proposing the above tolerances and the absence of other non-dietary routes of exposure to chlorfenapyr, and since the calculated exposures are well below 100% of the RfD, American Cyanamid believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of chlorfenapyr, including all anticipated dietary exposure and all other non-occupational exposures. American Cyanamid believes that the use of a 100-fold safety factor ensures an acceptable margin of safety for both the overall U. S. population as well as infants and children. American Cyanamid concludes that the toxicology data base (reproduction/developmental and teratology studies) is complete, valid, and reliable, and therefore no additional safety factor is needed.

The 100-fold margin of safety is adequate to assure a reasonable certainty of no harm to infants and children from the proposed use. As stated earlier, the NOEL is based on the effects observed in the rat and mouse chronic oncogenicity studies, (reduced body weight gains, increased globulin and cholesterol values, and increased liver weights in the rat and reduced body weight gains and vacuolation of white matter of the mouse brain), the 1-year neurotoxicity study in the rat, (reduced body weight gains and vacuolar myelinopathy of the brain and spinal cord that is completely reversible following termination of treatment and is not associated with any damage to neuronal cell bodies or axons; vacuolation of the white matter is a consequence of edema (water) formation between the myelin layers which result from the unrestricted movement of ions across the cell membranes) and the two-generation rat reproduction study, (reduced body weight gains for parental animals and reduced pup body weights for the F_1 and F_2 litters; however no

behavioral changes were observed in either F_1 or F_2 offsprings in the two-generation reproduction study). Moreover, as the NOELs for fetal/developmental toxicity are significantly higher than those for maternal toxicity, the results indicate that chlorfenapyr is neither a developmental toxicant nor a teratogenic agent in either the Sprague-Dawley rat or New Zealand white rabbit. Thus, there is no reliable information to indicate that there would be a variability in the sensitivities of infants and children and adults to the effects of exposure to chlorfenapyr.

Therefore, a chronic dietary exposure analysis for the residues of chlorfenapyr in cotton, meat, and milk, using the ''worst case'' proposed tolerance-level residues, demonstrates that these levels are well below the RfD of 0.03 mg/kg b.w./day and thus the proposed use of chlorfenapyr is toxicologically supported.

F. International Tolerances

Section 408(b)(4) of the amended FFDCA requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission.

There is neither a Codex proposal, nor Canadian or Mexican tolerances/limits for residues of chlorfenapyr in/on cottonseed. Therefore, a compatibility issue is not relevant to the proposed tolerance.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF-697]. All written comments filed in response to this petition will be available, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket control numbers [PF-697] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing.

The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this notice.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Dated: January 24, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–2466 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–695; FRL–5584–1]

Ciba-Geigy Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice announces the refiling of a pesticide petition proposing the establishment of a regulation for residues of [4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole 3 carbonitrile] (fludioxonil) in or on the raw agricultural commodity (RAC) potatoes. The notice contains a summary of the petition prepared by the petitioner, Ciba-Geigy Corporation.

DATES: Comments, identified by the docket number [PF–695], must be received on or before March 7, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–695]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit II of this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, PM 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm 227, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305–6226, e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4694) from Ciba-Geigy Corporation (''Ciba''), 410 Swing Road, Greensboro, NC 27401, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide, fludioxonil, in or on the raw agricultural commodity potatoes at 0.02 parts per million (ppm).

The proposed analytical method is Method AG–597B. The Limit of Detection is 0.5 ng and the Limit of Quantitation for potatoes is 0.01 ppm. In AG–597, a subsample of potato substrate or processed fraction is homogenized twice with 90 percent acetonitrile (ACN)/10 percent water. Both extracts are filtered through Whatman 2V and Reeve Angel 802 paper. A 40–mL aliquot (2–g equivalent) is taken and the

ACN is evaporated using rotary evaporation. The sample is diluted with a saturated salt solution and partitioned twice with methyl tert-butyl ether (MTBE). Toluene is added to the organic phase, the MTBE is evaporated and hexane is added to the sample. Samples are cleaned up on a 0.5–g silica Bond Elut column that has been preconditioned with 10 percent isopropyl alcohol/90 percent hexane and rinsed with hexane. The sample is loaded onto the column and CGA–173506 is eluted with 50 percent DCM/50 percent toluene. The silica column eluate is evaporated to dryness. The residue remaining is dissolved in methanol and water and then loaded onto a preconditioned 0.5–g phenyl Bond Elut column. Fludioxonil is eluted with acetone. The acetone solution is evaporated to dryness, and the residue is dissolved in an appropriate amount of mobile phase. Residues of fludioxonil are determined by using an Amino column with normal phase HPLC and ultraviolet absorbance detection at 268 nm.

EPA has determined that the petition contains data or information regarding the elements set forth in FFDCA 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.

I. Petition Summary

1. *Chemical uses.* Fludioxonil is a non-systemic, contact fungicide that is being developed as a seed treatment for potatoes. Fludioxonil provides high-level, broad-spectrum activity against a wide range of seed-borne and soil-borne diseases caused by *Ascomycetes, Deuteromycetes* and *Basidiomycetes*. On potatoes, fludioxonil provides control of *Fusarium* dry rot seed decay, *Rhizoctonia* stem canker, and silver scurf. Fludioxonil represents a new class of chemistry with a unique mode of action. Fludioxonil is classified as a phenylpyrrole and is structurally related to pyrrolnitrin. Pyrrolnitrin is a secondary metabolite of a soil-inhabiting bacterium of the genus *Pseudomonas*. It has significant activity against economically important soil-borne fungi. In European field trials against foliar pathogens, fludioxonil was highly effective against pathogens resistant or insensitive to other chemical classes such as the benzimidazoles and dicarboximides.

2. *Fludioxonil safety.* a. Ciba has submitted over 25 separate toxicology studies in support of tolerances for fludioxonil. According to Ciba, fludioxonil has a low order of acute toxicity by the oral, dermal, and inhalation exposure routes. The compound is slightly irritating to the eye, non-irritating to skin, and is not a dermal sensitizer. It is not a teratogen and does not affect reproduction or fertility. The kidney and liver have been identified as target organs in subchronic and chronic toxicity studies. No mutagenic activity has been seen *in vivo*. On September 19, 1996, the Health Effects Division Carcinogenicity Peer Review Committee issued its finding on fludioxonil. The consensus of the committee was that fludioxonil should be placed in Group D - not classifiable as to human carcinogenicity.

b. The following mammalian toxicity studies have been conducted to support the tolerance of fludioxonil:

i. The rat acute oral LD_{50} is >5,000 mg/kg.

ii. The rat acute dermal LD_{50} is >2,000 mg/kg.

iii. The rat acute inhalation LC_{50} is >2.6 mg/liter air.

iv. The primary eye irritation study in the rabbit showed slight irritation.

v. The primary dermal irritation study showed no irritation.

vi. The primary dermal sensitization study showed no sensitization.

vii. In a 28–day oral study in rats, the no-observed-effect level (NOEL) was 10 mg/kg/day.

viii. In a 28–day dermal study in rats, the NOEL was 40 mg/kg/day.

ix. In a 90–day subchronic dietary toxicity study in rats, the NOEL was 10 ppm based on liver toxicity.

x. In a 90–day subchronic dietary toxicity study in mice, the NOEL was 100 ppm based on blue urine (a metabolite). The maximum tolerated dose was 7,000 ppm.

xi. In a 90–day oral toxicity study in dogs, the NOEL was 200 ppm based on clinical observation. The maximum tolerated dose was clearly exceeded at 15,000 ppm.

xii. In a 1–year chronic toxicity study in dogs, the NOEL was 100 ppm based on body weight effects. The maximum tolerated dose was 8,000 ppm.

xiii. Two 18–month dietary oncogenicity studies were performed in mice. While a NOEL of 1,000 ppm was clearly established in the first study, its highest feeding level (3,000 ppm) did not meet the criteria for a maximum tolerated dose.

xiv. In the second 18–month study, the maximum tolerated dose was determined to be 5,000 ppm. There were no treatment-related increases in neoplasia at any dose level tested. In a combined chronic toxicity/oncogenicity study in rats, the incidence of liver tumors in top-dose females (3,000 ppm) was marginally higher than the controls. The NOEL for chronic toxicity was 1,000 ppm in both sexes.

xv. *In vitro* point mutation test: Ames assay - negative; Chinese hamster V79 cells - negative; hepatocyte DNA repair - negative.

xvi. *In vitro* chromosome test: Chinese hamster ovary cells - clastogenic effects and polyploidy at or near precipitating concentration.

xvii. *In vivo* mutagenicity test: rat hepatocyte micronucleus - negative; mouse bone marrow - negative; cytogenetic test on Chinese hamster bone marrow - negative; mouse dominant lethal - negative.

xviii. In a teratology study in rats, fludioxonil was not teratogenic at doses up to 1,000 mg/kg. The maternal NOEL was 100 mg/kg, while the NOEL in the fetus was 1,000 mg/kg.

xix. In a teratology study in rabbits, fludioxonil was not teratogenic at doses up to 300 mg/kg. The maternal and fetal NOELs were 10 mg/kg and 300 mg/kg, respectively.

xx. In a multigeneration reproduction study, fludioxonil had no adverse effects on the reproductive performance of the rat at doses up to 3,000 ppm. Fetal effects (reductions in pup body weights) were observed only at 3,000 ppm, a dose level at which there were maternal toxic effects. The NOEL was 300 ppm.

3. *Threshold effects*— a. *chronic effects.* Based on the available chronic toxicity data, Ciba believes that the Reference Dose (RfD) for fludioxonil is 0.025 mg/kg/day. This RfD is based on a 1–year feeding study in dogs with a NOEL of 2.5 mg/kg/day (100 ppm) and an uncertainty factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as body weight was the most sensitive indicator of toxicity in that study.

b. *Acute toxicity.* Based on the available acute toxicity data, EPA has determined that fludioxonil does not pose any acute dietary risks. The lowest NOEL in a short term exposure scenario, identified as 10 mg/kg in the rabbit teratology study, is actually higher than the chronic NOEL (see above). Ciba anticipates that the margin of exposure would be in the thousands for any population group (margins of exposure of 100 or more are considered satisfactory).

4. *Non-threshold effects.* Using the Guidelines for Carcinogenic Risk Assessment published on September 24, 1986 (51 FR 33992), the USEPA has classified fludioxonil in group D for carcinogenicity. The compound was

tested in two mouse oncogenicity studies and a 24–month rat chronic study. Dosage levels in both the mouse and the rat studies were adequate for identifying cancer risk.

5. *Aggregate exposure.* For purposes of assessing the potential dietary exposure under the proposed tolerance, Ciba has estimated aggregate exposure based on the tolerance level of 0.02 ppm in or on the RAC potatoes (potato tubers). This is a worse case estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.

Fludioxonil's current registered use for seed treatment on corn and sorghum seeds does not contribute to dietary exposure because there are no detectable residues. EPA has ruled that these uses are food uses not requiring tolerances. For potato seed treatment, the use described in this petition, a residue tolerance level of 0.02 ppm is being proposed although the highest actual level seen in field trials is around 0.01 ppm. In conducting this exposure assessment, very conservative assumptions—100 percent of potatoes will contain fludioxonil residues and those residues would be at the level of the tolerance—have been used, resulting in an overestimate of human exposure.

Exposures of the general population to residues of this pesticide from other potential sources, drinking water and other non-occupational sources, Ciba considers to be unlikely. The movement of fludioxonil into groundwater is highly unlikely. The EPA has not established a Maximum Contaminant Level for residues of fludioxonil in drinking water. Non-occupational exposure for fludioxonil has not been calculated since the current registration for fludioxonil is limited to commercial crop production. Since the chemical is not used in or around the home, Ciba considers the potential for non-occupational exposure to the general population to be non-existent.

Consideration of a common mechanism of toxicity is not appropriate at this time since Ciba is unaware of any reliable information that indicates that toxic effects produced by fludioxonil would be cumulative with those of any other chemical compounds. Consequently, Ciba is considering only the potential risks of fludioxonil in its aggregate exposure assessment.

6. *Determination of safety for U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for fludioxonil, Ciba has calculated aggregate exposure levels for this chemical. The calculation shows that only 0.09 percent of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Ciba concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fludioxonil residues.

7. *Determination of safety for infants and children.* Developmental toxicity (decreased pup weight) was observed in the 2–generation rat reproduction study at a maternally toxic dose. The NOEL for this effect was established at 30 mg/kg (300 ppm). This finding is judged to be a nonspecific, secondary effect of maternal toxicity. No developmental toxicity was observed at all in any of the teratology studies conducted. Ciba concludes that infants and children are not uniquely sensitive to fludioxonil.

Using the same conservative exposure assumptions used for the determination in the general population, Ciba has concluded that the percentage of the RfD that will be utilized by aggregate exposure to residues of fludioxonil is 0.03 percent for nursing infants less than 1 year old, 0.11 percent for non-nursing infants, 0.18 percent for children 1 to 6 years old, and 0.13 percent for children 7 to 12 years old. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Ciba concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to fludioxonil residues.

8. *Estrogenic effects.* No specific tests have been conducted with fludioxonil to determine whether the pesticide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

9. *Chemical residues.* The nature of the residue is adequately understood in animals and plants. The metabolism of fludioxonil in plants has been characterized in potatoes, rice, and spring wheat. Residues of fludioxonil do not concentrate in processed commodities. There are no Codex maximum residue levels established for residues of fludioxonil on potatoes. Ciba has submitted a practical analytical method for detecting and measuring levels of fludioxonil in or on food with the limit of quantitation that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA will provide information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from the Field Operations Division, Office of Pesticide Programs.

This petition is supported by 23 field residue tests where fludioxonil, in the form of Maxim T Potato Seed Protectant, was applied to potato seed pieces. These trials indicate that the maximum residue of fludioxonil will be at or below 0.011 ppm at the 0.7X rate of 1.75g a.i./100 kg. A tolerance of 0.02 ppm is proposed for raw agricultural commodities (tubers) of potatoes.

No residues greater than or equal to 0.01 ppm were detected in the tubers before processing, in peeled and rinsed potatoes, sliced and peeled potatoes, potato chips, or potato granules from field trials conducted in Michigan and North Dakota.

The results from all four processed field trials indicate that residues in potato processing waste (wet peel and trimmings) and potato culls will not exceed the tolerance established for potato tubers.

Based on the results of rotational crop studies, Ciba proposes a 1–year restriction on rotation to crops other than leafy vegetables, root and tuber vegetables, and registered crops (potatoes, corn, and sorghum).

Using the worst case theoretical diet for beef and dairy cattle, no detectable residues would be expected in tissues or milk. Processed potato products are not fed to poultry. Therefore, there is no need for tolerances in meat, milk or eggs.

10. *Environmental fate.* Since the Agency classifies seed treatment uses as ''Indoor,'' the only environmental fate data requirement is hydrolysis. Fludioxonil is hydrolytically stable in solution at 25°C at pH 5, 7, or 9. At pH 1 and 13, fludioxonil is extensively degraded.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket number [PF–695].

A record has been established for this notice under docket numbers [PF–695] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the

Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

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

List of Subjects

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

Dated: January 22, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–2711 Filed 2–4–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–696; FRL–5584–2]

Ciba-Geigy Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of cyprodinil in or on members of the stone fruit crop grouping under an experimental use permit (EUP). This notice contains a summary prepared by the petitioner, Ciba-Geigy Corporation.

DATES: Comments, identified by the docket number [PF–696], must be received on or before March 7, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–696]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as comments concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). No CBI should be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 5G4553 from Ciba Crop Protection, Ciba-Geigy Corporation (''Ciba''), 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, to amend 40 CFR part 180 by establishing a temporary tolerance for residues of the fungicide cyprodinil (4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine) in or on the agricultural commodities for the stone fruit crop grouping at 2.0 ppm. The proposed analytical method is by high performance liquid chromatography with UV detection. EPA has determined that the 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.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (Pub. L. 104-170), Ciba included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Ciba; EPA is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Cyprodinil Uses

Cyprodinil is the first fungicide in a new chemical class known as the anilinopyrimidine and is active against important Monilinia diseases of stone fruit when applied at rates of 0.25 to 0.5 lb active ingredient per acre. Cyprodinil has a unique mode of action which controls pathogens resistant to other chemical classes of fungicides.

B. Metabolism and Analytical Method

1. *Metabolism*. Ciba believes the metabolism of cyprodinil has been well characterized in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for parent cyprodinil.

2. *Analytical methodology*. Ciba has submitted a practical analytical method involving extraction, filtration, and solid phase cleanup of samples with analysis by HPLC and UV. The limits of quantitation (LOQ) for fruit is 0.02 ppm.

C. Magnitude of Residue

This petition is supported by field residue trials conducted on representative members of the Stone Fruit Crop Grouping. All samples were analyzed for parent residues of cyprodinil. In stone fruit, maximum residues ranged from 0.82 ppm to 1.7 ppm. A temporary tolerance of 2.0 ppm has been proposed for the Stone Fruit Crop Grouping under this EUP. Since stone fruit commodities are not fed to animals, potential transfer of cyprodinil into milk and meat is not anticipated and tolerances in milk, meat, poultry, and eggs are not required.

D. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRLs) established for residues of cyprodinil in or on raw agricultural commodities.

E. Toxicological Profile of Cyprodinil

The following mammilian toxicity studies have been conducted to support the tolerances of cyprodinil:

A rat acute oral study for cyprodinil with a LD_{50} of 2,796 mg/kg. A rat acute dermal study for cyprodinil with a LD_{50} >2,000 mg/kg.

A rat inhalation study for cyprodinil with a LC_{50} >1.2 mg/liter air.

A primary eye irritation study in rabbits showing cyprodinil as minimally irritating.

A primary dermal irritation study in rabbits showing cyprodinil as slightly irritating.

A skin sensitization study in guinea pigs showing cyprodinil as a weak sensitizer.

A 28–day dermal study in the rat with a No-Observed Effect Level (NOEL) of 5 mg/kg based on clinical signs.

A 90–day feeding study in the dog with a NOEL of 1,500 ppm (37.5 mg/kg) based on reduced food intake and body weight.

A 90–day feeding study in the mouse with a NOEL of 500 ppm (75 mg/kg) based on liver histologic changes.

A 90–day feeding study in the rat with a NOEL of 50 ppm (5 mg/kg) based on hematologic and histologic findings.

A 12–month feeding study in the dog with a NOEL of 2,500 ppm (62.5 mg/kg) based on liver histologic changes.

An 18–month oncogenicity feeding study in the mouse with a NOEL of 2,000 ppm (300 mg/kg). The MTD was 5,000 ppm based on reduction in body weight gain and no evidence of oncogenicity was seen.

A 24–month chronic feeding/oncogenicity study in the rat with a NOEL of 75 ppm (3.75 mg/kg) based on hematologic and histologic findings. The MTD was 2,000 ppm based on liver histopathology and no evidence of oncogenicity was seen. An oral teratology study in the rat with a maternal NOEL of 200 mg/kg based on reductions in body weight gain and food consumption and a fetal NOEL of 200 mg/kg based on decreased pup weight and delayed skeletal growth at 1,000 mg/kg. An oral teratology study in the rabbit with a maternal NOEL of 150 mg/kg based on reduction in body weight gain and a fetal NOEL of 400 mg/kg based on the absence of any fetal effects.

A 2–generation reproduction study in the rat with a systemic NOEL of 100 ppm and a fetal NOEL of 1,000 ppm (100 mg/kg).

A slight decrease in pup weight at birth and subsequent body weight gain during the lactation phase was observed only at the maternally toxic dose of 4,000 ppm without any effects on reproduction and fertility.

In vitro gene mutation test: Ames assay - negative; Chinese hamster V79 cell test - negative; rat hepatocyte DNA repair test - negative.

In vitro chromosome test: Chinese hamster ovary cell cytogenetic test - negative. In *vivo* mutagenicity test: mouse bone marrow test - negative.

F. Threshold Effects

1. *Chronic effects*. Based on the available chronic toxicity data, Ciba believes the Reference Dose (RfD) for cyprodinil is 0.0375 mg/kg/day. This RfD is based on a 2–year feeding study in rats with a NOEL of 3.75 mg/kg/day (75 ppm) and an uncertainty factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as liver sinusoidal dilatation was the most sensitive indicator of toxicity in that study.

2. *Acute toxicity.* The risk from acute dietary exposure to cyprodinil is considered to be very low. The lowest NOEL in a short-term exposure scenario, identified as 150 mg/kg in the rabbit teratology study, is 40–fold higher than the chronic NOEL. Since chronic exposure assessment did not result in any margin of exposure (MOE) less than 400 for even the most impacted population subgroup, Ciba believes the MOE is greater than 100 for any population subgroups; EPA considers margins of exposure of 100 or more as satisfactory.

G. Non-threshold Effects

Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), Ciba believes cyprodinil to be in Group ''E''(no evidence of carcinogenicity). There was no evidence of carcinogenicity in an 18–month feed study in mice and a 24–month feeding in rats. Dosage levels in both the mouse and the rat studies were adequate for identifying a cancer risk.

H. Aggregate Exposure

1. *Dietary exposure.* For the purposes of assessing the potential dietary exposure under the proposed temporary tolerance, Ciba has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC) from the requested tolerance for members of the Stone Fruit Crop Grouping at 2.0 ppm. The TMRC is a ''worst case'' estimate of dietary exposure since it assumes 100 percent of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels. In conducting this exposure assessment, Ciba has made very conservative assumptions — 100 percent of all stone fruit commodities will contain cyprodinil residues at tolerance levels — which result in an overestimate of human exposure. Ciba has also calculated aggregate exposure based upon the scale of the requested 950–acre EUP. It is estimated that a maximum of 0.25 percent of the stone fruit market would receive applications of cyprodinil under this EUP and that dietary exposure would be proportionately less than under the ''worst case'' assumptions given above.

2. *Drinking water exposure.* Cyprodinil is rapidly degraded in the environment via photolysis and microbial degradation; aqueous and soil photolysis half lives for cyprodinil are 12 days and 67 days, respectively. The aerobic metabolism half life is 25 days and the leaching potential for cyprodinil is low (K^{oc} = 1,550 to 2,030). Based on these data, Ciba does not anticipate exposure to residue of cyprodinil in drinking water.

3. *Non-dietary exposure.* Ciba believes that the potential for non-occupational exposure to the general public is unlikely except for potential residues in food crops discussed above. The proposed uses for cyprodinil are for agricultural crops and the product is not used residentially in or around the home.

Ciba believes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by cyprodinil would be cumulative with those of any other chemicals. Consequently, Ciba is considering only the potential exposure to cyprodinil in its aggregate risk assessment.

I. Safety To the U.S. Population

Reference dose. Using the conservative exposure assumptions described above (100 percent stone fruit acres treated and tolerance level residues) and based on the completeness and reliability of the toxicity data base for cyprodinil, Ciba has calculated aggregate exposure levels for this chemical. Based on chronic toxicity endpoints, only 2 percent of the RfD will be utilized for the U.S. general population. Under the scale of this EUP (0.25 percent stone fruit acres treated) it is estimated that only 0.005 percent of the RfD will be utilized for the U.S. general population. EPA usually has no

concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Ciba concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyprodinil residues.

J. Safety to Infants and Children

Developmental delays (reduced pup weight and ossification) were observed in the rat teratology study and 2–generation rat reproduction study at maternally toxic doses. The lowest NOEL for this effect was established in the 2–generation study at 100 mg/kg (1,000 ppm). The finding is judged to be a nonspecific, secondary effect of maternal toxicity. No developmental toxicity was observed in the rabbit teratology study.

Reference dose. Using the same conservative exposure assumptions as employed for the determination in the general population (100 percent stone fruit acres treated and tolerance level residues), Ciba has calculated the utilization of RfD by aggregate exposure to residues of cyprodinil to be 9 percent for nursing infants less than 1 year old, 17 percent for non-nursing infants less than 1 year old, 4 percent for children 1 to 6 years old, and 3 percent for children 7 to 12 years old. Under the scale of this EUP (0.25 percent stone fruit acre treated) the utilization of RfD by aggregate exposure to residues of cyprodinil is estimated to be 0.023 percent for nursing infants less than 1 year old, 0.043 percent for non-nursing infants less than 1 year old, 0.011 percent for children 1 to 6 years old, and 0.007 percent for children 7 to 12 years old. Ciba believes that under the worst case assumptions which overestimate exposure to infants and children, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyprodinil residues. Under the scale of this EUP resultant exposure will be proportionately less.

K. Estrogenic Effects

Cyprodinil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that cyprodinil might have any effects on endocrine function related to development and reproduction. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–696]. All written comments filed in response to this petition will be available, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket control number [PF–696] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

List of Subjects

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

Dated: January 22, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–2468 Filed 1–4–97; 8:45 am]
BILLING CODE 6560–50–F

[OPP–181031; FRL 5584–3]

Azoxystrobin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Louisiana Department of Agriculture and Forestry (hereafter referred to as the ''Applicant'') to use the pesticide azoxystrobin (CAS 131860–33–8) to treat up to 85,000 acres of rice to control benomyl-resistant rice panicle blast and sheath blight. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181031,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181031]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of azoxystrobin on rice to control rice panicle blast and sheath blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that widespread use of benomyl has reportedly resulted in the development of pathogen resistance to the chemical and consequent loss of benomyl as a chemical disease management measure in some crop production areas. Benomyl is the only recommended fungicide for blast and has not been effective consistently nor is it an effective treatment for severe blast occurrences. Data show that azoxystrobin is effective for controlling blast. Although sheath blight is considered the most important rice disease in Louisiana, rice blast may be more severe in individual fields. Yield losses of 80 percent have been experienced in individual fields planted to susceptible varieties. The Applicant estimates that treating the requested 85,000 acres of rice would prevent losses of at least 1,000 lb/acre that would be valued at $92 per acre, or $7.8 million for the entire acreage.

The Applicant proposes to apply azoxystrobin, manufactured by Zeneca Ag Products, as Quadris, at a maximum rate of 0.3 lbs. active ingredeint (a.i.) [6 oz. of product] per acre by ground or air, with a maximum of two applications per season. A 28-day PHI will be observed. Use under this exemption could potentially amount to a maximum 51,000 lbs. of azoxystrobin.

This notice does not constitute a decision by EPA on the application. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing the use of a new chemical. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181031] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Louisiana Department of Agriculture and Forestry.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: January 21, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–2497 Filed 2–4–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181030; FRL 5583–2]

Cymoxanil, Propamocarb Hydrochloride and Dimethomorph; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the New York State Department of Environmental Conservation (hereafter referred to as the ''Applicant'') to use the pesticides cymoxanil (CAS 57966–95–7), propamocarb hydrochloride (CAS 25606–41–1) and dimethomorph (CAS 110488–70–5) to treat potentially up to 30,000 acres of potatoes to control immigrant strains of late blight which are resistant to historically used control materials. The Applicant proposes the use of either new (unregistered) chemicals or the first food use of an active ingredient therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181030,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181030]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any

part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of cymoxanil, propamocarb hydrochloride, and/or dimethomorph on potatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in potatoes as well as tomatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. The Applicant states that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicant states that each of these requested chemicals has been shown to be effective against these strains of late blight. Each active ingredient holds current registrations throughout many European countries for control of this disease. The Applicant indicates that at least a 40 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over $27 million for the affected acreage without the use of these requested chemicals.

Specific exemptions for use of one or more of these chemicals on potatoes were issued to 22 states in 1995. An additional request is currently pending, bringing the total potential potato acreage treated under these requests to 885,010. Specific exemption requests for use of one or more of these chemicals on tomatoes have either been authorized or are pending for three states involving 66,500 acres. It is presumed that a similar number of states will be requesting each of these uses for the 1997 season.

The Applicant proposes to apply propamocarb hydrochloride, manufactured by AgrEvo USA Company, as Tattoo C, at a maximum rate of 0.9 lbs. active ingredient (a.i.) [2.3 lbs. of product] per acre by ground or air, with a maximum of 5 applications per season. A 14-day PHI will be observed. Use under this exemption could potentially amount to a maximum 134,000 lbs. of propamocarb hydrochloride.

The Applicant proposes to apply cymoxanil, manufactured by E.I. du Pont de Nemours and Company, as Curzate M-8, at a maximum rate of 0.12 lbs. a.i., (1.5 lbs. of product) per acre, by ground or air, with a maximum of 7 applications per season and a 14-day PHI. Use under this exemption could potentially amount to a maximum 25,200 lbs. of cymoxanil.

The Applicant proposes to apply dimethomorph at a maximum rate of 0.2 lbs. a.i., (2.25 lb. of product) per acre, by ground or air, with a maximum of 5 applications per season and a 14-day PHI. Use under this exemption could potentially amount to a maximum 30,375 lbs of dimethomorph.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) or the first food use of an active ingredient. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181030] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the New York State Department of Environmental Conservation.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: January 21, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–2498 Filed 2–4–97; 8:45 am]
BILLING CODE 6560–50–F

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. Once the notices have been accepted for processing, they will also 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 February 20, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Randolph S. Miles, Antioch, Illinois; to retain 35.88 percent of the shares of Antioch Holding Company, Antioch, Illinois, and thereby indirectly retain share of State Bank of The Lakes, Antioch, Illinois.

Board of Governors of the Federal Reserve System, January 31, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2862 Filed 2–4–97; 8:45 am]

BILLING CODE 6210–01–F

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. Once the application has been accepted for processing, it will also 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, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (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 February 28, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pioneer Bancorp, Inc., Auburndale, Wisconsin; to become a bank holding company by acquiring 98.2 percent of the voting shares of Pioneer State Bank, Auburndale, Wisconsin.

2. The Connor Trusts, Marshfield, Wisconsin; to become a bank holding company by acquiring 36.84 percent of the voting shares of Pioneer Bancorp, Inc., Auburndale, Wisconsin, and thereby indirectly acquire Pioneer State Bank, Auburndale, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Marshfield Investment Company, Springfield, Missouri; to acquire 100 percent of the voting shares of Metropolitan Bancshares, Inc., Springfield, Missouri, and thereby indirectly acquire Metropolitan National Bank, Springfield, Missouri.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Krum Holdings, L.L.C., Krum, Texas; to become a bank holding company by acquiring 1.0 percent of the voting shares of Porter Holdings, Ltd., Krum, Texas.

In connection with this application Porter Holdings, Ltd., has also applied to become a bank holding company by acquiring 69.16 percent of the voting shares of Farmers & Merchants State Bank, Krum, Texas.

2. Eagle Bancshares, Inc., Fairfield, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Fairfield Holdings, Inc., Fairfield, Texas, and thereby indirectly acquire First National Bank of Fairfield, Fairfield, Texas.

In connection with this application, Fairfield Holdings, Inc., Fairfield, Texas, has also applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fairfield, Fairfield, Texas.

Board of Governors of the Federal Reserve System, January 30, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2762 Filed 2–4–97; 8:45 am]

BILLING CODE 6210–01–F

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. Once the application has been accepted for processing, it will also 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, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (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 March 3, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Tri-County Financial Corporation, Waldorf, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Tri-County,

Waldorf, Maryland. Community Bank of Tri-County is the proposed successor by charter conversion to Tri-County Federal Savings Bank of Waldorf, Waldorf, Maryland.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. AliKat Investments, Inc., Gurnee, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of NorthSide Community Bank, Gurnee, Illinois, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 31, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2863 Filed 2–4–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 952–3401]

1554 Corp.; Brainerd L. Mellinger, III; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Woodland Hills, California-based company and its president from making unsubstantiated earnings claims and from using deceptive testimonials. The Commission had alleged that 1554 and Mellinger advertised a work-at-home course, called ''Mellinger World Trade Mail Order Plan,'' in an infomercial which contained deceptive and misleading claims.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Justin Dingfelder, Federal Trade Commission, S–4302, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3017.

Jonathan Cowen, Federal Trade Commission, S–4302, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2533.

Lemuel Dowdy, Federal Trade Commission, S–4302, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2981.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 27, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from 1554 Corporation and its president Brainerd L. Mellinger, III (collectively, ''respondents''). The agreement would settle a proposed complaint by the Federal Trade Commission that respondents engaged in unfair or deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Proposed Complaint

This matter concerns advertising practices related to the sale of 1554 Corporation's Mellinger World Trade Mail Order Plan (''Mellinger Plan''). The administrative complaint, which the Commission has proposed to issue, would allege that respondents promoted the sale of the Mellinger Plan by creating and disseminating advertisements and promotional materials, including a program-length television advertisement entitled ''Mellinger's Secret Treasures.''

The complaint charges that through the use of statements contained in their advertisements and promotional materials, respondents made unsubstantiated representations that consumers who use the Mellinger plan typically succeed in readily starting and operating profitable businesses and that consumers who use the Mellinger Plan typically earn substantial income. The complaint also charges that endorsements appearing in respondents' advertisements and promotional materials were represented, without substantiation, to be reflective of the typical or ordinary experience of members of the public who have used the Mellinger Plan.

The Proposed Order

The proposed consent order contains provisions that are designed to remedy the alleged advertising violations and to prevent respondents from engaging in similar acts and practices in the future. The order prohibits respondents from making any unsubstantiated representations: (1) that consumers who use the Mellinger plan typically succeed in readily starting and operating profitable businesses, (2) that consumers who use the Mellinger Plan typically earn substantial income, or (3) about the performance, benefits, efficacy or success rate of any product or service concerning business opportunities.

The proposed order also contains prohibitions about using or misusing testimonials or endorsements. In particular, the order prohibits respondents from using testimonials that do not reflect the actual opinions, beliefs, or experiences of the endorser, and from using testimonials to represent the typical experience of respondents' customers unless respondents can substantiate that such claims are in fact typical or respondents clearly disclose that the endorser's experience is not typical. The order also contains standard provisions regarding record-keeping, notification of changes in corporate or employment status, distribution of the order, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and the proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 97–2808 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–P

[File No. 932–3019]

The Administrative Co.; Michael P. McIntyre; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, The Administrative Company and McIntyre from making misrepresentations about living trusts, and would require them to make certain disclosures with regard to legal challenges that can be made against living trusts, the possibility of probate for certain estates regardless of whether living trusts are used, and the transfer of consumers' assets into the trusts. The agreement settles allegations that the respondents made numerous false statements about the benefits and appropriateness of living trusts, in general, and about living trusts they sold, in particular.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janice Charter, Federal Trade Commission, Denver Regional Office, 1961 Stout Street, Suite 1523, Denver, CO 80294. (303) 844–2272. Elizabeth Palmquist, Federal Trade Commission, Denver Regional Office, 1961 Stout Street, Suite 1523, Denver, CO 80294. (303) 844–2272.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 16, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has agreed to accept, subject to final approval, a proposed consent order settling charges that Michael P. McIntyre and The Administrative Company (''TAC'') violated Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the sale of living trusts to senior citizens through membership in the American Association for Senior Citizens (''AASC''). The respondents covered by the proposed order include The Administrative Company, the company through which all of AASC's business was conducted, and Michael P. McIntyre, the President of TAC.

The complaint alleges that the respondents violated section 5 of the Federal Trade Commission Act by making numerous misrepresentations about the advantages of living trusts over other forms of estate planning. Specifically, the complaint alleges that respondents have misrepresented that (1) the use of a living trust avoids all administrative costs; (2) at death, a living trust ensures that assets are distributed immediately or almost immediately; (3) a living trust cannot be challenged; (4) living trusts are prepared by local attorneys; (5) a living trust protects against catastrophic medical costs; (6) a living trust is the appropriate estate planning device for every consumer; and (7) there are no disadvantages to a living trust.

The proposed consent order contains provisions which are designed to remedy the alleged violations and to prevent the respondents from engaging in similar acts and practices in the future. The proposed order would prohibit the respondents from making the misrepresentations alleged in the complaint and set forth above. Additionally, the order would require the respondents to disclose to prospective purchasers that living trusts may be challenged on similar grounds as wills and that they may not be appropriate in all instances.

Under the order, the respondents also would be required to provide four affirmative disclosures in situations where the statements would be true. (1) Some states have created a mechanism for ''informal probate'' of an estate if the estate meets certain criteria, which significantly reduces the time involved in probate. This disclosure would be required in states where informal probate is available. (2) If the transfer of an individual's assets into the living trust is not included in the price of creating the living trust, that fact must be disclosed. (3) If it is the sole responsibility of the purchaser of the living trust to transfer assets into the trust, that fact must be disclosed. (4) In some states, but not in others, creditors have a longer period of time to file claims against a living trust than against a probated estate. This fact would have to be disclosed in such states.

The proposed order would require the respondents to distribute the proposed order to their officers, agents, and all personnel who participate in any way in respondents' sales activities relating to living trusts. Additionally, the order would require TAC to notify the Commission of any changes in its corporate structure, and Michael McIntyre to notify the Commission of his affiliation with any new business. The proposed order also requires the respondents to retain for five years all materials that they rely upon in making representations covered by the order. Finally, the respondents are required to file one or more compliance reports detailing their compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, nor to modify in any way their terms. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondents that the

law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 97–2809 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–P

[File No. 942–3114]

Herb Gordon Auto World, Inc. d/b/a Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Silver Spring, Maryland-based automobile dealerships from misrepresenting financing terms and would require them them to comply with federal laws mandating accurate disclosure of the annual percentage rate and monthly payments in financed offers and clear and conspicuous disclosure of major automobile deal terms. They also agreed not to advertise terms that are not actually available to consumers. The Commission had alleged that, in several car leasing advertising campaigns, Herb Gordon Auto had not included all of the disclosures of lease costs and terms required under the Consumer Leasing Act.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3224. Carole Reynolds, Federal Trade Commission, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3230.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 23, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Herb Gordon Auto, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars.[1]

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state initial low monthly payment amounts and promote the ''luxury of low payments'' and in fine print, *inter alia*, state an initial number of payments, a downpayment and another amount described as a ''purchase option'' (''Gold Key Plus'' advertisements). The complaint alleges that the Gold Key Plus advertisements misrepresent that the additional amount is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation, and that respondent, therefore, has engaged in a deceptive act or practice in violation of section 5(a) of the Federal Trade Commission Act (''FTC Act'). The complaint also alleges that the Gold Key Plus advertisements fail to accurately state the terms of repayment, by failing to disclose that the additional amount is a final payment and by inaccurately stating that the amount is optional when, in fact, it is mandatory based on the financing to be signed at purchase, in violation of the Truth in Lending Act (''TILA'') and § 226.24(c) of Regulation Z. The complaint also alleges that the Gold Key Plus advertisements fail to disclose the annual percentage rate for the financing, using that term or the abbreviation ''APR,'' in violation of the TILA and § 226.24(c) of Regulation Z, and that this is a deceptive act or practice in violation of section 5(a) of the FTC Act.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state a low downpayment and initial low monthly payment amounts and thereafter, *inter alia*, state that the ''balance of 48 payments will be higher than 1st 12 months'' and ''cost per $1,000 borrowed $20.52'' (''Drive for 95'' advertisements). The complaint alleges that the Drive for 95 advertisements misrepresent and fail to accurately disclose the amount of the second series of installment payments required at conclusion of the initial payments, based on the financing to be signed at purchase, and that respondent, therefore, has engaged in a deceptive act or practice, in violation of section 5(a) of the FTC Act. The complaint also alleges that the Drive for 95 advertisements, *inter alia*, fail to accurately state the terms of repayment, by failing to accurately disclose the amount of the second series of installment payments required at conclusion of the initial payments, based on the financing to be signed at purchase, in violation of the TILA and § 226.24(c) of Regulation Z.

The complaint also alleges that in fine print in the Gold Key Plus advertisements, respondent's advertisements state an initial number of payments, a downpayment and another amount described as a ''purchase option'' (the ''disclaimer''). The complaint also alleges that in fine print (print), in fine print for a short duration (television) and orally for a short duration (radio) in the Drive for 95

[1] In this Analysis to Aid Public Comment, Herb Gordon Auto, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo and Herb Gordon Used Cars are referred to collectively as ''respondent Herb Gordon Auto'' or ''respondent.''

advertisements, respondent's advertisements, *inter alia*, state ''balance of 48 payments will be higher than 1st 12 months,'' and ''cost per $1,000 borrowed $20.52,'' and an annual percentage rate (the ''disclaimer''). The complaint also alleges that the disclaimer in respondent's Gold Key Plus advertisements is virtually unreadable and incomprehensible to ordinary consumers and is not clear and conspicuous because of the small typesize. The complaint also alleges that the disclaimer in respondent's Drive for 95 advertisements is virtually incomprehensible to ordinary consumers and is not clear and conspicuous because of the small typesize in the print and televised advertisements and because of the short duration in the radio and televised advertisements. The complaint further alleges that respondent's aforesaid practices in connection with the disclaimers in its Gold Key Plus and Drive for 95 advertisements constitute deceptive practices in violation of section 5(a) of the FTC Act and violations of the TILA and § 226.24(c) of Regulation Z, as more fully set out in 226.24–1 of the Official Staff Commentary to Regulation Z.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation ''APR,'' in violation of the TILA and § 226.24(c) of Regulation Z.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term, in violation of the Consumer Leasing Act (''CLA'') and § 213.5(c) of Regulation M.

The proposed order prohibits respondent Herb Gordon Auto, in connection with any advertisement to promote any extension of consumer credit, from misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment or second series of installment payments, and the amount of any balloon payment or second series of installment payments.

The proposed order also requires respondent Herb Gordon Auto, in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately, clearly and conspicuously, state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment; the terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments, and the annual percentage rate, using that term or the abbreviation ''APR.''

The proposed order further requires respondent Herb Gordon Auto, in any advertisement to promote any extension of consumer credit, whenever the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment or the amount of any finance charge is stated, to clearly and conspicuously state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, and the annual percentage rate, using that term or the abbreviation ''APR.''

The proposed order also prohibits respondent Herb Gordon Auto, in any advertisement to promote any extension of consumer credit, from stating a rate of finance charge without stating the rate as an ''annual percentage rate,'' using that term or the abbreviation ''APR,'' and from failing to calculate the rate in accordance with Regulation Z. The proposed order also requires respondent Herb Gordon Auto to state only those terms that actually are or will be arranged or offered by the creditor, in any credit advertisement, as required by Regulation Z.

The proposed order prohibits respondent Herb Gordon Auto, in connection with any advertisement to aid, promote or assist any consumer lease, from misrepresenting the costs or terms of leasing a vehicle.

The proposed order also requires respondent Herb Gordon Auto, in any advertisement to aid, promote or assist any consumer lease, whenever the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease is stated, to state, clearly and conspicuously, all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability.[2] The proposed order also

[2] The Federal Reserve Board (''Board''), which implements the CLA, recently issued revised Regulation M, 61 FR 52246 (Oct. 7, 1996) (to be codified at 12 CFR part 213). Revised Regulation M is not mandatorily effective until Oct. 1, 1997; compliance with revised Regulation M is optional starting Oct. 1, 1996. 61 FR at 52246. In addition, President Clinton recently signed the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (''Omnibus Act'), Pub. L. No. 104–208, 110 Stat. 3009 (Sept. 30, 1996). Title II, Section 2605 of the Omnibus Act amends certain provisions of the CLA (''revised CLA'') (to be codified at 15 U.S.C. 1667 *et seq.*); in the future, the Board will implement the revised CLA. The revised CLA is mandatorily effective on the first October 1 that follows the Board's promulgation of implementing regulations, amendments or interpretations by not less than six months; compliance with the revised CLA is optional at any time before the mandatory effective date. See Title II, section 2605(b)(2) of the Omnibus Act.

Accordingly, the proposed order permits respondent to comply with the lease advertising ''triggering term'' rules of existing Regulation M, 12 CFR 213.5(c), as amended, and the CLA, 15 U.S.C. 1667c(a)–(b), by utilizing applicable provisions of the revised CLA and revised Regulation M. For all lease advertisements, respondent may utilize section 184(a) of the revised CLA (to be codified at 15 U.S.C. 1667c(a)), as amended, or utilize § 213.7(d) of revised Regulation M (to be codified at 12 CFR 213.7(d)), as amended. For radio lease advertisements, respondent may also utilize section

Continued

requires respondent in any lease advertisement to state that a specific lease of any property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease such property at those amounts or terms, as required by Regulation M.

The proposed order also prohibits respondent Herb Gordon Auto from failing to comply in any other respect with the TILA and Regulation Z and the CLA and Regulation M.[3]

The proposed order defines the term ''clearly and conspicuously'' for respondent's advertisements in all media. In a television or videotaped advertisement, the required disclosures made in the audio portion of the advertisement must be in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. The required disclosures made in the video portion of the advertisement must appear on the screen in a size, shade, contrast, prominence and location, and for a duration, as to be readily noticeable, readable and comprehensible to an ordinary consumer. In a radio advertisement, the required disclosures must be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. In a print advertisement (including but not limited to mail solicitations), the required disclosures must appear in a size, shade, contrast, prominence and location as to be readily noticeable, readable and comprehensible to an ordinary consumer. Additionally, nothing contrary to, inconsistent with or in mitigation of the required disclosures can be used in any advertisement.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–2807 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–P

184(b) of the CLA, 15 U.S.C. 1667c(b), as amended by Title II, section 2605 of the Omnibus Act (to be codified at 15 U.S.C. 1667c(c)) (''Section 184(c) of the revised CLA''), as amended, or utilize § 213.7(f) of revised Regulation M (to be codified at 12 CFR 213.7(f)), as amended. For television lease advertisements, respondent may also utilize § 213.7(f) of revised Regulation M, as amended.

[3] The proposed order permits respondent to comply with other requirements of existing Regulation M, 12 CFR part 213, as amended, and the CLA, 15 U.S.C. 1667–1667e, as amended, by utilizing revised Regulation M, as amended.

[File No. 952–3009]

Huling Bros. Chevrolet, Inc.; Huling Buick, Inc.; Huling Bros. Chrysler/ Plymouth, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Seattle-based automobile dealerships from misrepresenting financing terms and would require them to comply with federal laws mandating accurate disclosure of the annual percentage rate and monthly payments in financed offers and clear and conspicuous disclosure of major automobile deal terms. They also agreed not to advertise terms that are not actually available to consumers. The Commission had alleged that Huling Bros.' advertising understated the true annual percentage rate (''APR'') for their financed purchase deals or failed to state the APR at all, even though a triggering term appeared in the ads, defeating the purpose of the APR as a means for assisting consumers in comparison shopping.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Charles Harwood, Federal Trade Commission, Seattle Regional Office, 2896 Federal Building, 915 Second Ave., Seattle, WA 98174 (206) 220–6350.

George Zweibel, Federal Trade Commission, Seattle Regional Office, 2896 Federal Building, 915 Second Ave., Seattle, WA 98174. (206) 220–4485

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 23, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondent Huling Bros. Chevrolet has disseminated, or caused to be disseminated, advertisements that state annual percentage rates as well as monthly payment amounts and vehicle sales prices, but in many instances understate the annual percentage rates by more than 1/4 of 1 percentage point, in violation of the Truth in Lending Act (''TILA'') and §§ 226.22(a) and 226.24(b) and (c) of Regulation Z, and have also engaged in an unfair or deceptive act or practice, in violation of section 5(a) of the Federal Trade Commission Act (''FTC Act'').

The complaint also alleges that respondents Huling Bros. Chevrolet, Huling Buick, and Huling Bros. Chrysler/Plymouth have disseminated, or caused to be disseminated, advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state the annual percentage rate, in violation of the TILA and § 226.24(c) of Regulation Z.

The complaint also alleges that respondents Huling Bros. Chevrolet and Huling Buick have disseminated, or

caused to be disseminated, advertisements that state conflicting monthly payment amounts for the same transaction, thereby failing to disclose accurately the terms of repayment, in violation of the TILA and § 226.24(c) of Regulation Z, and have also engaged in an unfair or deceptive act or practice, in violation of section 5(a) of the FTC Act.

The complaint also alleges that respondents Huling Bros. Chevrolet, Huling Buick, and Huling Bros. Chrysler/Plymouth have disseminated, or caused to be disseminated, advertisements that state terms of repayment (such as monthly payment amounts) or annual percentage rates that are not actually arranged or offered by respondents, in violation of the TILA and § 226.24(a) of Regulation Z, and have also engaged in an unfair or deceptive act or practice, in violation of section 5(a) of the FTC Act.

The complaint also alleges that the respondents have disseminated, or caused to be disseminated, advertisements offering new motor vehicles that state monthly payment amounts, sale prices, and rebates, and which represent that ''College Graduate'' or ''1st Time Buyer'' rebates are available in conjunction with a payment plan in which monthly payments are at one amount for the first 12 months and are approximately double that amount thereafter (''Half Payment Program'). According to the complaint, College Graduate and 1st Time Buyer rebates are not available to purchasers who choose the Half Payment Program, and the respondents have therefore engaged in an unfair or deceptive act or practice, in violation of section 5(a) of the FTC Act.

The complaint also alleges that respondent Huling Buick has disseminated, or caused to be disseminated, advertisements that state a rate of a finance charge without stating that rate as an ''annual percentage rate,'' using that term or the abbreviation ''APR,'' in violation of the TILA and § 226.24(b) of Regulation Z.

The proposed order prohibits respondents Huling Bros. Chevrolet, Huling Buick, and Huling Bros. Chrysler/Plymouth, in any advertisement to promote any extension of consumer credit, from misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to the annual percentage rate, the amount of any periodic payment amount, or the availability of any advertised credit term; the sale price; or the availability of any advertised rebate.

The proposed order also prohibits the respondents, in any advertisement to promote any extension of consumer credit, from stating a rate of finance charge without stating the rate as an ''annual percentage rate,'' using that term or the abbreviation ''APR,'' and from failing to calculate the rate in accordance with Regulation Z.

The proposed order also requires the respondents, in any advertisement to promote any extension of consumer credit, whenever the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge is stated, to accurately, clearly and conspicuously, state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate. The proposed order also requires the respondents to state only those terms that actually are or will be arranged or offered by the creditor, in any credit advertisement.

The proposed order also requires the respondents, in any advertisement to promote any extension of consumer credit, to comply in every other respect with the TILA, as amended, and with Regulation Z, as amended.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–2806 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–P

[File No. 952–3041]

Nationwide Syndications, Inc.; Thomas W. Karon; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Barrington, Illinois-based company and its president from misrepresenting that its NightSafe Glasses make driving at night safer, and from using the name ''NightSafe,'' or any other name that would imply that such a product makes night driving safe or safer. Nationwide and Karon also agreed to pay $125,000 in consumer redress, and to provide the Commission with the names of consumers who purchased NightSafe glasses, so the Commission may provide them with a notice that wearing NightSafe glasses while driving at night may, in fact, be unsafe. The complaint accompanying the consent agreement alleges that Nationwide and Karon made false and unsubstantiated claims regarding the benefits of NightSafe Glasses, which purportedly make night driving safer by improving night vision.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL 60603. (312) 353–8156. Karen D. Dodge, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 24, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed

consent order from Nationwide Syndications, Inc., a corporation, and Thomas W. Karon, individually and as an officer of Nationwide Syndications, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the proposed respondents' advertisements for NightSafe Glasses. The Commission's proposed complaint alleges that the advertisements expressly or impliedly claim that NightSafe Glasses will make night driving safer, improve night vision, and that laboratory tests prove that NightSafe Glasses improve night vision. These claims are alleged to violate section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because they are false and the proposed respondents did not possess adequate substantiation for the claims at the time they were made.

Part I of the proposed consent order prohibits the proposed respondents from representing, directly or by implication, that NightSafe Glasses or any substantially similar product, makes night driving safe or safer or improves night vision. Part II of the proposed order prohibits proposed respondents from representing, directly or by implication, the efficacy, performance, safety, or benefits of NightSafe Glasses or any substantially similar product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence. Part III of the proposed order prohibits the proposed respondents from representing, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study. Part IV of the proposed order prohibits the proposed respondents from using the name ''NightSafe,'' or any other name, in a manner that represents, directly or by implication, that such product makes night driving safe or safer. Part V of the proposed order requires the proposed respondents to pay $125,000 for consumer redress. Part VI of the proposed order requires the respondents to provide to the Commission the names and addresses of all of the purchasers of NightSafe Glasses whose names and addresses are in the possession of or can reasonably be obtained from the agents involved in fulfilling orders on behalf of Nationwide Syndications, Inc., and permits the Commission to provide the purchasers of NightSafe Glasses with safety information contained in an appendix to the proposed order.

The remaining parts of the consent order require proposed respondents to maintain all materials relied upon in disseminating any representation covered by the proposed consent order, to deliver a copy of the proposed order to all current and future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by the proposed consent order, to notify the Commission of any changes in the structure of the proposed corporate respondents or the employment of the proposed individual respondent, for each proposed respondent to file a written report with the Commission setting forth in detail how it complied with the order, and for the order to terminate twenty years from the date of its issuance, absent the filing of a complaint or consent decree alleging that the order has been violated.

The purpose of this analysis is to facilitate public comment of the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–2811 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–P

[File No. 971–0024]

Tenet Healthcare Corp.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the for-profit general acute care hospital chain to divest a hospital, and related assets, in San Luis Obispo County, California that it will acquire as part of its proposed acquisition of OrNda Healthcorp. The complaint accompanying the consent agreement alleges that Tenet's acquisition of OrNda would deny the benefits of free and open competition—lower prices and better quality of service—to patients, physicians, third-party payers, and other consumers of inpatient acute care hospital services in that county.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2932. Mark Whitener, Federal Trade Commission, H–374, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2845. Robert Leibenluft, Federal Trade Commission, S–3115, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 29, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from Tenet Healthcare Corp. (''Tenet''), to resolve antitrust concerns raised by Tenet's proposed acquisition of OrNda Healthcorp (''OrNda''). Tenet would be required to divest, among other things,

OrNda's French Hospital and Medical Center in San Luis Obispo, California (''French''), and OrNda's interests in Monarch Health Systems, an integrated health care delivery system in the San Luis Obispo area. Tenet has also agreed to hold French, the Monarch interests, and some additional assets separate from Tenet's other assets, pending the required divestitures.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's Complaint

The proposed consent order would settle charges by the Federal Trade Commission that Tenet's proposed acquisition of OrNda Healthcorp would endanger competition in the market for inpatient acute care hospital services in San Luis Obispo County, California, and so would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. This matter involves the same market, and the same principal hospitals, as were at issue in a previous Commission hospital merger case, *American Medical International, Inc.*, 104 F.T.C. 1, 617 (1984), which resulted in the divestiture of French.

Tenet operates over 75 acute care hospitals nationwide. In San Luis Obispo County, Tenet operates two acute care hospitals, 195-bed Sierra Vista Regional Medical Center (''Sierra Vista'') in the city of San Luis Obispo, and 84-bed Twin Cities Community Hospital (''Twin Cities'') in Templeton about 22 miles to the north of San Luis Obispo. OrNda operates over 50 acute care hospitals nationwide, including 147-bed French Hospital Medical Center in the city of San Luis Obispo. OrNda also operates 70-bed Valley Community Hospital in Santa Maria, in northern Santa Barbara County about 30 miles south of the city of San Luis Obispo.

The complaint alleges that Tenet and OrNda are the two leading competitors, out of only four providers, of acute care hospital services in San Luis Obispo County, California. It further alleges that Tenet's main hospital in the area, Sierra Vista, and OrNda's French hospital, offer broader service complements than any of the other hospitals in the county, and are each other's principal and most direct competitor.

The complaint identifies 79-bed Arroyo Grande Community Hospital in southern San Luis Obispo County, and county-owned 64-bed San Luis Obispo General Hospital (''SLO General'') in the city of San Luis Obispo, as the only acute care hospitals in San Luis Obispo County that would not be owned by Tenet after the acquisition of OrNda. The complaint further alleges that SLO General's long-term competitive prospects are clouded by its need for major capital improvements, including construction required to bring the hospital into compliance with stringent new state earthquake safety standards.

As stated in the complaint, the proposed acquisition would eliminate competition between Tenet and OrNda, and significantly increase the already high level of concentration for inpatient acute care hospital services in San Luis Obispo County. The complaint also alleges that the proposed merger would increase the market share of Tenet, already the leading provider of inpatient acute care hospital services in the Tri-Cities area, to over 71%, an increase of at least 17% above its existing market share. The complaint further alleges that, as measured by the Herfindahl-Hirschman Index (''HHI''), market concentration would increase more than 2000 points to a post-acquisition level of over 5000. The HHI is a measure of market concentration used by the Federal antitrust enforcement agencies to estimate, in conjunction with information on other market factors, the likelihood that a merger would endanger competition. As explained in the 1992 Merger Guidelines, the Federal antitrust enforcement agencies consider markets with HHI levels above 1800 (on a scale of 0 to 10,000) to be ''highly concentrated,'' and, where the post-merger HHI would exceed 1800, presume that a merger producing an increase in the HHI of more than 100 points is likely to significantly lessen competition (unless factors other than market concentration indicate that the merger presents no significant threat to competition).

According to the complaint, it is unlikely that entry into San Luis Obispo County by a new acute care hospital will prevent or remedy any anticompetitive price increases or other effects resulting from the acquisition. This is due to, among other factors, the lengthy lead times required to build new hospitals in the relevant market, such as those required by California's requirements for advance review of hospital building plans.

The complaint alleges that the proposed acquisition may: substantially lessen competition for inpatient acute care hospital services in San Luis Obispo County; result in less favorable prices and other terms for health plans that contract for such services in the county; increase the possibility of collusion or interdependent coordination by the remaining market competitors; deny patients, physicians, third-party payers, and other consumers of inpatient acute care hospital services, the benefits of free and open competition based on price, quality, and service; and deny the opportunity for the San Luis Obispo County government to purchase, on competitive terms, the hospital care it must provide to certain indigent County residents, as a potentially less costly alternative to providing those services at SLO General.

The Proposed Consent and Hold Separate Agreements

The consent order, if issued in final form by the Commission, would require Tenet to divest French and related OrNda assets, after Tenet acquires OrNda. These assets include, among others, OrNda's interests in a surgery center, two urgent care centers, and two medical office buildings in San Luis Obispo County.

Tenet would also be required to divest OrNda's holdings of about one-third of the stock of, and also a short-term loan agreement with, Monarch Health Systems (''Monarch'). Monarch is an integrated health delivery system, operating in San Luis Obispo and Santa Barbara Counties. Monarch has a long-term exclusive contract with French, through which French receives a large percentage of its patients. As part of the Agreement to Hold Separate accompanying the proposed order, Tenet has agreed—effective immediately—to place OrNda's stock in Monarch into a voting trust, and take other measures designed to prevent Tenet from exercising influence or control over Monarch, pending divestiture of the Monarch stock and loan agreement. These measures are to prevent Tenet from using the Monarch stock and loan agreement to damage French's business relationship with Monarch, and thereby lessen French's competitiveness and viability.

Under the terms of the proposed order, Tenet must make the foregoing divestitures to an acquirer, and in a manner, approved by the Commission. (However, Tenet may divest the Monarch stock to someone other than the purchaser of French, and if Monarch is bought in its entirety by a third party, Tenet need not obtain prior approval to divest its Monarch stock to Monarch's new owner.) The approval requirement allows the Commission to make sure that Tenet's divestitures fulfill their purpose, of ensuring the continuation of

French as an ongoing, independent, and viable acute care hospital, and remedying the lessening of competition resulting from Tenet's acquisition of OrNda.

The divestitures must be completed by August 1, 1997; otherwise, Tenet will consent to the appointment of a trustee, who will have twelve additional months to effect the divestitures. If Tenet does not complete a Commission-approved divestiture of French by August 1, 1997, the Commission may appoint a trustee to complete that divestiture. The trustee may divest not only French and related assets, but also OrNda's Valley Community Hospital in Santa Maria, south of San Luis Obispo County, and certain assets relating to Valley, if the additional hospital and assets turn out to be necessary for a successful divestiture of French.

The Agreement to Hold Separate executed in conjunction with the consent agreement requires Tenet, effective immediately, to maintain French, Valley, the Monarch stock and loan agreement, and related assets separate from Tenet's other operations until the completion of the divestitures, or as otherwise specified. The Agreement to Hold Separate also requires Tenet to comply with the provisions of the proposed consent order, pending its final approval by the Commission.

To assure the complete independence and viability of French and Valley hospitals, and related assets, the Hold Separate Agreement requires Tenet to transfer control of those assets to a three-member board (only one of whom will be a Tenet employee), and to ensure that no competitive information is exchanged between Tenet and those assets. (The Hold Separate Agreement's provisions relating to the Monarch stock have been described above.) Under the Hold Separate Agreement, Tenet may not exercise any direction, control, or influence over the assets to be held separate, except as necessary to ensure compliance with the Consent Order and the Hold Separate Agreement, and to ensure the continued viability, competitiveness, and marketability of those assets.

For ten years after the order is made final, the proposed consent order would prohibit Tenet from combining (through purchase, sale, lease, or otherwise) its acute care hospitals in San Luis Obispo County with any other acute care hospital in that area, or from acquiring Monarch stock, without prior notice to the Federal Trade Commission. Tenet must provide such notice in accordance with procedures similar to those governing premerger notifications required by Section 7A of the Clayton Act, 15 U.S.C. 18a (unless the merger is already subject to section 7A's requirements, in which case no notice is necessary over and above that provided pursuant to section 7A). The order provision supplements section 7A, to ensure that the Commission receives advance notice of potentially significant Tenet mergers in the relevant market, and to thereby give the Commission an opportunity to block any such merger if it can demonstrate that the merger may substantially lessen competition. The proposed order contains certain limited exceptions to the prior notification requirement for transactions which are unlikely to substantially lessen competition, such as for transactions under $1 million.

The proposed consent order also contains provisions concerning its continued application to future owners of French and of Tenet's acute care hospitals in San Luis Obispo County. The acquirer of French, pursuant to the divestiture called for by the order, must agree not to transfer the hospital, for ten years from the date of the order, without prior notice to the Commission, to any person already operating an acute care hospital in San Luis Obispo County. In addition, the order would prohibit Tenet for ten years from transferring an acute care hospital facility in San Luis Obispo County, other than French (*e.g.*, Sierra Vista or Twin Cities) to another person, unless the acquiring person first files with the Commission an agreement to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, and to assist the Commission in its determination of whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 97–2810 Filed 2–4–97; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 717]

National Limb Loss Information Project; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC), the Nation's prevention agency, announces the availability of funds in fiscal year (FY) 1997 for a cooperative agreement program to establish a National Limb Loss Information Center (NLLIC). Non-renewable financial assistance will be provided to develop a National Limb Loss Information Center which will operate as a national clearinghouse to provide educational material and self-help rehabilitation guidance to persons with limb loss. In addition, the NLLIC will develop a peer visitation training initiative that will conduct peer education and training sessions with hospitals and limb loss support groups.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the areas of Clinical Preventive Services and Surveillance and Data Systems.

(For ordering a copy of Healthy People 2000, see the section ''Where to Obtain Additional Information''.)

Authority

This program is authorized by Section 301(a)(42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit organizations, and governments and their agencies.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Availability of Funds

A maximum of $800,000 in FY 1997 funds will be available to award one non-renewable cooperative agreement. The award will be made on or before May 31, 1997, for a twelve-month budget period within a project period of up to 3 years. Succeeding second- and third-year budget requests should reflect the organization's increasing financial participation indicating the ability to

sustain the project once the cooperative agreement has expired. (Budget period is the interval of time into which the project is divided for funding and reporting purposes. Project period is the total time for which a project has been programmatically approved.)

Noncompeting continuation awards for new budget years within the approved project period will be made on the basis of satisfactory progress in meeting project objectives and the availability of funds. Progress will be determined by site visits by CDC, project-generated progress reports, and the quality of continuation application requests.

Use of Funds

Funds available under this announcement must support activities directly related to the establishment and operation of a National Limb Loss Information Center. The award may be used for personnel services, supplies, equipment, travel, subcontracts, and services directly related to project activities. Project funds may not be used to supplant the applicant's pre-existing funds, for construction costs, to lease or purchase facilities or space, or for patient care. Although applicants may contract with other organizations under this cooperative agreement, applicants must perform a substantial portion of the activities (including program management and operations and delivery of services) for which funds are requested.

Background

Estimates of persons in the United States that were born with a congenital limb deficiency or have sustained an amputation are questionable. Roughly 2,000,000 respondents to the U.S. Census Bureau's Survey of Income and Program Participation reported a deformity or loss of a hand, foot, leg or arm as the cause of their disability. The 1983–1985 National Health Interview Survey reported approximately 400,000 persons with a limb loss. It is estimated that approximately 60,000 surgical amputation procedures are performed a year and this number is expected to increase. Regardless of the actual numbers of individuals with limb loss, it is anticipated that current trends and population growth will contribute to increasing numbers of individuals with limb loss.

There is an ever increasing need to facilitate the timely distribution of appropriate information regarding rehabilitation, health promotion, and other services for persons with limb loss. Existing information sources are not equipped to handle the increasing demand for these services. There is a basic inability of individuals to locate and obtain information relating to their particular situation, care and rehabilitation. A Harris poll taken for the International Center for the Disabled indicated that fifty-three percent of the respondents expressed difficulty in obtaining disability-related information, and only forty-four percent considered themselves to be familiar with this type of information. These findings indicate a need to establish a National Limb Loss Information Center that will collect and/or develop state of the art rehabilitation and post-rehabilitation materials and resources for dissemination to persons with limb loss, their families, and providers responsible for their care.

Purpose

The purpose of this cooperative agreement is to establish a National Limb Loss Information Center and a peer visitation training initiative. These initiatives will significantly assist in identifying gaps in the service network, establish opportunities to bridge the gaps, provide appropriate and timely educational messages to affected individuals and their support groups, and facilitate linkages between individuals with limb loss and available rehabilitative and support services. It is important that these initiatives provide persons with limb loss access to resources, information and education needed to make informed choices to attain the optimal rehabilitation outcomes, return to productive lifestyles, and prevent related secondary conditions.

Advances in medical science and technology have been extremely effective in returning persons with limb loss to their customary lifestyle. Effective rehabilitation outcomes, however, are contingent upon the ability to provide a broad range of educational and informational resources to persons with limb loss. This project is intended to establish a National Limb Loss Information Center that will serve as a repository for current information on limb loss and be responsible for operating a national clearinghouse providing guidance to the public regarding rehabilitation, support services and training opportunities for persons with limb loss.

Budget and Project Costs

This program has no statutory matching requirement; however, applicants should demonstrate their capacity to support a portion of project costs, increase cost-sharing potential over time, and identify other potential funding sources for continuation of the project at the conclusion of the three-year project period. Applicants must prepare budget requests that provide line item specificity for intended expenditures and a separate budget justification (identifying both Federal and non-Federal funding sources).

Cooperative Activities

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for activities under A. (Recipient Activities) and CDC shall be responsible for activities listed under B. (CDC Activities).

A. Recipient Activities

1. Establish and maintain a resource library regarding limb loss which includes a comprehensive electronic resource database;
2. Utilize universities, research institutions and other noted authorities to collect and maintain a comprehensive inventory of current educational materials regarding limb loss;
3. Use professional staff to provide appropriate information, educational messages, and guidance to individuals with limb loss;
4. Develop and disseminate a national educational publication that conveys the most current advances in treatment and care of persons with limb loss;
5. Develop a peer visitation training initiative to conduct self-help training and work with support networks;
6. Develop standardized materials to assist local organizations in the conduct of appropriate visitation programs.

B. CDC Activities

1. Provide scientific, programmatic, and technical assistance in the planning, operation, and evaluation of the National Limb Loss Information Center;
2. Provide programmatic assistance in administrative and organizational aspects of project operations;
3. Serve as a resource for sharing regional and/or national data pertinent to limb loss; and
4. Assist in evaluating and/or studying the effectiveness of specific activities.

Application Content

Applicants must submit a separate typed abstract/summary of their proposal as a cover to their applications, consisting of no more than two double-spaced pages. Applicants should also include a table of contents for the project narrative and related attachments.

Applicants should organize their proposals in accordance with the application contents section of this

announcement. Applicants should be concise in preparing application narratives. The narrative portion of the application presenting the project functions should not exceed 30 double-spaced pages.

The application should be organized into two sections described as the (1) Project narrative and (2) budget justification. The total combined financial assistance request should be listed on the cover sheet and on the budget information sheet (Budget Information, Non-Construction Programs) on the Public Health Service Grant Application, Form PHS–5161–1.

Supporting information related to the project should be provided as attachments. Supporting information may include position descriptions, organizational charts, inventories of educational materials or tools, reports providing evidence as to need and extent of the problem, graphic depictions of objectives and milestones, letters of commitment noting collaborations and funding support, etc.

1. The application must document the background and need for support, including an overview of the national limb loss problem. Describe gaps in data, information, educational materials, program services, educational approaches, and how this cooperative agreement will help close those gaps and develop the capacity to establish and continue to operate a national information center for persons with limb loss.

2. Describe the plan and methods for initiating, facilitating, coordinating, conducting and evaluating educational activities related to limb loss. The applicants should describe those project resources and staff necessary to accomplish the project objectives. The plan should describe the future funding options beyond the three-year project period and discuss the plans for continuation of the project.

3. Describe the plan to develop and disseminate a national educational publication regarding limb loss.

4. Describe the plan to develop a peer visitation training initiative that will promote the educational outreach goals and objectives of the project and enhance the opportunities for a sustained educational presence at the local level.

5. Furnish an organizational chart of the applicant agency and indicate the relationships of the proposed activities to affiliates and other organizations that will be utilized to promote the program objectives; and describe the physical facilities available to house project operations.

6. Describe the role of the board of directors, if applicable, and outline its responsibilities.

7. Describe the applicant's potential to sustain the viability of the National Limb Loss Information Center. This description should explain how and over what time period the project will develop its plan for financial self-sufficiency. The plan should establish benchmarks that relate to annual increases in non-Federal sources of funding. Indicate how the plan will be updated and marketed to ensure a timely and orderly transition to non-Federal financial support.

8. Present specific and measurable objectives within the project work plan to meet the purposes of the cooperative agreement. Outline the dates that selected key events will be initiated, become operational, and conclude. Chart long-range objectives and time frames for the three-year project period, including methods for project evaluation.

9. Describe what measures have been or will be taken to ensure that all program services and facilities will be fully accessible to persons with disabilities, and how persons with disabilities will be encouraged to participate.

10. Describe the plans and methods to be employed or that are in place for addressing the needs of low socioeconomic and minority populations.

11. Provide a detailed narrative justification for all requested budget items.

Evaluation Criteria (Total 100 Points)

1. Evidence of Need and Understanding of the Problem: (15 Points)

Evaluation will be based on:

a. The applicant's description and understanding of the national limb loss problem as evidenced by estimates of incidence and/or prevalence, demographic indicators, and scope of the problem;

b. The applicant's description of the gaps that exists in the educational materials and tools that would serve to better educate and facilitate more positive rehabilitation outcomes.

2. Technical Approach (30 Points)

Evaluation will be based on:

a. The capability of the applicant to ensure that the basic components of the project will be promoted and implemented;

b. The proposed plan to establish and operate the National Limb Loss Information Center, and ensure its capability to function as a national coordinating focus for collection and dissemination of limb loss information utilizing its affiliation with local and regional support groups, allied disability agencies, health professionals and service providers. These historical relationships should be documented with the submission of memorandums of agreement and/or letters of support that demonstrate the collaborative relationship with the applicant;

c. A demonstrated competency in developing educational materials regarding individuals with limb loss;

d. The functions of the established oversight entity (such as a board of directors) including its composition, impact on policy, planning, and oversight for educational activities, with an indication of how it will complement existing educational programs;

e. The reasonableness, feasibility, and logic of the designated project objectives, including the overall work plan, timetable for accomplishment, and the strength of the proposed evaluation plan;

f. The described services and how access for persons with disabilities to project services, opportunities, and facilities will be achieved.

3. Evidence of Ability to Provide Educational Materials Needed to Inform Individuals With Limb Loss Regarding Rehabilitation Resources and Choices (25 Points)

Evaluation will be based on: a. Evidence of the applicant's knowledge and use of current educational materials available with regard to limb loss rehabilitation and identification of materials needed to address specific problems associated with the rehabilitation process;

b. Evidence of the applicant's capacity to disseminate resources, educational materials and tools that will inform persons with limb loss in regard to their rehabilitation options.

4. Outreach Capacity (20 Points)

Evaluation will be based on:

a. Evidence of the applicant's ability to establish a peer visitation training program initiative;

b. Identification and description of facilities and organizations to be visited and description of any planned follow-up to evaluate the number of training sessions that were initiated and the results of these activities.

5. National Education Publication (5 points)

Evaluation will be based on:

The description of the applicant's plan to develop, distribute, and update a national educational publication that

will provide information regarding limb loss.

6. Cost-Sharing (5 Points)

Evaluation will be based on:

The evidence of personnel and financial contributions to the project and the specific plans for providing cost-sharing for the first year and succeeding years within the project period.

7. Budget Justification/Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, accuracy and consistency with the intended use of cooperative agreement funds.

Funding Priority

CDC will give priority consideration to an established national organization with experience in providing educational and support services to individuals with limb loss.

Reporting Requirements

Project narrative reports, submitted with an original and two copies, will be required semi-annually. The reports shall be submitted to CDC thirty days after the end of the report period. An original and two copies of the Financial Status Report is required no later than 90 days after the end of each budget period.

Executive Order 12372

Applications are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.184.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB number 0937–0189) must be submitted to Mr. Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before March 17, 1997.

1. *Deadline:*

Applications will be considered to have met the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. *Late Applications:*

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6814, Internet address: glj2@ops.cdc.gov. Please refer to Program Announcement No. 717 when requesting information and submitting an application.

Programmatic technical assistance including additional guidance may be obtained from Jack Stubbs, Disabilities Prevention Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, telephone (404) 488–7096, Internet address: jbs2@cehod1.em.cdc.gov.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 30, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–2800 Filed 2–4–97; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 721]

State and Community-Based Childhood Lead Poisoning Prevention Program and Surveillance of Blood Lead Levels in Children; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1997 for new and competing continuation State and community-based childhood lead poisoning prevention projects, and to build statewide capacity to conduct surveillance of blood lead levels in children.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of Healthy People 2000, see the Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act [42 U.S.C. 241(a), 247b–1, and 247b–3], as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b.

Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Environmental Justice Initiative

Activities conducted under this announcement should be consistent with the Federal Executive Order No. 12898 entitled, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Grantees, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of its program's mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of lead on minority populations and low-income populations.

Eligible Applicants

Eligible applicants for State childhood lead prevention programs are State health departments or other State health agencies or departments deemed most appropriate by the State to direct and coordinate the State's childhood lead poisoning prevention program, and agencies or units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Applicants for prevention program grants from eligible units of local jurisdiction must elect either to apply directly to CDC as a grantee, or to apply as part of a statewide grant application. Local jurisdictions cannot submit applications directly to CDC and also apply as part of a Statewide grant application.

For Surveillance Funds Only

Eligible applicants are State health departments or other State health agencies or departments deemed most appropriate by the State to direct and coordinate the State's childhood lead poisoning prevention and surveillance program. Eligible applicants must have regulations for reporting of PbB levels by both public and private laboratories or provide assurances that such regulations will be in place within six months of awarding the grant. This program is intended to initiate and build capacity for surveillance of childhood PbB levels. Therefore, any applicant that already has in place a PbB level surveillance activity must demonstrate how these grant funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. CDC funds should be added to blood-lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for surveillance of PbB levels.

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided.

Availability of Funds

State and Community-based Prevention Program Grant Funds

Approximately $8,000,000 will be available in FY 1997 to fund a selected number of new and competing continuation childhood lead poisoning prevention projects. The CDC anticipates that awards for the first budget year will range from $200,000 to $1,500,000. Applications exceeding the funding limit of $1,500,000 will be returned as non-responsive to the program announcement. This includes both direct and indirect cost amounts.

Surveillance Grant Funds

Approximately $300,000 will be available in FY 1997 to fund up to four new grants to support the development of PbB surveillance activities. Surveillance awards are expected to range from $60,000 to $75,000. Applications exceeding the funding limit of $75,000 will be returned as non-responsive to the program announcement. This includes both direct and indirect cost amounts.

The new awards are expected to begin on or about July 1, 1997.

New awards are made for 12-month budget periods within project periods not to exceed 3 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or surveillance activities. Grant funds should be used to increase the level of expenditures from State, local, and other funding sources.

Applicants may apply for either a prevention program grant or a surveillance grant, but NOT both. Applicants from State health agencies applying for prevention program grant funds must address surveillance issues in their application.

Awards will be made with the expectation that program activities will continue when grant funds are terminated.

Note

- Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.
- Not more than 10 percent (exclusive of Direct Assistance) of any grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

Background and Definitions

Background

State and community health agencies have traditionally been the principal delivery points for childhood lead screening and related medical and environmental management activities; however, limited resources and changing public health infrastructures have required public health agencies to develop new strategies to ensure the delivery of comprehensive services to prevent childhood lead poisoning.

In 1991, CDC recommended universal screening for children under six years old except in communities where the prevalence of elevated blood lead levels was known to be very low. In areas where the majority of children are at low risk for lead exposure, universal screening is not a practical or cost-beneficial investment of limited resources. Thus, screening activities should be targeted to children at elevated risk of lead exposure. As the prevalence of blood lead levels continues to diminish in the United States, targeting screening to those children who remain at elevated risk of lead exposure will become increasingly important.

Based on this scientific information and practical experience, to prevent childhood lead poisoning State and community health agencies will need to

re-examine their current screening policies and practices. State and local health agencies must have in place sound policies and programs to assess the risk for lead exposure and assure that appropriate and timely actions take place to protect children at risk of lead exposure. As State and local health departments revise their screening policies, it is anticipated that the screening and follow-up of children who most need services will be expanded or enhanced, thereby diminishing the screening of children in areas where they are not exposed to lead.

Blood lead levels in the United States have fallen dramatically over the past decade—by about 78 percent between 1978 and 1991. Nevertheless, the Third National Health and Nutrition Examination Survey (NHANES III) shows that, despite a dramatic decline in lead exposure among children, approximately 1.7 million children ages 1–5 still have blood lead levels ≥10 μg/dL, a level at which there has been shown to be subtle effects on children's cognitive development. Poor, urban, black children and Mexican-American children are at especially high risk for harmful levels of lead in their blood.

We have made great progress in reducing lead in important sources for the U.S. population—gasoline and food. However, there are still important sources of lead that pose a serious health threat to children. The remaining sources of lead exposure for children—lead in paint, dust, and soil—are far more difficult to address, since these can only be reduced by actions in individual homes. Without a concerted effort to reduce exposure from these sources, elevated lead levels in children will continue to be a public health problem.

Definitions

•*Program*: A designated unit within an agency responsible for implementing and coordinating a systematic and comprehensive approach to prevent childhood lead poisoning in high-risk communities.

•*Program Elements*: Include (1) identifying infants and young children with elevated blood lead levels, (2) identifying and assuring the remediation of possible sources of lead exposure throughout the community, (3) monitoring the medical and environmental management of lead poisoned children, (4) providing information on childhood lead poisoning and its prevention and management to the public, health professionals, and policy and decision makers, (5) encouraging and supporting community-based programs directed to the goal of eliminating childhood lead poisoning, (6) developing and providing laboratory support, and (7) maintaining a data management component that assists in the day-to-day management of the childhood lead poisoning prevention program and documents program activities.

•*High-Risk or Targeted Community*: Geographically defined community or neighborhood where there is significant childhood lead exposure (documented by the presence of children with elevated blood lead levels) or potential childhood lead exposure (documented by the presence of sources of lead exposure, especially older, deteriorating housing.)

•*Lead Hazard*: Accessible paint, dust, soil, water, or other source or pathway that contains lead or lead compounds that can contribute to or cause lead poisoning.

•*Lead Hazard Remediation*: The elimination, reduction, or containment of known and accessible lead sources.

•*Care coordination*: The total care of a child with lead poisoning, including appropriate and timely medical and environmental follow-up.

•*Surveillance*: For the purpose of this program, a complete PbB surveillance activity is defined as a process which: (1) systematically collects information over time about children with elevated PbB levels using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; and (3) provides timely and useful analysis and reporting of the accumulated data including an estimate of the rate of elevated PbB levels among all children receiving blood tests.

Purpose

Prevention Grant Program

The purpose of this grant program is to provide impetus for the development and operation of State and community-based childhood lead poisoning prevention programs in places where there is a determined risk of childhood lead exposure and to develop Statewide capacity for conducting surveillance of elevated blood-lead levels.

Grant-supported programs are expected to serve as catalysts and models for the development of non-grant-supported programs and activities in other States and communities. Further, grant-supported programs should create community awareness of the problem (e.g., among community and business leaders, medical community, parents, educators, and property owners). It is expected that State health agencies will play a lead role in the development of community-based childhood lead poisoning prevention programs, including ensuring coordination and integration with maternal and child health programs; State Medicaid Early Periodic Screening, Diagnosis, and Treatment, (EPSDT) programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act.

The prevention grant program will provide financial assistance and support to State and local government agencies to:

1. Establish, expand, or improve services to assure that children in high risk areas are screened. Screening should focus on: (1) Making certain children not currently served by existing health care services are screened, (2) integrating screening efforts with maternal and child health programs; State Medicaid programs, such as the EPSDT programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act, and (3) guaranteeing that high-risk children seen by private providers are screened.

2. Intensify care coordination efforts to ensure that children with elevated blood lead levels receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations to rapidly identify and reduce sources of lead exposure throughout a community.

4. Plan and develop activities for the primary prevention of childhood lead poisoning in demonstrated high-risk areas to be conducted in collaboration with other government and community-based organizations.

5. Develop and implement efficient information management/data systems compatible with CDC guidelines for monitoring and evaluation.

6. Improve the actions of other appropriate agencies and organizations to facilitate the rapid remediation of identified lead hazards in high-risk communities.

7. Enhance knowledge and skills of program staff through training and other methods.

8. Based upon program findings, provide information on childhood lead poisoning to the public, policy-makers, academic community, and other interested parties.

9. Develop State-based systems for surveillance of blood lead levels among

children, and use surveillance data to assess prevention activities and target resources.

Surveillance Grant Funds

The surveillance component of this announcement is intended to assist State health departments or other appropriate agencies to implement a complete surveillance activity for PbB levels in children. Development of surveillance systems at the local, State and national levels is essential for targeting interventions to high-risk populations and for tracking progress in eliminating childhood lead poisoning.

The childhood blood-lead surveillance program has the following five goals:

1. Increase the number of State health departments with surveillance systems for elevated PbB levels;
2. Build the capacity of State-or territorial-based PbB level surveillance systems;
3. Use data from these systems to conduct national surveillance of elevated PbB levels;
4. Disseminate data on the occurrence of elevated PbB levels to government agencies, researchers, employers, and medical care providers; and
5. Direct intervention efforts to reduce environmental lead exposure.

Program Requirements

A copy of the Program Guidance Document will be included with the application package. Please refer to this document (Program Guidance) for important information and procedures in developing and completing your application.

Prevention Grant Program

The following are requirements for Childhood Lead Poisoning Prevention Projects:

1. A director/coordinator with authority and responsibility to carry out the requirements of the program.
2. Provide qualified staff, other resources, and knowledge to implement the provisions of the program.
3. Revise program efforts based on CDC's plans to issue new recommendations on childhood lead poisoning prevention.
4. Provide a comprehensive statewide plan that includes strategies, identifies where lead exposed children are, and provides appropriate screening and timely follow-up for those children.
5. Provide a plan to develop an automated data-management system designed to collect and maintain laboratory data on the results of blood lead testing and care coordination data for children with elevated blood lead levels. This automated data-management systems should be used to monitor and evaluate all major program activities and services.
6. Establishment and maintenance of a system to monitor the notification and follow-up of children who are confirmed with elevated blood lead levels and who are referred to local Public Housing Authorities (PHAs).
7. Effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g., housing authorities, environmental agencies, maternal and child health programs, State Medicaid EPSDT programs; or, community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act, State epidemiology programs, State and local housing rehabilitation offices, schools of public health and medical schools, and environmental interest groups) to appropriately address the needs and requirements of programs (e.g., data management systems to facilitate the follow-up and tabulation of children reported with elevated blood lead levels, training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other State and local agencies with expertise in childhood lead poisoning prevention programming.
8. Assurances that income earned by the childhood lead poisoning prevention program is returned to the program for use by the program.
9. For awards to State agencies, there must be a demonstrated commitment to provide technical, analytical, and program evaluation assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.
10. SPECIAL REQUIREMENT regarding Medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1) as amended by Sec. 303 of the ''Preventive Health Amendments of 1992'' (Public Law 102–531), applicants AND current grantees must meet the following requirements: For Childhood Lead Poisoning Prevention Program services which are Medicaid-reimbursable in the applicant's State:

- Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.
- Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers.

An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

11. For State Prevention Programs, a Surveillance component defined as a process which: (1) Systematically collects information over time about children with elevated PbB levels using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; (3) provides timely and useful analysis and reporting of the accumulated data including an estimate of the rate of elevated PbB levels among all children receiving blood tests; and (4) reports data to CDC in the appropriate format.

To achieve these goals, programs must be able to: (1) provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system; (2) revise, refine, and implement, in collaboration with CDC, the methodology for surveillance as proposed in the respective program application; (3) have demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs; and (4) have the ability to translate data to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

For Surveillance Grants

The following are requirements for surveillance only grant projects:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of surveillance program activities.
2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system.
3. Effective, well-defined working relationships with childhood lead poisoning prevention programs within the applicant's State.
4. Revise, refine, and implement, in collaboration with CDC, the methodology for surveillance as

proposed in the respective program application.

5. Collaborate with CDC in any interim and/or final evaluation of the surveillance activity.

6. Monitor and evaluate all major program activities and services.

7. Demonstrated experience in conducting and evaluating public health programs or having access to professionals who are knowledgeable in conducting such activities.

8. Ability to translate data to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

Technical Reporting Requirements

Quarterly progress reports are required of all grantees. The quarterly report should not exceed 25 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each calendar quarter. A progress report is required as a part of the continuation application. Note that surveillance only grantees are not required to submit quarterly quantitative data.

Annual Financial Status Reports (FSRs) are due 90 days after the end of the budget period. The final progress report and FSR shall be prepared and submitted no later than 90 days after the end of the project period. Submit the original and 2 copies of the reports to the Grants Management Office indicated under ''Where to Obtain Additional Information'' section.

Evaluation Criteria

The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using available resources. The maximum ratings score of an application is 100 points.

A. The Factors To Be Considered in the Evaluation of Prevention Program Grant Applications Are:

1. Evidence of the Childhood Lead Poisoning Problem (40 points).

(a) Applicants should describe and document the extent of the problem as defined by data from recent screening, demographic, environmental, and other data. (Population-based data or estimates should be compared to NHANES III data discussed in the Background and Definition Section of this program announcement). (20 points)

(b) Applicants' ability to identify high-risk targeted areas within their public health jurisdictions defined by such factors as: evidence of children with elevated blood lead levels, documentation of pre-1950 housing and/or other evidence of old, deteriorating houses as well as the percent and number of children under six years of age living in poverty. Other known or suspected sources of lead poisoning should also be discussed. (20 points)

2. Technical Approach (30 points).

The quality of the technical approach in carrying out the proposed activities including:

(a) Goals and Objectives: The extent to which the applicant has included clearly identified goals and objectives which are specific, measurable, and relevant to the purpose of this proposal (10 points).

(b) Approach: The extent to which the applicant provides a detailed description of the proposed activities which are likely to achieve each objective for the budget period (10 points).

(c) Timeline: The extent to which the applicant provides a reasonable schedule for implementation of the activities (5 points).

(d) Evaluation: The extent to which the evaluation plan addresses the achievement of objectives (5 points).

3. Applicant Capability (10 points).

Capability of the applicant to initiate and carry out proposed program activities successfully within the time frames set forth in the application. Proposed staff skills must match the proposed program of work described. Elements to consider include:

(a) Demonstrated knowledge and experience of the proposed project director or manager and staff in planning and managing large and complex interdisciplinary programs involving public health, environmental management, and housing rehabilitation. The percentage of time the project manager will devote to this project is a significant factor, and must be indicated (5 points).

(b) Written assurances that proposed positions can and will be filled as described in the application (3 points).

(c) Evidence of institutional capacity, demonstrated by the experience and continuing capability of the jurisdiction, to initiate and implement similar environmental and housing projects. The applicant should describe these related efforts and the current capacity of its agency (2 points).

4. Collaboration (20 points).

(a) Extent to which the applicant demonstrates that proposed activities are being conducted in conjunction with, or through, organizations with known and established ties in the target communities. Evidence of support and participation from appropriate community-based or neighborhood-based organizations in the form of memoranda of understanding or other agreements of collaboration. (10 points)

(b) Extent to which the applicant documents established collaboration with appropriate governmental agencies responding to childhood lead poisoning prevention issues such as environmental health, housing, medical management, etc., through specific commitments for consultation, employment, or other activities, as evidenced by the names and proposed roles of these participants and letters of commitment. Absence of letters describing specific participation will result in a reduced rating under this factor. (10 points)

5. Budget Justification and Adequacy of Facilities (NOT SCORED).

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

B. The Factors to be Considered in the Evaluation of Applications for Surveillance Program Grant Applications are:

1. Surveillance Activity : (35 points).

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

(a) How laboratories report PbB levels.

(b) How data will be collected and managed.

(c) How the quality of data and completeness of reporting will be assured.

(d) How and when data will be analyzed.

(e) How summary data will be reported and disseminated.

(f) Protocols for follow-up of individuals with elevated PbB levels.

(g) Provisions to obtain denominator data.

2. Progress Toward Complete Blood-Lead Surveillance (30 points).

The extent to which the proposed activities are likely to result in substantial progress towards establishing a complete State-based PbB surveillance activity (as defined in the ''Purpose'' section).

3. Project Sustainability (20 points).

The extent to which the proposed activities are likely to result in the long-

term maintenance of a complete State-based PbB surveillance system. In particular, specific activities that will be undertaken by the State during the project period to ensure that the surveillance program continues after completion of the project period.

4. Personnel (10 points).

The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.

5. Use of Existing Resources (5 points).

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

6. BUDGET (Not Scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If they have comments it should be sent to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the grant will be subject to review by the Office of Management and Budget(OMB)under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the PHS 5161–1 (OMB Number 0937-0189) must be submitted to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before April 9, 1997.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 721. You will receive a complete program description, information on application procedures and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796. Internet address lgt1.@ops.cdc.gov.

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 721 when requesting information and submitting an application.

Technical assistance on prevention activities may be obtained from Claudette A. Grant, Acting Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330, Internet address cag4@ceh.cdc.gov.

Technical assistance on surveillance activities may be obtained from Carol Pertowski, M.D., Medical Epidemiologist, Surveillance and Programs Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330, Internet address cap4@ceh.cdc.gov.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 30, 1997.

Joseph R. Carter,

Acting Associate Director, Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 97–2799 Filed 2–4–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 97F–0038]

Alcide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions for red meat disinfection in processing plants.

DATES: Written comments on the petitioner's environmental assessment by March 7, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3074.

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 7A4532) has been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposes to amend part 173 (21 CFR part 173) of the food additive regulations to provide for the safe use of acidified sodium chlorite solutions for red meat disinfection in processing plants.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 7, 1997 submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 17, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–2820 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–01–F

Studies of Adverse Effects of Marketed Drugs, Biologics, and Devices; Availability of Grants (Cooperative Agreements); Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing the availability of $1.4 million in Fiscal Year 1997 funds for cooperative agreements to study adverse effects of marketed drugs, biologics, and devices. This amount is consistent with the level of funding in the President's budget. FDA expects to make four to six awards in the range of $250,000 to $350,000 for direct and indirect costs. The Government's obligation is contingent upon the availability of appropriated funds from which the cooperative agreements will be funded. The purpose of these agreements is to conduct drug, biologic, and device safety analysis for public health benefit; respond expeditiously to urgent public safety concerns; provide a mechanism for collaborative pharmacoepidemiological research designed to test hypotheses, particularly those arising from suspected adverse reactions reported to FDA; and enable rapid access to multiple data sources to ensure public safety when necessary.

DATES: Application receipt date is March 21, 1997.

ADDRESSES: Application kits are available from, and completed applications should be submitted to: Robert L. Robins, Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, Park Bldg., rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Note: Applications hand-carried or commercially delivered should be addressed to the Park Bldg., rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857. Please do NOT send applications to the Division of Research Grants, National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Charles M. Maynard, Division of Pharmacovigilance and Epidemiology (HFD–733), Food and Drug Administration, 5600 Fishers Lane, rm. 15B–18, Rockville, MD 20857, 301–827–3187.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. Applications submitted under this program are not subject to the requirements of Executive Order 12372.

I. Background

New drugs, biologics, and devices are required to undergo extensive testing before marketing. With the submission of adequate data on safety and effectiveness, FDA approves a new drug, biologic, and device application (NDA/PLA/PMA) that permits a manufacturer to market its product in the United States. Although the information provided before marketing is sufficient for approval, it is not adequate to anticipate all effects of a product once it comes into general use.

This request for applications (RFA) is intended to encourage collaboration between FDA and researchers with pharmacoepidemiological data bases to address postmarketing issues confronting the agency. FDA is also interested in the ability to measure and/or estimate incidence rates and test hypotheses based on signals of possible drug, biologic, and device safety problems originating from reports of adverse reactions received by FDA.

II. Program Research Goals

FDA would prefer to fund a variety of data bases representing, without overlap, different patient populations and/or types of patient care settings. The data bases maintained through these agreements must be able to: (1) Provide data on exposure to new chemical entities; (2) perform feasibility studies of multiple drugs and/or multiple outcomes; (3) identify adverse drug, biologic, and device events that occur infrequently; and (4) provide a substantive response within a very short timeframe.

The goal for these cooperative agreements is to investigate suspected associations between specific drug and

possible biologic and device exposures and specific adverse events and to quantitate such risk. The specific objectives are to: (1) Provide immediate access to existing data sources with the capability of providing assessments of study feasibility; (2) respond to particular drug, biologic, and device safety questions within a few weeks; and (3) provide a substantive response to those questions deemed feasible within a few months.

Data base characteristics should include the ability to:

(1) Estimate adverse event rates or relative risks for specific event.

(2) Estimate the contribution of various risk factors associated with the occurrence of adverse events (e.g., age, sex, dose, coexisting disease, disease severity, concomitant medication).

(3) Determine adverse event rates for generic entities as well as for classes of drugs.

(4) Determine rate and depth of usage of new drugs into the formulary.

(5) Obtain data from laboratory results.

(6) Link to state vital statistics, if possible.

(7) Link to cancer registry.

(8) Determine inpatient exposure.

(9) Long term followup of exposure and outcomes.

(10) Determine adverse events related to vaccines.

(11) Ability to follow cohort (retrospectively or prospectively) based on device exposure or clinical diagnosis for case-control or cohort studies.

(12) Ability to study all medical devices, especially newer technologies approved by FDA since 1990.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated above to specifically defined populations including but not limited to children, pregnant women, and the elderly.

The ideal data source would capture all drug exposures linked longitudinally to each patient regardless of health care delivery setting. Because the outcomes of interest could be either acute or chronic effects, all health provider encounters, i.e., medical records, would be captured whether in the ambulatory, emergency, chronic care, or acute care setting. The ideal data source would have the statistical power to identify rare adverse events in the population of interest. The ideal data base would also be automated with a computerized system available for linking each patient to all relevant medical care data including drugs, biologics, and device exposure data, coded medical outcomes, vital records, cancer registries, and birth defect registries. Additional points would be awarded for linkage of data bases to laboratory values and easy accessibility of records. The location and accessibility of the medical records are very important concerns to FDA. For rare events, the capability of performing case-control studies is valuable.

Submitted applications must include an indepth description of the data base and provide descriptive and quantitative information on diagnoses of drug, biologic, and device exposures in the population. The quality and validity of the data should be described in detail.

III. Reporting Requirements

Program progress reports will be required quarterly. These reports must be submitted within 30 days after the last day of each quarter based on the budget period of the cooperative agreement. Financial Status Reports (SF–269) will be required annually. These reports must be submitted within 90 days after the last day of the budget period of the cooperative agreement. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

Program monitoring of the grantees will be conducted on an ongoing basis and written reports will be prepared by the project officer. The monitoring may be in the form of telephone conversations between the project officer and/or grants management specialist and the principal investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the official grant file and may be available to the grantee upon request consistent with FDA disclosure regulations.

A final program progress report, Financial Status Report (SF–269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Up to two representatives from each cooperative agreement may be required, if requested by the Project Officer, to travel to FDA up to twice a year for no more than 2 days at a time. These meetings will include, but are not limited to, presentations on study design and findings and discussions with the FDA staff involved in the collaborative research. At least one FDA employee may visit the cooperative agreement site at least once a year for collaboration and information exchange.

IV. Mechanism of Support

A. Award Instrument

Support of this program will be in the form of cooperative agreements. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and PHS Grants Policy Statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State, local, and foreign units of government) and any for-profit organization. For profit organizations must exclude fees or profit from their requests for support. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant/cooperative agreement awards.

C. Length of Support

The length of support will depend upon the nature of the study and may extend beyond 1 year, but may not exceed 3 years. The first year will be competitive and the remaining 2 years will be noncompetitive. Future support will be contingent upon: (1) Performance during the preceding year, and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of cooperative agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. $1.4 million is budgeted for this program. It is anticipated that four to six awards will be made for approximately $250,000 to $350,000 total direct and indirect cost. Federal funds for this program are limited. Therefore, should FDA approve two or more applications that propose duplicative or very similar data resources, FDA will support only the source with the best score.

V. Delineation of Substantive Involvement

Program support will be offered through cooperative agreements because FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to the following:

1. FDA staff will participate in the selection and approval of the drug, biologic, and device exposures and medical events to be studied predicated upon public health needs. The drug exposure and medical events to be studied will be jointly agreed upon by the extramural investigator and the FDA staff.

2. FDA scientists will collaborate with awardees in study design and data analysis. Collaboration may include sharing of the analysis data set, interpretation of findings, review of manuscripts, and where appropriate, coauthorship of publications.

VI. Review Procedure and Criteria

A. Review Procedure

All applications submitted must be responsive to the RFA. Those applications found to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant.

Responsive applications will undergo dual peer review. An external review panel of experts in the fields of epidemiology, statistics, and data base management will review and evaluate each application based on its scientific merit. Responsive applications will also be subject to a second level review by the National Advisory Environmental Health Science Council for concurrence with the recommendations made by the first level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

B. Review Criteria

Applications will be reviewed according to the following criteria with each criteria being of equal weight. All applications will be scored with a maximum of 100 points allowable.

1. Size and Characteristics of the Data Base (67 points). The size and characteristics of the data base should include the following:

a. A large population size of individuals for whom drug, device, and biologic exposure and medical outcome data are available. Our goal will be to award data bases with a population of at least 2,000,000 current enrollees. No points will be awarded for data bases with a population size of less than 250,000. Data bases comprised of only one of the special populations for which data are desired (i.e., children, pregnant women, and the elderly) may be awarded full points for smaller population sizes. Investigators who mainly use a case-control design, should be able to provide information on at least 500 cases of a specific disease or disorder and exposure primarily to new molecular entities.

b. Ability to assemble and follow (retrospectively or prospectively) well defined cohorts based on drug, device, and biologic exposure or clinical diagnosis for the purpose of performing case-control or cohort studies.

c. Ability to access and to link to the patient all health provider encounters and drug, biologic, and device exposure information regardless of patient care setting. Full points will be awarded to data bases that capture full drug, device, and biologic exposure and in-patient outcome data from hospital, ambulatory care and long-term care settings.

d. Ability to detect rare adverse drug, biologic, or device events in one or more specific target populations of interest (i.e., children, pregnant women, and the elderly).

e. Ability to study all drug products especially new molecular entities (NME's) approved by FDA since 1991 and newly approved medical devices and biologics.

f. Ability to ascertain patient enrollment and turnover rates as demonstrated by descriptions of the entry and dropout rates and the average length of enrollment. For investigators primarily employing the case control design, ability to attain complete and unbiased ascertainment of cases and controls.

g. A standard set of drug and disease classification systems.

h. Ability to successfully retrieve a high proportion of medical records (sufficient to address the issue presented) in a timely fashion. Documentation of a large proportion of medical records retrieved in a specified time period should be included.

i. Ability to link to cancer registry and to state vital statistics.

j. Ability to identify risk factors for drug-associated outcomes and assess potential confounders.

k. Ability to assess drug interactions.

l. A long calendar time period for which data are available and longitudinally linkable. No points will be awarded to data bases with less than 2 years of history.

m. A short lag time (< 6 months) between patient events (hospitalization, etc.) and availability of clean data.

2. Information Systems and Software Capabilities (12 points). Information systems and software capabilities should include the following:

a. A well defined and acceptable description of computer resources and the extent of automation and software capabilities.

b. Availability of computerized data elements (in patient drugs and diagnoses, outpatient drugs and diagnostic procedures, medical records) or progress towards automation of those data elements not yet available.

c. Existing software to calculate person time at risk and time of event occurrence.

d. Ability to complete routine searches of the data base within a short time period of about 15 working days.

e. Ability to generate customized SAS, ASCII, or other appropriate data sets to facilitate data transfer and research collaboration.

3. Personnel (15 points). Personnel should have the following qualifications:

a. Extensive research experience, training, and competence with a demonstrated ability to draw on consultative expertise in the areas of postmarketing surveillance and epidemiology.

b. Information systems expertise with previous experience in the organization and manipulation of large data sets, and specific experience in data bases under agreement.

c. Investigators should demonstrate a willingness to collaborate with FDA scientists as well as with other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for design of the study, analysis of data sets, and publication of results among FDA and Cooperative Agreement investigators.

4. Budget (3 points). Reasonableness of the proposed budget. Special consideration will be given to methodology which is cost effective (e.g., well-structured medical records and/or record linkage) if otherwise scientifically acceptable.

5. Demonstrated ability to initiate, conduct, complete, and publish epidemiology studies in a timely manner (1 point).

6. Plans for complying with regulations for protection of human subjects as applicable to the proposed study project (1 point).

7. Research experience, training, and competence of the principal investigator and the support staff and the resources available to them. Special consideration will be given to investigators with knowledge and previous experience in postmarketing surveillance and drug epidemiology, but applicants with strong acute and chronic disease epidemiology background are encouraged to apply (1 point).

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of Form 5161 (Rev. 7/92) for applications from State and local governments, with sufficient copies of

the appendix for each application, should be delivered to Robert L. Robins (address above). No supplemental material will be accepted after the closing date. FDA's authority to fund research projects is under section 301 of the PHS Act. FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. Applications submitted under this program must comply with 45 CFR part 46—Protection of Human Subjects where applicable and requirements of the Office of Protection from Research Risks. The outside of the mailing package and item 2 of the application face page should be labeled ''Response to RFA–FDA–CDER–97–1''.

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the March 14, 1997, deadline.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 5/95). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, NIH. This information collection is approved under OMB No. 00925–0001. Applications from State and local governments may be submitted on Form PHS 5161 (Rev. 7/92) or PHS 398 (Rev. 5/95). The face page of the application must reflect the request for applications number RFA–FDA–CDER–97–1. This information collection is approved under OMB control number 0937–0189.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of an application that have been specifically identified by page number, paragraph, etc., by the applicant as containing confidential commercial information or other information that is exempt from public disclosure will not be used or disclosed except for evaluation purposes.

Dated: January 30, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–2870 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0362]

Determination of Regulatory Review Period for Purposes of Patent Extension; DIFFERIN Topical Gel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DIFFERIN Topical Gel and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DIFFERIN Topical Gel (adapalene). DIFFERIN Topical Gel is indicated for the topical treatment of acne vulgaris. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DIFFERIN Topical Gel (U.S. Patent No. Re. 34,440) from Centre International de Recherches Dermatologiques (CIRD), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 24, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DIFFERIN Topical Gel represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DIFFERIN Topical Gel is 2,447 days. Of this time, 1,401 days occurred during the testing phase of the regulatory review period, while 1,046 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 20, 1989. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on September 20, 1989.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and*

Cosmetic Act: July 21, 1993. The applicant claims July 15, 1993, as the date the new drug application (NDA) for DIFFERIN Topical Gel (NDA 20–380) was initially submitted. However, FDA records indicate that NDA 20–380 was submitted on July 21, 1993.

3. *The date the application was approved*: May 31, 1996. FDA has verified the applicant's claim that NDA 20–380 was approved on May 31, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 433 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 7, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 4, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–2871 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–137]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Internal Revenue Service/Social Security Administration/Health Care Financing Administration Data Match 42 CFR 411.20–411.206; *Form No.:* HCFA–R–137; *Use:* Employers who are identified through a match of IRS, SSA, and Medicare records will be contacted concerning group health plan coverage of identified individuals to ensure compliance with Medicare Secondary Payer provisions found at 42 U.S.C. 1395y(b). *Frequency:* Semi-annually *Affected Public:* Individuals or Households, Business or other for profit, Not for profit institutions, Farms, Federal Government and State, Local or Tribal Government; *Number of Respondents:* 596,241; *Total Annual Responses:* 596,241; *Total Annual Hours Requested:* 2,325,449.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 29, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–2764 Filed 2–4–97; 8:45 am]

BILLING CODE 4120–03–P

[HSQ–244–N]

CLIA Program; Clinical Laboratory Improvement Amendments of 1988—Denial of Exemption of Laboratories in the Commonwealth of Puerto Rico

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

ACTION: Notice.

SUMMARY: The Public Health Service Act provides for the exemption of laboratories from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) if the State in which they are located has been determined to have requirements equal to or more stringent than those of CLIA. Under our regulations, HCFA's decision to approve or deny a requested exemption from CLIA requirements is published in the Federal Register. This notice announces that a request from the Commonwealth of Puerto Rico for exemption from CLIA requirements has been denied.

EFFECTIVE DATE: The denial of exemption from CLIA was effective on October 28, 1996.

FOR FURTHER INFORMATION CALL:

Lee Feehely, (410) 786–3401.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act, as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), requires any laboratory that performs tests on human specimens to meet the requirements established by the Department of Health and Human Services. Regulations implementing section 353 of the Public Health Service Act are contained in 42 CFR part 493, Laboratory Requirements. Subject to specified exceptions included in subpart D, laboratories must have a current and valid CLIA certificate to test human specimens. Section 353(p) of the Public Health Service Act provides for the exemption of laboratories from CLIA requirements in a State that is

determined to have requirements that are equal to or more stringent than those of CLIA. The statute does not specifically require the promulgation of criteria for the exemption of laboratories in a State. The authority to determine whether a State qualifies for an exemption has been delegated by the Secretary to the Administrator of HCFA.

Part 493, subpart E, Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program, implements section 353(p) of the Public Health Service Act. Section 493.513 provides that we may exempt from CLIA requirements, for a period not to exceed 6 years, State licensed or approved laboratories in a State if the State meets specified conditions.

When a request for exemption from CLIA is not granted, the State may request a reconsideration. Our policy on reconsiderations is set forth in our regulations in Part 488, subpart D—Reconsideration of Adverse Determinations-Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs. Sections 488.205 and 488.207 provide for the opportunity for an informal hearing and set out the informal hearing procedures. The hearing officer presents his findings within 30 days of the close of the hearing (§ 488.209). Section 488.211 provides that the hearing officer's decision is final unless the Administrator, within 30 days of the hearing officer's decision, chooses to review that decision. The Administrator may accept, reject, or modify the hearing officer's decision. If the Administrator chooses to review the hearing officer's decision, the Administrator's decision becomes the final decision. Section 488.211 provides that we will publish, in the Federal Register, the final reconsideration determination.

On December 5, 1992, the Commonwealth of Puerto Rico, which is considered a State for CLIA purposes, requested exemption from the CLIA requirements. The Health Quality and Standards Bureau, HCFA, notified Puerto Rico on May 10, 1995 that its request was denied. On July 10, 1995, the Commonwealth requested a reconsideration. A reconsideration hearing was held on August 30, 1996. The hearing officer rendered his decision on September 27, 1996, affirming the denial of the request for exemption. The Administrator declined his right to review the hearing officer's decision. Thus, in accordance with § 488.211(a), the hearing officer's decision became the final reconsideration determination on October 28, 1996.

II. Notice of Denial of CLIA Exemption to Laboratories in the Commonwealth of Puerto Rico

Attached as an addendum to this notice is the hearing officer's decision on the Commonwealth of Puerto Rico's request for exemption from CLIA.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: January 27, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum—Reconsideration of the Commonwealth of Puerto Rico's Application for Exemption From CLIA

Hearing Officer's Recommended Decision

I. Background

The Clinical Laboratories Improvement Amendments of 1988 (the ''CLIA'') requires that all laboratories must be certified in order to perform testing on human specimens. (Section 353 Public Health Service Act, 42 U.S.C. 263a). The Health Care Financing Administration (the ''HCFA'') using scientific and technical support, as needed, from the Centers for Disease Control (the ''CDC''), Public Health Service (the ''PHS''), administers the CLIA program for the Department of Health and Human Services. HCFA has promulgated regulations containing the requirements concerning the Medicare, Medicaid and CLIA programs in 42 CFR part 493.

The CLIA statute provides that ''[i]f a State enacts laws relating to matters covered by [CLIA] which provide for requirements equal to or more stringent than the requirements of [CLIA], the Secretary may exempt clinical laboratories in that State from compliance with [CLIA].'' 42 U.S.C. 263a(p)(2). This statutory authority is reflected in HCFA's regulations which provide that HCFA may exempt from CLIA program requirements all State-licensed or approved laboratories in a State [1] if the State meets the requirements of 42 C.F.R. 493.513(a). Section 493.513(a)(1) of the regulations, which mirrors 42 U.S.C. 263a(p)(2), explains that in order to be granted an exemption from CLIA, the State must have in effect laws that provide for requirements equal to or more stringent than condition-level requirements.[2] Section 493.513(a)(1).

On December 5, 1992, the Secretary of Health for the Commonwealth of Puerto Rico submitted an application for exemption from CLIA. On May 10, 1995, the Commonwealth was notified that its application for CLIA exemption was denied.[3] The basis for the denial was a determination by HCFA that several of Puerto Rico's personnel standards did not meet the respective CLIA condition level requirements and that the Commonwealth's laboratory licensure requirements, especially as applied to tests performed by physicians, were less stringent than CLIA requirements.

By letter dated July 10, 1995, and in accordance with § 488.201 of the regulations, the Commonwealth requested a reconsideration of the denial of its application for CLIA exemption. At the same time, Puerto Rico also requested permission to submit a proposal addressing HCFA's concerns and establishing equivalencies with applicable CLIA requirements. The revised proposal was sent by the Commonwealth on July 26, 1995. This proposal addressed Puerto Rico's laboratory environment and outlined proposed changes to regulations establishing educational standards for certain laboratory personnel. On October 24, 1995, the Hearing Officer then appointed by HCFA requested that the Commonwealth submit materials pertinent to its request for exemption and recommended that the Commonwealth submit a complete and current application for exemption.

On December 5, 1995, Puerto Rico submitted revised application materials, including an updated cross-walk of the Puerto Rico equivalents to the CLIA regulations together with complete addenda, to HCFA for review. On May 22, 1996, after having reviewed the revised application materials, HCFA again decided to deny the Commonwealth's application for exemption.[4] The Commonwealth was advised that the application failed to demonstrate the existence of CLIA-level laws and regulations in several key

[1] For purposes of CLIA, the term ''state'' includes each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and a political subdivision of a State where the State, acting pursuant to State law, has expressly delegated powers to the political subdivision sufficient to authorize the political subdivision to act for the State in enforcing requirements equal to or more stringent than CLIA requirements. 42 CFR Section 493.2.

[2] Condition-level requirements are defined as any of the requirements identified as ''conditions'' in subparts G through Q of Part 493. 42 CFR Section 493.3.

[3] See May 10, 1995, letter to Dr. Carmen Feliciano de Melecio, Secretary of Health from Anthony J. Tirone, Director of the Office of Survey and Certification, Health Standards Quality Bureau.

[4] *See* May 22, 1996 letter to Dr. Feliciano from Anthony Tirone, hereinafter referred to as the ''denial'' or ''initial determination.''

areas including, but not limited to, those identified in the May 10, 1995 letter and in the areas of enforcement authority, proficiency testing and quality assurance.[5]

In accordance with 42 CFR § 488.201, *et seq.*, the Commonwealth requested a reconsideration of HCFA's denial of the application for CLIA-exemption. A hearing was scheduled for August 30, 1996 to review each of the grounds for denial identified by HCFA in making its initial determination. In an effort to facilitate a full understanding of the Commonwealth's position on each of those issues, the Commonwealth was asked to submit a Position Paper prior to the scheduled hearing date. The Position Paper was submitted and the hearing took place, as scheduled, on August 30, 1996 at HCFA's Headquarters in Baltimore, Maryland.

II. Issue

Whether the Commonwealth of Puerto Rico has submitted evidence in connection with its application for exemption from CLIA that, in accordance with 42 U.S.C. 263a(p)(2) and 42 CFR 493.513(a)(1), demonstrates that it has in effect laws that provide for requirements equal to or more stringent than condition-level CLIA requirements.

III. Discussion

In reaching its initial determination to deny the Commonwealth's application for exemption, HCFA identified several different grounds for denial in a summary referred to in and attached to the May 22, 1996 denial letter. In the following discussion, for each of the grounds for denial, I review the CLIA requirements, the cited deficiency, and the evidence of equivalency offered by Puerto Rico in its submissions, Position Paper and at the hearing. My finding of fact is provided at the end of each section.

A. Basis and Scope

Upon review of the initial application, HCFA determined that the Commonwealth failed to clarify whether testing performed in certain locations was subject to the Commonwealth's laboratory licensing regulations. Of particular concern was testing in physician's office laboratories, clinics, group practices, seropheresis centers, non-hospital transfusion services, blood and blood products processing centers, temporary testing sites, such as health fairs, and testing performed during patient examinations in a physician's office.

The CLIA regulations set forth the conditions that all laboratories must meet to be certified to perform testing on human specimens. 42 CFR 493.1. A laboratory is defined, in pertinent part, as ''a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.'' 42 CFR 493.2.

HCFA's assessment was that when compared with the CLIA regulations, the Commonwealth's laboratory regulations did not clearly show that all testing sites were regulated. The agency also viewed as problematic the issue of whether physician-operated laboratories were required to be licensed.

In its Position Paper, the Commonwealth explained that the statutory provisions regulating clinical laboratories are contained in Public Law 97 and Regulation 83. (Position Paper, pg. 21). Section 91 of Public Law 97 mandates the issuance of a license by the Secretary of Health prior to establishing and operating clinical analysis laboratories, plasmaphereses centers, seropheresis centers or blood banks. Similarly, Regulation 83, Chapter 2 states that ''(n)o entity, be it a natural or juridical person, may establish or operate a clinical analysis laboratory, an anatomical pathology laboratory, or a Blood Bank, a licensed (sic)[7] issued by the Department of Health is previously obtained.'' Thus, the Commonwealth's position is that any place where clinical analysis is performed must be licensed and is subject to the laboratory regulations. (Position Paper, pg. 23). It is their contention that this includes cases where clinical analysis is performed in temporary testing sites, such as physician's offices and at health fairs. *Id*.

During the proceedings, testimony was offered by witnesses called by the Commonwealth that all testing sites in Puerto Rico were regulated. (Position Paper, pp. 65, 69, 74, and 83). The key inquiry appears not to be who is performing the test but whether a clinical analysis test covered by Regulation 83 is being performed. *Id*. at 69. In cases where a physician elects to perform clinical analysis testing in his or her office, Regulation 83 requires that the physician comply with applicable licensing requirements. *Id*. at 70. In such instances, the physician must secure a special license in accordance with Regulation 83, Chapter 2, Article I, sec. 3(a). *Id*. at 80.

Based upon the foregoing, I believe that the Commonwealth has sustained its burden of demonstrating that all laboratories of the type covered by CLIA, including physician operated laboratories, must be licensed. Regulation 83 encompasses all locations where clinical analysis is performed and explicitly mandates that, as a prerequisite of performing such tests, a license must be obtained. While arguably the Commonwealth's regulations could be amended to explicitly include physician operated laboratories in the list of covered laboratories, the regulations currently are broad enough to include physician operated laboratories. Thus, I disagree with HCFA's initial determination that the Commonwealth's regulations defining the scope of coverage are not as broad as the CLIA regulations and find that the scope is in fact, equivalent.

B. Categories of Test by Complexity

HCFA determined in its initial review of the application that the Commonwealth needed to provide clarification and evidence on how

[5] The Commonwealth has asked, for purposes of rendering a decision on reconsideration, that the Hearing Officer disregard the May 22, 1996 letter. According to counsel for the Commonwealth, ''Puerto Rico finds this May 22 letter highly irregular'' since it was issued approximately a year after the May 1995, notice of denial and it identifies additional reasons underlying HCFA's decision to deny the application for exemption. (Position Paper, pg. 10). However, I note that by letter dated July 26, 1995, the Commonwealth submitted a ''new proposal'' to ''override the objections stated in * * * (the) May 10, 1995 (denial) letter.'' *See* July 26, 1995 letter to Anthony Tirone from Dr. Carmen A. Feliciano de Melecio. In that same letter, the Commonwealth offered to meet with HCFA to discuss the proposed new standards and included ''a copy of the final official documentation of the application for exemption.'' *Id*. at pg. 15. Thus, while I agree that it was unusual for HCFA to send two separate letters representing initial determinations, the record suggests that the second letter illustrates HCFA's attempts to accommodate the interests of the Commonwealth. HCFA could have elected to limit the Commonwealth's recourse to a reconsideration hearing after it sent the May 1995 letter. However, the agency allowed the Commonwealth a chance to buttress its application outside of the reconsideration process. Therefore, for purposes of this reconsideration determination, I will consider in its entirety the May 22, 1996 letter sent by HCFA to the Commonwealth.

[6] ''Clinical Analysis'' is defined broadly as ''any facility, place or location, where any sample obtained from a human being is handled and/or processed for the purpose of it being tested or analyzed by any biological, biophysical, microbiological, serological, immunological, chemical, hematological, immunohematological, cytogenetical or any other test of materials derived from the human body (sic) are performed with the purpose of providing information for the prevention, diagnostic (sic) and treatment of any disease, or deterioration, or for the health evaluation of human beings.'' Reg. 83, Chpt. 1, Art. III, sec. 1.

[7] Should likely read ''unless a license.''

provider-performed microscopy (PPM) procedures and waived tests were regulated. In its application, the Commonwealth indicated that all tests were treated as high complexity tests. However, the application was silent with regards to waived tests and PPM procedures.

HCFA categorizes laboratory tests as waived tests, tests of moderate complexity, including PPM procedures, or tests of high complexity. 42 CFR 493.5. The type of CLIA certificate issued is a function of what type of testing the laboratory performs. 42 CFR 493.5(c); § 493.3. The CLIA regulations at §§ 493.15 and 493.19 explain that waived tests include simple laboratory examinations that impose no reasonable risk to the patient if done properly while PPM procedures are moderately complex tests performed by certain health care practitioners.

In its Position Paper, the Commonwealth explained that regardless of complexity, all clinical analysis testing is regulated in the same way. (Position Paper, p. 24). Both waived tests and PPM procedures are included in the definition of clinical analysis testing and are subject to the requirements of Regulation 83. *Id*. In other words, rather than issuing different certificates for high-complexity, waived tests or PPM procedures, the Commonwealth regulates all clinical analysis tests in the same way. Similarly, during the hearing, witnesses for the Commonwealth reiterated that all tests in Puerto Rico were treated as high complexity and, thus, were subject to the standards applicable to high complexity tests. (Position Paper, p. 62, 81).

Based upon my review of the Commonwealth's regulations and an evaluation of the testimony given at the hearing, I reverse HCFA's finding with regard to waived tests and PPM procedures. I find that the Commonwealth's use of a single criterion for all tests, which is comparable to the CLIA requirement for high complexity tests, should be recognized as more stringent than the CLIA regulations.

C. General Requirements for Exemption

1. Retrospective Review of Cytology Smears. Section 493.513(a)(4) of the CLIA regulations states that a State seeking exemption from CLIA must ''(demonstrate) that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements.'' One of the grounds for HCFA's initial denial of the application for exemption was that the Commonwealth failed to demonstrate an administrative structure and adequate resources to arrange for a retrospective review of cytology smears by appropriately trained individuals if necessary to investigate or enforce cytology requirements. The application and materials submitted together with the application were silent with regard to this issue.

In its Position Paper, the Commonwealth indicated that it would develop a cytology enforcement program to support the Laboratory Inspection Division. (Position Paper, p. 25) However, there was no indication in either the Position Paper or through testimony that there are current procedures for performing retrospective reviews of cytology smears or for the investigation and enforcement of cytology requirements.

Thus, I concur with HCFA's initial determination and find that the Commonwealth has not satisfied the requirements of § 493.513(a)(4) insofar as they concern retrospective reviews of cytology smears.

2. Enforcement Authority, Administrative Structure, and Resources. Section 493.513(c)(3) of the CLIA regulations states that an application for exemption must include ''(a) description of the State's enforcement authority, administrative structure and resources to enforce the State standards.'' When reviewing the application submitted by the Commonwealth, HCFA determined that Puerto Rico failed to submit adequate information necessary to evaluate its enforcement authority, administrative structure or resources for enforcement.

In its Position Paper, the Commonwealth asserted that the organizational charts found in addenda 18 and 19 of the application for exemption clearly set forth the information required by § 493.513(c)(3). (Position Paper, p. 25). Addendum 18 simply is an organizational chart for the Office of the Assistant Secretariat for Regulation and Accreditation of Health Facilities for the Department of Health. Addendum 19 merely represents the Fiscal Year 1994–1995 budget for the Laboratory Division for the Department of Health.

During the hearing, testimony was offered with regard to the enforcement authority that could be exercised by the Department of Health. Counsel for the Commonwealth explained that the ''Uniform Administrative Procedures Act'' (the ''UAPA'') empowered the Secretary to take immediate remedial action, *ex parte*, against laboratories where there is a (sic) indication of immediate and serious threats to public health and safety. (Position Paper, p. 91) According to the Commonwealth, section 2167 of the UAPA allows an agency to use emergency adjudicatory procedures in any situation in which there is imminent danger to the public health, safety and welfare. Section 2201 of the UAPA provides that any violations of laws administered by agencies shall be penalized by administrative fines not to exceed $5000 for each violation. With the exception of discussing the UAPA, which is a statute of general application, little additional information on the Commonwealth's enforcement authorities was provided at the hearing.

By contrast, subpart R of part 493 sets forth detailed requirements relating to the use of intermediate sanctions, and on the suspension, limitation or revocation of laboratory certifications. These requirements direct the correction of deficiencies within a certain time period, provide for alternative sanctions and set forth the penalties that may be assessed in the event a laboratory operates without a license.

Neither the application nor Position Paper submitted by the Commonwealth provided sufficient information to assess the scope and breadth of the Commonwealth's enforcement authority as compared to subpart R of part 493. Accordingly, I must concur with HCFA's initial determination and find that the Commonwealth failed to produce adequate evidence concerning the enforcement authority, administrative structure and resources available in its laboratory program to demonstrate that its requirements are equal to or more stringent than the CLIA requirements.

3. Cases Involving Immediate and Serious Jeopardy. Section 493.513(c)(5) of the regulations directs a State applying for exemption from the CLIA program to provide information concerning its procedures for responding to and investigating complaints against licensed or approved laboratories. In its initial determination, HCFA found that the Commonwealth did not explain how it would investigate complaints indicating possible immediate and serious jeopardy to public health.

In its Position Paper, the Commonwealth referenced Regulation 83, Chapter 10, Art. VI, Sec. 10 as the section identifying procedures for responding to and investigating such complaints. Also referenced was a Letter of Intent dated February 24, 1995 which represents that if an onsite investigation or inspection is required, appropriate personnel will visit the facility within 30 days of receiving the complaint. (Position Paper, p. 25).

I have considered the information submitted by the Commonwealth and reject the agency's determination in this regard. I note that § 493.513(c)(5) only requires a State to submit information on the State's procedures for responding to and investigating complaints against laboratories. This section of the regulation does not direct, in any way, the *manner* in which the State must respond to or investigate any such complaints.[8] In order to satisfy § 493.513(c)(5), the State need only include with its application for exemption this required information. Since the Commonwealth included a copy of Regulation 83 in its application, which at Chapter 10, Art. VI, Sec. 10 outlines its investigation and complaint procedures, I find that the plain requirements of 42 CFR 493.513(c)(5) were satisfied.

4. Documentation Requirement. Section 493.513(d) of the regulations directs that States applying for exemption submit supporting documentation on the ability to furnish HCFA with electronic data in ACSII compatible code and a statement acknowledging that it will notify HCFA through electronic data transmission of certain licensure and specialty change events. In the initial determination, HCFA found that Puerto Rico failed to submit documentation demonstrating the intent and ability to provide HCFA with this data.

In a Letter of Intent dated February 24, 1995, the Commonwealth assured HCFA that it would notify HCFA ''by electronic transmission of any laboratory having its license revoked, limited, withdrawn or suspended and/or of all enforcement actions of sanctions imposed and/or any changes in licensing or inspection requirement and/or any changes in specialties and/or subspecialities of laboratories'' within 30 days after such event. The Letter indicated that the Commonwealth would modify the ASPEN system, currently utilized by the Medicaid program, to satisfy this requirement. In its Position Paper, the Commonwealth assured HCFA that it is currently mechanizing operations and, once the process is completed, would be able to provide the necessary information via electronic transmission. (Position Paper, pg. 25–26).

The regulations at § 493.513(d) specifically require that at the time of application the State must demonstrate its ability to provide HCFA with electronic data in ASCII compatible code. However, the Commonwealth has not been able to document its current ability to satisfy this requirement. Hence, I concur with the initial determination of HCFA on this issue and find that the Commonwealth has failed to demonstrate an ability to furnish HCFA with electronic data in the appropriate code format.

D. Enrollment and Testing of Samples

Section 493.801 of the regulations requires that each laboratory must enroll in a proficiency testing program that meets the criteria of subpart I of part 493 and is approved by HHS. In its initial determination, HCFA found that the Commonwealth's proficiency program was not HHS-approved for direct antigen testing in bacteriology and that the regulations did not require all licensed laboratories to seek enrollment with another HHS-approved program if the Commonwealth lost its Federal approval.

The Commonwealth points out that Regulation 83, Chapter 6, Art. I, sec. 1(a) provides that each institution which processes clinical analysis tests must participate satisfactorily in a proficiency program established by the Department of Health. (Position Paper, p. 26). The regulation further provides that those programs must be accredited by HHS. *Id.* As explained by the Commonwealth in its Position Paper, in cases involving direct antigen testing, the laboratory must participate in an HHS-approved proficiency program. (Position Paper, p. 26)

Based upon the language of the regulations and the assurances provided in the Position Paper, I reverse the initial determination of HCFA on this matter and find that the Commonwealth has in effect laws equal to or more stringent than 42 CFR 493.801.

E. Referral of Specimens

Section 493.1111 of the CLIA regulations at subsection (b) states that referring laboratories may permit each testing laboratory to send the test result directly to the authorized person who initially requested the test. In its application, the Commonwealth cited as an equivalent regulation its Regulation 83, Chpt. 7, Art. IV, sec. 2(1), which states that the referring laboratory ''will deliver the original report sent by the testing laboratory directly to the physician or to the patient.''

In its initial determination, HCFA found that the Commonwealth's regulation raised concerns because it appeared to allow the testing report to be given to either the patient or to the physician, without assuring that a copy of the test results would be sent to the individual who initially requested the test.

The Position Paper submitted by the Commonwealth provided additional information regarding reporting test results. (Position Paper, pp. 26–27) First, other subsections of section 2 of Regulation 83, Art. IV, more fully explain how referred laboratory tests are handled and, at subsection (3), states that ''(t)he referring institution may permit each testing laboratory to sent (sic) the test result directly to the physician who initially requested the test.'' *Id.* Secondly, the Commonwealth cites section 1(a) of the same Article, which provides that ''(a)ll laboratory report (sic) must be sent promptly to the authorized physician who requested said test.'' (Position Paper, p. 27) Testimony also was given to clarify that all laboratory reports are sent to the physician ordering the test. (Position Paper, p. 109)

Thus, based upon the Commonwealth's current regulations, I reject the initial determination of HCFA and find that the Commonwealth has in effect laws which are equal to those set forth at 42 CFR 493.1111.

F. Quality Control Issues

1. Control Procedures. Section 493.1218(f)(1) of the regulations directs each laboratory, as part of its routine control procedures, to check each batch or shipment of reagents, discs, stains, antisera and identification systems when prepared or opened for positive and negative reactivity, as well as graded reactivity.

In both its application and its Position Paper, the Commonwealth cites to its comparable regulation, Regulation 83, Chapter 8, Article IV, sec. 1(a)(6). (Position Paper, p. 28). That section provides that each laboratory will ''(v)erify each lot and delivery of reagents, media (if applicable), disks, stains, antiserums, and identification systems when they are prepared or opened for positive or negative reactions.'' However, in its initial determination, HCFA noted that the Commonwealth's requirements fell short of the requirements of § 493.1218(f)(1) since they do not require laboratories to check for graded reactivity, if applicable.

Similarly, § 493.1218(f)(3) requires that laboratories check fluorescent stains for positive and negative

[8] While § 493.513(c)(5) does not dictate the manner of investigation and response to complaints that each State must show in an application for exemption, § 493.513(a)(1) requires a demonstration of the existence of laws at least comparable with CLIA condition-level requirements. Thus, a review of the State's process for investigating and responding to complaints must be done when considering how the State's enforcement laws compare with those set forth in subpart R of Part 493. See discussion at I. Subpart R—Enforcement, section 1, (pp. 32–34) of this Decision.

reactivity each time of use, unless otherwise specified in subpart K of part 493. The Commonwealth's regulations on this aspect of reagent and supply checks requires laboratories to check fluorescent stains for reactivity each time of use, unless otherwise indicated. Reg. 83, Chpt. VIII, Art. IV, sec. 1(a)(8).

In its Position Paper, the Commonwealth acknowledged that the current regulations do not require laboratories to check for graded reactivity or to check fluorescent stains for positive and negative reactivity each time of use. (Position Paper, p. 28) In order to resolve the lack of regulations equivalent to paragraphs (1) and (3) of § 493.1218(f), the Commonwealth has offered to amend its regulations. *Id.*

Notwithstanding the offer to amend the deficient regulations, since they currently do not include such requirements, I must concur with the initial determination made by HCFA. I find that the Commonwealth's regulations on control procedures are not equivalent to the corresponding CLIA requirements set forth at §§ 493.1218(f)(1) and 493.1218(f)(3).

2. Syphilis Serology. In order to meet the quality control requirements for syphilis serology, the current CLIA regulations at section 493.1239 state that a laboratory must comply with applicable requirements including, as relevant here, employing positive and negative controls that evaluate all phases of the test system to ensure reactivity and uniform dosages. In the initial determination, the Commonwealth was advised that it needed to show evidence to assure HCFA that its regulations met this specific requirement. However, neither in its Position Paper, which set out in great detail SARAFS Quality Control Specific Requirements, nor in testimony offered at the hearing, was the Commonwealth able to identify a specific regulatory provision that indicated that it required laboratories to use positive and negative controls *in all phases* of the syphilis serology. (Position Paper, pp. 28–30; Testimony, pp. 106–107).

Hence, based upon the application, Position Paper and the testimony offered at the hearing, I must concur with the initial determination made by HCFA. I find that the Commonwealth has failed to demonstrate that it has regulations in place, comparable to 42 CFR 493.1239, which require laboratories to employ positive and negative controls that evaluate all phases of syphilis testing.

3. Urinalysis Testing. In order to meet the quality control requirements for urinalysis, § 493.1251 of the regulations states that the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221. In its application, the Commonwealth indicated that it requires facilities to comply with all applicable general quality control and routine chemistry requirements as well as additional requirements for urinalysis. However, HCFA's initial review suggested that these requirements appeared to conflict.

The Position Paper submitted by the Commonwealth clarified the apparent inconsistency and explained that institutions must comply with general quality controls and routine chemistry requirements. (Position Paper, p. 30). In addition, certain positive controls and confirmatory tests must be run for urinalysis. *Id.* I believe that this explanation clears up the inconsistency noted by HCFA and, thus, I find that the Commonwealth has demonstrated the existence of regulatory requirements equal to those set forth at 42 CFR 493.1251.

G. Personnel Qualifications

At the outset, I must note that the issues relating to the personnel qualifications have been the most contentious. The Commonwealth, HCFA and CDC have spent a significant amount of time discussing the educational and training levels for key laboratory personnel. The Commonwealth has suggested in its Position Paper that Puerto Rico has distinct sociological and economic limitations that should militate in favor of establishing different educational qualifications for laboratory personnel. (Position Paper, pp. 1–9) However, as I counseled the Commonwealth in the hearing, the discretion granted to the Hearing Officer in CLIA reconsideration hearings is limited. *See* 42 CFR 488.201, *et seq.* Accordingly, my decision must be based on whether the Commonwealth can cite existing regulations or laws that represent criteria or standards equal to or more stringent than those required by CLIA. Sociopolitical, economic nor cultural differences may not be considered. It is also inappropriate for me to consider proposed laws that would amend the Commonwealth's laws.

The Commonwealth also argues that applying the CLIA standards strictly, especially as regards personnel qualifications, does not allow a consideration of whether the Commonwealth's laws demonstrate ''equivalency'' with CLIA. (Position Paper, p. 9) As used in the CLIA regulations, ''equivalency'' means that:

> An accreditation organization's or a State laboratory program's requirements, taken as a whole, are equal to or more stringent than the CLIA requirements established by HCFA, taken as a whole. It is acceptable for (a) * * * State laboratory program's requirements to be organized differently or otherwise to vary from the CLIA requirements, as long as (1) all of the requirements taken as a whole would provide at least the same protection as the CLIA requirements taken as a whole; and (2) a finding of noncompliance with respect to CLIA requirements taken as a whole would be matched by a finding of noncompliance with the * * * State requirements as a whole.

Thus, the term ''equivalency'' as defined in § 493.2 of the regulations requires a consideration of the *entirety* of the State's program and a consideration of whether the same protections provided by CLIA would be provided under that State's program. Accordingly, it would be inappropriate to use ''equivalency'' as a tool to measure whether or not a *particular* standard or requirement is present in a State's program when compared with CLIA. Instead, it is necessary to evaluate the totality of the State's program consonant with the scope and intent of CLIA.

That said, I will now address the specific personnel requirements at issue in the Commonwealth's application.

1. Laboratory Director. The regulations at § 493.1443 set forth the qualifications for laboratory directors. The laboratory director must be qualified to manage and direct the laboratory personnel, to perform certain tests and be eligible to be an operator of a laboratory within the requirements of subpart R. Subsection (b) of § 493.1443 specifies the educational criteria necessary for laboratory directors and states, in pertinent part, that the laboratory director must (1) be a licensed doctor of medicine or osteopathy and certified in anatomic or clinical pathology, or both; (2) be a licensed doctor of medicine, osteopathy, or podiatric medicine and have either at least one year of laboratory training during medical residency or two years experience directing or supervising high complexity testing; or, (3) hold an earned doctoral degree in chemical, physical, biological or clinical laboratory science and be certified by specified licensing organizations. Section 493.1443. Provision is made in the regulations for ''grandfathering'' in laboratory directors who qualified and served as such on or before February 28, 1992.

The Commonwealth's current regulations do not establish educational criteria for laboratory directors that are at all comparable to those set forth in § 493.1443. HCFA was advised in

correspondence, and testimony was offered in the hearing, that the Commonwealth would be willing to amend its existing regulations to establish new qualifications equivalent to CLIA. However, as of the date of the hearing, such action has not been taken by the Commonwealth.

Consequently, I must concur with the initial determination reached by HCFA. I find that the personnel requirements for laboratory directors in the Commonwealth of Puerto Rico are not equal to or more stringent than those set forth in section § 493.1443.

2. Technical Supervisor. Section 493.1447 mandates that laboratories performing high complexity testing must have a technical supervisor who meets the qualification requirements of § 493.1449 and who provides technical supervision in accordance with § 493.1451. Section 493.1449 requires that laboratories employ one or more persons qualified by education and either training or experience to provide technical supervision for each of specialties and subspecialties of service in which the laboratory performs high complexity tests or procedures. In § 493.1449 the education and experience qualifications differ based upon the types of procedures and tests that the laboratory performs.

The Commonwealth was notified by HCFA in May 1995, that the standards set forth in its existing regulations for laboratory supervisors, when compared with those required by CLIA for the various types of laboratory testing, were insufficient. More specifically, HCFA explained that

> For most specialties, CLIA requires individuals with a bachelor's degree to have 4 years training/experience in the specialty with, if applicable, a minimum of 6 months experience in a subspecialty. Although Puerto Rico requires an individual with a bachelor's degree to have 5 years experience, two of which should be supervisory, there is no requirement for the experience to be in the specialty/subspecialty. In addition, CLIA requires a technical supervisor of histocompatibility or clinical cytogenetics to have at minimum a doctoral degree and 4 years of specific training or experience, or both. PR [sic] allows an individual with a bachelor's degree in medical technology and specialized training * * * to serve as a technical supervisor in these specialties.

The Commonwealth never disputed HCFA's characterization of the apparent differences in qualifications for technical supervisors. Instead, the Commonwealth asserted that ''the nature of the practice of laboratory testing in Puerto Rico is very different from that on the mainland'' [9] and offered to change its regulations on technical supervisor qualifications ''in order to upgrade this particular personnel standard to the C.L.I.A. standard'' contingent of the approval of Puerto Rico's request for exemption. (Position Paper, p. 16 and Feliciano letter).

However, as discussed at the outset, the requirements for exemption from CLIA are clear. In order to be granted an exemption, the State must demonstrate the current existence of laws that represent standards equal to or more stringent than CLIA condition level requirements. An offer to change existing regulations at sometime in the future to meet the ''CLIA standard'' is insufficient.

Accordingly, I must concur with the initial determination reached by HCFA with regard to the technical supervisors qualifications. I find that the qualifications for technical supervisor represent a condition-level requirement and that the Commonwealth has not produced existing regulations demonstrating the existence of standards equal to or more stringent than those required by 493.1447.

3. Clinical Consultants. Section 493.1453 requires that all laboratories performing high complexity testing must have a clinical consultant meeting the requirements of § 493.1455 and who provides clinical consultation in accordance with § 493.1457.

In its application, the Commonwealth stated that, with the exception of hospital laboratories, it did not require laboratories to have a clinical consultant. On this basis, HCFA made an initial determination that the Commonwealth did not demonstrate that it had laws equal to or more stringent than the CLIA regulations regarding clinical consultants.

In the Feliciano letter and in the Position Paper, the Commonwealth argues that clinical consultants have no role in Puerto Rico since the clinical laboratories use the physician who orders the test as the clinical consultant. (Position Paper, p. 19; Feliciano letter, p. 7). The Commonwealth believes that requiring independent clinical consultants interferes with the physician-patient relationship and could cause ethical conflicts. *Id.* However, notwithstanding these concerns, the Commonwealth has offered to amend its regulations to include a requirement relating to clinical consultants *if* the request for exemption is granted.

As discussed above, a future offer to amend the regulations to meet or exceed CLIA requirements may not be considered in a request for CLIA exemption. Thus, on the issue of clinical consultants, I concur with the determination reached by HCFA. I find that the Commonwealth has failed to demonstrate that it has in effect regulations regarding clinical consultants that are equal to or more stringent than those required by § 493.1453.

4. General Supervisor—Cytology. Section 493.1467 sets as a condition-level standard for the subspecialty of cytology, that the laboratory must have a general supervisor who meets the qualification requirements of section 493.1469 and who provides supervision in accordance with section 493.1471. In reviewing the Commonwealth's submission, HCFA noted that the application failed to address certain requirements for cytology general supervisors, including the requirement that the individual have at least three years of full-time experience as a cytotechnologist within the preceding ten years.

In its Position Paper, the Commonwealth concedes that its regulations at Regulation 83, Chpt. 5, Art. IV, Sec. 1(a)(5) do not mandate that cytology general supervisors have the same number of years of experience as a cytotechnologists. (Position Paper, pg. 31). To resolve this deficiency, the Commonwealth offers to amend their regulations to correct this ''oversight.'' *Id.*

As stated, a future offer to amend regulations to meet or exceed CLIA standards can not be considered when evaluating a request for exemption. The Commonwealth acknowledges that its current regulations establishing the qualifications for cytology general supervisors are not equal to the CLIA regulations. Thus, I concur with the initial determination reached by HCFA and find that the Commonwealth has failed to document the existence of regulations equal to or more stringent than those set forth at § 493.1467.

5. Cytotechnologists. Section 493.1483(b)(4) of the CLIA regulations requires that cytotechnologists seeking the benefit of the ''grandfathering'' provisions must have completed two years of full-time supervised experience in cytotechnology before January 1, 1969. Section 493.1483(b)(5), in turn, allows an individual to be ''grandfathered'' in if, on or before September 1, 1994, they had two years of full-time experience within the preceding five years under the supervision of a physician and on or

[9] July 26, 1995 Letter from Dr. Carmen A. Feliciano de Melecio to Anthony J. Tirone.

before September 1, 1995, either have graduated from an accredited cytotechnology school or become certified in cytotechnology.

HCFA informed the Commonwealth as one of the grounds for denial that their personnel qualifications for cytotechnologists wanting to be ''grandfathered'' into the program were less stringent than these CLIA requirements. Specifically, HCFA noted that the regulations cited by the Commonwealth did not require an additional two years of full-time supervised experience in cytology before January 1, 1969. The Commonwealth's regulations also did not require an individual to have graduated from cytotechnology school or have certification in addition to possessing the requisite number of years of full-time experience.

In responding to these issues in its Position Paper, the Commonwealth did not dispute the existence of a difference in qualifications. The Commonwealth avers that the applicable provisions in Regulation 83, Chpt. 5, Art. IV, sec. 1(a)(5) contains an error, causing one to read these qualifications in the alternative rather than as cumulative, that will be corrected at some time in the future. (Position Paper, p. 31).

However, to the extent that the language of the current regulatory provision is lacking when compared to §§ 493.1483(b)(4) and (b)(5), I concur with the determination reached by HCFA. I find that the Commonwealth has failed to demonstrate the existence of regulations setting forth cytotechnologist qualifications equal to or more stringent than those required by §§ 493.1483(b)(4) and (b)(5).

6. Testing Personnel. § 493.1487 requires that laboratories performing high complexity testing have a sufficient number of individuals meeting the qualification requirements of § 493.1489 to handle the volume and complexity of testing performed. The qualification standards set forth at section 493.1489 apply to all individuals performing such high complexity testing. In its initial determination, HCFA stated that the Commonwealth did not provide assurances that individuals given special licenses, such as hemodialysis technicians, nursing personnel and emergency medical technicians, would have to meet these CLIA level standards. The Commonwealth has stated that all testing performed in the Commonwealth is treated as high complexity testing. Thus, even individuals granted special licenses by the Commonwealth would need to possess qualifications equal to or more stringent than those set forth at § 493.1489.

The Commonwealth cites Regulation 83, Chapter 2, Section 2 as the currently applicable regulation governing the qualifications of individuals accorded special licenses. That regulation allows a laboratory to undertake responsibilities for training personnel working under a special license and allows the laboratory to certify proficiency through a written and practical tests. (Position Paper, p. 32). However, there is no indication that these individuals are required to complete any accredited laboratory training program or that they must attain any particular educational level.

By contrast, § 493.1489 of the CLIA regulations sets forth in detail the licensing, accreditation and educational requirements for personnel who perform high complexity testing. Nothing in the documentation provided by the Commonwealth represents similar regulatory requirements.

The Commonwealth states in its Position Paper that ''the personnel authorized under special license to perform certain testing shall either comply with Puerto Rico's stricter testing personnel requirements or at a minimum, comply with the less stringent C.L.I.A. requirements.'' (Position Paper, pp. 31–31.) However, as with other personnel qualification requirements, the Commonwealth's proposed manner of assuring the application of such standards is by taking regulatory action in the future.

Thus, I agree with the determination made by HCFA regarding the qualifications for testing personnel. I find that the Commonwealth has not produced evidence of existing regulations that are equal to or more stringent than the CLIA regulations on testing personnel qualifications set forth at § 493.1489.

H. Comparison of Test Results

Section 493.1709 of the regulations provides that if a laboratory performs tests that are not included in a proficiency testing program, the laboratory must have a system for verifying the accuracy of its test results at least twice a year. Upon reviewing the Commonwealth's application, HCFA determined that it failed to demonstrate the existence of an equivalent regulation.

In its Position Paper, the Commonwealth draws our attention to the text of Regulation 83, Art. XI, Chpt. 9, sec. 5(b). (Position Paper, p. 34.) That section, which is entitled ''Evaluation of the Comparison of the Test Results,'' states in pertinent part that ''(t)he Institution must develop mechanisms to verify the accuracy and reliability of the processed tests through different methods at least twice a year.''

However, the Commonwealth acknowledges, and we must note, that this regulation does not specifically require that laboratories maintain the accuracy of a testing procedure at least two times a year for tests for which proficiency testing is not available. In order to ensure that its regulations correspond more closely with § 493.1709, the Commonwealth has offered to amend its regulations accordingly.

This change, necessary to ensure that the Commonwealth has in effect a law equal to or more stringent than § 493.1709, has not yet been made. Hence, I concur with the initial determination of HCFA and find that the Commonwealth has not satisfied the requirements of § 493.513(a) with regard to the comparison of test results.

I. Subpart R—Enforcement

1. Relationship of Proprietor to Owner/Operator. When apprising the Commonwealth of its initial determination, HCFA generally noted that ''(t)he relationship of the proprietor to the owner/operator is unclear. This is important because, under CLIA, certain consequences to the owner-operator of a laboratory occur when the laboratory loses its certificate.'' No particular section of the CLIA regulations was cited and no additional information on the ''consequences'' at issue was provided in the notice of denial. Indeed, other than the above-cited two sentences, there is no indication that the Commonwealth was advised of the specific basis for HCFA's problems with the manner in which the Commonwealth defined the duties of the proprietor/owner.

Section 493.1840(a)(8) allows HCFA to initiate adverse actions to suspend, limit or revoke any CLIA certificate if the laboratory's owner or operator, within the preceding two year period, owned or operated a laboratory that had its CLIA certificate revoked. An ''owner'' is defined at § 493.2 as ''any person who owns any interest in a laboratory except for an interest in a laboratory whose stock and/or securities are publicly traded.'' Section 493.2 defines an ''operator'' as the ''individual or group of individuals who oversee all facets of the operation of a laboratory and who bear primary responsibility for the safety and reliability of the results of all specimen testing performed in that laboratory.''

By comparison, the Commonwealth uses the term ''proprietor'' or ''owner'' to mean the person to whom a license is issued for the operation of a

laboratory. Reg. 83, Art. III, (51). The ''supervisor'' of the laboratory is identified as the ''[p]erson in charge of ensuring that the operation and/or administrative procedures are performed in compliance with the established standards of the institution.'' *Id.* at (58). The laboratory ''director'', in turn, is the ''[p]erson in charge of a facility in which any type of clinical analysis, pathological study and/or Blood Bank's service is provided.'' *Id.* at (15).

While there apparently is incongruence between the terms used in the CLIA regulations and the Commonwealth's regulations, the initial determination did not explain the basis for HCFA's concerns in anything but the vaguest form. Perhaps because of this failure to specify the nature of the problem insofar as concerns ''proprietors,'' ''owners,'' and ''operators,'' the Commonwealth did not address this issue in its Position Paper.

It is also noteworthy that HCFA did not actively solicit additional guidance on how the Commonwealth allocated duties between proprietors, owners and operators during the hearing.

Hence, because the Commonwealth was not fully apprised of the nature of HCFA's concerns with regard to the issue of the duties of proprietors, owners and operators, I have elected to disregard this issue in reaching a decision in this reconsideration.

2. Ensuring Timely Correction of Deficiencies. The Commonwealth was informed by HCFA that one of the grounds for the initial determination to deny the request for exemption from CLIA was that the application failed to explain fully how the Commonwealth enforced the timely correction of deficiencies. More specifically, the Commonwealth was advised:

> (T)he ability to take enforcement action in cases of immediate and serious jeopardy before the laboratory receives a hearing must be demonstrated. The Commonwealth must provide information concerning the type of sanction imposed, time frames for correction, and the actions taken when deficiencies are not corrected for * * * immediate and serious threat to public health and safety; condition level deficiencies, and deficiencies below the condition level.[10]

Thus, HCFA's evaluation of the application for exemption indicated a dearth of basic information necessary to establish the existence of adequate enforcement measures.

In its Position Paper, the Commonwealth overlooks an opportunity to educate us regarding this important aspect of the basis for denial and instead merely references sundry regulations and laws, without meaningful explanation on how the laws and regulations respond to the concerns identified in the initial denial. (Position Paper, p. 34) However, testimony was given during the Hearing that may help explain how the Commonwealth knits together these various laws to fashion enforcement proceedings. We will use this testimony to attempt to respond to the particular concerns identified by HCFA in its initial determination.

As stated, HCFA generally noted that the Commonwealth needed to demonstrate the ability to take prehearing enforcement action in cases of immediate and serious jeopardy. To respond to this deficiency, the Commonwealth refers us to Regulation 83, Chapter 10, Art. VI, sec. 10, which explains the procedures the Department may use in cases where there is an existing situation which is imminently dangerous to the health, safety and well being of the public. While this regulation is imprecise, it does demonstrate an ability to take enforcement action in such cases, and when read together with other parts of Regulation 83, such as Chapter 2 and Chapter 4, would seem sufficient to respond to the first concern expressed by HCFA.

Testimony offered at the hearing also pointed to the UAPA as an important element of the Commonwealth's enforcement authority. Section 2167 of the UAPA allows an agency to take immediate action in cases involving threats to the public health. Witnesses for the Commonwealth explained that these proceedings are *ex parte* and an order addressing the threat may be issued by the Secretary of the Department of Health after receipt of a complaint. (Testimony, pp. 90–91). If a laboratory ignores the Secretary's order, the Department of Law may petition the court for an injunction directing the laboratory to close. (Testimony, p. 91).

We note that the UAPA and the relevant provisions of Regulation 83 were cited in the Crosswalk submitted by the Commonwealth together with its application. However, it is also apparent that the testimony offered at the Hearing helped explain how these various laws should be read together. Based upon the information I have reviewed, I must partially reverse the determination of HCFA insofar as concerns this aspect of the initial determination. I find that the Commonwealth has produced documentation demonstrating the ability to take prehearing enforcement actions in cases of immediate and serious jeopardy.

HCFA also found lacking the Commonwealth's submission of documentation concerning sanctions, time frames for corrections and actions taken when deficiencies are not corrected for all levels of deficiencies. Again, because the Commonwealth relies upon several regulations to address enforcement and did not prepare a Crosswalk that corresponded exactly to the CLIA regulations, appraising the sufficiency of the Commonwealth's laws has been difficult. However, we believe that a very close reading of the documentation submitted with the initial application, including sections not explicitly identified by the Commonwealth, provides some of the information needed by HCFA.

Regulation 83, Chpt. 2, Art. VII sets forth the principal sanctions: suspension, revocation or limitation of tests. Puerto Rico also has alternative sanctions such as plans of correction, explained at Regulation 83, Chpt. 4, Art. III, sec. 1(f), and civil monetary penalties, set forth at section 2201 of the UAPA and Regulation 83, Chpt. 2, Art. VIII. A civil suit, seeking immediate closing of a laboratory, may be commenced in cases of immediate jeopardy and criminal prosecution may be sought in cases involving intentional violations. Reg. 83, Chpt. 2, Arts. IX and X. Thus, with the exception of State onsite monitoring, the Commonwealth has in effect laws that correspond generally to the CLIA regulations at section 493.1806.

However, although these laws exist, they nevertheless fail to address certain key elements and are, in some instances, less stringent than the CLIA regulations. For example, the regulations do not address the amount of time a laboratory is given to make corrections. Although Regulation 83, Chpt. 4, Art. III, Section 1(f) explains that deficiency reports are issued ten days after an inspection discloses deficiencies and indicates that correction plans must be submitted by the laboratories, the regulations do not specify when the laboratory must complete any noted corrections. Neither do the regulations make clear that the Commonwealth may send someone to visit the laboratory at any time to evaluate progress in correcting noted deficiencies. *See* § 493.1820(a).

Similarly, while the Commonwealth has in effect laws that allow for the assessment of civil monetary penalties for certain violations, the amounts are markedly less than those authorized under the CLIA regulations. As stated, section 2201 of the UAPA allows the imposition of an administrative fine of up to $5,000 for each violation of the

[10] See May 22, 1996 Denial Letter.

agency's regulations and has been cited by the Commonwealth as the key penalty provision for cases involving immediate jeopardy. However, this must be compared with 42 CFR 493.1834(d)(2) which allows HCFA to impose a penalty amount from $3,050 to $10,000 per day of noncompliance or per violation for condition level deficiencies that represent immediate jeopardy.

Lastly, with the exception of information provided concerning cases of immediate jeopardy, the Commonwealth cannot be said to have submitted comprehensible documentation of what actions are taken when less severe deficiencies are not corrected.

In summary, while I disagree with HCFA's initial determination that the Commonwealth did not demonstrate an ability to take enforcement action in cases of immediate and serious jeopardy, I concur with their assessment that the Commonwealth did not adequately explain certain key aspects of their enforcement proceedings. I find that the Commonwealth has not demonstrated the existence of regulations to ensure the timely investigation of and correction of deficiencies. I also find that the amount of civil monetary penalties that the Commonwealth may assess in cases of immediate and serious jeopardy is insufficient when compared to the CLIA regulations. For these reasons, I find that the Commonwealth has failed to document the existence of regulations equal to or more stringent than § 493.1820 of the CLIA regulations.

3. Laboratory Registry. Section 493.1850 of the regulations requires HCFA to make available once a year specific information that is useful in evaluating the performance of laboratories. The regulation explicitly mandates that this information include a list of laboratories convicted under laws relating to fraud and abuse, false billing, or kickbacks. In its initial determination, HCFA found that the Commonwealth did not evidence the existence of a regulation or law that would require it to make available to physicians and the public, via HCFA, a list of laboratories convicted of fraud and abuse, false billing, or kickbacks, under Puerto Rican law.[11]

The Commonwealth in its Position Paper indicates that it does not have any information about any laboratory convicted under Puerto Rican laws sanctioning fraud and abuse, false billing or kickbacks. (Position Paper, p. 34). As concerns its future duty to report pursuant to § 493.1850, the Commonwealth ''guarantees'' submission of such information and the future amendment of its regulations, if necessary. (Position Paper, p. 34).

We are unsure of how one should interpret the Commonwealth's lack of information in this regard. One interpretation is that there have been no laboratories in the Commonwealth of Puerto Rico have been convicted of fraud and abuse, false billing or kickbacks. Another interpretation is that the Secretary does not obtain information or maintain a record of the disposition of fraud and abuse, false billing or kickback cases involving laboratories.

In any event, to the extent that the CLIA regulations specifically require disclosure of this information to the public, any State seeking exemption from CLIA must show the existence of a corresponding reporting mechanism. As conceded by the Commonwealth, it does not currently have regulations that require it to collect and submit this data to HCFA. Without such current regulations, I have no alternative but to concur with the initial determination reached by HCFA. For the above-noted reasons, I find that the Commonwealth has failed to demonstrate the existence of a regulation equal to or more stringent than the CLIA regulation requiring laboratory registry.

IV. Findings

After undertaking an exhaustive and complete review of the documentation submitted by the Commonwealth in connection with its application for exemption, HCFA determined that Puerto Rico did not satisfy the requirements of § 493.513(a)(1) and could not be granted exemption from CLIA. I have considered the record, supplementary information provided by the Commonwealth, the Position Paper and testimony in preparing this decision. I hereby make the following findings:

1. Section 493.513 of the regulations sets forth the general requirements for States seeking exemption from CLIA program requirements.

2. Subsection 493.513(a)(1) provides that HCFA may grant a State exemption from CLIA if the State has in effect laws that provide for requirements equal to or more stringent than CLIA condition-level requirements.

3. The application for exemption and supporting documentation submitted by the Commonwealth of Puerto Rico was evaluated by HCFA using this standard.

4. In fourteen instances involving condition-level requirements, HCFA properly determined that the Commonwealth was unable to demonstrate the existence of laws providing for requirements equal to or more stringent than the CLIA regulations. These deficiencies have been thoroughly discussed in this decision.

Legal Conclusion

For the reasons discussed herein, and based upon the above-referenced findings of fact, I conclude that the initial determination reached by HCFA to deny the Commonwealth of Puerto Rico's application for exemption from CLIA was consistent with the applicable laws and regulations. It is recommended that the initial determination denying the Commonwealth's application for CLIA exemption be affirmed.

Dated: September 27, 1996.

Richard W. Besdine,

Hearing Officer, Health Care Financing Administration.

[FR Doc. 97–2761 Filed 2–4–97; 8:45 am]

BILLING CODE 4120–03–P

[11] See also § 493.513(d), which requires exempted States to provide HCFA with certain information, including license approvals, revocations, sanctions and withdrawals.

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the Federal Register a notice of each petition filed. Set forth below is a partial list of petitions received by HRSA on October 10, 1996 through December 30, 1996.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Sarah Jean Busby on behalf of Payton Elizabeth Helms, Kennett, Missouri, Court of Federal Claims Number 96–0628 V
2. Kimberly Berg on behalf of Ryan Berg, Deceased, Salt Lake City, Utah, Court of Federal Claims Number 96–0630 V
3. Alberta Wagner and Derrick Shaw on behalf of Eric N. Shaw, Kingstree, South Carolina, Court of Federal Claims Number 96–0638 V
4. Elizabeth Watson, Waldorf, Maryland, Court of Federal Claims Number 96–0639 V
5. Tina and Gene Albert Simpson on behalf of Gene Albert Simpson, Jr., English, Indiana, Court of Federal Claims Number 96–0643 V
6. Nicholas Francis DeLouis on behalf of Amanda Rachel Ingebretson, San Antonio, Texas, Court of Federal Claims Number 96–0655 V
7. Catherine Colluro, Woodmere, New York, Court of Federal Claims Number 96–0662 V
8. Kathleen Kurtzhall, Glens Falls, New York, Court of Federal Claims Number 96–0669 V
9. Teary Evaline Gardner, North Fort Myers, Florida, Court of Federal Claims Number 96–0679 V
10. Kristen Matheny on behalf of Kaitlyn Rose Matheny, Woodford, Illinois, Court of Federal Claims Number 96–0722 V
11. Jane and Stephen Miller on behalf of Sarah Miller, Boulder, Colorado, Court of Federal Claims Number 96–0727 V
12. Joanne DeRobertis on behalf of Dean Wesley DeRobertis, Deceased, West Chester, Pennsylvania, Court of Federal Claims Number 96–0746 V
13. Michelle Kelleher on behalf of Jennifer Dawn Bieliauskaus, Jersey City, New Jersey, Court of Federal Claims Number 96–0747 V
14. Michelle Emmer-Gilbank on behalf of Dakota Emmer, Deceased Baraboo, Wisconsin, Court of Federal Claims Number 96–0761 V
15. Susan and Gaylen Weil on behalf of Anthony Duane Weil, Shenandoah, Iowa, Court of Federal Claims Number 96–0762 V
16. Breggett and Terrence Rideau on behalf of Terrence Carl Rideau, Bedford, Texas, Court of Federal Claims Number 96–0765 V
17. Angela and Aaron Hill on behalf of Arielle Hill, Jacksonville, Florida, Court of Federal Claims Number 96–0783 V
18. Mary Zwinn on behalf of Kaitlyn Zwinn, LaGrange, Illinois, Court of Federal Claims Number 96–0785 V
19. Angela Ward and Duane Booden on behalf of Alysa Booden, Deceased, Andrews Air Force Base, Maryland, Court of Federal Claims Number 96–0789 V
20. Patricia and Michael Sawinski on behalf of Kaitlyn Sawinski, Melrose Park, Illinois, Court of Federal Claims Number 96–0796 V
21. Carmen Heller on behalf of Isaiah Jones, Deceased, Cuyahoga Falls, Ohio, Court of Federal Claims Number 96–0797 V
22. Tawny and Robert Buck on behalf of Quincy Mason Buck, Wrangell, Alaska, Court of Federal Claims Number 96–0802 V
23. Chatie Bantug Cruz, San Diego, California, Court of Federal Claims Number 96–0820 V.

Dated: January 30, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–2867 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–15–P

Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

AGENCY: Indian Health Service, HHS.

ACTION: Standing Notice of Availability of Funds for Health Professions

Preparatory, Pregraduate and Indian Health Professions Scholarship Programs for Fiscal Years (FY) 1997, 1998, and 1999.

SUMMARY: The Indian Health Service (IHS) announces the availability of approximately $3,578,200 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Programs for FY 1997 awards. Similar amounts are anticipated to be available in FY 1998 and FY 1999. These programs are authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), Pub. L. 94–437, as amended by Pub. L. 100–713, and by Pub. L. 102–573.

The Indian Health Scholarship (Professions), authorized by section 104 of the IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, and by Pub. L. 102–573, has approximately $7,475,645 available for FY 1997 awards. Similar amounts are anticipated to be available in FY 1998 and FY 1999.

Scholarships under the three programs will be awarded utilizing the Notice of Grant Award, form PHS–5152–1 (Rev. 7/92). For academic year 1997–1998, 1998–1999, and 1999–2000, full-time and part-time scholarships will be funded for each of the three scholarship programs.

The Indian Health Professions Preparatory Scholarship is listed as No. 93–123 in the Office of Management and Budget Catalog of Federal Domestic Assistance (CFDA). The Indian Health Professions Pregraduate Scholarship is listed as No. 93.971, and the Indian Health Scholarship (Professions) is listed as No. 93.972 in the CFDA.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2000*, (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

DATES: The application deadline is April 1 of each year. If April 1 falls on the week-end, the application will be due on the following Monday. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

ADDRESSES: Application packets may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856, 856–2 through 856–8, 815, 816, 818, and F–01 through L–04 (approved under OMB No. 0917–0006, expires 12/31/97).

IHS area office and states/locality served	Scholarship coordinator/address
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota.	Ms. Connie Maine, Scholarship Coordinator, IHS Aberdeen Area, Federal Building, 115 4th Avenue, SE., Aberdeen, SD 57401, Tele: 605–226–7553.
Alaska Area Native Health Service: Alaska	Ms. Rose Jerue, Scholarship Coordinator, IHS Alaska Area, 250 Gambell Street, Anchorage, Alaska 99501, Tele: 907–257–1307.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Alvina Waseta, Scholarship Coordinator, IHS Albuquerque Area, 505 Marquette, NW., Suite 1502, Albuquerque, NM 87102, Tele: 505–248–5405.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin.	Ms. Barbara Fairbanks, Scholarship Coordinator, IHS Bemidji Area, 214 Federal Building, Bemidji, MN 56601, Tele: 218–759–3415.
Billings Area IHS: Montana, Wyoming	Mr. Sandy Macdonald, Scholarship Coordinator, IHS Billings Area, P.O. Box 2143, 2900 4th Avenue, North, Billings, MT 59103–6601, Tele: 406–247–7210.
California Area IHS: California, Hawaii	Ms. Gail M. Taylor, Scholarship Coordinator, IHS California Area, 1825 Bell Street—Suite 200, Sacramento, CA 95825–4202, Tele: 916–566–7001.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, District of Columbia, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.	Mr. Steven Holder, Scholarship Coordinator, IHS Nashville Area, 711 Stewarts Ferry Pike, Nashville, TN 37214–2634, Tele: 615–736–2431.
Navajo Area IHS: Arizona, New Mexico, Utah ..	Ms. Rosalinda Allison, Scholarship Coordinator, IHS Navajo Area, P.O. Box 9020, Window Rock, AZ 86515, Tele: 520–871–1358.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma.	Ms. Barbara Roy, Scholarship Coordinator, IHS Oklahoma City Area, 3625 NW., 56th Street, Five Corporate Plaza, Oklahoma City, OK 73102–3477, Tele: 405–951–3939.
Phoenix Area IHS: Arizona, Nevada, Utah	Mr. Eric LaRose, Scholarship Coordinator, IHS Phoenix Area, 3738 N. 16th Street—Suite A, Phoenix, AZ 85016–5981, Tele: 602–640–2066.
Portland Area IHS: Idaho, Oregon, Washington	Ms. Darlene Marcellay, Scholarship Coordinator, IHS Portland Area, 1220 SW 3rd Street, Rm. 315, Portland, OR 97204–2892, Tele: 503–326–2–2019.
Tucson Area IHS: Arizona, Texas	Mr. Cecil Escalante, Scholarship Coordinator, IHS Tucson Area, 7900 S.J. Stock Road, Tucson, AZ 85746, Tele: 520–295–2478.

FOR FURTHER INFORMATION CONTACT: Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Ms. Patricia Lee-McCoy, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland, 20852; Telephone 301–443–6197. (This is not a toll free number.) For grants information, contact Ms. Margaret Griffiths, Acting Grants Scholarship Coordinator, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Room 100, 12300 Twinbrook Parkway, Rockville, Maryland, 20852; Telephone 301–443–0243. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Grant Programs are authorized by section 103 of the IHCIA, Pub. L. 94–437, as amended by Pub. L. 96–537, Indian Health Care Amendments of 1980; Pub. L. 100–713, Indian Health Care Amendments of 1988; and Pub. L. 102–573, Indian Health Care Amendments of 1992.

The Indian Health Professions Scholarship Grant Program, formerly authorized by section 338I of Public Health Service Act (42 U.S.C. 254r), is now authorized by section 104 of the IHCIA, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713, Pub. L. 102–573, Indian Health Care Amendments of 1992.

A. General Program Purpose

These grant programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professions to serve Indians.

B. Eligibility Requirements

1. the Health Professions Preparatory Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum. Support is limited to 2 years for full-time students and the part-time equivalent of 2 years not to exceed 4 years for part-time students.

2. The Health Professions Pregraduate Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years by part-time students.

3. The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized tribe as provided by section 104, 4(c), and 4(d) of the IHCIA. Membership in a tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 36.330. Recipients shall incur a service obligation prescribed under section 338C of the Public Health Service Act (43 U.S.C. 244m) which shall be met by service:

(1) in the Indian Health Service;

(2) in a program conducted under a contract or compact entered into under the Indian Self-Determination Act;

(3) in a program assisted under title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) in private practice of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 104–313), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338c of the Public Health Service Act (42 U.S.C. 254m) by a program specified in options (1)–(4) above that:

(i) is located on the reservation of the tribe in which the recipient is enrolled; or

(ii) serves the tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, and Pub. L. 102–573.

C. Fund Availability

Both part-time and full-time scholarship awards will be made in accordance with regulations at 42 CFR Part 36.320, incorporated in the application materials, for the Health Professions Preparatory Scholarship Program for Indians and 42 CFR Part 36.370, incorporated in the application materials, for the Health Professions Pregraduate Scholarship Program for Indians. Approximately 238 awards, 100 of which are continuing, will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians in each fiscal year covered by this standing announcement. The awards are for 10 months in duration and the average award to a full-time student is approximately $15,000. In FY 1997, approximately $1,500,000 is available for continuation awards and approximately $2,078,200 is available for new awards. Pending the availability of funds, similar amounts are anticipated to be available in FY 1998 and FY 1999.

Approximately 393 awards, 179 of which are continuing, will be made under the Indian Health Scholarship (Professions) Program in each of the fiscal years covered by this announcement. Awards will be made to both full-time and part-time students. The awards are for 12 months in duration and the average award to a full-time student is for approximately $19,000. In FY 1997, approximately $3,401,000 is available for continuation awards, and $4,074,645 is available for new awards. Pending availability of funds, a similar amount is anticipated for FY 1998 and FY 1999.

No more than 20% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status.

D. Criteria for Evaluation

Applications will be evaluated against the following criteria:

1. *Needs of the IHS.* Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

2. *Academic Performance.* Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

3. *Faculty/Employer Recommendations.* Applicants are rated according to evaluations by faculty

members and current and/or former employers regarding the applicant's potential in the chosen health related professions.

4. *Stated Reasons for Asking for the Scholarship and Stated Career Goals.* Applicants must provide a brief written explanation of reasons for asking for the scholarship and of career goals. The applicant's narrative will be judged on how well it is written and content.

5. *Applicants who are closest to graduation or completion are awarded first.* For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before the freshmen and sophomores.

E. Priority Categories

Regulations at 42 CFR Part 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarship and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Pub. L. 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded. The list of priority health professions that follow, by scholarship program, are based upon the needs of the IHS, as well as upon the needs of the American Indians and Alaska Natives, for additional service by specific health profession.

1. *Health Professions Preparatory Scholarship Scholarships.* (Below is the list of disciplines to be supported and priority is based on academic level)

A. Pre-Accounting.
B. Pre-Dietetics.
C. Pre-Medical Technology.
D. Pre-Nursing.
E. Pre-Pharmacy.
F. Pre-Physical Therapy.
G. Pre-Social Work (Jr and Sr undergraduate Years).

2. Health Professions Pregraduate Scholarships. (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman)

A. Pre-Dentistry.
B. Pre-Medicine.

3. Indian Health Scholarships (Professions). (Below is a list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman)

A. Accounting.
B. Associate Degree Nurse.
C. Chemical Dependency Counseling.
D. Counseling Psychology: Ph.D. only.
E. Computer Science: B.S.
F. Dentistry.
G. Dietician: B.S.
H. Health Education: Masters level only.
I. Health Records: A.R.T. and R.R.T.
J. Medical Technology: B.S.
K. Medical Social Work: Masters level only.
L. Medicine: Allopathic and Osteopathic.
M. Nurse Practitioner: R.N.A. and F.N.P.
N. Nurse Midwife: C.N.M.
O. Nurse: B.S.*
P. Nurse: M.S.*

(Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act.)

Q. Optometry.
R. Para-Optometric.
S. Pharmacy: B.S.
T. Physician Assistant: B.S.
U. Physical Therapy.
V. Podiatry: D.P.M.
W. Public Health: M.P.H. only (Applicants must be enrolled or accepted in a school of public health in specialty areas such as Dietetics and Community Development in health).
X. Public Health Nutrition: Masters level only.
Y. Radiologic Technology: Certificate, Associate, and B.S.
Z. Respiratory Therapy: Associate.
AA. Sonography.

Interested individuals are reminded that the list of eligible health and allied health professions is effective for the applicants for the three academic years covered by this standing announcement. These priorities will remain in effect until superseded.

Dated: January 29, 1997.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 97–2817 Filed 2–4–97; 8:45 am]

BILLING CODE 4160–16–M

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Annual Program Performance Report—Revision—The PAIMI Act (P.L. 99–319) authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	56	1	43	2,408
Activities and accomplishments	.....	.....	(35)	(1,960)
Performance outcomes	.....	.....	(3)	(168)

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Expense report	.....	.....	(2)	(112)
Budget	.....	.....	(2)	(112)
Priority Statement	.....	.....	(1)	(56)
Advisory Council Report	56	1	10	560
Total	.....	.....	.....	2,968

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 30, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–2798 Filed 2–4–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3569–N–03]

Notice of Proposed Information Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* April 7, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency Project Proposal.

OMB Control Number: 2577–0033.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) and on occasion, local officials, turnkey developers and private owners will complete HUD-prescribed forms to provide information on projects which will be developed pursuant to HUD regulations 24 CFR part 941. The information will provide HUD with sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made for project development.

Form Numbers: HUD–51971–I, HUD–52482, HUD–52483–A, HUD–52485, HUD–52651–A.

Members of affected public: State or Local Government, business or other for profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 334 respondents, one-time responses, three hour average per response, 4,635 total reporting burden hours.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 28, 1997.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Offer of Sale of Real Property

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (Exp. 9/30/96)

This collection of information is required for developing a public housing project pursuant to HUD regulations 24 CFR 941. The information will be used to provide HUD with sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made. This information collection is mandated pursuant to the U.S. Housing Act of 1937. The information requested does not lend itself to confidentiality.

1. In consideration of the sum of $ _____ and other valuable consideration herein called "option price," the receipt whereof is hereby acknowledged, the undersigned (**hereinafter called the "seller"**), being the owner of the property described below, hereby offers and agrees to sell and convey the property to the _____

   _____

   (hereinafter called the "Public Housing Agency" (PHA) or its assignee or nominee for the sum of $ __ _____.

   In the event that a Purchase Agreement (form HUD-51971-II) is executed but closing cannot be consummated for the reasons stated in paragraph 3 or 5 of the Purchase Agreement, the seller hereby agrees that the option price or portion thereof shall be returned to the PHA as provided in the Purchase Agreement.

2. The property is located in (**city or town and county**) _____

   _____

   in the State of _____
   and the property is described as follows (**include street address or other specific location, attach list of any renter occupants by name, address, and number of persons in household, and identify any exceptions to the offer**):

3. This offer shall be irrevocable for a period of _____ days (**insert at least 90 days**) from the date hereof and shall remain inforce thereafter until terminated by the seller by giving 30 days prior written notice to the PHA of such termination. Until the offer is terminated, the PHA or its designee shall have the right to entersaid property for the purpose of appraisal, survey and inspection.

4. The PHA shall evidence acceptance of this offer by executing at least three copies of form HUD-51971-II, Purchase Agreement, a copy of which is attached as an exhibit, and by mailing at least two executed copies to the seller at the address specified below so that the seller may execute both copies and return one to the PHA.

5. Upon closing, the seller shall: (a) convey (**subject to any exceptions specifically set forth in paragraph 2 hereof and liens for current taxes and assessments**) to the PHA or its designee or nominee by general warranty deed a good and marketable fee-simple title thereto, together with all improvements, hereditaments, and appurtenances thereunto belonging, free and clear of all liens, easements, restrictions, delinquent taxes and assessments, leases and encumbrances of any kind, existing or inchoate, with proper release of dower, curtsy, and waiver of homestead rights, if any, together with all of the seller's rights, title, and interest in and to any streets or alleys adjoining or abutting thereon; (b) provide documentary evidence that the zoning permits the PHA's proposed use of the property; and (c) deliver possession to the PHA which shall be responsible for relocation of any renter occupants in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

6. Loss or damage to the property by any cause shall be at the risk of the seller until title has been conveyed to the PHA.

7. The seller agrees, so long as this offer remains in effect, not to sell, mortgage, encumber, or otherwise dispose of the property or any part thereof, or interest therein, except to the PHA.

8. This offer is made voluntarily. The PHA will not use its power of eminent domain to acquire this property if the seller and the PHA are unable to reach an amicable agreement as to the purchase price. The PHA will inform the seller of the amount it believes is the fair market value of the property. If that amount is less than the proposed sale price in paragraph 1 of this Offer of Sale, the seller may withdraw the offer and return the option price to the PHA. The seller understands that the seller is not and will not be eligible to receive relocation assistance under the URA implementing regulations at 49 CFR Part 24, or HUD program regulations. This offer shall be binding upon the seller and the seller's heirs, executors, administrators, successors, and assignees.

Witness	Seller
	Date , 19
Witness	Address

Purchase Agreement

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (Exp. 9/30/96)

1. The _____ (hereinafter called the "Public Housing Agency" (PHA) agrees to purchase, and _____ (hereinafter called the "seller") agrees to sell, the property described in paragraph 2 of the attached Offer of Sale of Real Property (form HUD-51971-I, executed by the seller on _____ (date)(hereinafter called the "Offer of Sale"), for the sum of $ _____. The Department of Housing and Urban Development (hereafter called "HUD") has, on the basis of its appraisal, determined the fair market value of the property to be $ _____. (If the fair market value of the property is greater than the price specified in paragraph 1 of the Offer of Sale, the seller may withdraw its offer of sale. If the seller withdraws the offer of sale, the option price shall be returned to the PHA). The Purchase Agreement incorporates all conditions stated in the Offer of Sale.
2. The PHA shall specify the place and time of closing, which shall not be more than 90 days after the date of seller's execution of this Purchase Agreement or such later date as may be acceptable to seller; however, if additional time is needed for required zoning changes, the closing date shall be extended for an additional 90 days or such additional time as may be acceptable to seller.
3. Upon closing, the seller shall deliver title to the property in compliance with paragraph 5 of the Offer of Sale. If there are defects in the title which can be remedied by legal action within a reasonable time as agreed to by the seller and the PHA, the seller shall take such action promptly at the seller's own expense and the date for closing shall be extended for such period of time. If there be defects in title which cannot be or are not remedied within such time, this Purchase Agreement shall be terminated, the seller shall return the option price to the PHA and both parties shall be released from all liability for damages by reason of any defect in title.
4. Prior to closing, the site must be determined to meet the requirements of HUD. The seller grants permission to the PHA or its designee to enter said property for the purpose of conducting the following studies or tests which must be completed to make the determination, prior to closing, that the property meets HUD requirements:
5. In the event that title is in compliance with paragraph 5 of the Offer of Sale, but closing cannot be consummated because the studies or tests result in a determination that the site does not meet HUD requirements, or any required zoning changes have not been obtained, one-half of the option price as provided in paragraph 1 of the Offer of Sale shall be returned to the PHA.
6. All expenses of examination of title, transfer tax, and of preparation and recording the Deed shall be paid by the PHA. Payment of the above-stated purchase price shall be made upon transfer of title to the PHA.
7. Current taxes shall be prorated as of the time of closing. Any outstanding special assessments or future installments thereon, remaining unpaid against the property shall be paid in full at time of closing by the seller.

Certification: We hereby certify that to the best of our knowledge and belief no member, officer, or employee of the PHA, no official of the locality (city, county, etc.) and no member of the locality's governing body has any interest, direct or indirect, in this Purchase Agreement or in any proceeds or benefits arising therefrom.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

PHA Execution		**Seller Execution**	
Signature	Date	Signature	Date
Title of PHA Official		Title	
PHA Address		Address	
Witness		Witness	
Notary		Notary	

Form HUD-51971-I, Offer of Sale of Real Property
Form HUD-51971-II, Purchase Agreement

1. **Purpose:** A Public Housing Agency (PHA) is responsible for selecting a site or property for its proposed public housing project under the conventional and acquisition methods. As stated in the form HUD-51971-I, Offer of Sale of Real Property (**Offer of Sale**), the offer is voluntary and the PHA will not use its power of eminent domain to acquire the property if the seller and the PHA are unable to reach an amicable agreement on the purchase price. Paragraph 1 of the Purchase Agreement indicates the amount HUD believes is the fair market value of the property. As a consequence of these disclosures, the purchase is not subject to any of the policies of Title III (Uniform Real Property Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and the seller is not eligible for relocation assistance. Renter-occupants of the property are, however, eligible for relocation assistance under Title II (Uniform Relocation Assistance) of the URA. All documentation evidencing the voluntary nature of the transaction, e.g., invitation, newspaper and other listings, etc., must be retained by the PHA. The form HUD-51971-II, Purchase Agreement, is to be used by the PHA to indicate the amount which the PHA is authorized to pay to purchase the site or property and to identify any studies or tests required to determine if the site or property meets HUD requirements.

2. **Prepared By:** The form HUD-51971-I, Offer of Sale, is completed by a prospective seller. The form HUD-51971-II, Purchase Agreement, is prepared by the PHA and executed by both the PHA and the seller. Adaptations required by state or local law may be made to forms HUD-51971-I and HUD-51971-II with the approval of the HUD Office Counsel.

3. **Number:** At least three executed copies of the form HUD-51971-I, Offer of Sale, and form HUD-51971-II, Purchase Agreement.

4. **Distribution:** As an attachment to its PHA proposal, a PHA shall submit one copy of the form HUD-51971-I to the HUD Office for each site or property comprising a public housing project to be developed under the conventional or the acquisition methods. One copy of the forms HUD-51971-I and 51971-II shall be an attachment to the PHA's submission of the site acquisition documents. If there are renter occupants on the site, and if delays in closing beyond 30 days of PHA execution of the Purchase Agreement are anticipated (**due to zoning changes, site studies, HUD Office approvals, etc.**), the PHA should submit, with its PHA Proposal, a request for HUD Office approval of an appropriate specified extension of time for providing the required relocation notices.

5. **PHA Instructions Concerning Preparation:**

A. Form HUD-51971-I, Offer of Sale of Real Property

Paragraph 1. In the first space state the dollar amount of the consideration. In the second space state the legal name of the PHA. In the third space state the seller's asking price for the property described in paragraph 2.

Paragraph 2. In the first space identify the city or town and county or equivalent political subdivision in which the property is located. In the second space identify the State (**or equivalent**) in which the property is located. Describe the property in the large space, beginning with the street address or other specific location. Also in this space identify any exceptions to the offer and list any renter occupants by name, address, and number of persons in the household. Use a continuation page if required.

Paragraph 3. Insert a time period of at least 90 days taking into consideration time necessary for any anticipated special requirements such as site studies or zoning changes.

Signature Area. The seller's signature and typed name, date and address should be included in this area with the signatures of two witnesses who have seen the seller sign. Space is also provided for notarization or acknowledgement if required by local law.

B. Form HUD-51971-II, Purchase Agreement

Paragraph 1. In the first space state the legal name of the PHA. In the second space state the name of the seller. In the third space state the date the seller signed the Offer of Sale (form HUD-51971-I) and attach a copy of the Offer of Sale to the Purchase Agreement. In the fourth space insert the amount authorized by the HUD Office as the purchase price. In the fifth space indicate the amount determined to be the fair market value of the property by HUD. If the proposed sale price in paragraph 1 of the Offer of Sale of Real Property (HUD-51971-I) is less than the HUD determined fair market value, the seller may withdraw the Offer of Sale and return the option price to the PHA.

Paragraph 4. In the space provided identify any studies or tests required to be completed prior to closing to make the determination that the property meets HUD requirements.

Paragraph 7. The second provision, that the seller pay any outstanding assessments, is based on the assumption that the value of any improvements for which the assessment is made has been included in the HUD-approved purchase price of the property.

Signature Area. The first signature is that of the authorized PHA official and signifies the PHA's acceptance of the seller's offer, with or without changes in the price and with or without the specified studies or tests. The second signature is that of the seller and confirms that there is an agreement. Both signatures attest to the certification immediately preceding the signature area. The signatures of two witnesses are required for each party to the agreement and spaces are provided for any locally required notarization or acknowledgement.

Guide Form of Turnkey Developer's Packet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (Exp. 9/30/96)

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0033), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

This collection of information is required for developing a public housing project pursuant to HUD regulations 24 CFR 941. The information will be used to provide HUDwith sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made. This information collection is mandated pursuant to the U.S. Housing Act of 1937. The information requested does not lend itself to confidentiality.

1. **Purpose.** This form provides a potential turnkey developer with all the information necessary to prepare a turnkey proposal. It also provides the format for PHAs to request proposals.

2. **Prepared by:** The Request for Proposals and Part I will be prepared by the PHA. Parts II, III and IV may be used as printed. Some of the forms and other material in Part IV must be obtained from the HUD field office. Approval must be obtained for any modifications to the Packet not previously authorized by the HUD field office.

3. **Number:** The PHA shall prepare sufficient developer's packets to provide for distribution to all interested developers.

4. **Distribution:** The PHA shall provide one copy of the completed packet to any interested developer. One copy shall be submitted to HUD along with the PHA proposal.

5. **PHA instructions concerning preparation:** The Request for Proposals (RFP) and Part I, Project Description, are to be completed by the PHA based upon local preferences or requirements. Format sentences are typed in regular type. PHA notes or instructions are typed in another distinctive style and are not meant to be included in the final text.

   The remaining parts may be used as printed here. Part II outlines the general requirements of the program. Part III discusses the proposal contents. Part IV lists the various forms and documents which are attachments to this Packet. Copies of these forms may be obtained from the HUD field office. If quantities are limited, they may be reproduced locally by the PHA along with this Packet.

Requests for Proposals

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (Exp. 9/30/96)

The _____ will accept proposals for
(PHA Note: Insert Legal Name of PHA)

_____ housing units under the Public Housing Program to be located in
(PHA Note: Insert "Newly Constructed" or "Substantially Rehabilitated")

_____, and known as
(PHA Note: Insert Name of Community and State)

_____.
(PHA Note: Insert Project Number)

Turnkey proposals may be submitted for not more than _____ units to be provided in
(PHA Note: Insert Total Number of Units)

_____ structures. The following is the
(PHA Note: Insert Structure Type (or Types))

maximum number of units for each size by bedroom count:

No. of Bedrooms	Maximum No. of Units	
	Elderly	Family
0	_____	
1	_____	_____
2	_____	_____
3		_____
4		_____
5		_____
6		_____

(PHA Note: Insert number of each size desired.) Delete inapplicable sizes.

The project will also consist of the following maximum amounts and types of non-dwelling space:

Management Space _____ square feet
Maintenance Space _____ square feet
Community Space _____ square feet

(PHA Note: Insert the maximum amount calculated for each type of space.) If proposals are submitted for less than the total number of units requested, non-dwelling space will be subject to limitations stated in the Developer's Packet.

Turnkey proposals must be received by _____ of _____ at the
(PHA Note: Insert Time) (of Deadline and Date of Deadline)

address identified below. Turnkey proposals received after the deadline will be returned to the developer without being considered.

Interested developers should obtain a Turnkey Developer's Packet, which provides detailed project information and submission requirements

from _____ _____
(PHA Note: Insert Name of PHA Official) (PHA Note: PHA Name and Address)

_____.
(PHA Note: PHA Telephone Number)

Guide Form of Turnkey Developer's Packet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (Exp. 9/30/96)

Introduction

The United States Department of Housing and Urban Development (HUD) is providing financial assistances to this Public Housing Agency (PHA) to develop a low-income housing project pursuant to Sections 4 and 5 of the United States Housing Act of 1937. The PHA has selected the Turnkey method to develop the housing identified in this Turnkey Developer's Packet (Packet).

Under the Turnkey method, developers submit proposals in response to a Request for Proposals (RFP) from the PHA. The proposals that meet the requirements of this Packet are reviewed, rated, and ranked by the PHA. The highest rated turnkey proposal which represents the best "total package" is submitted to HUD for approval. After HUD approval of the turnkey proposal, the developer's architect prepares the preliminary design and working drawings and the construction specifications for PHA and HUD approval.

Prior to start of construction of rehabilitation, the PHA and the developer execute a Contract of Sale under which the PHA agrees to purchase the completed project from the developer for a specified price. The developer is fully responsible for all development and construction activities, such as purchasing sites or properties, completing all site improvements (including structures), obtaining utility hook-ups and local building permits and approvals, and obtaining construction financing. After satisfactory project completion, the PHA purchases the project from the developer.

The completed project will be owned and managed by this PHA to provide rental housing for low-income households. The structures, housing units, and non-dwelling facilities shall be designed to provide a wholesome living environment. Emphasis shall also be placed on durable construction, efficiency and economy of maintenance, energy conservation, and suitable recreation space to enhance a wholesome living environment, over the thirty-year term of the PHA's permanent financing for purchase of the project.

In order to be considered by the PHA and HUD, turnkey proposals must comply with the program and submission requirements identified in this Packet. Accordingly, interested developers should review the project description (Part I), the program requirements (Part II), the turnkey proposal content (Part III) and the required program documents and forms (Part IV), prior to preparing and submitting a turnkey proposal to the PHA.

Interested developers must submit their turnkey proposals to the PHA by the deadline date identified in the RFP. Turnkey proposals that are not received by the deadline, or which are determined to be incomplete or non-responsive will not be considered by the PHA. Any questions that you may have should be directed to the individual identified in the RFP.

Part I. Project Description

PHA Instructions: This Part shall be completed by the PHA to provide specific details about the proposed project. The PHA shall ensure that the information and requirements stated in this part comply with the Public Housing Development Regulation (24 CFR 841), The Public Housing Development Handbook (HB 7417.1 Rev-1), related state and local building requirements, and special regional requirements identified in accordance with Handbook 7417.1, Chapter 3, par. 3-143 and agreements reached by the PHA and HUD at the project planning conference.

1. **Community.** Identify the name of the community for which the housing project is proposed. State whether or not the community is a Community Development Block Grant (CDBG) recipient that has an approved Housing Assistance Plan (HAP).

2. **Site Location.** Identify the general locations for assisted housing stated in the HAP, and any local preferences for sites (e.g., CDBG Activities, Neighborhood Preservation Areas). For communities not covered by a HAP, state any local preferences for sites in areas that are consistent with the public housing site and neighborhood standards and local planning and housing development activities.

3. **Housing Type.** State whether the proposed housing is to be newly constructed or substantially rehabilitated.

4. **Housing Units.** Identify the number of units for each structure type and household type by number of bedrooms as follows:

	Number of Bedrooms								
	Elderly			Family					
	0	1	2	1	2	3	4	5	6
Elevator									
Detached									
Semi-Detached									
Townhouse/Row									
Walk-up Apartment									
Total Units									
Handicapped Units Included in Above*									

*Identify the number of units to be designed specifically for use by handicapped individuals.

The number of units identified above shall not vary from the unit distribution identified in the area office invitation for a PHA proposal. In the case of a project involving **Substantial Rehabilitation** provide a statement that:

A. The total number of units for elderly and family households are maximum amounts;

B. The number of units by structure type are preferred, but the PHA will consider substitution of less expensive structure type (e.g., townhouse/row instead of detached) if appropriate for household type provided that the number of units does not exceed the totals shown for a specific number of bedrooms;

C. If the larger units (number of bedrooms) are not available, a one-for-one substitution of smaller units will be consistent with the applicable housing assistance plan; and

D. The PHA will give preference in selecting turnkey proposals to those proposals that most clearly adhere to the proposed distribution.

5. **Special Building Requirements.** State any local preferences or building requirements or limitations. These may include such items as:

A. Security Systems (access, surveillance, standby power, etc.);
B. Central TV Antenna System;
C. Same key for both housing unit door and mail box;
D. Design requirements to complement neighborhood architecture and standards;
E. Energy Conservation Requirements;
F. Air Conditioning Systems;
G. Building Height Restrictions;
H. Number of buildings and distribution of unit sizes (number of bedrooms) among buildings; and
I. Space for child care which meets local standards and codes.

6. **Special Site Requirements.** State any local preferences or building requirements or limitations. This may include such items as:

   A. Preference or requirement for more than one site

   B. Limitation on number of units per site by bedroom size

   C. Parking Requirements - Number of spaces outside, inside, covered, for handicapped, and parking space per dwelling unit ratio

   D. Recreation space and equipment

   E. Accessibility to commercial areas, churches, schools, transportation

   F. Reference site and neighborhood standards in Part II, Section 3

   G. Statement that PHA will not pay for off-site work to bring utilities to site unless it is local practice and developers normally pay costs of extending utilities for privately owned projects.

7. **Prototype Costs.** State that costs for dwelling construction and equipment (defined in Part II of this packet) are limited by law to no more than 10 percent above the published amount for the size and structure type for the area. Indicate the applicable prototype costs for this project and the date they were published in the *Federal Register* (a legible photocopy of the appropriate *Federal Register* page may be used instead of the following table, if desired).

	Bedroom Size						
	0	1	2	3	4	5	6
Detached	$	$	$	$	$	$	$
Row	$	$	$	$	$	$	$
Walk-up	$	$	$	$	$	$	$
Elevator	$	$	$	XXX	XXX	XXX	XXX

Insert a statement that HUD will adjust the prototype cost base for the project (using a commercial cost index) to recognize actual changes (increases or decreases) in construction costs from the effective date of the unit costs published in the *Federal Register*. This is done for comparison purposes only at early stages of processing. The developer's costs should always reflect current conditions.

8. **Utilities.** State the utilities preferred for the project. Enclose the HUD prepared form HUD-51994. Indicate that any other proposed utility combination and heating and cooling systems must be demonstrated to be the most cost effective on the bland form HUD-51994.

9. **Non-Dwelling Space.** This section should be a detailed statement of the requirements and limitations for non-dwelling space such as a community rooms*, maintenance and office space and space for child care facilities, health care facilities, or congregate dining facilities, if justified. If there is a requirement for several sites, the proration or consolidation requirements for the non-dwelling space must be clearly defined. The PHA may require a separate proposal for part or all of this space especially for proposals for less than the total number of units requested.

   *Includes recreation or hobby rooms, but not hallways, stairways, mail rooms, boiler rooms, closets, lobby, or laundry.

10. **Special Project Requirements and Instructions.** This section should include any other information, requirements or instructions pertaining to this project. Examples of items are:

    1. Whether staged construction will be allowed.

    2. Any dwelling or non-dwelling installed equipment to be furnished by the PHA and its estimated cost.

11. **Proposal Evaluation Criteria.** The standard rating procedure is described in Part IV. If the PHA desires to use the optional procedure, the additional criteria and the point value to be assigned shall be described in this section.

12. **Proposal Instructions.** Provide specific details for submitting proposals, such as:

    A. The deadline time and date for submitting proposals. Proposals received after the deadline will not be considered.

    B. The official address for submitting proposals.

    C. Statement that proposals must be complete. The PHA will determine if any omission makes the proposal "non-responsive". A proposal is considered to be "non-responsive" if critical information is mission or the proposal represents a major deviation from this packet. In such cases the developer will be notified, the reason stated, and the proposal will not be considered by the PHA. In the event of minor omissions, the PHA may give the developer additional time to submit the missing information. A minor omission is one which generally will not affect any of the proposal evaluation criteria considerations.

    D. Statement that all requirements for Part II of this packet must be considered in developing the project.

E. Procedures for sealed envelope submissions. Although proposals will be opened after the deadline, a selection will not be announced until all proposals have been rated under the proposal evaluation criteria and HUD approval has been obtained. A proposal is not a bid and price is only one element to be considered.

F. Number of copies of proposals required.

G. Reference project number assigned to the project.

Part II. General Program Requirements

Section 1. General

Introduction. This part explains the general program standards and policies and the statutory requirements related to the development of public housing. These requirements are applicable to all turnkey proposals. Developers are advised to review this part thoroughly to ensure a complete understanding of their responsibilities. The regulations for this program may be found at 24 CFR 841 and the applicable HUD Handbook is 7417.1 Rev-1.

1. **State and Local Requirements.** The developer must comply with all State and local laws and ordinances relating to the development of a project. This includes State and local requirements relating to employment, obtaining bonds and licenses, and complying with building codes and zoning requirements.

2. **Prevailing Wage Rates.** Development related contracts entered into by the developer provide for the payment of prevailing wages.

   a. **Architects and Technicians.** All architects, technical engineers, draftsmen and technicians employed in the development of the project shall be paid not less than the wages prevailing in the locality.

   b. **Laborers and Mechanics.** All laborers and mechanics employed in the development of a project shall be paid not less than the wage prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276).

3. **Developer's Price.** The turnkey developer's price for the proposed project shall be based on construction costs as of the deadline date specified in the Request for Proposals. The price in the proposal shall be subject to the following modification.

   a. The price shall be subject to reduction to the extent that the HUD appraisal indicates a site value less than the proposed amount for the site and/or to the extent that the proposal substantially exceeds the HUD estimated replacement cost for the project.

   b. The portion of the developer's estimated price for dwelling construction and equipment may not exceed the project prototype cost limits by more than 10 percent.

   c. At each subsequent processing stage, HUD will adjust the price to reflect changes (increases or decreases) in construction costs as identified by a commercial cost index. Any time lost due to the developer's failure to adhere to schedules set by HUD or the PHA will not be recognized.

   d. At the time the Contract of Sale is executed the maximum price that can be approved is the lower of:

      (1) the revised price submitted by the developer, or

      (2) the original proposal price as updated by HUD, or

      (3) the project replacement cost identified by HUD.

   e. The price to be stated in the Contract of Sale shall also be adjusted to reflect the developer's actual interest cost for construction financing.

   f. The estimate of all State and local taxes, other than Real Property taxes and assessment, payable by the developer with respect to the project shall be included in the total developer's price and shall be itemized by type, rate and estimated amount. In the event these taxes are exempt or abated after execution of the Contract of Sale, the amount applicable shall be subtracted from the total contract price at settlement.

   g. The total developer's price shall not include any amount for real property taxes and assessment. The amount paid or payable by the developer as evidenced by the original tax bills or receipts will be added to the contract price at settlement.

4. **Proposal Evaluation System.** Proposals will be selected on the basis of free and open competition. They will be evaluated objectively according to the procedures and criteria set forth in the Proposal evaluation System which is included in Part IV of this Packet and any additional criteria identified in Part I.

5. **Previous Participation.** Developers must successfully complete HUD Previous Participation clearance before selection is approved by HUD. Clearance is initiated by the developer furnishing (as part of the turnkey proposal) completed forms HUD-2530 with respect to the developer and other principals. HUD will review its experience with the developer and the other principals on the projects listed on the forms. An opportunity will be afforded the developer or other principals to explain any adverse information found during the clearance process.

6. **Contract of Sale.** The Contract of Sale, form HUD-53015, included in Part IV of this packet, will be executed by the PHA and the selected developer. Both parties should carefully review the Contract of Sale to ensure an awareness of its requirements. The turnkey developer must certify (as part of the proposal) that the developer has read, understands, and will comply with its provisions.

7. **Insurance Requirements.** Any risks and insurance protection during construction are solely the turnkey developer's responsibility as owner and seller.

Section 2. Fair Housing and Equal Opportunity

Introduction. The fair housing and equal opportunity requirements stated in this section apply to contractors and turnkey developer activities during project development. This includes site selection, award of contracts and sub-contracts, employment of minority and women-owned business enterprises, and employment practices.

1. **Titles VI and VIII and Executive Order 11063.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Executive Order 11063, prohibit discrimination on the basis of race, color, creed or national origin in Federally assisted programs. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601), prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing.

2. **Section 504 of the Rehabilitation Act of 1973.** Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), prohibits discrimination in Federally assisted programs against any otherwise qualified individual solely by reason of a handicap as defined by the Secretary of Health and Human Services.

3. **Age Discrimination Act of 1975.** The Age Discrimination Act of 1975 prohibits with certain stated exceptions, discrimination in Federally assisted programs against any otherwise qualified individual solely on the basis of age.

4. **Executive Order 11246.** Contracts for construction work are subject to Executive Order 11246 (30 FR 12319) as amended by Executive Order 11375 (32 FR 14303), and applicable implementing regulations (24 CFR 130; 41 CFR 60), rules and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employee or applicants for employment are treated with regard to their race, color, religion, sex or national origin. An affirmative action plan pursuant to 24 CFR 135 must be prepared prior to execution of the Contract of Sale.

5. **Section 3 of the HUD Act of 1968.** Projects under development are subject to Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701), which requires that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located; and contracts for work in connection with a project be awarded to business concerns which are located in or owned in substantial part by persons residing in such area.

6. **Minority and Women-Owned Business Enterprise.** Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise, encourages participation in Federal programs by business concerns owned by minority group members. Executive Order 12138, Creating a National Women's Business Enterprise Policy, encourages participation i Federal programs by business concerns owned by women. In accordance with these Executive Orders, program participants (e.g., PHAs, contractors, turnkey developers) shall take affirmative action to encourage participation by businesses owned and operated by minority groups and women. These affirmative actions may include: conducting outreach programs to expand opportunities for participation by such businesses in the public housing program; providing assistance and guidance to such firms that have demonstrated a desire to participate in public housing development activities; and establishing goals for such businesses, in terms of the dollar value of contracts.

Section 3. Site and Neighborhood Standards

Introduction. Each site proposed for a public housing project must comply with the site and neighborhood standards identified in this section. The PHA and turnkey developer shall make every effort to select sites that will minimize the number of households to be displaced for purposes of developing a public housing project. In addition, proposed sites must comply with all environmental requirements and displacement, relocation and acquisition requirements. These standards should be reviewed by the turnkey developer before a site is selected and a purchase option is obtained.

1. **Section 213 of the HCD Act of 1974.** Each site must be consistent with any applicable Housing Assistance Plan (HAP). Sites proposed for newly constructed or rehabilitated projects must be within the general locations specified in any applicable HAPS. The community's HAP is submitted to HUD as part of the Community Development Block Grant (CDBG) application. A community that is not participating in the CDBG programs may also submit a HAP.

2. **Facilities and Services.** The developer should select project sites to make use of existing and proposed public facilities and services identified in State, local and regional plans. Generally, the locations identified in HAPs should have adequate public facilities and services available or planned for the immediate future.

   a. **Access and Utilities.** Sites must be accessible to public utilities, such as water and sewer, electric, natural gas, and trash collection and must be accessible to vehicular traffic. Access streets and utilities should be available at the boundary of each site in time for project construction or occupancy and should be capable of serving the proposed project.

   b. **Transportation.** Sites must be convenient to public transportation or to places of employment, which provide a range of jobs for low-income workers.

   c. **Other.** Sites must be accessible to social, religious, recreational, educational, commercial, and health facilities that are adequate to serve the intended occupants of the project.

3. **Density.** There is no rigid standard to determine an acceptable level of density. One means of measuring density levels is the land use intensity method provided in the HUD Manual of Acceptable Practices (Handbook 4930.1). The determination of an acceptable density level varies with each community and with each site and consideration should be given to such factors as land costs, topography, planned site use, the number and types of buildings, the anticipated age and number of residents based on the number of bedrooms, local building requirements, and the density prevailing in the neighborhood.

4. **Physical Characteristics.** Each site shall be adequate in size, exposure, and contour to accommodate the number and type of units proposed. The topography and subsurface conditions shall promote economical and efficient development and operation of the project.

   a. **Grades.** Sites with grades exceeding ten (10) percent will significantly increase development and management costs and should be avoided. Sites for housing for the elderly or handicapped with grades exceeding five (5) percent should be avoided unless site development (e.g., sidewalks) will provide for not more than a five (5) percent grade without undue development costs. Low-lying and flat sites should also be avoided unless practical and economical means of surface drainage can be provided.

   b. **Bearing Qualities.** Sites with unsuitable soil bearing qualities for foundations and underground utilities or with excessive rock or shale will increase site improvement costs and should be avoided.

   c. **Earth Slides.** Sites that are exposed to the potential hazard of earth slides should not be selected.

5. **Housing Opportunities.** Sites for public housing projects must comply with the following requirements:

   a. **General.** The site and neighborhood for new construction and rehabilitation projects must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

   b. **New Construction.** The site for new construction projects shall:

      (1) not be located in an area of minority concentration unless,

         (a) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration; or

         (b) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. (An overriding need may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable.);

      (2) not be located in a racially mixed area, if the project will cause a significant increase in the proportion of minority to non-minority residents in the area; and

      (3) promote greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of low-income persons.

   c. **Rehabilitation.** Sites for rehabilitation projects shall promote greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of low-income persons.

Section 4. Environmental Requirements

Introduction. This section identifies the laws, Executive Orders and regulations relating to environmental protection. The development of public housing projects must comply with these requirements except when excluded.

1. **NEPA.** The National Environmental Policy Act of 1969 (42 U.S.C. 4321) establishes the national policy, goals and procedures for protecting and enhancing environmental quality. The HUD implementing regulation at 24 CFR 50 establishes the policies and procedures for HUD environmental clearances (including procedures for automatic requirements for a Special Clearance or Environmental Impact Statement and criteria for determining when several projects built near each other may be considered as a single action) and establishes categorical exclusions that are not subject to an environmental assessment under NEPA. This does not exempt them from the other requirements identified in this section.

2. **Historic Properties.** The National Historic Preservation Act of 1966 (P.L. 89-665), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), Executive Order 11593, Protection and Enhancement of the Cultural Environment, and the Procedures for Protection of Historic and Cultural Properties, Advisory Council on Historic Preservation (36 CFR 800). Establish national policy and procedures for protecting properties, sites and artifacts of historic, architectural, or archeological significance listed (or eligible to be listed) in the national Register of Historic Places. These laws and procedures require that proposed projects be reviewed to determine whether they would affect any district, site, building or other structure listed (or eligible to be listed) in the National Register of Historic Places. These procedures require consultation with the State Historic Preservation Officer and may require a determination of eligibility b the Department of Interior and a determination of effect by the Advisory Council on Historic Preservation.

3. **Noise Abatement.** The Environmental Criteria and Standards (24 CFR 51, Subpart B) establish minimum HUD standards to protect citizens against excessive noise in their community and place of residence. This regulation also establishes criteria for determining acceptable notice levels and special requirements and mitigation measures to be followed in normally unacceptable and unacceptable noise zones.

4. **Explosive or Flammable Fuels or Chemicals.** The Environmental Criteria and Standards (24 CFR 51, Subpart C) establish standards indicating how close a project can be located to hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature.

5. **Floodplains and Wetlands.** The Flood Disaster Protection Act of 1973 (P.L. 93-234) and implementing regulation at 24 CFR 55, the National Flood Insurance Act of 1968 (42 U.S.C. 4001), Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, require, if a project is to be located in such an area, that specific review and notification procedures be followed and that appropriate measures be taken to protect the property, to protect the life and safety of the occupants, and to minimize any harm to the floodplain or wetland.

6. **Coastal Zones.** The Coastal Zone Management Act of 1972 (16 U.S.C. 1451) and the implementing regulation at 44 CFR 123 require that projects to be located in the coastal zone (which includes the Great Lakes) be consistent with the State Coastal Zone Management Program.

7. **Air Quality.** The Clean Air Act (P.L. 90-148), the Clean Air Acts Amendments of 1970 (P.L. 91-604), the Clean Air Act Amendments of 1977 (P.L. 95-95), and the implementing regulations of the Environmental Protection Agency (40 CFR 50, 51 and 52) establish national ambient air quality standards.

8. **Water Quality.** The Federal Water Pollution Control Act of 1973 (P.L. 92-500), the Safe Drinking Water Act of 1974 (P.L. 93-523) and the implementing regulations of the Environmental Protection Agency (40 CFR 120) establish measures to protect the quality of water if a project is to be located in the recharge area of a community's sole water supply.

9. **Fish and Wildlife.** The Fish and Wildlife Coordination Act (P.L. 85-624) requires that HUD consult with the Fish and Wildlife Service (Department of Interior) and the appropriate State agency if the project will affect control or require modifications to any stream or other body of water.

10. **Endangered Species.** The Endangered Species Act of 1973 (P.L. 93-205), the Endangered Species Act Amendments of 1978 (P.L. 95-632) and 43 CFR 870, require that HUD consult with the Department of Interior and the Department of Commerce if the project may affect any species (including its habitat) identified by the Department of Interior as an endangered species.

11. **Toxic Chemicals and Radioactive Material.** HUD Notice 79-33 identifies the contact person for guidance on protection of persons and property from man-made environmental hazards such as toxic chemicals and radioactive materials.

Section 5. Uniform Act and Relocation Requirements

The Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) is not applicable to public housing projects developed under the turnkey method. However, in line with its policy regarding other HUD-assisted activities not covered by the uniform Act, HUD administratively requires that relocation assistance, including advisory services and reasonable moving and related expenses, be provided for eligible residential tenant-occupants (not owner-occupants) who are displaced as a result of turnkey development.

When required, relocation assistance and related payments are provided and financed by the PHA. However, the developer may be required to reimburse the PHA for all or part of the costs for such assistance if the developer fails to provide the PHA with specific information regarding the occupants of a proposed site or property, or to furnish notifications to such occupants in accordance with the PHA's instructions, or to meet any other applicable relocation requirements.

If there are any tenant occupants of the site(s) or property(ies) identified in the turnkey proposal, prior to its preparation and submission, the developer should ask the PHA to provide detailed information regarding the relocation notification requirements.

Section 6. Facilities and Services

Introduction. The developer shall make every effort to select sites that are accessible to existing or proposed public facilities and services. This may not be possible because sites may not be available near required facilities or the facilities may not have the capacity to serve the proposed project. In such instances, necessary facilities and services may be provided to the extent authorized in this section.

1. **Project Non-Dwelling Facilities.** Necessary non-dwelling space and equipment may be provided for management, maintenance and community activities and may be included in the development cost of a public housing project provided that the amount of space does not exceed the limitations identified below. These facilities may be provided on a project-by-project basis or as central space for several closely situated public housing projects operated by the PHA. Developers should review Part I of this packet for the specific PHA requirements for this project.

   a. **Management Facilities.** General purpose office space and equipment may be required by the PHA to perform administrative functions. Space for necessary facilities may be provided not to exceed the following limitations:

Number of Public Housing Units Served	Maximum Management Space Allowed (sq. ft.)
0-15	150
16-50	325
51-100	500
101-150	600
151-200	775
201-300	1000
301-400	1200
401-500	1400

b. **Maintenance Facilities.** Space and equipment may be required to perform operation and maintenance activities. Included are facilities for a central repair shop and storage of tools, parts and outdoor equipment (e.g., lawn mowers, snow blowers, and maintenance vehicles). Space for necessary maintenance facilities may be provided not to exceed the following limitations:

Number of Public Housing Units Served	Maximum Maintenance Space Allowed (sq. ft.)
0-15	125
16-50	400
51-100	800
101-150	1100
151-200	1400
201-300	1900
301-400	2300
401-500	2700

c. **Community Facilities.** Community space and related equipment may be required to provide social and recreational opportunities for project occupants. Included are such facilities as game rooms, meeting rooms or craft rooms. In determining the amount of community space to be provided, consideration shall be given to whether space will be provided for a child care facility and whether such space could be used for both purposes. Space for necessary community facilities may be provided not to exceed the following limitations:

(1) **Projects Designed for the Elderly:**

Number of Public Housing Units Served	Maximum Community Space Allowed
Under 51	25 sq. ft. per unit.
51-100	1,250 sq. ft. for the first 50 units, plus 20 sq. ft. for each additional unit.
101 or more	2,250 sq. ft. for the first 100 units, plus 15 sq. ft. for each additional unit.

(2) **Projects for Family Occupancy:**

Number of Public Housing Units Served	Maximum Community Space Allowed
Under 101	8 sq. ft. per bedroom.
101 or more	800 sq. ft. for the first 100 bedrooms, plus 4 sq. ft. for each additional bedroom.

(3) **Projects for Elderly and Family Occupancy.** The maximum amount of community space for a project to be occupied both by elderly and family households is the sum of the amounts determined in accordance with (1) and (2) above.

2. **Child Care Facilities.** Space may be provided for a child care center for the project occupants if such a facility is not otherwise available, or existing facilities are inadequate, to serve the proposed project. Such space may be provided in addition to the amount allowed for community facilities. Refer to Part I of this Packet for specific requirements.

3. **Health Care Facilities.** In projects for elderly occupancy, space may be provided, if required, for preventive health programs for the project occupants. This may include space for such facilities as examination rooms and health clinics only if they are not accessible in the neighborhood but shall not include general medical care or hospital care facilities such as laboratories and treatment rooms. If health care facilities are necessary, a maximum of five square feet for each unit may be provided. Such space may be provided in addition to the other amounts allowed. Refer to Part I of this Packet for any specific requirements.

4. **Off-Site Facilities.** Off-site improvements and facilities, such as extensions of water and sewage systems and access streets to the site boundary, may be required. The cost for off-site facilities may be included in the developer's price only if it is local practice that a developer or builder normally pays for such facilities when developing comparable privately owned housing. The amount authorized for off-site facilities shall be limited to the Area Office estimate of either the cost of such facilities or the increase in the site value that is attributable to such facilities, whichever is lower. If the cost exceeds the amount that may be approved by the Area Office, the additional amount would have to be off-set by a donation.

5. **Congregate Facilities.** As defined in the Act, congregate housing provides a living environment in which some or all of the dwelling units do not have kitchen facilities. Such housing must have or be connected with a central dining facility to provide wholesome and economical meals for the occupants in a generally self-supporting operation. The space required for a central kitchen and dining facility is in addition to the allowable non-dwelling facilities identified in this section. The amount of space for the dining room shall not exceed fifteen (15) square feet per finer, accommodating one-half of the project occupants at one sitting, and the kitchen shall be adequate to serve the dining facility. The turnkey developer's price may only include the cost of the following:

a. space for the common kitchen and dining facility, including food storage areas;

b. equipment for the central kitchen facility, including cooking utensils, ranges, refrigerators, storage cabinets, dishwashers, and waste disposal equipment, and;

c. furniture and equipment for the central dining facility, including tables, chairs, linen, glassware and eating utensils.

Section 7. Design and Construction Standards

Introduction. This section discusses the design and construction standards applicable to all projects developed for the public housing program. If the standard is optional, Part I will indicate if it is required for this specific project.

1. **Basic Standards.** Projects developed under the public housing program must comply with:

   a. either the HUD Minimum Property Standards (MPS) for New Construction or the HUD Minimum Design Standards for Rehabilitation of Residential Properties. The MPS for multi-family Housing apply to walk-up and elevator structures and sites and are contained in Handbook 4910.1. The MPS which apply to detached, semi-detached and row structures and sites are contained in Handbook 4900.1. An up-to-date copy of the MPS is available for examination in each HUD Regional, Area and Service Office. Copies may be purchased from the United States Government Printing Office, Washington, D.C. 20402. The MPS for Rehabilitation of Residential Properties is Handbook 4940.4 which applies to all types of structures. It may be obtained free of charge from any HUD Office.

   b. HUD environmental requirements and requirements for accessibility and usability by the physically handicapped (24 CFR 40 and 24 CFR 8); and

   c. any applicable local requirements, such as State or local building codes and ordinances.

2. **Local MPS Variations.** The Area Manager may approve variations from the MPS to meet special local conditions for a specific project. Variations may include modifications to design and construction standards, use of alternate building materials and fixtures, and the use of innovative construction methods and materials. In such cases, the Area Manager must determine that the alternate standards or materials will provide for a level of structural soundness, useful life, and economy in maintenance or operation that is at least equivalent to the MPS. Where a variation is expected to be used for future projects on a repetitive basis, the Area Manager should recommend that an appropriate Local Acceptable Standard be established.

3. **Additional Program Standards.** The basic standards identified above provide minimum design and construction requirements. The construction of public housing projects may exceed the basic standards provided that projects do not involve elaborate or extravagant design or materials. For example, increasing the MPS insulation or glazing standard may be required to conserve energy and provide for more economical operations over the projected life of the housing.

   a. **Additional Quality Standards.** The Area Manager is required to develop specific additional quality standards necessary to comply with the requirements of Section 6(b) of the Act. Specifically, the law requires that the design and cost of a public housing project take into account the extra durability required for safety and security and economical maintenance of such housing; the provision of amenities designed to guarantee a safe and healthy family life and neighborhood environment; the application of good design as an essential component of such housing for safety and security as well as other purposes; the maintenance of quality in architecture to reflect the standards of the neighborhood and community; the need for maximizing the conservation of energy for heating, lighting, and other purposes; the effectiveness of existing cost limits in the area; and the advice and recommendation of local housing producers. The additional quality standards for this project may be found in Part IV of this Packet.

   b. **Density.** The density requirements are stated in Section 3 of this Part.

   c. **Non-Dwelling Facilities.** The requirements and limitations for required facilities and services are stated in Section 6 of this Part.

4. **Carpeting.** Carpeting, instead of other types of finished flooring, may be provided only in projects proposed for occupancy by the elderly or handicapped. Carpeting may not be used in bathrooms or kitchens.

5. **Basements.** Unfinished basements may only be provided in public housing projects if the cost of constructing basements was reflected in the published prototype dwelling construction and equipment (DC&E) costs for the area developed by the Area Office. In establishing prototype costs, the Area Office may consider the cost of constructing basements but only in those areas where it is common local practice for moderate income housing.

6. **Parking Spaces.** The number of parking spaces to be provided for a public housing project is generally determined by local building codes and ordinances. In the absence of local parking requirements, the Manual of Acceptable Practices (HB 4930.1) should be used as a guide for determining the number of parking spaces to be provided. Parking spaces, generally, will be provided in the form of parking pads for detached and semi-detached structures, or a parking lot for other structure types, and would be an allowable expense for site improvements (Account 1450.1).

   a. **Highrise Elevator Structures.** Parking spaces for the occupants of highrise elevator projects may be included as an integral part of the structure. This may be necessary to comply with local requirements or to provide for economical construction of the proposed project because of the limited availability or high cost of acquiring adjacent land solely for a parking lot. In such instances, parking spaces may be provided in a basement or sub-basement garage and would be an allowable expense for site improvements (Account 1450.1).

   b. **Detached and Semi-Detached Structures.** Garages or carports (as distinguished from parking pads) are occupant storage spaces and must be included in dwelling construction (Account 1460). One-car garages or carports for a specific project being developed as scattered site housing may be provided if this can be accomplished within the prototype dwelling construction and equipment cost limitation.

7. **Air Conditioning.** Air conditioning systems may be provided in public housing projects. This may be necessary to provide flexibility in the design and layout of the housing units, provide for a healthy living environment, assure continued occupancy,

and prevent premature obsolescence. Although air conditioning may be desirable, it is not required unless specified in Part I of this Packet.

8. **Utilities.** It is important that the best types and utility combinations be selected. If the best system is not installed initially, the cost of converting to another system at some later date is usually prohibitive. All selected utilities must be available in time for project construction or occupancy.

   a. **Utility Analysis.** The PHA will provide a completed Comparative Analysis of Utility Costs (Form HUD-51994) for the proposed project with this Packet.

   b. **Utility Selection.** The utility combination identified by the PHA shall be selected unless the developer can demonstrate that a more efficient and economical combination is available. If the developer wishes to propose an alternative combination, the developer must prepare and submit with its proposal a revised Form HUD-51994.

   c. **Individual Non-Dwelling Meters.** Utilities for non-dwelling facilities (e.g., maintenance, management and community space) shall have meters separate from residential meters.

9. **Solar Energy.** The developer shall make use of solar energy, if it is economical to do so. Solar energy systems are required only if stated in Part I of this Packet. Any addition, alteration, or improvement to an existing or new structure designed to use solar energy to reduce the demand for other energy sources may be considered.

   a. **HUD Standards.** The Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Systems (Handbook 4930.2) identifies various types of active and passive systems that may be considered. A solar heating or domestic hot water system may be approved only if an operational conventional system will be provided as a "back-up".

   b. **Allowable Project Costs.** The cost of solar energy equipment is an allowable expense for project development.

      (1) **Site Improvements (Account 1450.1).** The purchase and installation cost of energy generating or collecting equipment shall be included in Account 1450.1. Included are the costs of related structure alterations; distribution systems (e.g., wiring, ducts, piping, pumps, insulation and heat exchangers); storage tanks, rock bin or heat sink elements; and control systems, sensors and logic devices.

      (2) **Dwelling Construction (Account 1460).** The cost of all energy distribution systems within the dwelling unit shall be included in Account 1460. Included are all costs for the conventional "back-up" system, as well as the related dwelling unit costs for the solar heating or domestic hot water system such as wiring, ducts, piping, radiators, grills, dampers and thermostat. In addition, the cost of building construction common to both the solar system and the housing (e.g., sturdier roof framing to support solar collecting equipment) shall be included in Account 1460.

10. **Works of Art.** Works of art, such as sculptures, mosaics or murals, may be incorporated in a public housing project. Selection of the artist is the responsibility of the architect or developer with the approval of the PHA. Works of art may be provided only in common buildings areas or grounds of the proposed project. In selecting art objects, consideration must be given to their appeal and acceptance by project and neighborhood residents. The materials selected should be permanent and capable of withstanding exposure to the elements and preclude the possibility of theft. The cost of all works of art for a specific project shall not exceed one percent of the amount budgeted for dwelling construction and equipment. The cost of art objects that are part of the structure is an allowable expense for non-dwelling construction (Account 1470), otherwise, the cost shall be included in site improvements (Account 1450.1).

Section 8. Prototype Costs

Introduction. Section 6(b) of the Act requires that HUD establish prototype costs at least annually for various structure types and unit sizes in different areas of the country. The prototype costs established by HUD represent the ceiling amounts that may be approved for construction and equipment in the project development budget and construction contract. The Act also provides that the prototype costs established by HUD for any area may be exceeded by up to ten (10) percent if necessary for individual projects.

1. **Federal Register Publication.** The unit prototype cost schedule is published at least annually as a Notice in the Federal Register and is effective upon publication. The published prototype cost schedule identifies the current per unit dwelling construction and equipment cost base don the number of bedrooms and structure types for various geographic areas. The unit prototype cost schedule for a specific geographic area may be revised based on public comments or other evidence that construction costs exceed the limits determined by HUD. Any revisions approved by HUD also will be published as a Notice in the Federal Register.

2. **Prototype Cost Area.** A "prototype cost area" is a geographic area, established by the Area Office, within which there is no appreciable difference in the cost of material, labor, and equipment for the housing construction industry. A separate prototype cost area may be established if construction costs in a community consistently differ from other communities within the same prototype cost area. Prototype cost areas are identified by county, city, or other political boundaries. A map, identifying the current prototype cost areas, is maintained in the Area Office and is available for public inspection.

3. **Structure Types.** The unit prototype cost schedule is established on the basis of the number of bedrooms per unit for the following structure types:

   a. **Detached (D).** A structure which consists of a single living unit and is surrounded by permanent open spaces.

   b. **Semi-Detached (SD).** A structure containing two living units separated by a common vertical wall.

c. **Row Dwelling (R).** A structure containing three or more living units, each separated by vertical walls, and generally having individual entrances and interior stairs.

d. **Walk-Up Apartments (AW).** A multi-level low-rise structure containing two or more living units, each separate horizontally (ceiling/floor), and by vertical walls.

e. **Elevator Structure (AE).** Any high-rise structure for which an elevator is required under the Minimum Property Standards or local building codes.

4. **Dwelling Construction and Equipment Costs.** The construction cost of new housing, for the purposes of establishing prototype costs, includes the cost allowed for dwelling structures (Account 1460) and dwelling equipment (Account 1465). The following is a description of the construction items included in prototype costs:

a. **General Construction.** This includes the costs for:

(1) normal excavation and backfill for dwelling structures, but not the cost for excessive excavation and backfill or site improvements such as grading, installation of utility service, streets, walks and landscaping;

(2) normal foundations but, not the cost of special improvements such as pilings, caissons, or underpinnings required for unusual site topography or sub-soil conditions;

(3) structural framing and interior and exterior finish;

(4) dwelling structures, including closets and other occupant storage spaces, and common spaces such as entrances, corridors and lobbies, janitorial closets, and laundry, heating and equipment spaces; and

(5) fixed equipment such as cabinets, cupboards and shelving, including installation.

b. **Plumbing.** This includes all costs relating to domestic gas, water and sewage distribution systems within dwelling structure walls, such as piping, kitchen and bathroom fixtures and accessories, domestic hot-water heaters, circulating pumps, and utility meters or checkmeters.

c. **Heating and Air Conditioning.** This includes all costs relating to air handling and distribution systems, such as furnaces, piping, ducts, radiators, filters, vents, and fans. This applies to costs related to dwelling structures whether such items are within the dwelling structure walls or part of a central heating plant or system. If a central plant will serve both dwelling and non-dwelling areas, a proportionate cost of the structure, equipment, heating mains, and pipe tunnels is also included. The cost of air conditioning systems and equipment is also included where it has been justified.

d. **Electrical.** This includes all costs relating to interior electrical systems from the service drops, such as wiring, receptacles, switches, fixtures and electric meters or check meters.

e. **Elevators.** This includes the cost of elevators and related equipment for high-rise structures.

f. **Other.** This includes a proportionate share of the builder's cost of labor, insurance, Social Security and sales taxes, and the builder's general overhead, profit, and bond premiums. Not included are a turnkey developer's fee, overhead, or interest on construction financing.

g. **Dwelling Equipment.** This includes the cost of ranges, refrigerators, shades, screens, and similar equipment provided in dwelling structures and the installation cost.

5. **Unit Prototype Cost.** The published unit prototype cost represents the current dwelling construction and equipment costs for modest housing that is built in compliance with the MPS and local building codes and requirements and the additional public housing program standards.

6. **Base Project Prototype Cost.** The base project prototype cost is computed by multiplying the then current applicable unit prototype cost by the number of units for that unit size and structure type and then adding the amount for all units in the proposed project.

7. **Prototype Cost Adjustment Factor.** A cost adjustment factor is developed to recognize actual changes (increases or decreases) in construction costs from the effective date of the unit prototype cost (used to determine the base project prototype cost) to the execution date of the contract of sale (turnkey). The cost adjustment factor is based on actual changes in construction cost using the Boeckh's Index. However, if another commercial index (e.g., Marshall Swift's) is customarily used by the Area Office for routine processing, it may be used instead of the Boeckh's Index.

8. **Project Prototype Cost Limit.** The project prototype cost limit is the ceiling amount that may be approved for dwelling construction and equipment (Account 1460 and Account 1465) in the contract of sale. The project prototype cost limit is determined at the time that the contract of sale is to be executed. This is determined by multiplying the base project prototype cost by the prototype cost adjustment factor.

In limited circumstances, it may be necessary to exceed the project prototype cost limit to carry out the objectives of the Act. Section 6(b) of the Act provides that the prototype cost may be exceeded by up to ten (10) percent. If the additional cost does not exceed ten (10) percent, the Area Manager may approve a higher project prototype cost for the following reasons:

a. **Local Building Requirements.** Increases attributable to changes in local building requirements (e.g., codes, ordinances) which were imposed after the unit prototype cost schedule was published.

b. **Minimum Property Standards.** Increases attributable to changes in the HUD Minimum Property Standards or the additional public housing program standards which were imposed after the unit prototype cost schedule was published.

c. **Scattered Site Housing.** Higher development costs are anticipated because the project is being developed as scattered site housing.

d. **Increases During Construction.** Change orders, that are beyond the scope of the construction contract or contract of sale, which are required to provide a necessity, appropriate betterment, or equivalent, for the proposed project.

Part III. Contents of Turnkey Proposal

Turnkey proposals must comply with all requirements of the Turnkey Developer's Packet to be considered by the PHA. Each turnkey proposal shall include:

1. **Form HUD-52651-A.** The proposal shall contain an original of the Site, Design and Cost Report (Form HUD-52651-A) for each individual site (or a site comprising several contiguous parcels having exhibits and information applicable to all parcels). This form must be completed with all attachments and all questions answered. Where more than one site is proposed, a separate Form HUD-52651-A shall be submitted as a summary for the proposed project as a whole.
2. **Developer's Experience.** The developer and the developer's contractor shall provide the following information relating to their housing construction and development experience in connection with:
   a. **HUD projects:** a Previous Participation Certificate (Form HUD-2530), which identifies the project number, location, units, and current development status for all HUD assisted housing projects (e.g., Public Housing, Section 8, Section 202) and HUD insured projects (e.g., Section 221(d) (4), Section 236, Section 207);
   b. **Other projects:** a list of other projects (excluding HUD assisted and HUD insured projects) developed, identifying the number of units, structure type, community, total project cost and current development status; and
   c. **Financial statement:** a Personal Financial and Credit Statement (Form FHA 2417). The PHA will not be authorized to release any financial information, except to the Area Office, without the express written consent of the developer or contractor.
3. **Developer's Certification.** The developer shall submit a written certification which indicates that::
   a. the developer has read and understood the provisions of the turnkey contract of sale; and
   b. if the developer's turnkey proposal is selected, the developer will comply and assure that any contractors or subcontractors employed by the developer will comply with the requirements of the contract of sale.

Section IV. Forms and Documents

The following forms and documents are provided with this Packet.

1. PHA's Proposal Evaluation System
2. Prepared Form HUD-51994 (Comparative Analysis of Utility Costs)
3. Blank Form HUD-51994
4. Form HUD-53015 (Format for Turnkey Contract of Sale)
5. Form HUD-52651-A (Site, Design and Cost Report)
6. Form HUD-2530 (Previous Participation Certificate)
7. Form HUD-5087 (Outline Specification)
8. Program Regulation 24 CFR 841
9. A copy of the locally adopted HUD additional quality standards
10. Handbook 7417.1 REV-1, Chapters 9 and 10 Sections on PHA submission of drawings
11. Form FHA-2417 (Personal Financial and Credit Statement)
12. Form HUD-92800-3 (FHA Underwriting Report) - only if the project involves single family (1-4 family) units

PHA's Proposal Evaluation System

Proposal Evaluation Criteria. The PHA will evaluate and rate each turnkey proposal objectively on the basis of the following criteria:

1. **Developer's Price:** the total developer's price as a percent of the median developer's price for all responsive turnkey proposals;
2. **DC&E Cost:** the developer's dwelling construction and equipment cost as a percent of the base project prototype cost;
3. **Developer's Experience:** the ability of the turnkey developer and contractor, if applicable, to build a housing project of the type and scale proposed, including the number, complexity and location of construction activities currently underway;
4. **Physical Site Characteristics:** the suitability of the site for housing use and freedom from adverse environmental conditions;
5. **Site Plan:** the extent that the site is appropriate for the intended use (e.g., occupants, density) and the site plan provides open spaces, outdoor recreation areas, and promotes economical project construction and maintenance, and minimizes displacement of site or property occupants.
6. **Site Location:** the proximity and accessibility of the site to transportation, employment, recreation and similar facilities and the adequacy of such facilities;
7. **Housing and Employment Opportunities:** the absence of low income or assisted housing concentrated in the proposed neighborhood or area of the community and extent that the developer proposes to employ minority or women-owned businesses in project development activities.
8. **Architectural Treatment:** the degree to which the design, and placement of buildings is aesthetic and complements adjacent development, and the building and unit floor plans and layout provide functional housing arrangements;

9. **Special Design Features:** the degree to which the design incorporates features that provide for efficient project operations, lower maintenance costs, and the safety and security of the occupants;

10. **Energy Savings:** the extent that the design provides for long-term energy savings by incorporating the use of solar energy or other energy conservation features;

11. **Materials and Equipment:** the extent that durable, low maintenance, construction material and equipment will be used;

12. **Overall Project Design:** the extent that the proposed housing, including non-dwelling facilities, meets the design and functional objectives indicated i the Turnkey Developer's Packet;

13. **Other PHA Criteria:** any other objective criteria established by the PHA and identified in Part I of this Turnkey Developer's Packet.

Proposal Rating and Selection. The PHA will rate each responsive turnkey proposal on the basis of the criteria above. If the highest rated turnkey proposal was assigned a zero by the PHA for any criterion, the PHA may select the next highest rated turnkey proposal for which no criterion was assigned a zero.

a. **Standard Rating System.** The standard rating system shall be used if special PHA criteria were not established. (See Part I, Proposal Evaluation Criteria.) The maximum rating under the standard system is 84 points. However, a turnkey proposal must receive a score of at least 50 points to be selected by the PHA based on the following rating procedure:

(1) **Developer's Price.** A turnkey proposal will be considered as average, if the developer's price is between 90 percent and 100 percent of the median developer's price for all responsive turnkey proposals; poor, if the developer's price is more than 100 percent; and superior, if the developer's price is less than 90 percent. Points for developer's price shall be assigned as either superior (10 points), average (5 points), or poor (zero points).

(2) **DC&E Cost.** A turnkey proposal will be considered as average, if the Dwelling Construction and Equipment (DC&E) portion of the developer's price is between 90 percent and 100 percent of the base project prototype cost, poor, if the DC&E cost is more than 100 percent; and superior, if it is less than 90 percent. Points for DC&E cost shall be assigned as either superior (10 points), average (5 points), or poor (zero points).

(3) **Developer's Experience.** The PHA shall evaluate the developer's and, if applicable, the contractor's previous experience in housing construction. Points for developer and contractor experience shall be assigned as either: superior (10 points), average (5 points), or poor (zero points).

(4) **Site and Design Criteria.** The PHA shall evaluate the turnkey proposals for each of the other nine criteria and shall assign points as superior (6 points), average (3 points), or poor (zero points).

b. **Optional Rating System.** The optional rating system shall be used if special PHA criteria were established. The maximum rating under the optional system is 100 points which provide sixteen (16) discretionary points for use by the PHA. Under this system, a turnkey proposal must receive a score of at least 60 points to be selected by the PHA. The sixteen (16) discretionary points shall be distributed among the PHA established criteria and shall be assigned as follows: superior (the number of points, not exceeding 16, assigned to the criterion by the PHA), average (one-half of the maximum number of points assigned to the criterion), or poor (zero points).

Proposal for a Public Housing Project

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (Exp. 09/30/96)

See Public Reporting Burden Statement on Page 3.

Project Number:	If an ACC for Front-End Funds was executed:	Allocation Area:
P	Loan Authority= $ _____ Contract Authority= $ _____ Date: _____	☐ Metro Area ☐ Non-Metro Area ☐ PHA inside Central City Allocation Area ☐ PHA outside Central City Allocation Area

Part I—PHA Data

1. Name of PHA:	2. Address of PHA:

3. PHA area of jurisdiction ☐ includes the community for which public housing development assistance is being requested.

4. The required Cooperation Agreements ☐ are executed for the proposed project.

5. A current General Certificate: (a) ☐ is attached (b) ☐ was submitted, dated , and is still valid.

6. The required PHA resolution authorizing submission of this PHA Proposal, etc., (a) ☐ is attached (b) ☐ was submitted, dated

Part II—Proposal Project Summary and Development Schedule

Section A. Project Location

1. Community:	2. County or Other Similar Area:	3. Congressional District(s)	4. Census Tracts/Enumeration District(s)

Section B. Housing Type and Development Method

1. Housing Type and Development Method	9. If Turnkey:	3. Congregate or other special-use housing
(1) Conventional (2) Turnkey (a) New Construction ☐ ☐ (3) Acquisition (b) Rehabilitation ☐ ☐ (c) Existing ☐	(a) ☐ RFP and Developer's Packet is attached. (b) ☐ PHA selected Turnkey Proposal is attached. (c) ☐ PHA certifies that Turnkey Proposal was selected based on an objective rating system using such factors as site location, project design, price and developer experience.	(a) ☐ is (b) ☐ is not proposed. If "Yes" specify use(s) and number of units:

Section C. Dwelling Units by Household Type and Structure Type

As appropriate, enter the number of dwelling units (DUs), proposed for this project by number of bedrooms, structure and household type.

	Column 1	Column 2	Column 3 Total DUs			Column 4 Number of Family and Large Family DUs						Column 5 Number of Elderly DUs		
	Structure Type[1]	No. of Buildings	(a) Total	(b) Family	(c) Elderly	(a) 1-BR	(b) 2-BR	(c) 3-BR	(d) 4-BR	(e) 5-BR	(f) 6-BR	(a) Efficiency	(b) 1-BR	(c) 2-BR
1	D													
2	SD													
3	E													
4	W													
5	E[2]													
6	Totals													
7	Number in Line 6 for Hdcp.													

[1] Structure Types are: D=Detached; SD=Semi-Detached; R=Row or Townhouse, W=Walkup; and E=Elevator
[2] Justification required; See Part III, Item A.4, Density

Section D. Proposed Project Development Schedule

Schedule each processing step for the proposed project in the "PHA Estimate" column by entering the estimated number of calendar days required.

Processing Steps		Number of Calendar Days (1) PHA Estimate	Number of Calendar Days (2) HUD Use
1. Site Documents	(a) PHA Submission		
	(b) HUD Decision	25	25
2. Design Documents	(a) PHA Submission		
	(b) HUD Decision	45	45
3. Construction Documents	(a) PHA Submission		
	(b) HUD Decision	45	45
4. Contract Documents	(a) PHA Submission		
	(b) HUD Decision	15	15
5. Construction Start			
6. Completion or Acquisition			
7.	**Total**		

8. Date by which complete proposal will be submitted:

9. State the earliest option expiration date and identify the applicable site:

Part III—Proposal Content

Section A. Proposed Site, Project Description and Construction Cost

1. **One to Four Family Properties:** A scattered site housing project involving one to four family properties is proposed: (a) ☐ Yes, (b) ☐ No. If Yes, the following are attached: (1) ☐ a neighborhood map identifying specific boundaries within which the PHA proposed to acquire sites or properties; (2) ☐ a description of the structural types, unit sizes, and conditions of typical housing in each of the specified neighborhoods; (3) ☐ evidence that vacant sites or existing houses, as applicable to the proposal, are regularly offered for sale within cost limitations; and (4) ☐ for projects involving 1-to-4-family properties, the attached schedule demonstrates that all properties will be acquired by the PHA within one year of ACC execution and identifies the number of units and dates by which property specific site acquisition documents will be submitted.
2. **Site Design and Cost Reports:** (1) Number of sites in proposed project _____; (b) Number of Forms HUD-52651-A attached _____; (c) A Form HUD-52651-A with required exhibits is attached for: (1) ☐ each proposed site and/or (2) ☐ a site comprising several contiguous parcels having common exhibits and information; (d) ☐ a separate Form HUD-52651-A is attached summarizing the proposed project as a whole.
3. **Proposed Construction Cost/Price:** The total construction cost/price proposed is $ _____ , with a per unit cost/price proposed of $ _____.
4. **Density:** (a) ☐ the PHA proposes a project density which meets HUD requirements including those of compatibility for the number and ages of the intended residents; (b) the proposed project: (1) ☐ is (2) ☐ is not a scattered-site project; (c) justification for the use of high-rise structures: (1) ☐ is not applicable, (2) ☐ is attached, or (3) ☐ was previously submitted to the Field Office on _____ (date).
5. **Schools:** A letter from the school board (a) ☐ is attached (b) ☐ is not required.
6. **PHA:** The PHA selected the proposed site(s) to comply with the locations for assisted housing identified in the HUD-approved PHA: (a) ☐ Yes or (b) ☐ Not Applicable.
7. **Facilities and Services:** For the intended residents, the PHA proposes a project for which: (a) ☐ the facilities and services as currently exist, meet or exceed HUD requirements; or (b) ☐ with the addition of the following, the facilities will meet or exceed HUD requirements:

Proposed Facility/Service	Source of Funding	Completion Date	Remarks

8. **Nondwelling Space:** (a) ☐ the project nondwelling space proposed complements the facilities and services referred to in Item 7 above. If nondwelling space is **not** exclusively for the proposed project, an attachment state the extent that (b) ☐ nondwelling space is also for other public housing projects and the applicable amounts and cost of such space and/or (c) ☐ nondwelling space is also for projects under other assisted housing programs.
9. **Utility Combination:** The attached Comparative Analysis of Utility Costs (Form HUD-51994) (a) ☐ is the one prepared by the Field Office or (b) ☐ is a revised one prepared pursuant to requirements.
10. **Housing Opportunities:** (a) ☐ the PHA selected the proposed project site to comply with or exceed HUD housing opportunity requirements and (b) ☐ the following information has been added to the locality map required by the Form HUD-52561-A: (1) the percentage of minority residents for each of the locality's areas of minority concentration and racially mixed areas; and (2) existing and proposed HUD and other assisted housing.
11. **Environmental:** ☐ the PHA proposes a project which complies with or exceeds HUD environmental requirements.
12. **Relocation:** Displacement (a) ☐ is (b) ☐ is not involved. If displacement is involved, (c) an attachment, in addition to that required by the Form HUD-52561-A, identifies: (1) ☐ the type of notice (Notice of Displacement, Notice of Right to Continue in Occupancy, or other notice) proposed to be issued to each occu-pant; (2) ☐ the estimated cost of any required relocation benefits; and (d) the following summarizes potential displacement:

(1) Type of Occupant	a. Total Number	b. Eligible for Assisted Housing	c. Estimated Relocation Cost	(2) Sources of Relocation Cost Funds	
				a. Source	b. Amount
1. Families				1. CDBG	
2. Individuals				2. Public Housing	
3. Business Concerns		xxxxxxxxxxxxxxxxx		3.	
4. Nonprofit Institutions		xxxxxxxxxxxxxxxxx		4.	
5. **Total**				5. **Total**	

Section B. Demonstration of Financial Feasibility

This PHA has demonstrated financial feasibility: (1) ☐ with the aid of operating subsidy or (2) ☐ without the need for operating subsidy, and a Demonstration of Financial Feasibility (Form HUD-52485) or other demonstration pursuant to HUD instructions is attached.

Section C. Professional Assistant to PHA

The following _____ (enter the number) professional service contracts are attached:

1. Service	2. Name and Address of Firm or Individual
a.	a.
b.	b.
c.	c.
d.	d.

Section D. Annual Contributions Contract

Three original, signature copies of the following are attached:

1. ☐ **Form HUD-53010.** Part One of the ACC (Form HUD-53010) signed and dated by the authorized PHA official. (Part Two should not be returned.)
2. ☐ **Forms HUD-274 and HUD-51999.** The Designation of Depository for Direct Deposit of Loan or Grant Funds (Form HUD-274) and the General Depository Agreement (Form HUD-51999) signed and dated by the authorized PHA official and bank representative.
3. ☐ **Forms HUD-9204, HUD-52250 and HUD-5412.** The Project Loan Note (Form HUD-9204), the Permanent Note (Form HUD-52250), and the Note Signature Certificate (Form HUD-5412) signed and dated by the authorized PHA official.

Section E. Request for Advances

1. A PHA request for advances (a) ☐ is attached (b) ☐ is not attached.
2. Funds required are for: (a) ☐ planning expenses required for the first calendar quarter following Field Office execution of the ACC ($ _____ and/or (b) ☐ site acquisition and related costs ($ _____).
3. ☐ A detailed explanation of the nature and the amount of each obligation or proposed obligation and the extent that the obligation is necessary for the proposed project is attached.
4. ☐ The PHA certifies that required blanket fidelity bond and any other required insurance coverage is in force.

Section F. Signature

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Typed Name and Title of Authorized PHA Official:	Signature:	Date:

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0033), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

This collection of information is required for developing a public housing project pursuant to HUD regulations 24 CFR 941. The information will be used to provide HUDwith sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made. This information collection is mandated pursuant to the U.S. Housing Act of 1937. The information requested does not lend itself to confidentiality.

Demonstration of Financial Feasibility

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0033 (exp. 9/30/96)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0033), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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Part 1. Estimate of PHA and Tenant Utility Costs

Project Number:	Public Housing Agency:

Type of Utility or Fuel	Estimated Amount per Unit per Month — PHA Furnished Quantity	PHA Furnished Cost	Tenant Purchased Quantity	Tenant Purchased Cost
a. Water Services. Uses: ☐ Household ☐ Lawn and Shrubs	Gals.	$	Gals	$
b. Sewage Disposal.		$		$
c. Electricity. Uses: ☐ Lighting and Refrigeration ☐ Cooking ☐ Air Conditioning ☐ Domestic Hot Water ☐ Space Heater ☐ Other: (identify)	KWH	$	KWH	$
d. Gas / LP. Uses: ☐ Domestic Hot Water ☐ Cooking ☐ Space Heater ☐ Other: (identify)	Therms	$	Therms	$
e. Oil (Type No.:). Uses: ☐ Domestic Hot Water ☐ Cooking ☐ Space Heater	Gals.	$	Gals	$
f. Heating Labor. (Project Oper. Plant Only)		$		
g. Other Utilities or Services. (specify)		$		$
h. Sub Total - PHA Furnished Utilities.		$		
i. Sub Total - Tenant-Purchased Utilities.				$
j. Total PHA and Tenant-Purchased Utilities. (h plus i)				$

Part 2. Estimate of Anticipated Operating Expenses

	Estimated Amount per Unit per Month
a. Administrative Expense: Salaries (including maintenance supervision), legal, staff training, travel, accounting fees and other administrative expenses.	$
b. Tenant Services Expense: Salaries and other expenses incurred in providing tenant services and the cost of other tenant services activities.	$
c. Utilities Furnished by PHA: Water, electricity, gas, fuel, sewer and other utilities. Also utilities labor and other utilities expense (from item 1h, above).	$
d. Ordinary maintenance and Operation: Labor, materials, and contract costs for all routine maintenance including janitorial and watchman service. Exclude expense applicable to utilities.	$
e. Protective Services: Labor, material and contract costs for protective services.	$
f. Insurance: Fire and Extended coverage, Public Liability, Workmen's Compensation, Employers' Liability, boiler, automobile, burglary, theft and robbery, and Fidelity Bonds, as appropriate.	$
g. Payment in Lieu of Taxes: (Part 3,c (below) minus Part 2,c (above) times 10 percent).	$
h. Other General Expenses: Terminal leave payments, employee benefit contributions, collection losses, and other general expenses.	$
i. Sub-Total (a through h)	$
j. Provision for Nonroutine Expenses and Reserve (10 percent of i)	$
k. Estimated Monthly Operating Expenses (i plus j)	$

Part 3. Estimate of Average Monthly Contract Rent of the Proposed Project	per Unit Month
a. **Estimate of Average Monthly Gross Rent**	$
b. **Estimate of Tenant-Purchased Utilities** (from item 1i, above)	$
c. **Estimate of Monthly Contract Rent** (a minus b)	$
d. **Estimate of Average Monthly Contract Rent Based on 97% Occupancy** (.97 x c)	$

Part 4. PHA Determination The PHA determines that (mark and complete "a" or "b") :

a. ☐ The project's estimated operating expenses, (item 2k) $_____ **will not** exceed the estimated operating income (item 3d) $_____

b. ☐ The project's estimated operating expenses, (item 2k) $_____ **will** exceed the estimated operating income (item 3d) $_____ by $_____ (item 2k minus item 3d) and an operating subsidy of that amount will be required. To be feasible, this amount cannot exceed item 5d (below).

Part 5. Maximum Allowable Operating Subsidy	per Unit Month
a. **The PUM allowable expense level**	$
b. ***Plus:*** **The PUM allowable utilities expense level** (from item 1h, above, less utilities labor and other utilities expense)	$
c. ***Minus:*** **The PUM contract rental income** (item 3d, above)	$
d. **Maximum PFS operating subsidy** (5a plus 5b minus 5c)	$

Part 6. Signature

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Typed Name and Title of Authorized PHA Official:	Signature:	Date:
	X	

Instructions

1. Purpose. This form shall be used to demonstrate financial feasibility of a project submitted by a Public Housing Agency (PHA) under the Public Housing Program pursuant to 24 CFR 941 and the Public Housing Development Handbook 7417.1 REV-1 and by an Indian Housing Authority (IHA) under the Indian Housing Program pursuant to 24 CFR 905 and the Indian Housing Handbook 7440.1. This form is to be used for all development methods: conventional, turnkey or acquisition. A project may be approved by the HUD Field Office if it is determined that the project is financially feasible based on the PHA's demonstration of financial feasibility pursuant to this form. This form is not to be used by PHAs located in Alaska, Guam, Puerto Rico or the Virgin Islands (See Handbook 7417.1 REV-1). A revision of this financial feasibility test is mandatory if the PHA proposes to change any physical element of the proposed project or its method of management or plans to increase services, and such change would materially increase the estimated operating costs of said project.

2. Prepared By: The form HUD-52485 is prepared by the PHA, with assistance if necessary from the HUD Field Office.

3. Number: Original and one or more copies.

4. Distribution: A PHA shall submit the original to the applicable HUD Field Office with the PHA Proposal for the project and shall retain a copy for its files. A PHA may also be requested by the Field Office to submit additional copies.

5. Instructions for PHA Preparation:

Heading: In the space provided, enter the name and address of the PHA and the project number.

Part 1. - Estimate of PHA and Tenant Utility Costs. Enter the estimated per unit per month (PUM) consumption and PUM cost applicable to PHA furnished and/or tenant purchased utilities. The source data for consumption and cost for electricity, gas, fuel, heating supplies and heating labor is available on Form HUD-51994, Part A, Life Cycle Cost Analysis of Utility Combinations. The PHA shall use the cost associated with the utility combination which HUD has determined is most suitable for the project. Estimates for water and sewage disposal shall be determined separately and entered in Part 1, Items a and b. Costs shown on HUD-51994 will be allocated to PHA furnished or tenant purchased and the results entered into Part 1, Items h and i.

Part 2. - Estimate of Operating Expenses. The PHA shall submit an estimate of its average monthly operating expenses for its first year of operation. This estimate shall be based on the actual expenses of a project which is comparable from a physical and tenancy standpoint and is located in or about the locality of the proposed project. The expense estimates shall be based on current data and shall not include a projected inflation factor.

a. Administrative Expenses. Enter the PUM estimated total administrative expense for the project. Do not include an estimate for audit fees.

b. Tenant Services Expense. Enter the PUM estimated total expense for any tenant services programs projected for the project.

c. Utilities Furnished by PHA. Enter the PUM estimated total expense for utilities to be supplied by the PHA for the project.

d. Ordinary Maintenance and Operation. Enter the PUM estimated total expenses for ordinary maintenance and operation for the project.

e. Protective Services. Enter the PUM estimated total expenses applicable to protective services for the project.

f. Insurance. Enter the PUM annual cost of the required insurance, even though the initial insurance may be charged to the development cost of the project.

g. Payment in Lieu of Taxes (PILOT). Enter the PUM estimated cost for PILOT. PILOT is ten (10) percent of the difference between the estimate of monthly contract rent and the utilities supplied by the project. No entry need be made where the Cooperation Agreement specifically waives PILOT. In the Indian Housing Program PILOT may only be paid on taxable land. If PILOT rate is less than ten (10) percent of shelter rent, entry should reflect such reduced rate.

h. Other General Expenses. Enter PUM estimated total expense for other general expenses (e.g., terminal leave payments, collection losses, employee benefit contribution and in the Indian Housing Program payment for services offered by other government agencies) for the project.

Part 3. - Estimate of Average Monthly Contract Rent of the Proposed Project. The estimate of operating income shall be the projected income for the first fiscal year of operation (without operating subsidy) based upon 97 percent occupancy by a tenant body selected in accordance with PHA regulations (based on Sections 3 and 6(c) (4) of the Act and 24 CFR Part 960 and in the case of the Indian Housing Program 24 CFR 905).

a. Estimate of Average Monthly Gross Rent. To determine the estimate of average monthly gross rents, the PHA shall, first, determine the range of incomes of low-income families residing in rental units in the county or jurisdiction which the project would serve. The families shall be classified by household types (elderly/non-elderly) and by income intervals. The percentage distribution of these incomes shall be recorded in established income intervals. The PHA shall determine the estimated rental income of the project by projecting occupancy which approximates the percentage distribution of families and by applying its current rent determination standards.

The PHA shall submit an analysis, with Form HUD-52485 that will indicate the average monthly gross rent that would result if the PHA selected families with a broad range of incomes representing the distribution of incomes of the eligible population. The PHA shall take into consideration the size of the families most likely to occupy the proposed project if it were constructed at the proposed location. The PHA should use whatever data is available to it to determine the income ranges in the community This could include such sources as census data., CDBG applications, wage surveys, etc. which should be updated to reflect current income levels. The Field Office may have data which could be of assistance to the PHA. If there are not a sufficient number of eligible applicants in a particular range or ranges existing on the PHA's waiting list to fulfill the requirements stated above regarding the tenant body, the PHA must submit its proposed plan to attract applicants whose incomes will permit tenant selection resulting in the project housing tenants with a distribution of income reflecting the distribution of incomes of the potential population in the community. If the PHA proposes to acquire a project occupied in whole or part by low-income families, who will be retained as residents, the estimate of average monthly gross rent shall include the income distribution of those families as well. Based upon the instructions, provide a realistic estimate of the average PUM gross rent.

b. Estimate of Tenant Purchased Utilities. Insert figure calculated in Item 1i of this form.

c. Estimate of Monthly Contract Rent. Subtract tenant purchased utilitties PUM (item 3b) from the Average Monthly Gross Rent (item 3a) to determine the amount to be entered on this line.

d. Estimate of Average Monthly Contract Rent Based Upon 97 Percent Occupancy. Enter the product of Average Monthly Contract Rent (Item 3c) multiplied by 97 percent (.97).

Part 4. - PHA Determination.

a. If the estimated operating expenses for the first fiscal year following the End of the Initial Operating Period (EIOP) does not exceed the estimated operating income (without operating subsidy) for the same period, the project is financially feasible. In this case check block "a" and do not complete the remainder of this form.

b. If the estimated operating expenses exceed the estimated operating income (without operating subsidy), check block "b" and complete remainder of this form to determine if the project will be financially feasible within the limitations of the available Performance Funding System (PFS) operating subsidy.

Part 5. - Maximum Allowable Operating Subsidy.

General. The PUM amount of operating subsidy which can be considered will be based upon whether the proposed project is to be included in the Consolidated Annual Contributions Contract (CACC) or whether the proposed project is to be placed in a separate Annual Contributions Contract (ACC).

Existing PHA/New Project - CACC. If an existing PHA is proposing a new project, and wishes to incorporate the project into its CACC, the maximum allowable PUM amount of operating subsidy which may be used in the determination of the financial feasibility test shall be based on the following:

a. The PUM Allowable Expense Level for the project shall be based upon the current PUM Allowable Expense Level for the CACC recomputed to incorporate the characteristics of the project on all required PFS forms. The recomputation of the Allowable Expense Level shall be accomplished pursuant to Section 990.105 (d) (3) of 24 CFR Part 990, Subpart A, Operating Subsidy - Performance Funding System.

The PHA's current fiscal year PFS shall be recomputed to incorporate the project. In the recomputation no data regarding the project shall be in the Current Year Columns, but shall be shown in the Requested Year Columns. For this recomputation, the estimated date of EIOP for the proposed project shall be the last day of the current fiscal year. For purposes of this recomputation, the project will be considered to be one year old.

b. Plus: The PUM Allowable Utilities Expense Level (do not include Utilities Labor and Utilities Other).

c. Minus: The PUM estimate of the average monthly contract rent based upon 97 percent occupancy.

Existing PHA/New Project to be Placed in Separate ACC or New PHA / New Project. If project is to be in a separate ACC, the maximum allowable PUM amount of operating subsidy which may be used in the determination of the financial feasibility test should be based on the following:

a. The PUM Allowable Expense Level for the proposed project shall be determined to be the same as the current Allowable Expense Level of a PHA already in management which is located in or about the locality of the proposed project, if the proposed project and the comparable PHA are generally alike in physical characteristics and tenancy. Comparison should exclude a project age comparison. If the project is not the first project of the PHA, the comparable PHA might be the PHA itself. The usable Allowable Expenses Level would have been developed pursuant to Section 990.105 of the PFS Regulation. The HUD Field Office shall provide the appropriate Allowable Expense Level upon request.

b. Plus: The PUM Allowable Utilities Expense Level (not to include Utilities Labor and Utilities Other).

c. Minus: The PUM estimate of average monthly contract rent based upon 97 percent occupancy.

d. Initial Operating Subsidy Eligibility. If the proposed project is deemed to be financially feasible, the PUM Allowable Expense Level determined in accordance with this subparagraph will be the basis for the PUM Allowable Expense Level to be used in the project's first fiscal year in management. This PUM will be adjusted by an inflation factor(s) for the intervening years. Instructions for the computation of the first fiscal year PUM Allowable Expense Level are contained in Performance Funding System Handbook 7475.13.

Completion of Part 5.

a. PUM Allowable Expense Level. Enter the PUM computed using the instructions above.

b. PUM Allowable Utilities Expense Level. Enter the PUM cost of PHA furnished utilities shown in Item 1h of this form less Utilities Labor and Other Utilities Expense.

c. PUM Contract Rental Income. Enter the PUM rental income amount as shown in 3d above.

d. Maximum PFS Operating Subsidy. Item 5(a) plus Item 5(b) minus Item 5(c). If this amount is equal to or greater than the deficit (Item 2k minus Item 3d) shown in Item 4b of this form, then the proposed project shall be determined to be financially feasible.

Site, Design and Cost Report

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0033 (Exp. 9/30/96)

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0033), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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Prepare and submit in accordance with the Public Housing Development Regulation (24 CFR 941) and Handbook (747.1J1). A separate report is required for each individual site or a site comprising several contiguous parcels having exhibits and information applicable to all parcels. A summary report is required for the project as a whole. Where necessary, attach a continuation sheet identifying Part, Section and Items continued.

1. Name of PHA:	3. Project Number P	5. Housing Type and Development Method
2. Address of PHA:	4. This report is: (a) ☐ the Summary Report for the project as whole; and/or (b) ☐ individual Site Report Report No. of reports	(1) Conventional (2) Turnkey (3) Acquisition (a) New Construction (b) Rehabilitation (c) Existing

6. Community:	7. County or Other Similar Area	8. Congressional District(s)	9. Census Tract(s)/ Enumeration District(s)

10. Locality Map: For the proposed project as a whole, a map of the locality ☐ is attached identifying each proposed site and the percentage of the population by race in the census tract. Also located on the map are existing and proposed: (a) public transportation lines serving the site, (b) the principal industrial, commercial, or other areas proving employing opportunities for project residents, and (c) public schools, community, recreation, health, shopping and other facilities adjacent to and serving the site.

11. Dwelling Units by Household Type and Structure. As appropriate, enter the number of dwelling units (DUs) proposed by number of bedrooms, structure and household type:

	Col. 1	Col. 2	Column 3 Total DUs			Column 4 Number of Family and Large Family DUs						Column 5 Number of Elderly DUs		
	Structure Type 1/	No. of Buildings	(a) Total	(b) Family	(c) Elderly	(a) 1-BR	(b) 2-BR	(c) 3-BR	(d) 4-BR	(e) 5-BR	(f) 6-BR	(a) Effic.	(b) 1-BR	(c) 2-BR
1	D													
2	SD													
3	R													
4	W													
5	E													
6	Totals													
7	No.in Line 6 For HDEP.													

1/Structure Types are: D = Detached, SD = Semi-Detached, R = Row or Townhouse, W = Walk-up, and E = Elevator

12. Areas and Costs of Dwelling and Non-Dwelling Buildings or Spaces

Identify separately for family and for elderly dwelling and non-dwelling areas and the costs attributable to the areas.	Gross Square Feet		Net Square Feet		Total Cost	
	Family	Elderly	Family	Elderly	Family	Elderly
(a) Dwelling Space						
(b) Non-Dwelling Buildings or Spaces (1) Management						
(2) Maintenance						
(3) Community						
(4) Other (specify)						
(5) Total Non-Dwelling Space						

form **HUD-52651-A** (5/94)
ref Handbook 7417.1

Report Number **of** **Reports for Project Number:**

13. Proposed Project Development Schedule

Schedule each processing step for the proposed project in the applicable column below. Processing Steps	Number of Calendar Days: Turnkey Developer Estimate Column (1)	PHA Estimate Column (2)	Total Column (3)
a. Site Documents Submission			
b. Design Documents Submission			
c. Construction Documents Submission			
d. Contract Documents Submission			
e. Construction Start			
f. Construction Completion			
g. PHA Acquisition of Existing			
h. Total			

14. Certification

a. The PHA, and Developer if a turnkey project, certifies that as applicable, the development and operation of the project will be carried out in compliance with applicable Fair Housing and Equal Opportunity Requirements - - i.e., Title VI of the Civil Rights Act of 1964 and Executive Order 11063, Title VIII of the Civil Rights Act of 1968. Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 11246 as amended by Executive Order 11375, Section 3 of the HUD Act of 1963 and Executive Orders 11625 and 12138.

b. For the proposed project as a whole, ☐ a plan is attached including any experience, which addresses:

(1) ☐ Section 3 of the HUD Act of 1968 - - providing opportunities for training and employment of lower-income residence of the unit of local government of the metropolitan area (or non-metropolitan county, as determined by HUD) in which the project is located and awarding contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in such area;

(2) ☐ Executive Order 11625 and 12138 - - employment minority and women-owned business enterprises to perform work in connection with the development and operation of the project.

Part II - Proposed Site

1. Site Identification and Address

2. Closet Major Intersection

3. Source of Site or Property (Check as applicable and identify)
(a) ☐ HUD (CDBG, U.R. 226, etc.) _____
(b) ☐ Other Fed (VA, etc.) _____
(c) ☐ PHA Owned _____
(d) ☐ City, County, State-Owned _____
(e) ☐ Private-Owned _____
(f) ☐ Other (Identify) _____

4. Dimensions
(a) feet by feet (b) sq. fr. (c) acres

5. Zoning
(a) Identify existing zoning for the site: _____
(b) ☐ Zoning recently changed, evidence is attached
(c) ☐ Zoning is permissive:
(d) ☐ Zoning is not permissive:
(1) zoning required: _____
(2) source of insurance _____
(3) party responsible for obtaining required change:

6. Site Control
Identify current site control and attach evidence
(a) ☐ Form(s) HUD-51971 for conventional and acquisition projects or
(b) ☐ Other form(s) for turnkey projects (identify):
(c) Option expiration date _____

Title Information
To demonstrate that good title can be obtained, attached are: (a) ☐ Title opinion or report and (b) ☐ Recordation plat.

8. Site Survey ☐ is attached

9. For conventional or acquisition projects PHA obtained private owner's offer to sell by:
(a) ☐ PHA advertisement or invitation;
(b) ☐ Owner's advertisement or listing or other voluntary action
(c) ☐ Other

10. Utilities

Service	Currently On-Site (1)	Currently Off-Site (2)	Change Required (3)	Assurance Attached (4)	Explain Change
(a) Sanitary Sewer					
(b) Water					
(c) Gas					
(d) Electricity					
(e) Storm Sewer					
(f) Access Street					
(g) Boundary Streets					
(h)Other (Identify)					

Report Number **of** **Reports for Project Number:**

11. Site Grades: Indicate the Percent of Area for the Site for Each Grade Range

(a) _____ % area w/grades 0 through 1% (c) _____ % area w/grades 6 through 10%

(b) _____ % area w/grades 2 through 5% (d) _____ % area w/grades 11% and above.

12. Rainfall: For Low-Lying and Flat Sites, Indicate Level of Rainfall

13. Flood Hazards: Is the Site Within an Area Identified Within an Area Identified by HUD as Having Special Flood Hazards?

(a) ☐ Yes (elaborate) (b) ☐ No

14. Earthslides: Does the Hazard of Earthslides Exist Either on the Site or on Adjacent or Nearby Land?

(a) ☐ Yes (elaborate) (b) ☐ No

15. Earthquakes: Is the Site a High Risk Area for Earth quakes?

(a) ☐ Yes (elaborate) (b) ☐ No

16. Noise: Is the Site Exposed to Noise in Excess of HUD Standards?

(a) ☐ Yes (elaborate) (b) ☐ No

17. History Similar: Is the Site Located Within a Historic District or Similar Location which may be Subject to Special Environmental Treatment?

(a) ☐ Yes (elaborate) (b) ☐ No

18. Other Environmental Consideration or Comments.A-95 Clearance Attached

☐ Yes ☐ No

19. Unusual, Existing Site Features

(a) ☐ None (f) ☐ Poor Drainage

(b) ☐ Cuts (g) ☐ Retaining Walls

(c) ☐ Fill (h) ☐ Rock Foundations

(d) ☐ Erosion (i) ☐ High Water Table

(e) ☐ Other (specify)

20. Known Subsurface Conditions

21. Relocation

(a) ☐ Vacant (no displacement) or;

(b) ☐ Occupied: (potential displacement)

(c) Types of Occupants	(d) Total Number	(e) Eligible for Assisted Housing
(1) Families		
(2) Individuals		
(3) Business Concerns		
(4) XXXXXXXX???		

(f) ☐ a statement is attached identifying each occupant by (1) name; (2) address; (3) whether owner or tenant; (4) type of occupant; (5) length of occupancy; and (6) dwelling unit size requirements.

(g) ☐ the PHA (or developer in the case of turnkey) certifies that the informational and other notices to occupants will be issued as required.

22. Parcells Comprising Site

(a) Parcel Number	(b) Parcel Address/Identification	(c) Option Exp. Date	(d) Area (Square Feet)	(e) Improvement (1) Type	(e) Improvement (2) Use	(f) Conditions	(g) Asking Price

Report Number	of	Reports for Project Number:

23. Remarks	24. Area of site
	(a) Area to be purchased
	(b) Area to be donated
	(c) Total Area of Site
	(d) Deductions
	(e) Net Buildable Area
	25. Demolition Required
	(a) ☐ None Involved
	(b) ☐ Number of Dwelling Units _____
	(c) ☐ Number of Nondwelling Structures _____

Part III - Proposed Design

Proposed Gross Density	2. No. of Parking Spaces	3. No. of Stories/Buildings	4. No. of Elevators	5. Structural System
(a) _____ DUs per Acre				
(b) _____ Total Population/Acre	6. Floor System	7. Exterior Finish	8. Heating System	
(c) _____ Number of Adults/Acre				
(d) _____ Number of Minors/Acre	9. Air Conditioning	10. Type of Foundation		
(e) _____ DUs		☐ Slab or Grade ☐ Crawl Space ☐ Partial Basement ☐ Full basement		

11. Depth of Detail: The attached project description exhibits fulfill public housing program requirements for (a) ☐ proposal submission; (b) ☐ design document submission; or (c) ☐ construction document submission.

12. Attachment Identification: The attachments to this report are: (a) ☐ identical for and for and represent all sites in this proposed project; (b) ☐ limited only to the property proposed for this site; or (c) ☐ applicable to the various site as described in an attachments' cover sheets.

13. Utility Combination: A revised Comparative Analysis of Utility Costs, form HUD-51994; (a) ☐ is attached; (b) ☐ is not attached.

14. New Construction Project: Attached are (a) ☐ Outline Specification, form HUD-5087; (b) ☐ Site Plan; and (c) ☐ Schematic drawings to identify proposed typical features.

15. Rehabilitation or Existing Housing Project: Attached are: (a) ☐ Preliminary Work Write-ups; (b) ☐ Photographs and (c) (1) ☐ For one-to-four family properties, Underwriting Report, Form HUD-92800.3 (as applicable through Item 22); or (c) (2) ☐ for a property of five more units, Outline Specification, form HUD-5087.

16. Rehabilitation or Existing Housing Project: The following shows the annual income for the property, which includes the indicated equipment and services, over the last twelve months:

16 (a) "As Is" or Before Rehabilitation (Annual Income Last 12 Months)

(1) Number of each type of Unit	(2) Living area (Square Ft)	(3) Composition of Units	(4) Monthly Rent per Unit	Annual Rent (5) Income Received	Annual Rent (6) Received in full Occupancy
			$	$	$
(a) Total Rentals Family Units					
Other Income (Specify)					
Total Other Income					

16 (b) Equipment and Services included in Rent.

Other Items Included in Rent:

(1) Range (Gas or Electricity)	
(2) Refrigerator (Gas or Electricity)	
(3) Attic Fan	
(4) Laundry Facilities	
(5) Venetian Blinds	
(6) Water (Cold)	
(7) Water (Hot)	
(8) Gas	
(9) Electricity	
(10) Space Heat	
(11) Janitor Service	
(12) Air Conditioning	
(13) Ground Maintenance	
(14) Garbage or Rubbish Removal	
(15) Other (Specify)	

Report Number **of** **Reports for Project Number:**

Part IV - Proposed Construction Cost/Price

Section A. Construction Cost/Developer's Price Description

1. Applicability: The cost/price in this part: (a) ☐ is the Summary Report for Project Number _____ and shows the total construction cost or developer's price for the proposed project as a whole; or (b) ☐ applies only to individual site Report Number _____ of _____ Reports for Project Number _____.

2. Identification: The cost/price is: (a) ☐ for a new construction or rehabilitation project and is based on construction costs as of which is: (1) ☐ the PHA proposal submission date or (2) ☐ the deadline date specified in the turnkey request for proposals; or (b) ☐ for acquisition of existing units.

Section B. Construction Cost/Developer's Price Statement (The following is a statement of proposed construction cost/developer's price.)

Items	(a)Develpoer's Price	(b) PHA Cost	(c) Total Cost
Site Improvements			
1. Unusual Site Improvements			
2. Normal Site Improvements			
3. Total Site Improvements (Account 1450)			
Structures and Equipment			
4. Dwelling Structure (Account 1460)			
5. Dwelling Equipment (Account 1460)			
6. Subtotal D, C and E			
7. Non-Dwelling Structures (Account 1470)			
8. Non-Dwelling Equipment (Account 1475)			
9. Subtotal Non-Dwelling Structures and Equipment			
10. Total Structures and Equipment (Sum of Lines 6 and 9)			
11. Total Construction Cost (Sum of Lines 3 and 10)			
12. Architect's fee - Design at _____ percent.			
13. Architect's Fee Developer at _____ percent. Supervisory: PHA at _____ percent.			
14. Total for all Improvements (Sum of Lines 11, 12 and 13)			
15. Cost per Gross Square Foot			$ per sq. ft.
16. Estimated Construction Time			months
Other (Turnkey only)			
17. Construction Financing: Interest on $ at % for months			
18. State or Local Taxes			
19. Title and Recording Fees			
20. Closing Costs			
21. Developer's Fee and Overhead			
22. Total for Other			
Site Acquisition_____ square feet 23. Site/Existing Property (Account 1440.1) $ _____ per sq. ft.			
Total 24. Total Construction Cost/Price			
25. Average Cost per Dwelling Unit (LIne 24 divided by Number of Dwelling Units)			$

Part V - Signature

The information contained herein and in any attachments is true and correct and to the best knowledge of the signatory entities.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Prepared for PHA: (1) ☐ as Turnkey proposal; pr (2) ☐ by PHA Architect/Other (Specify) _____

Name & Address of Entity:	Name & Title of Authorized Representative:
Typed Name & Title of Authorized PHA Official:	Signature of Representative & Date: X

form **HUD-52651-A** (5/94)
ref Handbook 7417.1

Instructions for Form HUD-52651-A Site, Design and Cost Report

1. Purpose: When the PHA is preparing to submit a PHA Proposal for a Public Housing Project (PHA Proposal), Form HUD-52483-A, the Site, Design and Cost Report, Form HUD-52651-A, is the principal attachment used to delineate components of the proposed project. This form is also used to summarize the submission of site documents when the project involves 1-4 family properties under the conventional or acquisition developmental methods.
2. Prepared by: Form HUD-52651-A Site, Design and Cost Report, is prepared by the PHA and its architect under the conventional and acquisition methods. Under the turnkey method, Form HUD-52651-A is initially prepared by prospective developers as part of their turnkey proposal. By signing the form, the PHA formally incorporates it into its PHA proposal which is submitted to HUD. Only one turnkey proposal is permitted for each PHA proposal.
3. Number: Original and one more copies. (Note: The Form HUD-52651-A, itself, calls for attachments).
4. Distribution: A turnkey developer shall submit the original and at least one copy of Form HUD-52651-A to the PHA with all attachments as part of a turnkey proposal. The Developer's Packet may specify a greater number of copies to be submitted to the PHA. A PHA shall attach the original to the original of its PHA Proposal which is submitted to the applicable HUD Field Office and shall retain the copy with a copy of its PHA Proposal in its files. A PEA may also be requested by the Field Office to submit additional copies of its proposal. If the Field Office plans to request any additional copies of the proposal form the PHA, the Field Office should advise the PHA to specify a sufficient number of turnkey proposals in the Developer's Packet.
5. Instructions for Preparation: The Site, Design and Cost Report (Form HUD-52651-A) is to be prepared in accordance with the public housing development regulation (24 CFR-941) and Handbook 7417.1 by either the PHA (Conventional and Acquisition methods) of the turnkey developer (Turnkey method). Except for conventional or acquisition projects involving 1-4 family properties, a separate Form and HUD-52651-A is to be submitted for each individual site or a site comprising several contiguous parcels having common exhibits or other information. In addition, a Form HUD-52651-A (Parts I,IV and V) is to be submitted summarizing the project as a whole.

   For convential or acquisition projects involving 1-4 family properties, a Form HUD-52651-A with Part I, Items 1-11, Part IV and Part V completed shall be submitted summarizing the site documents for each group of properties being proposed. Each part should indicate the total of all properties approved or submitted to date. The following attachments are required with each group of properties submitted to HUD for approval:

   a. Offers of Sale of Real Property and Purchase Agreements (executed Forms HUD-51971-I and II).

   b. Neighborhood Map designating properties previously approved by HUD and acquired by the PHA and the properties currently being submitted for HUD approval.

   c. Appraisal (Form HUD-92800-3)

   d. Work write-ups for properties to be rehabilitated and repair descriptions for those requiring only minor repairs.

   e. A statement of how each property was identified and whether it is currently occupied by an owner or tenant.

   Specific instructions for completing each item follow. If there is insufficient space on the form, a continuation sheet may be used which clearly identifies the material by Part, Section, and item number.

Part I-General

Item 1. State the legal name of the PHA.

Item 2. State the complete mailing address of the PHA.

Item 3. Complete the project number, if known.

Item 4. Check the box which indicates that this is an individual and/or a summary report, and complete the data.

Item 5. Check only one box to identify the proposed housing type and selected development method for the proposed project.

Item 6. State the name of the community in which the project is proposed to be located. A community (formerly referred to as a locality) is defined as municipality or other general purpose political subdivision below the country level (e.g., city, town, township).

Item 7. State the name of any applicable county or similar area of jurisdiction (broader than the community) in which the project is proposed to be located.

Item 8. If known, identify each Congressional district within which the project will be located.

Item 9. If known, identify each Census Tract or Enumeration District within which the project will be located.

Item 10 A locality map which identifies the items listed should be attached to the summary report only.

Item 11 Complete the table as appropriate to indicate the number of dwelling units (DU's) proposed for the site by structure type, household type and number of bedrooms. Also show the number of buildings for each structure type. The sums of family units (Column 4) and those for the elderly (Column 5) should be stated as totals in Column 3 as appropriate. The grand totals should be shown on Line 6. Line 7 should show the number of units included on line 6 for occupancy by the handicapped.

The structure types are defined as follows: (a) Detached (D): A structure which consists of a single living unit and is surrounded by permanent open spaces; (b) Semi-Detached (SD): A structure containing two living units separated by a common vertical wall: (c) Row (R): A structure containing three or more living units, each separated by vertical walls, and generally having individual entrances and interior stairs; (d) Walk-up (W): A multi-level low-rise structure containing two or more living units, each separated horizontally (ceiling/floor) and by vertical walls; (e) Elevator (E): Any high-rise structure for which an elevator is required under the Minimum Property Standards (MPS) or local building codes.

The summary report must indicate the sum total of the dwelling units from all the individual reports.

Item 12. Identify the areas for each of the space types listed. The summary report must indicate the sum total of the areas from all of the individual reports.

Item 13. Enter the estimated number of calendar days in each box depending on the development method. The summary report shall indicate the time estimate which is the longest of the individual reports. Any estimates in excess of the amounts established as Standard Processing Times (SPTs) shall be accompanied by a jurisdiction of the extra time required.

a. Turnkey. The turnkey developer shall enter estimates in column (1). The PHA shall complete the estimate by entering the number of days to complete its part of the processing in column (2). The PHA shall enter the total of columns (1) and (2) in column (3). Enter the information on each lime as follows:

Line a. No entries are made on this line for the turnkey method.

Line b. No entries are made on this line if this stage is to be bypassed; i.e., the design documents are being incorporated with the proposal or the construction documents. Otherwise enter the number of days required form HUD approval of the PHA proposal to developer submission of the design documents to HUD (Col. 2). (The Total (Col. 3) should not exceed the SPT of 60 days).

Line c. Enter the number of days from HUD approval of the design documents (or PHA proposal if the design documents stage is to be bypassed) to turnkey developer submission of the construction documents to the PHA (Col. 1) and PHA submission of the construction documents to HUD (Col.2) (The Total (Col. 3) should not exceed the SPT of 90 or 120 days).

Line d. The PHA (Col. 3) shall enter the number of days from HUD approval of the construction documents to the date of the contract of sale conference (SPT 30 days).

Line e. The developer shall enter the number of days from execution of the Contract of Sale to start of construction (Col. 1) The PHA shall enter the number of days from the contract of sale conference to execution of the Contract of Sale, if not signed at contract of sale conference, (Col. 2).

The PHA shall transfer only the number of days in Col. (2) to Col. (3). There are no SPTs for these actions because the Contract of sale is presumed to be executed at the contract of sale conference and construction start is presumed at the execution of the Contract of Sale.

Line f. The turnkey developer shall enter the number of days required from execution of the Contract of Sale to completion of construction or rehabilitation. (Cols. 1 and 3). (No SPT)

Line g. No entries are made on this line for the turnkey method.

Line h. The PHA shall enter the sum of the horizontal totals in column (3) only.

b. Conventional. The PHA shall enter estimates for each processing stage in column (3) only:

Line a. Enter the number of days from HUD approval of the PHA proposal to submission of the site documents.

Line b. No entries are made on this line if design documents are being incorporated with the PHA proposal or construction documents (design document stage bypassed). Otherwise enter the number of days required

from HUD approval of the PHA proposal to submission of the design documents. (SPT 60 days)

Line c. Enter the number of days from HUD approval of the design documents (or PHA proposal if the design document stage is to be bypassed) to submission of the construction documents. (SPT 90 or 120 days)

Line d. Enter the number of days required from HUD approval of the construction documents to PHA submission of the contact award documents. (SPT 60 days)

Line e. Enter the number of days required from HUD approval of the contract award documents to issuance of the Notice to Proceed. (No SPT established for this step)

Line f. Enter the estimated number of days from issuance of the Notice to Proceed to completion or rehabilitation.

Line g. No entries are made on this line for the conventional method.

Line h. Enter the total of all amounts in column (3) **except line a.**

c. Acquisition. The PHA shall enter estimates for each processing stage in column (3) only:

Line a. Enter the number of days from HUD approval of the PHA proposal to submission of the site documents. Omit this line if the project involves 1-4 family (single-family) units.

Line b-e. No entries required on these lines for the acquisiton method.

Line f. Enter the number of days from HUD approval of the **last** site document to completion of repair work on the last unit.

Line g. for projects involving 1-4 family units, enter number of days required to submit site documents on all properties. (SPT is one year to acquire all properties)

Line h. Enter the total of all amounts in column (3) **including line a.**

Item 14. By signing this Report, the PHA (all methods) and the turnkey developer (Turnkey method) each certifies as started; and to the summary report each shall attach the plan addressing the two areas described.

Part II-Proposed Site

Indicate the report number and project number (if known) at the top of each page.

Item 1. Enter the address of the site or other descriptive information especially if the site is located in a rural area.

Item 2. Major intersecting streets or roads may provide further identification of the site.

Item 3. Check the appropriate box which identifies the present owner of the site.

Item 4. Enter the dimensions if known or an estimate. If dimensions are inappropriate, enter irregular. Calculate the total square foot and acres in the site.

Item 5. Identify the current zoning of the site and check the box indicating whether the zoning was recently changed (if so, attach the evidence) and whether the zoning will permit the intended use or not. If not, indicate the zoning required, the basis for believing that proper zoning can be secured, and the party responsible for obtaining it.

Item 6. Check the appropriate box and attach form HUD-51971-II or other evidence of control or ownership depending on development method. enter the option expiration date or the earliest date if there is more than one parcel involved.

Item 7. Check the two boxes as a reminder that the two pieces of title information are to be attached. Title information shall be in the form of a title opinion or report and a recordation plat to demonstrate that good title can be obtained and that there will be no encumbrances which would interfere with the development of the proposed project. At the time of transfer, title must be good and marketable, and free of any mortgage, lease, lien or other ecumbrances, such as use or building restrictions, zoning ordinances, easements, or rights-of-way which would affect the value or proposed use of site.

Item 8. Check the box as a reminder to submit a survey of the site (to Include all the parcels in this report). A "transit survey" shall be prepared by a surveyor or engineer, drawn to a scale of one inch to forty feet (1" = 40') or larger, showing;

a. the North point, property lines, and dimensions;

b. the community, county, and State in which the property is located, and the lot and block number of the property and adjacent properties;

c. the location and dimensions of all fights-of-way easements;

d. contours indicating current grades;

e. an outline and dimensions of any existing structures;

f. the location and size of utilities; and

g. the location of any known subsurface conditions.

Item 9. For conventional or acquisition projects only, explain how site was located. Check the appropriate box and if lines (a) and (b) are not appropriate, explain the circumstances on line (c).

Item 10. Explain the status of utility services to the site. Check the appropriate box to indicate if the service is presently available (show "Not Applicable" if appropriate). If a change to the existing status will be required i.e., extension, relocation, improvement or increased capacity, explain the change and attach a written assurance from the responsible local agency that funds are available and the work will be completed in time to serve the proposed project.

Item 11. Complete as applicable.

Item 12. Complete as applicable indicating whether any special drainage, etc. requirements are anticipated.

Item 13-17 If any of these conditions are present, explain the circumstances, extent or source of the hazard and what steps will be taken to mitigate potential damaging effects on the project, residents or the environment.

Item 18. Indicate any other environmental considerations applicable to the site and any state or local restrictions above and beyond HUD requirements. Provide a similar as in items 13-17. Attach A-95 clearance if obtained. Advance A-95 clearance is recommended, but not required. HUD will obtain it during its processing if it is not attached.

Item 19. Check the appropriate box (or boxes) which describes any unusual site features. If none, check box (a). Use box (e) to list others not shown such as surface rock, creeks, heavily forested, steep slopes, or power lines.

Item 20. Where any problems are known or suspected, describe the problem and the results of any preliminary examination indicating that the adverse conditions can be overcome. State the nature and extent of required corrective actions.

Item 21. If the site is vacant, check the box (a) and proceed to item 22. If the site is occupied, check the box (b) and provide additional information. Indicate the total number of various types of occupants which would need to be relocated. for purposes of this Report, individuals are single persons without dependents and are not considered families. Indicate "Not Applicable" if any occupant type is not present on this site. Indicating the number of families and individuals in box (e) which are eligible for assisted housing provides a means to estimate relocation expenses without violating their privacy. Check box (f) as a reminder to attach the information statement with the required elements. By checking box (g) the PHA or turnkey developer recognizes the obligation to provide the appropriate notifications to occupants as required by HUD.

Item 22. If the site consists of more than one parcel, devise a number system to identify each parcel on a separate line in column (a). Provide further identification of each parcel in column (b) such as street address, owner's name, or an obvious physical feature and, for properties to be acquired "as is" or rehabilitated, show the year built in column (b). Insert the option expiration date in column (c) calculated from the information on the site control document. Show the total square foot area for each parcel in column (d). In column (e) indicate the types of improvements and future use of any improvements on each parcel by the following codes: In column (e) (1) Type, show D = Dwelling or N = Nondwelling; In column (e) (2) Use, show V = Vacant land (no improvements) A = Use as is, D = will be demolished, R = will be rehabilitated. Enter one or more code letters for each parcel in columns (e) (1) and (e) (2). Indicate by checking column (f) that there are special conditions involving the acquisition of the parcel such as title problems, condemnation expected, relocation involved or any unusual situation, such as currently owned by PHA. Explain the condition in Item 23. Insert the asking price in column (g) from the site control document. If the parcel will be donated, indicate this in column (g) also.

Item 23. Cite any state, local or regional plans (including Housing Assistance Plans) which served as the basis for selecting the proposed site. Also state the reason for recommending exclusion of any parcels from the site and any other acquisition difficulties or conditions. Identify any proposed condition of purchase which should be included in the Purchase agreement, Form HUD-51971-II.

Item 24. Indicate the total square feet and acres acquired by the various means listed. Acquisition by condemnation should be shown as a purchase. Vacated area owned by a public entity should be shown as a donation. The total area of the site should not be greater than the total of lines (a) and (b), and should be the same as the total area of the parcels identified in Item 22, as well as streets, easements and unbuildable land. The result of subtracting line (d) from Line (c) is the net buildable are of the site.

Item 25. Summarize any demolition by checking the appropriate box and indicating the total number of dwelling units or non-dwelling structures to be demolished.

Part III-Proposed Design

Item 1. Enter the various density factors requested based on the dwelling units planned for this site only.

Items 2-10. Provide the information requested for the building or units on this site only.

Item 11. Check the appropriate box which will indicate if design or construction documents are included as part of the proposal instead of schematics. If (b) or (c) is checked, attach the documents required by Handbook 7417.1, complete items 12 and 13 only and proceed to Part V.

Item 12. If the plans, specifications and other attachments are identical for all sites, they need only be attached to the first report. If they are applicable to some sites but not all, enclose a cover sheet identifying each site and they need not be attached to more than one report.

Item 13. If the prepared Form HUD-51994, Analysis of Utility costs, is not to be used, a revised one must be attached and the box checked.

Item 14. For new construction projects only, check the boxes as a reminder to attach the three items shown;

a. a completed Outline Specification (Form HUD-5087)

b. a site plan (schematic drawing) based on available topographical information and known subsurface soil conditions which identifies:

(1) the outline and dimensions of each structure (dwelling and non-dwelling);

(2) the existing and proposed locations of streets, easements, and utilities (e.g. telephone, water, sewerage, gas, electric);

(3) the distance of utilities from the site boundary;

(4) proposed foundations, building grades, drainage swales, and extent of grading required; and

(5) the proposed placement of trees and shrubs, and primary land uses such as placement of buildings, play fields, tot lots, conversational groupings and parking or other paved areas.

c. schematic drawings which identify:

(1) typical building elevations;

(2) typical building floor plans for each structure type, showing the gross square feet of floor area, and the area for each type of non-dwelling space;

(3) typical floor and wall sections, mechanical features and equipment; and

(4) typical unit floor plans for each size and structure type.

Item 15. For rehabilitation and acquisition of existing housing projects, check the boxes as a reminder to attach the three items shown:

a. preliminary work write-ups to describe the extent and nature of work required to rehabilitate or repair each property.

b. photographs of typical interior and exterior buildings and units to illustrate the extent of rehabilitation or repairs required.

c. for one-to-four family properties, Form HUD-92800-3 (as applicable through item 22), or for rehabilitation of properties of 5 or more units, a completed Outline Specification, form HUD-5087.

Item 16. Complete the information requested for each property "as is". Composition refers to number of bedrooms, number of bathrooms, variations in size or other features which may vary the existing rent structure. Check the items of equipment and services included in the existing monthly rental.

Part IV-Proposed Construction Cost/Price

Section A: Construction Cost/Developer's Price Descriptipon

Item 1. Indicate whether this is the summary or an individual site report by checking the appropriate box and completing the data. If only one site is involved, a summary report is not necessary.

Item 2. Check the appropriate box and enter the appropriate date.

Section B: Construction Cost/Developer's Price Statement

1. Enter estimated cost amounts for each line item based on the development method as follows:

a. Turnkey method. The turnkey developer shall enter amounts in column (a) for costs which will incur. The PHA shall enter its costs over and above the turnkey developer's costs in column (b). The PHA shall total the amounts in (a) and (b) for each item and enter it in column (c).

b. Conventional method. The PHA shall enter the estimated costs it will incur for each item in column (c). No entries should be made for items under "Other".

c. Acquisition method. The PHA shall enter its costs in column (c). Line 11 should not be more than 10% of the estimated total development cost of the project. No entries should be made for items under "Other".

2. The amounts for items 1 through 11 are based on the prevailing Davis-Bacon wage rates and include any applicable social security and sales taxes, insurance and bond premiums, and a pro rata share of the contractor's fee (profit and overhead). The cost/price should be stated in terms of actual cost, without contingency, since an amount for contingency will be included in the Development Cost Budget provided to the PHA by the area Office with the proposal approval letter.

3. The "Other" items are to be calculated as follows for turnkey projects only:

a. **Construction Financing.** Indicate the amount of the Construction loan, the interest rate and the number of months of construction time and enter in column (a) the amount for construction financing.

b. **State or local taxes.** Enter an anticipated amount for any state or local taxes except real property taxes. The turnkey price at settlement will be adjusted for any real property taxes paid by the developer during construction.

c. **Title and recording fees, closing costs, and developer's fee.** The amount for these items shall be entered as appropriate.

4. Enter the amount for site acquisition. Since this amount is subject to HUD appraisal, it may be the asking price or an estimate of value.

5. The following is a brief description of the accounts relating to construction costs:

a. **Site Acquisition (Account 1440.1).** The account includes the amounts for land and existing improvements. Any amounts for condemnation and for the value of property donated are also included.

b. **Site Improvements (Account 1450).** This account includes the amount for normal site improvements (e.g., demolition, grading, utility installation, streets, parking and other paved areas, structural playground facilities and landscaping) and the amount for any special improvements required because of unusual site conditions (e.g., abnormal excavation resulting from unusual subsoil conditions, and excess foundation work such as pilings, caissons and underpinnings).

c. **Dwelling Construction (Account 1460).** This account includes the cost for normal foundations, structural framing and interior and exterior finish, closets, other occupant storage areas, and certain common spaces such as entrances, corridors, lobbies, janitorial closets, and laundry, heating and equipment spaces. Costs of major systems and equipment such as plumbing, electrical heating and air conditioning within units are included as well as the cost of elevators and related equipment. Built in equipment such as counters, cabinets, cupboards and shelving are also included.

d. **Dwelling Equipment (Account 1465).** This account includes the cost of ranges, refrigerators, shades, screens or similar equipment provided in dwelling structures.

e. **Nondwelling Construction (Account 1470).** This account includes the costs for management, maintenance and community space or structures. Community space includes social, recreational, health and child care facilities. All necessary built in equipment and plumbing, heating, ventilating and electrical systems are included in these costs.

f. **Nondwelling Equipment (Account 1475).** This account costs for all movable equipment required for management, maintenance, and community spaces.

Part V-Signature

1. If the form was prepared for the PHA by the turnkey developer or PHA architect or development manager, the preparer shall complete the entity and representative identification and sign and date the form.

2. The PHA official shall provide name, title, signature and date as requested.

3. The signatories complete these entries with full knowledge of the certification being provided and the penalties which may be imposed on persons or organizations for improper or false statements or information.

[FR Doc. 97–2788 Filed 2–4–97; 8:45 am]

BILLING CODE 4210–33–C

[Docket No. FR–4200–N–22]

Submission for OMB Review: of Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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: March 7, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 28, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Hope for Homeownership of Single Family Homes (HOPE 3).

Office: Community Planning and Development.

OMB Approval Number: 2506–0128.

Description of the Need for the Information and its Proposed Use: This information collection is needed to assist HUD in evaluating grantees that have been awarded funds. The grantees will be evaluated on their ability to administer a HOPE 3 program and their ability to provide homeownership opportunities to low-income homeowners under the program. Grantees will be required to submit progress reports to HUD in order to continue to receive grant funds.

Form Number: HUD–40086, 40102–B, 40103, 40104 and 40105.

Respondents: State, Local, or Tribal Government and not-for-profit institutions.

Frequency of Submission: On occasion and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	258		1		30		7,740
Environmental Procedures	258		15		3		11,610
Progress Reports	258		(1)		(1)		5,745

1 Varies.

Total Estimated Burden Hours: 25,095.

Status: Reinstatement, with changes.

Contact: Patricia Mason, HUD, (202) 708–3226 x4588, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 28, 1997.

[FR Doc. 97–2791 Filed 2–4–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4200–N–21]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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: March 7, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 28, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Request for Family Self Sufficiency (FSS) Coordinator Funds Under a Notice of Funding Availability.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0198.

Description of the Need for the Information and Its Proposed Use: Eligible housing agencies must submit an application for FSS program coordinator funds to enable the Department to determine the need for the requested funds. The application is also used to determine if the amount requested is reasonable. The Department will use the information as the basis for providing funds under the Notice of Funding Availability.

Form Number: None.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: On occasion and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	600		1		4		2,400

Total Estimated Burden Hours: 2,400.

Status: Reinstatement, without changes.

Contact: William Murphy, HUD, (202) 708–0477 x4062, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 28, 1997.

[FR Doc. 97–2792 Filed 2–4–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR –4200–N–20]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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: March 7, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 28, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Physical Inspection Report.

Office: Housing.

OMB Approval Number: 2502–0369.

Description of the Need for the Information and Its Proposed Use: The Department's mortgage insurance programs require mortgages to annually inspect each insured project and provide the Department and the project owner a report on that inspection. This format establishes standards which all mortgages must comply with when conducting these inspections.

Form Number: HUD–9822.

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Submission: Annually and on occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9822	15,000		1		2		30,000

Total Estimated Burden Hours: 30,000.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 28, 1997.

[FR Doc. 97–2793 Filed 2–4–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4027–N–03]

Mortgage and Loan Insurance Programs Under the National Housing Act; Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning January 1, 1997, is 6⅜ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for instance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1997, is 6¾ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, S.W., Room 6164, Washington, D.C. 20010, telephone (202) 708–1220 ext. 2612, (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the Federal Register.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 1997, is 6¾ percent (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6¾ percent for the six-month period beginning January 1, 1997. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1997.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning January 1, 1997, is 6⅜ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1997.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: January 28, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–2790 Filed 2–4–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Geological Survey, Biological Resources Division

Request for Public Comments on Proposed Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

The proposed information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Public comments on the proposal should be made within 30 days directly to: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and the Bureau Clearance Officer, U.S. Geological Survey, 208 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Fisherman Nationwide Angler Survey.

Summary: The collection of information referred herein applies to the public survey of a sample of anglers nationwide during the months of February, March, and April 1997. The purpose of this survey is to obtain information about anglers preferences, behaviors, motivations, and satisfactions with fishing opportunities that can be used by fisheries management agencies to develop fisheries management plans to enhance angler retention.

Estimated Completion Time: 20 minutes.

Estimated Number of Respondents: 20,410.

Frequency: One time only.

Estimated Burden Hours: 6,803 hours.

Proposed Dates: February 1–April 30, 1997.

Needs and Uses: To provide State and Federal fisheries management agencies with information that can be used to develop fisheries management plans or angler education programs that will improve angler satisfaction with fishing opportunities.

Affected Public: Randomly selected individuals who are members of North American Fishing Club.

FOR FURTHER INFORMATION: To obtain copies of the survey and to submit comments on this information collection, contact the Bureau clearance officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated January 6, 1997.

Sue Haseltine,

Acting Chief Biologist.

[FR Doc. 97–2864 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal/State Compact

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Iowa Tribe and the State of Oklahoma, which was executed on December 5, 1996.

DATES: This action is effective Febraury 5, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: January 29, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–2824 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

National Historic Oregon Trail Interpretive Center Advisory Board; Establishment

AGENCY: Bureau of Land Management, Interior.

ACTION: National Historic Oregon Trail Interpretive Center Advisory Board; Notice of establishment.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the National Historic Oregon Trail Interpretive Center Advisory Board.

The purpose of the Committee will be to advise the Bureau of Land Management Vale District Manager regarding policies, programs, and long-range planning for the management, use, and further development of the Interpretive Center; establish a framework for an enhanced partnership and participation between the Bureau and the Oregon Trail Preservation Trust; ensure a financially secure, world-class historical and educational facility, operated through a partnership between the Federal Government and the community, thereby enriching and maximizing visitors' experiences to the region; and improve the coordination of advice and recommendations from the publics served.

Members of the Advisory Board will be comprised of the Forest Service Wallowa Whitman Forest Supervisor; one member from Trail Tenders, Inc.; one member of the Oregon Trail Preservation Trust; one member from the business community; one member representing county or local elected office; and two members representing the public-at-large.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Bureau of Land Management, 1620 L Street, N.W. MS 1050, Washington, D.C. 20240, (202) 452–0377, or Edwin Singleton, Vale District Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, (541) 473–3144. The certification of establishment is published below.

Certification

I hereby certify that the establishment of the National Historic Oregon Trail Interpretive Center Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Date signed: January 29, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–2768 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–84–P

National Park Service

Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Lake Clark National Park and the Chairperson of the Subsistence Resource Commission for Lake Clark National Park announce a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Chairman's welcome.

(2) Introduction of Commission members and guests.

(3) Review agenda.

(4) Approval of minutes of last meeting.

(5) Old business:

a. Review NPS Subsistence Issue Paper.

(6) New business:

a. Election of Chairperson.

(7) Agency and public comments.

(8) Determine time and date of next meeting.

(9) Adjourn.

DATE: The meeting will be held Monday, February 17, 1997. The meeting will begin at 10 a.m. and conclude around 5 p.m.

LOCATION: The meeting will be held at the Lake Clark National Park Visitor Center, Port Alsworth, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, Lake Clark National Park and Preserve, 4230 University Drive, #311, Anchorage, Alaska 99508. Phone (907) 271–3751.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Field Director.

[FR Doc. 97–2833 Filed 2–4–97; 8:45 am]

BILLING CODE 4310–10–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–378]

Fresh and Processed Potatoes: Competitive Conditions Affecting the U.S. and Canadian Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: January 29, 1997.

SUMMARY: Following receipt on January 15, 1997, of a request from the Office of the United States Trade Representative (USTR), the Commission instituted investigation No. 332–378, *Fresh and Processed Potatoes: Competitive Conditions Affecting the U.S. and Canadian Industries*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of providing a report on factors affecting trade between the United States and Canada in fresh tablestock potatoes, seed potatoes, raw potatoes for processing, and frozen processed potatoes. As requested by the USTR, the Commission's report on the investigation will focus on the period 1992–96, and to the extent possible, 1997, and will include the following information for each of the four product areas:

(1) Production and/or processing volumes and trends in Canada and the United States over the past 5 years.

(2) U.S. imports from Canada over the last 5 years, including market share of Canadian exports, with particular emphasis on any increases in U.S. imports from Canada.

(3) Consumption trends for raw and finished processed potato products in Canada and the United States over the last 5 years.

(4) Federal, provincial, and municipal aid programs in Canada for Canadian growers and processors, including aid for the construction of storage, water treatment, and processing facilities; a compilation of existing literature and industry views on the impact of such aid on the competitiveness of Canadian producers.

(5) For the last 3 years, prices of Canadian products in Canada and in U.S. markets, together with prices of U.S. products in U.S. markets.

(6) The effect of exchange rates and terms of sale factors on Canadian prices.

(7) The cost of production in Canada and in the United States, including raw material costs for processed products, over the last 3 years.

As requested, the Commission will, to the extent possible, supplement national data presented in the report with regional and/or seasonal highlights, and that the Commission also include an analysis of any other factors affecting the conditions of competition between the U.S. and Canadian fresh potato and processed potato industries.

As requested by the USTR, the Commission will submit the results of its investigation on an expedited basis, but not later than July 15, 1997.

FOR FURTHER INFORMATION: Information on industry aspects may be obtained from Tim McCarty, Office of Industries (202–205–3324) or Douglas Newman, Office of Industries (202–205–3328); and legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205-1810).

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 30, 1997. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m. April 14, 1997. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 21, 1997; the deadline for filing posthearing briefs or statements is 5:15 p.m., May 15, 1997. In the event that, as of the close of business on April 14, 1997, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after April 14, 1997, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the public hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6

of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than May 15, 1997. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: January 29, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–2829 Filed 2–4–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on January 15, 1997, a proposed Consent Decree in *United States* v. *Connor Investment Co.,* Civil Action No. 97–5006–CV–SW–3 (W.D. Mo.) was lodged with the United States District Court for the Western District of Washington. This Consent Decree resolves the United States' claims in this action against Connor Investment Company (''Connor'') and Lima Hill Mining Company (''Lima'') (collectively ''Settling Defendants'') regarding their liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred or to be incurred by the United States in connection with the Oronogo/Duenweg Mining Belt Superfund Site in Jasper County, Missouri (''Site'').

The Consent Decree requires, *inter alia,* that the Settling Defendants shall provide the United States Environmental Protection Agency (''EPA'') and the State of Missouri with broad access rights to their property at the Site for the creation, operation, and maintenance of a hazardous waste repository. In addition, the Consent Decree requires that the Settling Defendants place restrictive covenants on the property in conformance with future use of the repository and reflecting any institutional controls established through the remedial action. The Consent Decree grants to the Settling Defendants a covenant not to sue and the contribution protection afforded by Section 1133(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). The Consent Decree also contains a reopener that permits the United States, in certain situations, to institute additional proceedings to require the Settling Defendants perform further response actions or reimburse the United States for additional costs of response.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Connor Investment Co.,* D.O.J. No. 90–11–3–1001C.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Missouri, 1201 Walnut Street, Kansas City, MO 64106; the Region VII Office of the U.S. Environmental Protection Agency, 726 Minnesota Ave., Kansas City, KS 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (Tel: (202) 624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. When requesting a copy, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–2769 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

Notice is hereby given that on January 24, 1997, a proposed Consent Decree in *United States of America* v. *North American Chemical Company,* Civil Action No. 97–0477–WJR (CWx), was lodged with the United States District Court for the Central District of California. This Consent Decree represents a settlement of claims against North American Chemical Company (''NACC'') pursuant to section 113(b) of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b), for NACC's alleged violations of provisions of the State Implementation Plan for San Bernardino, California, as well as for violations of the New Source Performance Standards and Prevention of Significant Deterioration (''PSD'') provisions of the Clean Air Act. See Standards of Performance for Nonmetallic Mineral Processing Plants, 40 CFR part 60, subpart OOO and the PSD provisions of the Act, 42 U.S.C. 7470–7501. The alleged violations occurred at a facility owned and operated by NACC located near Trona, California.

Under this settlement between the United States and NACC, NACC will be required to reduce emissions of nitrogen oxides from a gas turbine at the facility. The settlement provides for a civil penalty of $320,000. In addition, NACC will conduct a supplemental environmental project to reduce particulate matter emissions at the facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *North American Chemical Company,* DOJ Ref. #90–5–2–1–2001.

The proposed consent decree may be examined at the Office of the United States Attorney, Central District of California, 7516 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012 and at Region IX, Office of the Environmental Protection Agency, Air Division, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1130 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.25 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–2771 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Consistent with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 24, 1997, a proposed Supplemental Consent Decree in *United States* v. *Puerto Rico Administration of Corrections,* Civil Action No. 90–2119, was lodged with the United States District Court for the District of Puerto Rico. The proposed Supplemental Consent Decree settles the United States' claims for stipulated penalties under a 1992 Consent Decree between the parties as well as the United States' claims under the Clean Water Act alleged in a Supplemental Complaint.

Puursuant to the Supplemental Consent Decree, the Puerto Rico Administration of Corrections will pay $625,000 to the United States, will undertake numerous remedial actions to bring four of its facilities into compliance with the Clean Water Act in accordance with a schedule specified in the Consent Decree, and will expend $600,000 in carrying out additional remedial actions aimed at the improvement of community drinking water supplies in Puerto Rico.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Supplemental Consent Decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Puerto Rico Administration of Corrections,* Civil Action No. 90–2119, D.J. Ref. 90–5–1–1–3364A.

The proposed Supplemental Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Office Building, Rm. 101, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918, at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Supplemental Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please indicate the consent decree desired and enclose a check (there is a 25 cent per page reproduction cost) in the amount of $11.75 payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–2770 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–15–M

Foreign Claims Settlement Commission

Holocaust Survivor Claims; Notice of Deadline for Filing of Claims

AGENCY: Foreign Claims Settlement Commission of the United States; Justice.

ACTION: Notice.

SUMMARY: The Foreign Claims Settlement Commission announces the extension of the deadline previously set for filing of claims by certain United States survivors of the Holocaust for compensation pursuant to a September 19, 1995, agreement between the United States and Germany.

DATES: The new deadline for filing of claims in this program is February 23, 1997.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, U.S. Department of Justice, 600 E St., N.W., Suite 6002, Washington, DC 20579, Tel. (202) 616–6975, FAX (202) 616–6993.

Notice of Deadline for Filing of Holocaust Claims

Certain United States survivors of the Holocaust are eligible for compensation pursuant to a September 19, 1995, agreement between the United States and the Government of the Federal Republic of Germany.

The Foreign Claims Settlement Commission is conducting a claims program to identify persons eligible for compensation under the agreement. This will be the only opportunity for U.S. citizens to seek compensation from Germany through the U.S. Government for loss of liberty or damage to health due to Nazi persecution. The decisions of the Commission will serve as the basis for negotiation of a compensation figure between the U.S. Department of State and the German Government, which has already agreed in principle to compensate eligible claimants.

This program is open to those U.S. citizens who were U.S. citizens at the time of their persecution and were interned in concentration camps or under comparable conditions. The agreement excludes compensation for those who were subjected to forced labor only.

Any person wishing to file a claim must request and complete an official claim form, providing information including:

(1) The name, address and telephone number of claimant;

(2) A brief narrative description of the circumstances leading to and the nature of the Nazi persecution, including the dates and places of internment, and the impact of persecution on the freedom and health of claimant;

(3) Documentary proof of United States citizenship both (a) at the time of Nazi persecution and (b) at present;

(4) Documentary proof of claimant's loss of liberty or damage to health as a result of Nazi persecution (for example, a certified copy of a contemporaneous government document or report of a contemporaneous medical examination, or sworn witness statements);

(5) Any additional information or documentation relevant to the level of compensation sought by the claimant.

Completed claim forms and supporting documentation must be submitted no later than February 23, 1997.

The Commission is conducting this program and rendering its decisions in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR 500 *et seq.*). In particular, attention is directed to 45 CFR 531.6(d), which provides that the claimant shall bear the burden of proof on all elements of a claim. A copy of the regulations is available from the Commission upon request.

Requests for claim forms should be addressed to: Foreign Claims Settlement Commission of the United States, Washington, DC 20579. Forms also may be requested by telephone, at (202) 616–6975, or by facsimile, at (202) 616–6993.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0068.

Delissa A. Ridgway,

Chair.

[FR Doc. 97–2836 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–01–P

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; census of juvenile residential facilities.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 7, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Joseph Moone (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Joseph Moone, 202–307–5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of information collection: new collection.

(2) The title of the form/collection: Juvenile Residential Facility Census.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Public and Private Residential Facilities for Juveniles. Other: None. This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,500 respondents with an average 7 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 244,500 biennial burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–2758 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: census of juveniles in residential placement.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Commends and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Joseph Moone, Office of Juvenile Justice and Delinquency Prevention, Room 782, 633 Indiana Avenue, NW, Washington, DC, (202) 307–5929. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Joseph Moone, 202–307–5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: new data collection.

(2) Title of the Form/Collection: Census of Juveniles in Residential Placement.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: CJ–14 Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Public and private juvenile detention, correctional, shelter, facilities. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,500 respondents at an average 4 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 11,142 biennial burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance

Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 28, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–2759 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Evaluation of the ''Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression program:'' Individual youth outcome forms based on official police and school records.

This information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 7, 1997. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Marilyn Landon, Program Manager, Office of Juvenile Justice and Delinquency Prevention at (202) 307–0586. To receive a copy of the proposed information collection instrument with instructions, or additional information, please contact Marilyn Landon, 202–307–0586, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW., Washington, DC 20531. Additionally, comments may be submitted to the Department of Justice, (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530, or via facsimile to (202) 514–1534.

Overview of this information collection:

(1) Type of information Collection: New Collection.

(2) Title of the Form/Collection: Evaluation of the ''Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program:'' Individual Youth Outcome Forms Based on Official Police and School Records.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Sponsored by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Not-for-Profit Institutions. Other: State, Local, or Tribal Government. The study will obtain interview and test information on youth background, school and social adjustment, deviancy/crime activity, self-esteem, and depression/personality adjustment. It will determine the effectiveness of the program, comparing program subjects to non-program gang youth of the same ages, approximately 13 to 20 years old, and their backgrounds.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 2000/20—1 hour per youth (100 hours per recordkeeper) = 2000 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 2000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 31, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–2837 Filed 2–4–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage

determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

None.

Volume II

None.

Volume III

None.

Volume IV

None.

Volume V

None.

Volume VI

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The General wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the national Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 31st day of January 1997.

Margaret Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–2861 Filed 2–4–97; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, February 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Whayne Supply Co.*, Docket Nos. KENT 94–518–R and 95–556 (Issues include whether the judge correctly determined that a contractor's violation of the requirement in 30 CFR § 77.405(b) that raised machinery or equipment be securely blocked in position was not the result of the contractor's unwarrantable failure).

2. *Secretary of Labor* v. *Kellys Creek Resources, Inc.*, Docket No. SE 94–639 (Issues include whether the operator's violation of the borehole drilling requirements of 30 CFR § 75.388(a)(2) was significant and substantial and the result of its unwarrantable failure).

TIME AND DATE: 10:00 a.m., Thursday, February 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Amax Coal Co.*, Docket No. LAKE 94–197 (Issues include whether the presence of methane at a level over one percent in an above-ground facility violates 30 C.F.C. § 77.201).

TIME AND DATE: 1:00 a.m., Thursday, February 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session.

1. *Secretary of Labor* v. *Amax Coal Co.*, Docket No. LAKE 94–197 (See oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: January 30, 1997.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–2926 Filed 2–3–97; 10:41 am]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Submission for OMB Review; Comment Request

January 24, 1997.

SUMMARY: The Institute of Museum and Library Services 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 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR with applicable supporting documentation may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner (202) 606–8536. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636 between 9:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

COMMENTS: Comments must be within 30 days from the date of this publication in the Federal Register.

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for the Institute of Museum and Library Services, NEOB, Washington, DC 20503, (202) 395–7316.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Agency: Institute of Museum and Library Services.

Title: Final Financial Status Report.

OMB Number: 3137–0025.

Agency Number: 3137.

Frequency: Once.

Affected Public: Parties affected by this information collection are museums that have received grants from the Institute of Museum and Library Services.

Number of Respondents: 624.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 624.

Total Annualized capital/startup costs: 0.

Total Annual Costs: 0.

Description: This form is an abbreviated version of the OMB SF 269 (Financial Status Report). It is needed for use of museums unfamiliar with federal government requirements. Only the information required by IMLS is requested on this form.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Danvers, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W. Washington, DC 20506, telephone (202) 606–8539.

Dated: January 24, 1997.

Mamie Bittner,

Director Legislative and Public Affairs.

[FR Doc. 97–2765 Filed 2–4–97; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63 issued to Carolina Power & Light Company (the licensee) for operation of the Shearon Harris Nuclear Power Plant, Unit 1, located in New Hill, North Carolina.

The proposed amendment would revise Technical Specification (TS) 4.8.1.1.2 to clarify pressure testing requirements for isolable and non-isolable portions of the diesel fuel oil piping.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Applying ASME Code, Section XI alternative examination/testing will not affect any initiators of any previously evaluated accidents or change the manner in which the emergency diesel generators or any other systems operate. The diesel fuel oil system supports the emergency diesel generators which serve an accident mitigating function. Where portions of piping are non-isolable or where atmospheric tanks are involved, the Section XI ASME alternatives to 110% pressure testing continue to ensure the integrity of the fuel oil system without any impact on analyzed accident scenarios or their consequences. Therefore, the proposed amendment does not result in an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed alternative testing and surveillance will not involve any physical alterations or additions to plant equipment or alter the manner in which any safety-related system performs its function. Using ASME Section XI guidance for testing continues to provide assurance that the fuel oil supply system will perform its intended function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

There are no changes being made to the safety limits or safety settings that would adversely impact plant safety. Further, there is no impact on the margin of safety as defined in the Technical Specifications. Utilizing ASME Section XI as guidance for determining those sections of piping that should be pressure-tested or tested at atmospheric pressure will ensure proper operation of the diesel generator fuel oil supply system. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 6, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina, 27605. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mark Reinhart: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina, 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the

presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 10, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina, 27605.

Dated at Rockville, Maryland, this 28th day of January 1997.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2689 Filed 2–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corporation and Great Bay Power Corporation, (Seabrook Station, Unit 1); Order Approving Application Regarding the Corporate Restructuring of Great Bay Power Corporation by Establishment of a Holding Company

I

Great Bay Power Corporation (Great Bay) is the holder of a 12.1324-percent ownership share in Seabrook Station, Unit No. 1. Its interest in Seabrook Station, Unit 1, is governed by License No. NPF–86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50), on March 15, 1990, in Docket No. 50–443. Under this license, only North Atlantic Energy Service Corporation (North Atlantic), acting as agent and representative of 11 joint owners listed in the license, has the authority to operate Seabrook Station, Unit 1. Seabrook Station, Unit 1, is located in Rockingham County, New Hampshire.

II

By letter dated May 8, 1996, North Atlantic informed the Commission that Great Bay was in the process of implementing a corporate restructuring that will result in the creation of a holding company under the name ''Great Bay Holdings Corporation,'' of which Great Bay would become a subsidiary. Under the restructuring, the holders of Great Bay common stock will become holders of common stock of Great Bay Holdings Corporation. North Atlantic requested the Commission's approval of the corporate restructuring pursuant to 10 CFR 50.80. Notice of this application for approval was published in the Federal Register on November 26, 1996 (61 FR 60121), and an Environmental Assessment and Finding of No Significant Impact was published in the Federal Register on January 22, 1997 (62 FR 3317). Additional information related to this proposed restructuring was submitted by Great Bay through its counsel Shaw, Pittman, Potts & Trowbridge, by letters dated October 18 and December 9, 1996.

Under 10 CFR 50.80, no license 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 submitted in the letters of May 8 and October 18, 1996, and other information before the Commission, the NRC staff has determined that the restructuring of Great Bay will not affect the qualifications of Great Bay as a holder of the license, and that the transfer of control of the Seabrook license, to the extent effected by the restructuring of Great Bay, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated January 22, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, it is hereby ordered that the Commission approves the application regarding the restructuring of Great Bay subject to the following: (1) Great Bay 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 Great Bay to its proposed 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%) of Great Bay's consolidated net utility plant, as recorded on Great Bay's books of account; and (2) should the restructuring of Great Bay not be completed by June 30, 1997, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This order is effective upon issuance.

IV

By February 21, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an Order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141–0270, attorney for the licensee.

For further details with respect to this Order, see the application for approval of the corporate restructuring dated May 8, 1996, and supplement dated October 18, 1996, and December 9, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 22nd day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2813 Filed 2–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corporation and Great Bay Power Corporation (Seabrook Station, Unit No. 1); Exemption

I

North Atlantic Energy Service Corporation (North Atlantic or the

licensee) is a holder of Facility Operating License No. NPF–86, which authorizes operation of Seabrook Station, Unit No. 1 (the facility or Seabrook), at a steady-state reactor power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Rockingham County, New Hampshire. The license provides among other things, that it is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Great Bay Power Corporation (Great Bay) was established in 1994 as a successor to EUA Power Corporation, which had filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Great Bay is a non-operating, 12.1324 percent co-owner of Seabrook and sells its proportionate share of power from Seabrook on the wholesale electricity market. Great Bay is an exempt wholesale generator as defined in the Energy Policy Act of 1992.

On May 8, 1996, North Atlantic submitted to the NRC a request on behalf of Great Bay for Commission consent to the indirect transfer of control of Great Bay Power's interest in the Operating License. Additional information relating to this request was submitted on October 18 and December 9, 1996. Approval of the indirect transfer of control of Great Bay would allow Great Bay, through the formation of several subsidiaries and a merger, to become a wholly owned subsidiary of a new holding company, Great Bay Holdings Corporation. The indirect transfer of control of Great Bay's share of Seabrook is subject to NRC approval pursuant to 10 CFR 50.80.

In its May 8, 1996, submittal, North Atlantic indicated that, after the indirect transfer of control to the new holding company, Great Bay would remain an electric utility as defined by the NRC in 10 CFR 50.2. This conclusion is based on Great Bay's intended approach to market its share of power from Seabrook (approximately 140 MWe) through the implementation of long-term contracts. Great Bay believes that the Federal Energy Regulatory Commission (FERC) would have the ultimate regulatory authority to review rates for these contracts and, thus, Great Bay would meet the definition of ''electric utility.''

When the NRC staff approved the plan for Great Bay's emergence from bankruptcy in 1993, it did not explicitly address the issue of whether Great Bay met the definition of ''electric utility.'' The staff believed, however, that Great Bay would continue to be an electric utility based upon its status as such prior to bankruptcy and upon the expectation that the reorganized entity would be successful with obtaining long-term contracts for the sale of most of its share of power from Seabrook.

Notwithstanding the staff's earlier actions with respect to Great Bay's emergence from bankruptcy, the staff now believes that Great Bay does not meet the definition of ''electric utility.'' Great Bay has successfully entered only one long-term contract, which is for 10 MWe. Great Bay sells its remaining 130 MWe share of Seabrook power on the spot wholesale market, which by definition is subject to market-set rates. The staff believes that, although FERC may exercise general regulatory oversight over spot market rates, such rates cannot be considered to be ''rates *established* by * * * a separate regulatory authority'' (emphasis added).

If Great Bay is no longer an electric utility, Great Bay is required to meet the existing financial qualifications review requirements of 10 CFR 50.33(f)(2). This section requires that ''the applicant shall submit estimates for the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs.'' Seabrook has an established operating history and associated costs that are now a matter of record. Based on a review of Great Bay's current financial statements submitted with its May 8, 1996, submittal, and supplemental projections submitted on October 18, 1996, the staff has concluded that Great Bay has complied with the essential requirement of the existing standard, which is to demonstrate reasonable assurance of obtaining its share of Seabrook operating costs. Great Bay has projected operating income and cash flow based on what appear to be reasonable projections of the spot market price of and demand for power from Seabrook for the foreseeable future. Great Bay indicates that these projections would be the same with or without formation of the proposed holding company. Thus, Great Bay has demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license as required by 10 CFR 50.33(f)(2).

The requirements for indicating to the NRC how reasonable assurance will be provided that funds will be available for decommissioning are identified in 10 CFR 50.75, ''Reporting and recordkeeping requirements for decommissioning planning.'' Acceptable methods for providing this assurance are described at 10 CFR 50.75(e)(1) and the methods that may be used by non-electric utilities are identified at 10 CFR 50.75(e)(2). If Great Bay is no longer an electric utility, it does not meet the requirements of 10 CFR 50.75(e)(2) in that it does not have a surety bond or other surety method in place to provide additional assurance for decommissioning funding. Great Bay, however, does contribute to an external sinking fund, which alone would satisfy the requirements of 10 CFR 50.75 if Great Bay in fact were an electric utility, as it asserts. Great Bay has stated that the current value of Great Bay's share of the decommissioning liability in 1995 dollars is approximately $50.2 million. As of December 31, 1995, its accumulated decommissioning reserve was approximately $5.1 million. Great Bay also has in place $10 million in decommissioning costs guaranteed by Eastern Utility Associates, Great Bay's former corporate parent. However, Great Bay has not provided assurance as required under 10 CFR 50.75(e)(2). In its October 18, 1996, submittal, Great Bay indicated that the projected cash on hand at the end of the current fiscal year would be sufficient to cover most of the $50.2 million that is not otherwise offset by the $5.1 million reserve and the $10 million guarantee.

III

Great Bay currently is a stand-alone entity; that is, it is not itself a subsidiary of another organization and it has no subsidiary organizations (other than those recently formed to effect the proposed corporate reorganization). Great Bay has requested Commission approval of the indirect transfer of control of its interest in the Seabrook Operating License. This approval would permit Great Bay to become a wholly owned subsidiary of a new entity, Great Bay Holdings Corporation. The current owners of Great Bay would exchange their equity interest in Great Bay for equity interest in the holding corporation; thus, the current owners would own Great Bay indirectly rather than directly. The Great Bay interest in the Seabrook Operating License would remain directly with Great Bay. Great Bay indicated that the proposed restructuring would protect Great Bay's status as a wholesale electric generator and allow management to develop opportunities in additional electricity markets through the holding company, thus, potentially improving Great Bay's financial position.

The staff is, of course, particularly interested in Great Bay's longer-term

financial viability with respect to Great Bay's share of operation and decommissioning costs of Seabrook. The staff believes that Great Bay's financial viability will not be diminished but instead likely will be enhanced by the formation of the holding company. By approving the indirect transfer of control now, the staff believes that Great Bay could be in a stronger position to meet both the financial qualifications and decommissioning rules.

Thus, to allow the staff to act upon, without further delay, Great Bay's request for approval of indirect transfer of control of Great Bay, and at the same time afford Great Bay a reasonable opportunity to implement a suitable decommissioning funding assurance method required of a non-electric utility, the staff is granting Great Bay a 6-month exemption from compliance with the provisions 10 CFR 50.75(e)(2) pertaining to the additional surety arrangements for decommissioning funding assurance for non-electric utility licensees. If, within the effective period of this exemption, Great Bay has been unable to establish itself as an electric utility as defined in 10 CFR 50.2, Great Bay then must obtain a surety bond or other allowable decommissioning funding assurance mechanism for non-electric utility licensees meeting all of the requirements of 10 CFR 50.75(e)(2).

The Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are present justifying the exemption. Under criterion (ii), special circumstances exist in that application of the regulation in this particular circumstance is not necessary, for the 6-month period, to achieve the underlying purpose of the rule, which is to ensure that funds are available for decommissioning at the end of the license term or in the event of premature shutdown. Here, Great Bay's projected 1996 cash position is nearly sufficient to cover the unfunded decommissioning costs, and its cash position is not likely to deteriorate substantially during the period of the exemption.

Further, under criterion (v), special circumstances exist because the exemption provides only temporary relief from the applicable regulation(s), and Great Bay has made a good faith effort to comply with 10 CFR 50.75 by making payment into an external sinking fund based on its good faith belief that it is an electric utility.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (62 FR 3316).

This Exemption is effective upon issuance and shall expire 6 months from the date of issue.

Dated at Rockville, Maryland, this 22nd day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2814 Filed 2–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corporation and Great Bay Power Corporation (Seabrook Station, Unit 1); Order Modifying the Order Approving the Restructuring of Great Bay Power Corporation

I

On January 22, 1997, the NRC issued an Order approving the application submitted by Great Bay Power Corporation (Great Bay) regarding its proposed corporate restructuring involving the formation of a holding company named Great Bay Holdings Corporation. Great Bay is a minority non-operating owner of the Seabrook Station, Unit 1. On January 24, 1997, Great Bay, through its counsel, submitted a letter explaining that the State of New Hampshire informed Great Bay, subsequent to the filing of its application with the NRC, that the name ''Great Bay Holdings Corporation'' is already in use by another legal entity in New Hampshire and cannot be used in connection with Great Bay's proposed restructuring. Great Bay indicated that in view of the foregoing, the name of the new holding company has been changed to ''BayCorp Holdings, Ltd.'' and requested that the NRC issue an administrative addendum to the Order of January 22, 1997, to reflect the name change. Great Bay stated that its failure to notify the NRC previously of the name change was an oversight on its part.

On the basis of our review of the circumstances, the Order of January 22, 1997, is hereby modified to the extent that all references to ''Great Bay Holdings Corporation'' as the name of the proposed holding company of Great Bay are deemed to be references to ''BayCorp Holdings, Ltd.'' All other terms and conditions of the Order of January 22, 1997, are unchanged.

Dated at Rockville, Maryland, this 28th day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2816 Filed 2–4–97; 8:45 am]

BILLING CODE 7590–01–P

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is providing the public an opportunity to provide comments on the agency's Enforcement Policy (NUREG–1600, ''General Statement of Policy and Procedure for NRC Enforcement Actions''). This invitation is open to interested public interest groups, the regulated industry, states, and concerned citizens.

DATES: The comment period expires April 7, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: David Meyer, Chief, Rules Review and Directives Branch, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Copies of NUREG–1600 and NUREG–1525 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Copies are also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: On June 30, 1995, (60 FR 34381) the Commission published a complete revision of the NRC's Enforcement Policy in the Federal Register. The changes to the Enforcement Policy resulted from the efforts of a review team established in 1994 to assess the NRC's enforcement program. The review team published its recommendations in NUREG–1525, ''Assessment of the NRC Enforcement Program,'' and the Commission made revisions to the Enforcement Policy after considering those recommendations. The revisions to the Enforcement Policy were intended to, among other things:

- Emphasize the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified;
- Direct agency attention at licensees with multiple enforcement actions in a relatively short period; and
- Focus on current performance of licensees.

The revisions to the Enforcement Policy were also intended to better focus the inspection and enforcement process on safety, provide greater incentives for strong self-monitoring and corrective action programs in the civil penalty assessment process, provide more predictability and consistency in the civil penalty assessment process, and to better convey clear regulatory messages.

When the Commission published the revised Enforcement Policy in the Federal Register on June 30, 1995, it stated that it would provide the public an opportunity to comment on the revised Enforcement Policy after it had been in effect for about 18 months. This opportunity for public comment is being made in accordance with this commitment.

Dated at Rockville, MD, this 30th day of January, 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–2805 Filed 2–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–461]

Illinois Power Company; Soyland Power Cooperative; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF–62, to the extent now held by Soyland Power Cooperative (Soyland), to Illinois Power Company (IP, the licensee) with respect to the Clinton Power Station, Unit No. 1 (CPS), located in DeWitt County, Illinois, and issuance of conforming amendments under 10 CFR 50.90.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent, by the issuance of an order, to the transfer of the 13.21% minority ownership interest in the facilities for CPS from Soyland to IP and approve the issuance of conforming amendments to the license. This Environmental Assessment supersedes that published on November 19, 1996 (61 FR 58897), which reflected the licensee's original submittal of October 17, 1996. The licensee's original submittal, which proposed transferring the Soyland interest to Illinova Power Marketing, Inc., was revised in the licensee's submittal of December 13, 1996.

The Need for the Proposed Action

The proposed action is required to obtain the necessary consent to the transfer of the license, to the extent now held by Soyland, and approval of amendments discussed above. Soyland is a minority owner of CPS with an ownership share of 13.21%. Due to severe financial difficulties arising in large part because of its CPS-related debt, Soyland has been forced to seek significant refinancing of its outstanding obligations. As a condition precedent to said refinancing, the U.S. Department of Agriculture, acting through the Administrator of the Rural Utilities Services, required Soyland to completely divest itself of any ownership of, or responsibility for, CPS. As a result, Soyland and Illinova Corporation (Illinova), the parent company of Illinois Power Company, entered into an agreement wherein Illinova assumed full financial responsibility for Soyland's CPS obligations as of September 1, 1996, and Soyland agreed to transfer its entire ownership interest in CPS, subject to receipt of all necessary regulatory approvals.

Environmental Impacts of the Proposed Action

The Commission has reviewed the proposed action and concludes that there will be no changes to the facility or its operation as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not affect nonradiological plant effluents and will have no other environmental impact. Accordingly, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alterative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Clinton Power Station, Unit 1, documented in NUREG–0854.

Agencies and Persons Consulted

In accordance with its stated policy, on January 8, 1997, the staff consulted with the Illinois state official of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the Illinois Power submittal dated December 13, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, Illinois.

Dated at Rockville, Maryland this 29th day of January 1997.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–2815 Filed 2–4– 97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Probabilistic Risk Assessment will hold a meeting on February 20 and 21, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 20, 1997—8:30 a.m. until the conclusion of business
Friday, February 21, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its discussion of the NRC staff's approach to codify risk-informed, performance-based regulation through development of Standard Review Plan (SRP) sections and associated regulatory guides. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: January 30, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–2804 Filed 2–4–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. A97–9]

Eddyville, Nebraska 68834 (Ruth Yentes, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

January 30, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Docket Number: A97–9.

Name of Affected Post Office: Eddyville, Nebraska 68834.

Name(s) of Petitioner(s): Ruth Yentes, et al.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: January 27, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by February 11, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

APPENDIX

January 27, 1997	Filing of Appeal letter.
January 30, 1997	Commission Notice and Order of Filing of Appeal.
February 20, 1997	Last day of filing of petitions to intervene [*see* 39 CFR § 3001.111(b)]
March 3, 1997	Petitioners' Participant Statement or Initial Brief [*see* 39 CFR § 3001.115 (a) and (b)]
March 24, 1997	Postal Service's Answering Brief [*see* 39 CFR § 3001.115(c)]
April 8, 1997	Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 CFR § 3001.115(d)]
April 15, 1997	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR § 3001.116]
May 27, 1997	Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 97–2786 Filed 2–4–97; 8:45 am]
BILLING CODE 7710–FW–P

[Docket No. A97–10]

Hertel, Wisconsin 54845 (Thomas M. Mrozik, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

January 30, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Docket Number: A97–10.

Name of Affected Post Office: Hertel, Wisconsin 54845.

Name(s) of Petitioner(s): Thomas M. Mrozik.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: January 28, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by February 12, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

APPENDIX

January 28, 1997	Filing of Appeal letter.
January 30, 1997	Commission Notice and Order of Filing of Appeal.
February 21, 1997	Last day of filing of petitions to intervene [see 39 CFR § 3001.111(b)].
March 4, 1997	Petitioner's Participant Statement or Initial Brief [see 39 CFR § 3001.115(a) and (b)].
March 24, 1997	Postal Service's Answering Brief [see 39 CFR § 3001.115(c)].
April 8, 1997	Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)].
April 15, 1997	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116].
May 28, 1997	Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)].

[FR Doc. 97–2787 Filed 2–4–97; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22483; File No. 812–10484]

Anchor Pathway Fund, et al.

January 29, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Anchor Pathway Fund (''APT'') and SunAmerica Series Trust (''SST'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 10(e)(3) of the 1940 Act suspending the operation of Section 10(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seeks an order, pursuant to Section 10(e)(3) of the 1940 Act, extending the sixty-day period provided for by Section 10(e)(2) of the 1940 Act to March 21, 1997, in order to provide time for the identification, nomination and election of additional trustees. Applicants further request that the order grant retroactive relief for the period from January 21, 1997, the expiration date of the initial sixty-day period, to the date on which the order is issued.

FILING DATE: The application was filed on January 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving. Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on February 24, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC. 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Joan E. Boros, Esq., Katten, Muchin & Zavis, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 700, Washington, D.C. 20007–5201, or Robert M. Zakem, Esq., SunAmerica Asset Management Corp., The SunAmerica Center, 733 Third Avenue, New York, NY 10017–3204.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Staff Attorney, or Patrice M. Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. APT and SST (collectively, the ''Trusts'') each are open-end, series type management investment companies organized as Massachusetts business trusts. APT and SST are registered under the 1940 Act, and their shares are registered under the Securities Act of 1933, as amended.

2. The Boards of Trustees of APT and SST (collectively, the ''Boards'') are identical in composition. Before

November 23, 1996, each Board had five members, two of whom were not ''interested persons'' as that term is defined by Section 2(a)(19) of the 1940 Act. One of the disinterested Trustees died on November 23, 1996, reducing each Board to four members, only one of whom is not an interested person. The remaining disinterested Trustee expressed his intention to resign effective February 1, 1997. Following the resignation, each Board will be reduced to three members, all of whom will be interested persons.

3. The Boards are seeking diligently to identify replacements for the two disinterested Trustees. The remaining Trustees must approve the nomination of suitable candidates. Shareholders of the Trusts and owners of the Contracts also must approve the new nomination of the new Trustees.

4. No actions will be taken by the Boards that require a vote of disinterested Trustees until after the Boards have been fully constituted and shareholders have elected the nominees. Nor have any such actions been taken since November 23, 1996.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 10(e)(3) of the 1940 Act extending the sixty day period provided for by Section 10(e)(2) of the 1940 Act to March 21, 1997. Applicants further request that the order grant retroactive relief for the period from January 21, 1997, the expiration date of the initial sixty day period, to the date on which the order is issued.

2. Section 10(a) of the 1940 Act provides, among other things, that no registered investment company shall have a board of directors more than 60 percent of whose members are persons or officers or employees of such registered company. Section 10(e) of the Act sets forth time limitations for filing vacancies created by reason of the death, disqualification or bona fide resignation of any director(s). Section 10(e)(2) further provides that the operation of Section 10(a) shall be suspended for a period of sixty days if a vote of shareholders is required to fill the vacancy(ies). Section 10(e)(3) authorizes the Commission, by order upon application, to prescribe a longer period as not inconsistent with the protection of investors.

3. Section 16(a) of the 1940 Act requires, in pertinent part, that immediately after filling a vacancy on a board of directors, at least two-thirds of the directors shall have been elected to such office by the shareholders of the registered investment company. Applicants must submit the election of the Boards to the shareholders of the Trusts to comply with Section 16(a).

4. Applicants assert that the Boards have not yet identified appropriate candidates to fill the two vacancies which must be filled by Trustees who are not interested persons of the Trusts. Applicants represent that their efforts have been pursued with diligence, but to date have not resulted in the selection of appropriate nominees.

5. Applicants represent that once they have identified, interviewed and cleared potential nominees, their nomination will be considered at the meetings of the Boards scheduled for February 25, 1997. At those meetings, Applicants anticipate that the Boards will authorize the preparation and filing with the Commission of proxy materials relating to the election of the Boards and other significant matters that require shareholders approval.

6. Applicants assert that it is in the best interests of the separate accounts investing in the Applicants and the owners of variable annuity contracts funded through those separate accounts to take the necessary time to identify qualified and competent disinterested Trustees. Applicants represent that efforts have been undertaken and are continuing to obtain two disinterested Trustees, but that is now appears that the vacancies will not be filled until March 21, 1997.

7. Applicants represent that retroactive relief is necessary because they were not immediately notified of the death of one distinterested Trustee, and that sixty days is not sufficient time to prepare and file with the Commission, and for the Commission to consider, issue a notice and grant an order upon, an application for exemptive relief.

Conclusion

For the reasons stated above, Applicants assert that their requests for relief are consistent with the protection of investors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2781 Filed 2–4–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–22485; File No. 812–10286]

The Mutual Life Insurance Company of New York, et al.

January 29, 1997.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Mutual Life Insurance Company of New York (''MONY''), MONY Life Insurance Company of America (''MONY America,'' and collectively with MONY, ''the Companies'') and MONY America Variable Account A (''MONY America Account,'' and collectively with the MONY Account, ''the Accounts'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b) of the 1940 Act approving a proposed substitution of securities and pursuant to Section 17(b) of the 1940 Act granting exemptions from the provisions of Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the U.S. Government Series (''U.S. Government Portfolio'') of OCC Accumulation Trust (''Trust'') for shares of the Bond Series (''Bond Portfolio'') of the Trust. Applicants also seek an exemption from Section 17(a)(1) and 17(a)(2) of the 1940 Act to the extent necessary to permit Applicants to carry out the above referenced substitution in part by redeeming shares of the Bond Portfolio in-kind and using the redemption proceeds to purchase shares of the U.S. Government Portfolio.

FILING DATE: The application was filed on August 7, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on February 24, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Any person may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Frederick C. Tedeshi,

Esq., The Mutual Life Insurance Company of New York, 500 Frank W. Burr Blvd., Teaneck, N.J. 07666–6888.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Branch Chief, Office of Insurance Products (Division of Investment Management) at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. MONY is a mutual life insurance company organized in the state of New York. MONY America, a wholly owned subsidiary of MONY, is a stock insurance company organized in the state of Arizona.

2. MONY established the MONY Account on November 28, 1990, and MONY America established the MONY America Account on March 27, 1987, in accordance with the laws of the States of New York and Arizona, respectively. The Accounts are segregated asset accounts registered with the Commission as unit investment trusts pursuant to the provisions of the 1940 Act and are used to fund certain individual and group flexible payment variable annuity contracts issued by the Companies and sold under the name ''ValueMaster'' (''ValueMaster Contracts'').

3. The Accounts currently are divided into various sub-accounts (''Sub-Accounts''), five of which are available to owners of ValueMaster Contracts (''ValueMaster Contractowners'') and which reflect the investment performance of the Bond, Equity, Managed, Money Market and Small Cap Series of the Trust. ValueMaster Contractowners may transfer account values among the Sub-Accounts without any charge up to four times a year. For any additional transfers, a transfers, a transfer charge is not imposed currently. However, the Companies reserve the right to impose a charge. As of June 30, 1996, 3.7% of the total assets invested in the Accounts by ValueMaster Contractowners were allocated to the Bond Portfolio.

4. The ValueMaster Contracts are offered exclusively by agents of Oppenheimer Life Agency, Ltd., (''Oppenheimer Life''), an affiliate of OpCap Advisors, a registered investment adviser and the Trust's investment manager. Oppenheimer Life is no longer actively selling the ValueMaster Contracts.

5. The Trust was established on May 12, 1994, and is a registered open-end management investment company consisting of seven separate series (''Portfolios'') with differing investment objectives, policies and restrictions. All five of the Portfolios of the Trust supporting the ValueMaster Contract commenced operations on September 16, 1994, when a predecessor registered investment company (the ''Old Trust'') with portfolios corresponding to five of the current seven portfolios of the Trust was effectively reorganized into twin investment companies, the Old Trust and the Trust. Before September 16, 1994, the portfolios of the Old Trust had acted as the funding vehicles for the ValueMaster Contracts. The Trust currently also offers shares of its Portfolios to accounts of other unaffiliated life insurance companies, to serve as the investment vehicle for their respective variable annuity and variable life insurance contracts.

6. The Bond Portfolio seeks a high level of current income consistent with moderate risk of capital and maintenance of liquidity and, under normal market conditions, invests in U.S. Government securities and short- and intermediate-term, investment grade corporate bond and debt obligations. Performance returns ranked the Bond Portfolio 21st out of 33, 31st out of 34, and last out of 26 in its peer group, as reported by Lipper Variable Insurance Products Performance Analysis Service (''Lipper Universe Peer Group''), for the six-month, and the one- and five-year period ending June 30, 1996.

7. As of June 30, 1996, the Bond Portfolio had assets of $4,794,283, of which $2,563,131 were attributable to fewer than 100 ValueMaster Contractowners. The only other shareholder of the Bond Portfolio besides the Accounts is a segregated account of an unaffiliated insurance company, which account is exempt from registration under the 1940 Act (the ''unregistered account''). According to OpCap Advisors, the unregistered account intends to redeem its shares of the Bond Portfolio. For the six months ending June 30, 1996, and for calendar year 1995, net redemptions by the Accounts of shares of the Bond Portfolio, exclusive of dividend or capital gain reinvestments, total $293,852 and $1,232,852, respectively.

8. The U.S. Government Portfolio commenced investment operations on January 3, 1995, at which time OpCap Advisors contributed $300,000 in seed capital to that Portfolio. Like the Bond Portfolio, the U.S. Government Portfolio seeks a high level of current income and the protection of capital by investing exclusively in debt obligations, including a variety of U.S. government securities. Under normal conditions the U.S. Government Portfolio invests at least 65 percent of its total assets in U.S. government securities. Performance returns ranked the U.S. Government Portfolio 2nd out of 30, and 6th out of 30 in its Lipper Universe Peer Group for the first six months of 1996, and the one-year period ending June 30, 1996.

9. As of June 30, 1996, the U.S. Government Portfolio had assets of $2,544,472, which included OpCap Advisors' seed capital contribution. Shares of the U.S. Government Portfolio currently also are offered by two unaffiliated insurance companies as a funding vehicle for their variable products. For the six months ending June 30, 1996, and for calendar year 1995, net sales of shares of the U.S. Government Portfolio, exclusive of dividend or capital gain reinvestments, totaled $1,104,391 and $1,046,574, respectively.

10. Under the Investment Advisory Agreement (''Advisory Agreement'') between the Trust and OpCap Advisors, OpCap Advisors provides management and investment advisory services to the Trust and its Portfolios and is compensated by the Trust for services rendered to the Bond and U.S. Government Portfolios on a monthly basis at the annual rate of .50 percent of the average daily net assets of the Bond Portfolio and .60 percent of the average daily net assets of the U.S. Government Portfolio. Under the Advisory Agreement, OpCap Advisors has agreed to limit the total expenses of these Portfolios to 1.25 percent of their respective average daily net assets. Moreover, under a provision of the Advisory Agreement, OpCap Advisors guarantees that the total expenses of the Portfolios, in any fiscal year, exclusive of taxes, interest, brokerage fees and distribution expense reimbursements, shall not exceed the most restrictive state law provisions in effect in any state. In addition, OpCap Advisors has voluntarily agreed to limit the total expenses of the Bond and the U.S. Government Portfolios, through April 30, 1997, to 1.00 percent of their respective average daily net assets. As of June 30, 1996, the actual total expenses of both the Bond and the U.S. Government Portfolios exceeded both the voluntary expense limitation of 1.00 percent and the operative contractual expense limitation of 1.25 percent (Bond Portfolio at 1.45 percent and U.S. Government Portfolio at 3.33 percent). OpCap Advisors waived its fees and reimbursed both the Bond and the U.S. Government Portfolios so that the net expenses of those Portfolios remained at

1.00 percent of their respective average daily net assets.

The Proposed Substitution

11. Applicants propose to substitute shares of the U.S. Government Portfolio for all shares of the Bond Portfolio attributable to the ValueMaster Contracts (''Substitution''). The ValueMaster Contractowners will not bear any expenses and transaction costs of the proposed Substitution, including any applicable brokerage commissions; any such expenses will be borne by OpCap Advisors. Soon after the filing of this application for exemptive relief, the prospectuses for the Accounts will be supplemented to reflect the proposed Substitution and distributed to all ValueMaster Contractowners. The Substitution will occur as soon as practicable after receipt of an order. As of the effective date of the Substitution, the Companies will redeem shares of the Bond Portfolio. Simultaneously, the Companies will use the proceeds to purchase the appropriate number of shares of the U.S. Government Portfolio. The Substitution will take place at relative net asset values of the Bond and U.S. Government Portfolios, with no change in the amount of any ValueMaster Contractowner's account values.

12. To the extent the Bond Portfolio incurs brokerage fees and expenses in connection with the redemption by the Companies of its shares, these expenses would be charged to the applicable Portfolio, but borne by OpCap Advisors. To alleviate the impact of any such brokerage fees and expenses upon the Bond Portfolio and ultimately OpCap Advisors, the Trust and OpCap Advisors propose that the redemption of the Bond Portfolio shares be accomplished, in part, by ''in kind'' transactions. Under the Proposal, the Trust would transfer to the Companies their proportionate interest in cash and/or securities held by the Bond Portfolio on the date of the Substitution, and the Companies will then use such cash and/or securities to purchase shares of the U.S. Government Portfolio. The valuation of any ''in kind'' transfers will be on a basis consistent with the normal valuation procedures of the Bond and U.S. Government Portfolios.

13. Within five days after the Substitution, the Companies will send to ValueMaster Contractowners written notice of the Substitution stating that shares of the Bond Portfolio have been eliminated and that shares of the U.S. Government Portfolio have been substituted. The Companies will include in such mailing a second supplement to the prospectuses of the Accounts which discloses that the Substitution has occurred. The notice will advise ValueMaster Contractowners that for a period of thirty days from the mailing of the notice, the ''Free Transfer Period,'' they may transfer all assets, as substituted, to any other available Sub-Account, without limitation and without the transfer being deemed a transfer for purposes of determining any transfer charge. Following the Substitution, ValueMaster Contractowners will be afforded the same contract rights, including surrender and other transfer rights, as they currently have. Any applicable surrender (or contingent deferred sales) charges will continue to be imposed, but will not be affected in any way by the Substitution.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Applicants assert that the purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force investors dissatisfied with the substituted security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sale load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Section 17(a)(1) of the 1940 Act prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any such affiliated person, acting as principal, from purchasing any security or other property from such registered investment company. Applicants state that the transfer of proceeds emanating from the in-kind redemption of shares of the Bond Portfolio from the Bond Sub-Account to the U.S. Government Sub-Account could be deemed to involve a purchase and sale between the Bond Sub-Account and U.S. Government Sub-Account, each of which is an affiliated person of the other.

3. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from the provisions of Section 17(a) provided: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purpose of the 1940 Act.

4. Applicants submit that the purposes, terms and conditions of the proposed Substitution are consistent with the principles and purposes of Section 26(b) of the 1940 Act and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that a Substitution is an appropriate solution to the limited ValueMaster Contractowner interest or investment in the Bond Portfolio, which currently is, and in the future may be, of insufficient size to promote consistent investment performance or to reduce operating expenses. Applicants further assert that the proposed Substitution will not cause the fees and charges currently being paid by ValueMaster Contractowners to be greater after the Substitution than before the Substitution.

5. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against, and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The objectives, policies, and restrictions of the Bond Portfolio are substantially similar to the objectives, policies, and restrictions of the U.S. Government Portfolio; (b) OpCap Advisors voluntarily agreed to limit the total operating expenses of both the U.S. Government and Bond Portfolios, through April 30, 1997, to 1.00 percent of their respective average daily net assets; (c) if a ValueMaster Contractowner so requests during the Free Transfer Period, Contract value affected by the Substitution will be reallocated for investment in any other available Sub-Account selected by the ValueMaster Contractowner; (d) the Substitution will be a net asset value of the respective Portfolio shares, without

imposition of any transfer or similar charge; (e) OpCap Advisors will assume any expenses and transaction costs relating to the Substitution, including legal and accounting fees and any brokerage commissions; (f) the Substitution will not alter the insurance benefits or contractual obligations of the Companies to ValueMaster Contractowners, or the tax benefits and consequences to ValueMaster Contractowners; and (g) the Substitution is expected to confer certain modest economic benefits to ValueMaster Contractowners by virtue of the possible enhanced asset size of the U.S. Government Portfolio, and to avoid the detriments associated with investment in the Bond Portfolio, whose assets are declining. In this regard, Applicants also note that, within five days after the Substitution, the Companies will send to ValueMaster Contractowners written notice of the Substitution stating that shares of the Bond Portfolio have been eliminated and that shares of the U.S. Government Portfolio have been substituted therefor. The Companies will include in such mailing a second supplement to the prospectuses of the Accounts which discloses that the Substitution has occurred. For the reason cited above, Applicants also contend that the terms of the proposed Substitution meet the standards of Section 17(b).

6. Applicants assert that the decreasing asset base of the Bond Portfolio, the impending redemption of Bond Portfolio shares by the unregistered account, and the mediocre performance results of the Bond Portfolio have made it difficult for that Portfolio to retain current investors and attract new investors. Moreover, Oppenheimer Life Agency's limited effort in selling the ValueMaster Contract, coupled with a constant amount of fixed costs incurred by the Bond Portfolio, can reasonably be expected to lead to an increase in the actual expenses of the Bond Portfolio in the future. In contrast, the actual expenses of the U.S. Government Portfolio can reasonably be expected to decrease in the future: net sales of U.S. Government Portfolio shares from its inception to date suggest that the asset base of that Portfolio will continue to grow; superior performance results should assist the U.S. Government Portfolio in retaining existing investors and attracting new investors; and the use of the U.S. Government Portfolio in various variable products should increase distribution capabilities.

7. Applicants also note that the continuous accumulation of assets of the U.S. Government Portfolio and positive reaction of investors of that Portfolio has persuaded OpCap Advisors to extend its voluntary agreement to limit the operating expenses of the U.S. Government Portfolio to 1.00 percent of its average daily net assets past April 30, 1997, to at least April 30, 1998. OpCap Advisors has not assured the Companies that it will do the same for the Bond Portfolio. Therefore, the total expense ratio of the Bond Portfolio may increase after April 30, 1997, whereas, through April 30, 1998, the total expenses of the U.S. Government Portfolio are guaranteed not to exceed 1.00 percent of its average daily net assets.

8. Applicants contend that the relatively small asset size of the Bond Portfolio hampers the ability to maintain optimal diversification of its investments. In contrast, increasing asset size will permit the U.S. Government Portfolio to purchase attractive portfolio securities. Consequently the U.S. Government Portfolio can be expected to achieve greater portfolio diversification and to react more readily to changes in market conditions. Applicants assert that ValueMaster Contractowners will benefit through the more effective management of a potentially larger asset base with more diversified portfolio securities, such as that available through the U.S. Government Portfolio.

9. Applicants submit that the ValueMaster Contracts reserve to the Companies the right to replace the shares of the Portfolios held by the Accounts with shares of another portfolio, such as the U.S. Government Portfolio, if: (a) shares of a Portfolio should no longer be available for investment by the Accounts; or (b) in the judgment of the Companies, further investment in a Portfolio should become inappropriate in view of the purpose of the ValueMaster Contracts. Any such substitution must be approved by the Commission and must comply with applicable rules and regulations. The Companies believe that further investment in shares of the Bond Portfolio is no longer appropriate in view of the purposes of the ValueMaster Contracts.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the proposed Substitution meets the standards set forth in Sections 26(b) and 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2782 Filed 2–4–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act; Meeting

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 3, 1997.

A closed meeting will be held on Wednesday, February 5, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, February 5, 1997, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Commissioner Johnson, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 31, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–2992 Filed 2–3–97; 2:07 pm]

BILLING CODE 8010–01–M

[Release No. 34–38216; File No. SR–Amex–97–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Waiver of Transaction Charges for FLEX Equity Options

January 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 22, 1997, the American Stock Exchange, Inc. ''(Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend its waiver of transaction charges for FLEX Equity Options traded on the Exchange until further notice. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with the commencement of trading FLEX Equity Options, the Exchange waived transaction charges for the first ninety days of trading. The ninety day period is due to expire on January 24, 1997 and the Exchange has determined to extend the waiver. The Exchange continues to believe that waiving transaction charges is a meaningful factor in encouraging trading in FLEX Equity Options.

The Exchange intends to establish a transaction charge for FLEX Equity Options in the near future. However, until it is ready to do so it proposes to extend the waiver of transaction charges until further notice.[2] The waiver of the imposition and collection of transaction charges for FLEX Equity Option orders executed on the Exchange will be for all account types, e.g., the accounts of floor traders, specialists and customer and firm proprietary off-floor orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore, has become effective pursuant to Section 19(b)(3))A) of the Act[5] and subparagraph (e) of the Rule 19b–4[6] thereunder. At any time within 60 days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–03 and should be submitted by February 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2779 Filed 2–4–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38215; File No. SR–GSCC–96–13]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Eligibility of Treasury Inflation Indexed Securities for Netting Services

January 29, 1997.

On November 21, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on December 20, 1996.[2] No comment letters were received. For the reasons discussed

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission notes that any imposition of transaction charges for Flex Equity Options would have to be submitted to the Commission pursuant to Section 19(b) of the Act.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(e).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38048 (December 13, 1996) 61 FR 67371.

below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends GSCC's rules to make the U.S. Department of the Treasury's Treasury Inflation Indexed Security (''TIIS'') eligible for clearance and settlement at GSCC.[3] The first auction of TIIS by the Department of the Treasury will occur on January 29, 1997, and such securities will be issued on February 6, 1997. TIIS is a book-entry security that is designed to protect investors from inflation by adjusting semiannually the principal amount of the investors' holdings while maintaining a fixed interest rate. The amount of the principal adjustment is computed by multiplying the stated value at issuance (*i.e.,* par amount) by an index ratio. The applicable index will be the U.S. City Average All Items Consumer Price Index for All Urban Consumers (''CPI'') published by the Bureau of Labor Statistics of the U.S. Department of Labor. TIIS will be redeemed at maturity at the greater of its inflation adjusted principal or its par amount.

Although the interest rate is fixed, the coupon payments will be variable because the interest is paid on a varying amount of principal. Because this will be the first security with variable interest payments eligible for netting at GSCC, GSCC has enhanced its automated systems.[4] Since December 16, 1996, GSCC has been conducting tests with GSCC members in order to ensure that participants are able to properly provide and receive data regarding transactions in these new securities.

GSCC also worked with the Public Securities Association to determine a uniformly acceptable method for the industry to reflect the inflation index in the calculation of final money on TIIS transactions. Consistent with these discussions, participants will submit transactions using their contract price. GSCC will compare and will report transactions based on its Final Settlement Money formula. Final Settlement Money will equal the original par value multiplied by the CPI index ratio multiplied by the contract price plus the inflation adjusted accrued interest. Inflation adjusted accrued interest will equal the original par value multiplied by the CPI index ratio multiplied by the interest rate multiplied by the term.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes GSCC's rule change meets these goals by establishing a clearance and settlement system for TIIS whereby GSCC can provide the benefits of centralized automated settlement to a broader segment of government securities transactions. In addition, the inclusion of TIIS trades in GSCC's netting system provides several benefits to participants such as guaranteed settlement, automated coupon tracking, and automated output. By automating and enhancing the settlement process, GSCC's proposal is consistent with the prompt and accurate clearance and settlement of securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2780 Filed 2–4–97; 8:45 am]

BILLING CODE 8010–01–M

[3] The Department of the Treasury has adopted amendments to its Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (31 CFR Part 356) to accommodate the issuance of TIIS. Department of the Treasury Circular, Public Debt Service No. 1–93 (December 30, 1996) 62 FR 846 (January 6, 1997).

[4] The following enhancements have been made to GSCC's automated system. GSCC has created a database of historical CPI indexes in order to determine accrued interest, which will be used in valuing positions for settlement purposes and for forward margin and clearing fund calculations. GSCC has modified the security database to permit it to designate TIIS as a variable rate security. GSCC has modified participant input and output formats to take into account different and additional data elements.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Finding Regarding Foreign Social Insurance or Pension System—Former Yugoslav Republic of Macedonia

AGENCY: Social Security Administration.

ACTION: Notice of finding regarding foreign social insurance or pension system—former Yugoslav Republic of Macedonia.

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which, the individual has been in the United States. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2)-(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner for International Policy. Under that authority, the Associate Commissioner for International Policy has approved a finding that the Former Yugoslav Republic of Macedonia, as of February 1, 1994, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of the Former Yugoslav Republic of Macedonia and who qualify for the relevant benefits to receive those benefits, or their actuarial equivalent, while outside of the Former Yugoslav Republic of Macedonia, regardless of the duration of the absence of these individuals from the Former Yugoslav Republic of Macedonia.

Accordingly, it is hereby determined and found that the Former Yugoslav Republic of Macedonia has in effect, as of February 1, 1994, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This is our first finding under section 202(t) of the Social Security Act for the Former Yugoslav Republic of Macedonia. Before February 1994, the United States did not recognize the Former Yugoslav Republic of Macedonia as an independent nation. At that time, it was considered part of the former Yugoslavia which, on March 25, 1959, had been found to have a system that met section 202(t)(2) of the Social Security Act. Thus, prior to February 1994, Former Yugoslav Republic of Macedonia citizens were afforded the social insurance exception to the alien nonpayment provision based on the determination which was then in effect for Yugoslavia.

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: January 28, 1997.

James A. Kissko,

Associate Commissioner for International Policy.

[FR Doc. 97–2754 Filed 2–4–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8-96-060]

Lower Mississippi River Waterway Safety Advisory Committee Ports and Waterways Safety Systems ad hoc Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings location change.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee Ports and Waterways Safety System ad hoc Committee will hold 7 meetings to develop a baseline Vessel Traffic Service system for the Lower Mississippi river area. The meetings will be open to the public.

DATES: The meetings will be held from 9 a.m. to approximately 3 p.m. on Wednesday, February 5, 1997, Thursday, February 20, 1997, Friday, March 7, 1997, Friday, March 21, 1997, Wednesday April 2, 1997, Thursday, April 17, 1997 and Tuesday, April 29, 1997.

ADDRESSES: The meetings location has changed. The new location will be the 23rd floor boardroom of Tidewater Marine Inc., 1440 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of these meetings are given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The meetings are open to the public. Members of the public are encouraged to provide oral or written comments to a committee representative in advance of the meeting. Due to time constraints, only written comments will be received during a meeting. Written comments presented during a meeting will be submitted for consideration at the next meeting.

The agenda for the meeting consists of the following items:

(1) Presentation of the committee charter.

(2) Review of previous meeting minutes.

(3) Committee discussions.

(4) Adjournment.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Committee Administrator as soon as possible.

Dated: January 27, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–2783 Filed 2–4–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 97–007]

Minimum Requirements and Capabilities for Vessel Traffic Services

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard is undertaking an effort to identify the minimum requirements and capabilities a Vessel Traffic Service (VTS) must have have to serve its wide range of users and to develop criteria to identify ports requiring a VTS. This effort will form the basis for the Coast Guard to propose to Congress a viable production program for a VTS that takes advantage of available, off-the-shelf and open architecture systems that are inexpensive and easy to build and operate. The Coast Guard has invited representatives of maritime and environmental organizations and members of the public to provide input on these topics. The first public meeting on these topics was held on January 15, 1997. Several additional public meetings are planned.

DATES: The Coast Guard will sponsor a public meeting to be held on February 11, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Marine Board, National Academy of Sciences Foundry Building, 1055 Thomas Jefferson Street, NW, Washington, DC, in room 2004.

FOR FURTHER INFORMATION CONTACT: For information on VTS, contact Mike Sollosi, U.S. Coast Guard Office of Vessel Traffic Management, 2100 2nd Street, SW, Washington DC. Telephone (202) 267–1539, FAX (202) 267–4826. For information on the meeting, contact Peter Johnson, Marine Board, National Academy of Sciences, 2001 Wisconsin Avenue, NW, Washington, DC. Telephone (202) 334–3157, FAX (202) 334–3789.

Dated: January 28, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commander for Marine Safety and Environmental Protection.

[FR Doc. 97–2866 Filed 2–4–97; 8:45 am]

BILLING CODE 4910–14–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

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. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 20, 1997.

ADDRESS COMMENTS TO: Dockets Unit, 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 Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
7517–M	Trinity Industries, Inc., Dallas, TX (See Footnote 1)	7517
7879–M	Halliburton Energy services, Duncan, OK (See Footnote 2)	7879
11260–M	Texas Instruments Inc., Attleboro, MA (See Footnote 3)	11260
11267–M	TOPAZ International Program, Albuquerque, NM (See Footnote 4)	11267
11504–M	Livonia Avon & Lakeville Railroad Corp., Cohocton, NY (See Footnote 5)	11504
11580–M	The Columbiana Boiler Co., Columbiana, OH (See Footnote 6)	11580
11666–M	The Carbide/Graphite Group, Inc., Pittsburgh, PA (See Footnote 7)	11666
11804–M	Advertising Unlimited, Inc., Red Wing, MN (See Footnote 8)	11804

(*1*) To modify the exemption to allow for new construction of fusion welded multi-unit task car tanks for use in transporting Division 2.2 material.

(*2*) To modify the exemption to provide for technical changes to the 3'' non-DOT specification seamless cylinders used for transport of bromine trifluoride.

(*3*) To modify the exemption to provide for passenger aircraft as an additional mode of transportation for transporting certain low pressure air-bag switches containing limited quantities of argon, compressed.

(*4*) To authorize the emergency modification to provide for an additional specially designed metal container used to transport a Topaz II space power unit containing Division 4.1 and 4.1 solid substances.

(*5*) To reissue the exemption originally issued on an emergency basis to authorize the transportation of certain Class 8 and Division 2.2 material separated from an occupied locomotive with batteries disconnected and in tow.

(*6*) To modify the exemption to provide for various technical and administrative changes and to authorize the transportation by water as an additional mode.

(*7*) To modify the exemption to allow stacking of green graphite electrodes and shapes two or more levels high in bulk packaging strapped to wooden pallets on an open flat truck bed.

(*8*) To reissue an exemption issued on an emergency basis to authorize shipment of certain specially designed safety kits containing two highway fusees, which may include a tire inflator aerosol and a fire extinguisher, offered as a consumer commodity.

Application No.	Applicant	Parties to exemption
4453–P	American East Emplosives, Inc., Wilmington, DE	4453
5967–P	Primex Aerospace, Redmond, WA	5967
8009–P	Hydra-Press Inc., Bull Shoals, AR	8009
8431–P	Findly Chemical Disposal, Inc., Fontana, CA	8431
8451–P	Primex Physics, San Leandro, CA	8451
8451–P	Primex Aerospace, Redmond, WA	8451
8554–P	American East Explosives, Inc., Wilmington, DE	8554
8579–P	American East xplosives, Inc., Wilmington, DE	8579
8697–P	Kenai Air Alaska, Inc., Kenai, AK	8697
8723–P	American East Explosives, Inc., Wilmington, DE	8723
9480–P	Matheson Gas Products, East Rutherford, NJ	9480
9617–P	American East Explosives, Inc., Wilmington, DE	9617
9623–P	American East Explosives, Inc., Wilington, DE	9623
9689–P	Arco Chemical Company, Newtown Square, PA	9689
10704–P	Scott Specialty Gases, Inc., Plumsteadville, PA	10704
10751–P	American East Explosives, Inc., Willmington, DE	10751
10880–P	American East Explosives, Inc., Wilmington, DE	10880
10933–P	A & A Waste Oil Company, Inc., Linthicum Heights, MD	10933
10949–P	Superior Special Services, Inc., Port Washington, WI	10949
10981–P	Austin Powder Company, Cleveland, OH	10981
11153–P	Chemical Analytics, Inc., Romulus, MI	11153
11153–P	Ensco, Inc. dba Division Transport, El Dorado, AR	11153
11153–P	Superior Special Services, Inc., Port Washington, WI	11153
11156–P	American East Explosives, Inc., Wilmington, DE	11156
11221–P	Kenai Air Alaska, Inc., Kenai, AK	11221
11230–P	American East Explosives, Inc., Wilmington, DE	11230
11252–P	Advanced Monobloc, Markham, Ontario, CN	11252
11296–P	Philip Environmental, Renton, WA	11296
11373–P	E+E (US), Inc., Middletown, PA	11373
11588–P	Mid America Environmental Waste Protection Svc, Inc., Boonville, IN	11588
11602–P	K & M Metals Corp., Tacoma, WA	11602
11624–P	Superior Special Services, Inc., Port Washington, WI	11624

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 30, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 97–2784 Filed 2–4–97; 8:45 am]

BILLING CODE 4910–60–M

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 March 7, 1997.

ADDRESS COMMENTS TO: Dockets Unit, 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 application number.

FOR FURTHER INFORMATION: Copies of the application are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulations(s) affected	Nature of exemption thereof
11807–N	Kirby Chemical Co., Longview, TX.	49 CFR 172.407(c)	To authorize the transportation in commerce of a current supply of labels in size smaller than the 3.9 inch minimum required for use in transporting various Class 8 material. (mode 1).
11808–N	Trinity Industries, Inc., Dallas, TX.	49 CFR 179.300–19(a)	To authorize the foreign inspection of certain multi-unit tank cars (one ton containers) manufactured in Mexico for use in transporting chlorine. (mode 5).
11809–N	Laidlaw Environmental Services Inc., Columbia, SC.	49 CFR 173.156(b)(1)(iii) ...	To authorize the transportation in commerce of consumer commodities from a manufacturer, a distribution center, or a retail outlet to a disposal facility from more than one offeror. (mode 1).
11811–N	Laidlaw Environmental, Services Inc., Columbia, SC.	49 CFR 172.202(c)	To authorize the transportation in commerce of various household hazardous wastes to be transported without having the quantity and unit measurement shown on the shipping paper. (mode 1).
11815–N	Union Pacific Railroad, Co. et al., Omaha, NE.	49 CFR 174.85(d)	To authorize alternative positioning of certain placarded rail cars in a train transporting various classes of hazardous materials. (mode 2).
11816–N	The Scotts Co., Marysville, OH.	49 CFR 171–180	To authorize the transportation in commerce of certain hazardous materials across a public road, from one part of a plant to another, as essentially not subject to the hazard communication requirements in Part 172. (mode 1).
11817–N	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.301(c), 173.302(c)(2)(3) & (4), 173.34(e)(1)(3) & (4).	To provide for ultrasonic retesting of DOT 3AL cylinders to be used in transporting various authorized gases. (modes 1, 2, 3, 4, 5).
11818–N	National Aeronautics & Space Administration, Washington, DC.	49 CFR 173.34(d)	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.1, 2.2 and 2.3 liquidified and compressed gases not equipped with pressure relief devices to be used in connection with flight project spacecraft containing heat pipes. (modes 1, 3, 4).
11820–N	Grief Bros. Corp., Springfield, NJ.	49 CFR 173.23(g), 173.8(b)(4)(1).	To authorize the transportation and reuse or reconditioning of drums with ends thinner than 1.1mm for use in transporting various hazardous materials. (modes 1, 2, 3, 4, 5).
11821–N	Wyoming Department of Transportation, Cheyenne, WY.	49 CFR 173.202(c)	To authorize the use of a specifically designed steel tank, non-bulk container for use in transporting Gasoline, Class 3. (mode 1).
11822–N	Department of Energy, Germantown, MD.	49 CFR 178.244(c)	To authorize the transportation in commerce of non-specification storage tanks partially filled with sodium metal to off-site disposal processing facilities. (mode 2).
11824–N	The Dow Chemical Co., Freeport, TX.	49 CFR 172.203(a), 172.302(c), 180.509(6)(e).	To authorize the use of alternative testing method for tank car structural re-certification, extend the internal visual tank and service equipment inspection cycle to 15 years and provide relief from the shipping paper and marking requirements. (mode 2).
11825–N	Bevill Meter Service, Homer, LA.	49 CFR 173.304, 173.315	To authorize the transportation of a non-DOT specification container described as a meter prover for use in transporting various hydrocarbon products. (mode 1).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulations(s) affected	Nature of exemption thereof
11830–N	North Coast Container Corp., Cleveland, OH.	49 CFR 178.3(a)(5), 178.503(a)(10).	To authorize the transportation of 55 gallon full removable head and non-removable head steel drums with alternative markings. (mode 1).

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 30, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 97–2785 Filed 2–4–97; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

[STB Finance Docket No. 33220]

CSX Corporation and CSX Transportation, Inc.—Control and Merger—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 8; Notice of Issuance of Procedural Schedule.

SUMMARY: The Board is issuing a procedural schedule, following the receipt of public comments on a proposed procedural schedule and replies to those comments. This schedule provides for issuance of a final decision no later than 365 days after filing of the primary application.

EFFECTIVE DATE: The effective date of this decision is February 5, 1997. Notices of intent to participate in this proceeding will be due 45 days after the primary application is filed. All descriptions of inconsistent and responsive applications, as well as any petitions for waiver or clarification with respect thereto, will be due 60 days after the primary application is filed. All comments, protests, requests for conditions, inconsistent and responsive applications, and any other opposition evidence and argument will be due 120 days after the primary application is filed. For further information, see the procedural schedule set forth below.

ADDRESSES: An original plus 25 copies [1] of all documents, referring to STB Finance Docket No. 33220, must be sent to the Office of the Secretary, Case Control Branch, ATTN: STB Finance Docket No. 33220, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.[2] Parties are requested also to submit all pleadings, and any attachments, on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all formal filings in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289], and to each of the applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004–1202; and (2) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On October 18, 1996, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC) [3] filed their CSX/CR–1 notice of intent to file an application (hereinafter referred to as the primary application) seeking Board authorization under 49 U.S.C. 11323–25 for: (1) The acquisition of control of CRI by Green Acquisition Corp. (Acquisition), an indirect wholly owned subsidiary of CSXC; (2) the merger of CRI into Acquisition; and (3) the resulting common control of CSXT and CRC by CSXC. Applicants indicated that they expected to file their primary application, and any related applications, petitions, and notices, on or before March 1, 1997.

By letter dated December 27, 1996, CSXC and Acquisition advised the Board that certain amendments had been made to the Agreement and Plan of Merger (the Merger Agreement) dated October 14, 1996, by CSXC, Acquisition, and CRI. The Merger Agreement, as first entered into, envisioned: (1) the acquisition by Acquisition of approximately 19.9% of the common stock of CRI (this has already occurred, and the stock has been placed in a voting trust); (2) the subsequent acquisition by Acquisition of an additional approximately 20.1% of the common stock of CRI; and (3) after our approval of the primary application, the merger of CRI with and into Acquisition. As amended, however, the Merger Agreement now envisions that the merger of CRI with and into Acquisition will occur prior to our approval of the primary application. This change of plans necessarily means that applicants no longer seek our authorization for the acquisition of control of CRI by Acquisition, or for the merger of CRI into Acquisition.[4] Applicants, however, continue to seek Board authorization for the common control, by CSXC, of CSXT and CRC (hereinafter referred to as the CSXT/CRC control transaction). Applicants continue to indicate that they expect to file their primary application, and any related applications, petitions, and notices, on or before March 1, 1997.[5]

[1] In order for a document to be considered a formal filing, the Board must receive an original plus 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX), as in the past, will not be considered formal filings and thus are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

Applicants may file in bound volumes an original plus 25 copies of related applications, petitions, and notices of exemption; however, to facilitate processing of these related filings, we will require that applicants also file two unbound copies of each of these filings.

[2] It is anticipated that the Board will move to its new offices in March 1997. The Board's address at the new offices will be: Surface Transportation Board, Mercury Building, 1925 K Street, N.W., Washington, DC 20423.

[3] CSXC and CSXT are referred to collectively as CSX. CRI and CRC are referred to collectively as Conrail. CSX and Conrail are referred to collectively as applicants.

[4] The Merger Agreement envisions that, in connection with the merger of CRI into Acquisition, Acquisition (the surviving corporation) will be renamed ''Conrail Inc.'' References to CRI (i.e., Conrail Inc.) embrace both the ''old'' Conrail Inc. (i.e., the corporation presently known as Conrail Inc.) and the ''new'' Conrail Inc. (i.e., the renamed corporation that will exist after the merger of Conrail Inc. into Acquisition).

[5] The primary application, and each related application, petition, and notice, must be accompanied by the appropriate fee. *See, in general,* 49 CFR 1002.2(f), as recently amended in *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—1997 Update,* STB Ex Parte No. 542 (Sub-No. 1) (STB served Jan. 23, 1997, 62 FR 3487 (Jan. 23, 1997), and effective February 24, 1997). The fees applicants will have to pay may include, among others, the fees codified at: 49 CFR 1002.2(f)(39)(i)

Continued

In Decision No. 2, served and published on November 15, 1996 (61 FR 58613), we gave notice of applicants' pre-filing notification, and we found that the transaction proposed by applicants is a ''major'' transaction as defined at 49 CFR 1180.2(a).

In Decision No. 3, served and published on November 15, 1996 (61 FR 58611), we invited comments from interested persons on a proposed procedural schedule. Comments were due on December 6, 1996; most were received on or before that date. On December 10, 1996, Norfolk Southern Corporation (NSC) responded to applicants' comments. On December 16, 1996, applicants replied to the comments.

Public comments

Approximately 25 comments were received in response to Decision No. 3. Comments were filed by shipper organizations, railroads, electric utilities, government entities, and rail labor unions and by United States Senators Byron L. Dorgan and John D. Rockefeller IV.

Some commenters suggested that we hold in abeyance any decision regarding the procedural schedule pending the outcome of the hostile takeover bid launched by NSC. Others suggested that the Board coordinate dates in both the present proceeding and the NSC proceeding (STB Finance Docket No. 33286), and issue a single procedural schedule.

We find no reason to delay issuance of this procedural order, which only begins a procedural schedule when a CSX/Conrail application is filed. We realize circumstances are unusual here, but we believe that it would not be judicious to speculate about whether two merger applications will be filed, and we continue to have the power to revise our handling of this matter as necessitated by changes in these circumstances. Applicants in this proceeding already have filed their notice of intent, and pursuant to 49 CFR 1180.4(b) their application is anticipated within 3 to 6 months.[6] In the interest of efficient government, we believe that we should establish a procedural schedule in a timely manner to give adequate notice to all interested persons prior to the anticipated filing date of the application.[7]

We find it unnecessary to consolidate this proceeding with STB Finance Docket No. 33286, in which no application has yet been filed, and thus will adopt separate, but identical, procedural schedules for these proceedings, which will not begin in either case until an application is filed.[8] Rather, once an application seeking approval to control Conrail has been filed and the procedural schedule in that proceeding has begun, we will require that any subsequent application from any other party seeking approval to control Conrail, or any portion of Conrail, must be filed as an inconsistent or responsive application in accordance with the procedural schedule then underway. Thus, we will in effect have a single proceeding for determining the control or merger of Conrail.

After reviewing all of the comments we received on the proposed procedural schedule, we have determined, as discussed below, that a 365-day procedural schedule (which is 110 days more than applicants had proposed) will ensure that all parties are accorded due process and will allow us ample time to consider fully all of the issues in this proceeding. Within this procedural schedule, we will consider all issues affecting the public interest, and will also address cumulative impacts and crossover effects of prior mergers as appropriate. Further, we will consider the transaction in light of any settlement agreements that the applicants may reach with any parties, regardless of the complexity of the agreements.

We have carefully considered the parties' concerns regarding the amount of time necessary to prepare their cases, and have crafted the attached procedural schedule with fairness to all parties in mind. Accordingly, we have adjusted the proposed procedural schedule to give more time for the submission of filings. We also believe that we have established a schedule that will provide adequate time for the processing of any inconsistent applications that may be filed in this proceeding.

Environmental Reporting

Applicants filed comments requesting that we modify the requirement that applicants file an environmental report (ER) on F[9]—30 days and instead require that only a preliminary environmental report (PER) be filed on F—30 days, and a full ER when the application is filed. Applicants state that they need more time to prepare and complete a detailed analysis of environmental effects, as contemplated in 49 CFR 1105.7. We will grant applicants' request. We note, however, that, while applicants' two-step procedure would provide early notice of specific locations that will be the subject of the detailed analysis of localized environmental effects, the PER would not be sufficient to allow the Board's Section of Environmental Analysis (SEA) to commence an adequate review process during the 30 days prior to the filing of the application. Accordingly, SEA will require additional time to complete its environmental review as a result of the delayed filing of applicants' ER. We have considered this delay in adopting the extended procedural schedule.

Also, in their comments, applicants propose that the Board require inconsistent and responsive applicants to file their complete ERs substantially in advance of the filing of their inconsistent and responsive applications because, applicants allege, inconsistent and responsive applicants will have significantly more lead time to perform environmental analysis and

($889,500 for the primary merger application); 49 CFR 1002.2(f)(12)(i) or (12)(iii) ($44,500 for either an application or a petition involving the construction of a rail line); 49 CFR 1002.2(f)(21)(i) ($13,200 for an abandonment application, except an abandonment application filed by CRC under the Northeast Rail Service Act); 49 CFR 1002.2(f)(21)(ii) ($2,200 for an abandonment notice of exemption); 49 CFR 1002.2(f)(21)(iii) ($3,800 for an abandonment petition for exemption); 49 CFR 1002.2(f)(22) ($250 for an abandonment application filed by CRC under the Northeast Rail Service Act); 49 CFR 1002.2(f)(36) ($11,300 for an application for use of terminal facilities); 49 CFR 1002.2(f)(40)(iv) ($750 for a trackage rights notice of exemption); and 49 CFR 1002.2(f)(40)(vi) ($5,600 for a trackage rights petition for exemption). The Board is in the process of revising its rules and the way user fees are applied to reflect more accurately the resources expended on related filings in proceedings involving major transactions filed under fee items 38 through 41. We plan to issue interim rules shortly to cover this revision and that also will implement a new three-tiered fee structure for inconsistent applications that includes a determination of whether the transaction being proposed is minor, significant, or major. In addition, we plan to clarify what a responsive application is and what fees should be assessed for the various types of responsive applications.

[6] We note that, pursuant to 49 CFR 1180.4(b)(3), ''[a] prefiling notice may be amended to indicate a change in the anticipated filing date.''

[7] We note that, at a shareholders' meeting on January 17, 1997, CSX failed to obtain Conrail shareholders' approval to opt out of Subchapter 25E of the Pennsylvania Business Corporation Act. *See* Pa. Stat. Ann., tit. 15, §§ 2541 through 2548 (West 1995). This has no effect on our decision to adopt a procedural schedule, which is only triggered by the filing of the formal merger application. Our issuance of such a decision neither requires action by any person or party nor prejudices any person or party.

We also note that CSX, Conrail and NSC have indicated an agreement to meet to discuss matters pertaining to a merger involving Conrail. Given the intent of CSX and Conrail currently on the record to file their application by March 1, the Board believes that it must address the pending petition to set a procedural schedule at this time. As with any action that the Board takes, if circumstances change that warrant modification of a Board decision, the Board will take whatever action is appropriate.

[8] By separate decision served concurrently in STB Finance Docket No. 33286, we are adopting the same procedural schedule for the NSC proceeding.

[9] F is the date of filing of the primary application.

will have the benefit of applicants' PER and ER. NSC, in its reply comments, disputes applicants' allegations.

In order for us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, inconsistent applications and responsive applications must contain certain environmental information. As we have stated in past merger proceedings, anyone intending to file an inconsistent or a responsive application involving significant operational changes or an action such as a rail line abandonment or construction under 49 CFR 1105.6(b)(4) of our environmental rules must include, with its application, a preliminary draft environmental assessment (PDEA) or a preliminary draft environmental impact statement (PDEIS), as determined by SEA. Generally, these types of actions require an environmental report under 49 CFR 1105.6(b)(4) that would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, because of the time frames that we are adopting, a PDEA or PDEIS is necessary at the time that an inconsistent or responsive application is filed. We, however, will not require an inconsistent or responsive applicant to file an ER in advance of the filing of the inconsistent or responsive application.

Although the information would be presented in a somewhat different format, the PDEA or PDEIS should address essentially the same environmental issues that would have been covered by an ER. The PDEA or PDEIS, like the ER, should be based on consultations with SEA and the various agencies set forth at 49 CFR 1105.7(b). In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants shall consult with SEA as early as possible. If a PDEA or PDEIS is not submitted or is insufficient, we will not process the inconsistent or responsive application.

If an inconsistent or responsive application does not involve significant operational changes or an action such as an abandonment or construction, it generally is exempt from environmental review. The applicant must certify, however, that the proposal meets the exemption criteria under 49 CFR 1105.6(c)(2). Again, anyone intending to file an inconsistent application or responsive application shall consult with SEA as early as possible regarding the appropriate environmental documentation. Due to the uncertainties associated with this proposed transaction, we reserve the right to adjust the environmental review process, as appropriate.

Notice of Intent to Participate

All documents received by the Board concerning this proceeding will become part of the record and will be placed in the public docket for inspection and copying. Only those documents considered formal filings (i.e., those meeting the filing specifications discussed above in the **ADDRESSES** section) will be downloaded to the so-called pleading list. Moreover, persons who submit documents that are not considered formal filings will not be placed on the service list in this proceeding.

We will compile and issue an official service list at an early stage of this proceeding to help facilitate the participation of persons who will be actively participating as ''parties of record'' (POR). We are requiring these persons to notify the Board, in writing, within 45 days after the primary application is filed, of their intent to participate actively in this proceeding. In order to be designated a POR, a person must submit an original plus 25 copies of the notice, along with a certificate of service to the Secretary of the Board, indicating that the notice has been properly served on applicants' representatives and Judge Leventhal. [10] Every future filing must have its own certificate of service indicating that all PORs on the service list and Judge Leventhal have been served with a copy of the filing. Members of the United States Congress will be designated as MOC and Governors will be designated as GOV on the service list. They are *not* parties of record and need *not* be served with copies of filings, unless designated as a POR.

We will continue to follow the practice established in Union Pacific Corporation, *Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company,* Finance Docket No. 32760 (*UP/SP*). *See UP/SP,* Decision No. 15 (STB served Feb. 16, 1996), at 2–3. Copies of decisions, orders, and notices will be served only on those persons who are designated as POR or MOC or GOV on the official service list. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289–4357.

[10] The Office of the Secretary will compile the official service list for this proceeding after service of this decision adopting a procedural schedule. Persons named on the earlier service list will not automatically be placed on the official service list.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument

Most commenters express a need for more time to prepare protests, requests for conditions, and other opposition evidence and argument, and ask that these submissions be due on F + 120 days or later, instead of due on F + 75 days. In their response to those comments, applicants support giving persons at least 120 days to make such submissions.

We will extend the time for filing comments, protests, requests for conditions, and other opposition evidence and argument to F + 120 days as requested by applicants and most of the commenters. All inconsistent and responsive applications, and comments, including comments from the United States Department of Justice (DOJ) and the United States Department of Transportation (DOT), are also due on F + 120 days. Every party intending to file an inconsistent or responsive application must contact the Office of the Secretary at (202) 927–5686 or 927–8910 to reserve an STB Finance Docket No. 33220 Sub-number to use in filing the *description* of anticipated inconsistent or responsive application due on F + 60 days. [After the Board relocates to its new offices, the new number will be (202) 565–1681.]

Responses and rebuttals

Applicants request that the Board permit them to file at F + 150 days a single pleading (Consolidated Filing) containing responses to comments, protests, and requested conditions filed by all participating parties (including all government parties) and their rebuttal in support of the primary application, as well as their responses to inconsistent or responsive applications. We will grant applicants' request to file a Consolidated Filing containing responses to comments, protests, and requested conditions filed by all participating parties (including all government parties) and their rebuttal in support of the primary application, as well as their responses to inconsistent or responsive applications. We agree that a Consolidated Filing by applicants would result in a more orderly record

and would allow them to address the issues coherently in one submission, without needless fragmentation or repetition.[11]

Numerous commenters (including DOT), however, have urged that we allow them additional time to digest and respond to comments, protests, requested conditions, and, in particular, any inconsistent and responsive applications. Given the complexity and magnitude of issues that potentially may arise in an inconsistent or responsive application in this proceeding, we will add time in the schedule for responses to these filings. Responses to inconsistent and responsive applications, comments, protests, requested conditions, and opposition evidence and argument, as well as rebuttal in support of the primary application, will be due on F + 180 days. We note that, because inconsistent and responsive applicants must submit descriptions of their intended applications on F + 60 days, parties will have in effect 120 days to prepare their responses due on F + 180 days to any inconsistent and responsive applications. This schedule will allow adequate time for the processing of inconsistent and responsive applications filed in this proceeding, and we do not anticipate that further extensions to this schedule will be necessary.

We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have a right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not. *UP/SP*, Decision No. 6 (ICC served Oct. 19, 1995, at 7–8, 60 FR 54384 (Oct. 23, 1995)); *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549, Decision No. 16 (ICC served Apr. 20, 1995), at 11. Rebuttal in support of inconsistent and responsive applications will be due on F + 220 days, which will allow inconsistent and responsive applicants 40 days instead of 15 days to prepare their rebuttals.

Other dates. We also will expand the schedule to allow parties 5 additional days to prepare briefs (not to exceed 50 pages), which will be due on F + 260 days, as well as 5 additional days to prepare for oral argument (close of record), which is scheduled on F + 300 days. As for the remainder of the schedule, we will adopt the timetable as has been proposed. The voting conference (at Board's discretion) is scheduled on F + 305 days; and the date of service of the final decision is scheduled on F + 365 days.

In summary, the procedural schedule we adopt here consisting of a 365-day time period both is fair to all of the parties and allows us sufficient time to resolve the unique issues that we anticipate will arise in connection with any merger proposal involving Conrail. Our schedule is consistent with the thrust and weight of the comments and accommodates the processing of major inconsistent or responsive applications.

Discovery

In accordance with our decision in *Expedited Procedures For Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527 (STB served Oct. 1, 1996, 61 FR 52710 (Oct. 8, 1996)), parties should not file any discovery requests or materials with the Board unless they are attached as part of an evidentiary submission, or motions to compel or responses thereto. The Secretary's Office will otherwise reject them.

If parties wish to engage in discovery or establish discovery guidelines, they are directed to consult with Administrative Law Judge Leventhal. Judge Leventhal is authorized to convene a discovery conference, if necessary and as appropriate, in Washington, DC, and to establish such discovery guidelines, if any, as he deems appropriate. However, Judge Leventhal is not authorized to make adjustments to, or to modify, the dates in the procedural schedule. We believe the schedule as adopted allows sufficient time for meaningful discovery. Any interlocutory appeal to a decision issued by Judge Leventhal will be governed by the stringent standard of 49 CFR 1115.1(c): ''Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.'' *See Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Finance Docket No. 32133, Decision No. 17 (ICC served July 11, 1994), at 9 (applying the ''stringent standard'' of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by the ICC's former Chief Administrative Law Judge Paul S. Cross).

Merger-Related Abandonments

The procedural schedule applicable to merger-related abandonments will be as follows: (1) all merger-related abandonment proposals (which may be filed as applications, petitions, and/or notices) are to be filed, with any and all supporting documentation, simultaneously with the primary application; and (2) if the primary application is complete, we shall publish in the Federal Register, by day F + 30, notice of the acceptance of the primary application as well as notice of any merger-related abandonment proposal. Thereafter, with respect to each merger-related abandonment proposal: (3) interested parties must file notifications of intent to participate in the specific abandonment proceedings by day F + 45; (4) interested parties must file opposition submissions, requests for public use conditions, and/or Trails Act requests by day F + 120; (5) applicants may file rebuttal in support of their abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, by day F + 180; (6) as with the primary application and all related matters, briefs shall be due by day F + 260, oral argument will be held on day F + 300, and a voting conference will be held, at the Board's discretion, on day F + 305; and (7) if, in the final decision served on day F + 365, we approve the primary application, we also will address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we either approve or exempt any of the abandonment proposals, we shall require interested parties to file, no later than 10 days after the date of service of the final decision, offers of financial assistance with respect to any approved or exempted abandonments.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 30, 1997.

[11] Applicants also request that, as in recent merger proceedings, the Board indicate that it will require appeals of ALJ decisions to be filed within 3 working days and responses to appeals or to any procedural motion filed with the Board also to be filed within 3 working days. As in prior merger proceedings, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, an appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Board itself in the first instance must also be filed within 3 working days of the date the motion is filed.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

FINAL PROCEDURAL SCHEDULE

F – 30	Preliminary Environmental Report, including supporting documents, due.
F	Primary application & related applications filed. [Environmental Report, including all supporting documents, due.]
F+30	**Federal Register** publication of: notice of acceptance of primary application and related applications, petitions and notices; and notice of any merger-related abandonment applications, petitions, and notices of exemption.
F+45	Notification of intent to participate in proceeding due.
F+60	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
F+120	Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. Comments by U.S. Department of Justice and U.S. Department of Transportation due. With respect to all merger-related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
F+150	Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
F+180	Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition arguments and evidence due. Rebuttal in support of primary application and related applications due. With respect to all merger-related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
F+220	Rebuttal in support of inconsistent and responsive applications due.
F+260	Briefs due, all parties (not to exceed 50 pages).
F+300	Oral argument (close of record).
F+305	Voting conference (at Board's discretion).
F+365	Date of service of final decision. With respect to any approved or exempted abandonments: offers of financial assistance must be filed no later than 10 days after the date of service of the final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive and inconsistent applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[FR Doc. 97–2857 Filed 2–4–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33286]

Norfolk Southern Corporation and Norfolk Southern Railway Company—Control—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 4; Notice of Issuance of Procedural Schedule.

SUMMARY: The Board is issuing a procedural schedule, following the receipt of public comments on a proposed procedural schedule and the reply to those comments. This schedule provides for issuance of a final decision no later than 365 days after filing of the primary application.

EFFECTIVE DATE: The effective date of this decision is February 5, 1997. Notices of intent to participate in this proceeding will be due 45 days after the primary application is filed. All descriptions of inconsistent and responsive applications, as well as any petitions for waiver or clarification with respect thereto, will be due 60 days after the primary application is filed. All comments, protests, requests for conditions, inconsistent and responsive applications, and any other opposition evidence and argument will be due 120 days after the primary application is filed. For further information, see the procedural schedule set forth below.

ADDRESSES: An original plus 25 copies [1] of all documents, referring to STB Finance Docket No. 33286, must be sent to the Office of the Secretary, Case Control Branch, ATTN: STB Finance Docket No. 33286, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.[2] Parties are requested also to submit all pleadings, and any attachments, on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all formal filings in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538, FAX: (202) 219–3289], and to the applicants' representative: Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, DC 20006–3939.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On November 6, 1996, Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) [3] notified the Surface Transportation Board (Board) of their intent to file an application seeking Board authorization under 49 U.S.C. 11323–25 for: (1) the acquisition of control of Conrail Inc. (CRI) and Consolidated Rail Corporation (CRC) [4] by NSC; and (2) the resulting common control by NSC of Conrail and its subsidiaries, on the one hand, and NSR and its subsidiaries, on the other. In the notice of intent, applicants state that on October 23, 1996, NSC

[1] In order for a document to be considered a formal filing, the Board must receive an original plus 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX), as in the past, will not be considered formal filings and thus are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

Applicants may file in bound volumes an original plus 25 copies of related applications, petitions, and notices of exemption; however, to facilitate processing of these related filings, we will require that applicants also file two unbound copies of each of these filings.

[2] It is anticipated that the Board will move to its new offices in March 1997. The Board's address at the new offices will be: Surface Transportation Board, Mercury Building, 1925 K Street, N.W., Washington, DC 20423.

[3] NSC and NSR are referred to collectively as applicants.

[4] CRI and CRC are referred to collectively as Conrail.

announced its intention to commence a public tender offer for equity securities of CRI. On October 24, 1996, NSC and its wholly owned subsidiary, Atlantic Acquisition Corporation (Acquisition), commenced the tender offer pursuant to an Offer to Purchase dated October 24, 1996. NSC and Acquisition have offered to purchase shares of common stock of CRI, subject to the conditions specified in the Offer to Purchase. Upon purchase of CRI shares by NSC, Acquisition, or their affiliates, such purchased shares will be deposited in an independent voting trust pending approval by the Board of the acquisition of control by NSC of Conrail.[5] NSC is seeking to negotiate with CRI a definitive merger agreement pursuant to which CRI would, as soon as practicable following consummation of the Offer, consummate a merger or similar business combination with Acquisition or another direct or indirect subsidiary of NSC (the Merger). To avoid the acquisition of control by NSC of Conrail prior to our approval, NSC intends to deposit all issued and outstanding common stock of Acquisition (which may become stock of the surviving corporation on consummation of the Merger) owned by NSC into the voting trust at or immediately prior to the Merger. Upon our approval of the acquisition by NSC of control of Conrail, NSC will acquire control of Conrail through stock ownership of the voting trust. Applicants state that they anticipate filing their application on or before May 1, 1997.[6]

In a decision served and published in the Federal Register on November 27, 1996 (61 FR 60317) (Decision No. 1), the Board gave notice of the prefiling notification, found that the transaction proposed by applicants is a ''major'' transaction as defined at 49 CFR 1180.2(a), and invited comments from interested persons on a proposed procedural schedule. Comments were due on December 13, 1996, and were received on or before that date. Applicants replied to the comments on December 23, 1996.

Public Comments

Approximately 20 public comments were received in response to Decision No. 1. Comments were filed by shipper organizations, railroads, electric utilities, government entities, and rail labor unions and by United States Senators Byron L. Dorgan and John D. Rockefeller IV.

Some commenters suggested that we hold in abeyance any decision regarding the procedural schedule pending the outcome of the hostile takeover bid launched by NSC. Others suggested that the Board coordinate dates in both the present proceeding and the CSX/Conrail proceeding (STB Finance Docket No. 33220), and issue a single procedural schedule.

We find no reason to delay issuance of this procedural order, which only begins a procedural schedule when a NSC/Conrail application is filed. We realize circumstances are unusual here, but we believe that it would not be judicious for us to speculate about whether two merger applications will be filed, and we continue to have the power to revise our handling of this matter as necessitated by changes in these circumstances. Applicants in this proceeding already have filed their notice of intent, and pursuant to 49 CFR 1180.4(b) their application is anticipated within 3 to 6 months.[7] In the interest of efficient government, we believe that we should establish a procedural schedule in a timely manner to give adequate notice to all interested persons prior to the anticipated filing date of the application.[8]

We find it unnecessary to consolidate this proceeding with STB Finance Docket No. 33220, in which no application has yet been filed, and thus will adopt separate, but identical, procedural schedules for these proceedings, which will not begin in either case until an application is filed.[9] Rather, once an application seeking approval to control Conrail has been filed and the procedural schedule in that proceeding has begun, we will require that any subsequent application from any other party seeking approval to control Conrail, or any portion of Conrail, must be filed as an inconsistent or responsive application in accordance with the procedural schedule then underway. Thus, we will in effect have a single proceeding for determining the control or merger of Conrail.

After reviewing all of the comments we received on the proposed procedural schedule, we have determined, as discussed below, that a 365-day procedural schedule (which is 110 days more than applicants had proposed) will ensure that all parties are accorded due process and will allow us ample time to consider fully all of the issues in this proceeding. Within this procedural schedule, we will consider all issues affecting the public interest, and will also address cumulative

[5] Applicants filed a copy of a proposed voting trust agreement (VTA) on October 25, 1996, to be entered into by and between NS, Acquisition, and a Bank (to be named as Trustee) for use in a possible future NS acquisition of Conrail. An informal staff opinion letter was issued on November 1, 1996. On November 6, 1996, applicants submitted an alternative VTA proposed to be entered into by and between NS, Acquisition, and a Bank (to be named as Trustee), which would revise ¶ 4 of the VTA to reflect that, if a merger between Acquisition and CRI takes place prior to our approval of the control application and the common stock of the merged entity is deposited into the voting trust in accordance with VTA ¶ 3, the Trustee will have the authority from the outset to vote all shares of the Trust Stock on all matters except the enumerated matters in ¶ 4 ''in accordance with its best judgment concerning the interests of [CRI].'' An informal opinion letter was issued on November 18, 1996.

[6] The primary application, and each related application, petition, and notice, must be accompanied by the appropriate fee. *See, in general,* 49 CFR 1002.2(f), as recently amended in *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—1997 Update,* STB Ex Parte No. 542 (Sub-No. 1) (STB served Jan. 23, 1997, 62 FR 3487 (Jan. 23, 1997), and effective February 24, 1997). The fees applicants will have to pay may include, among others, the fees codified at: 49 CFR 1002.2(f)(39)(i) ($889,500 for the primary merger application); 49 CFR 1002.2(f)(12)(i) or (12)(iii) ($44,500 for either an application or a petition involving the construction of a rail line); 49 CFR 1002.2(f)(21)(i) ($13,200 for an abandonment application, except an abandonment application filed by CRC under the Northeast Rail Service Act); 49 CFR 1002.2(f)(21)(ii) ($2,200 for an abandonment notice of exemption); 49 CFR 1002.2(f)(21)(iii) ($3,800 for an abandonment petition for exemption); 49 CFR 1002.2(f)(22) ($250 for an abandonment application filed by CRC under the Northeast Rail Service Act); 49 CFR 1002.2(f)(36) ($11,300 for an application for use of terminal facilities); 49 CFR 1002.2(f)(40)(iv) ($750 for a trackage rights notice of exemption); and 49 CFR 1002.2(f)(40)(vi) ($5,600 for a trackage rights petition for exemption). The Board is in the process of revising its rules and the way user fees are applied to reflect more accurately the resources expended on related filings in proceedings involving major transactions filed under fee items 38 through 41. We plan to issue interim rules shortly that also will implement a new three-tiered fee structure for inconsistent applications that includes a determination of whether the transaction being proposed is minor, significant, or major. In addition, we plan to clarify what a responsive application is and what fees should be assessed for the various types of responsive applications.

[7] We note that, pursuant to 49 CFR 1180.4(b)(3), ''[a] prefiling notice may be amended to indicate a change in the anticipated filing date.''

[8] We note that, at a shareholders' meeting on January 17, 1997, CSX failed to obtain Conrail shareholders' approval to opt out of Subchapter 25E of the Pennsylvania Business Corporation Act. *See* Pa. Stat. Ann., tit. 15, §§ 2541 through 2548 (West 1995). This has no effect on our decision to adopt a procedural schedule in this proceeding or in STB Finance Docket No. 33220, as the procedural schedule is only triggered by the filing of a formal merger application. Our issuance of such a decision neither requires action by any person or party nor prejudices any person or party.

We also note that CSX, Conrail and NSC have indicated an agreement to meet to discuss matters pertaining to a merger involving Conrail. Given the intent of CSX and Conrail currently on the record to file their application in STB Finance Docket No. 33220 by March 1, the Board believes that it must address the pending petitions to set a procedural schedule for both proceedings at this time. As with any action that the Board takes, if circumstances change that warrant modification of a Board decision, the Board will take whatever action is appropriate.

[9] By separate decision served concurrently in STB Finance Docket No. 33220, we are adopting the same procedural schedule for the CSX proceeding.

impacts and crossover effects of prior mergers as appropriate. Further, we will consider the transaction in light of any settlement agreements that the applicants may reach with any parties, regardless of the complexity of the agreements.

We have carefully considered the parties' concerns regarding the amount of time necessary to prepare their cases, and have crafted the attached procedural schedule with fairness to all parties in mind. Accordingly, we have adjusted the proposed procedural schedule to give more time for the submission of filings. We also believe that we have established a schedule that will provide adequate time for the processing of any inconsistent applications that may be filed in this proceeding.

Environmental Reporting

Applicants filed comments requesting that we modify the requirement that applicants file an environmental report (ER) on F [10] − 30 days and instead require that only a preliminary environmental report (PER) be filed on F − 30 days, and a full ER when the application is filed. We will grant applicants' request. We note, however, that, while applicants' two-step procedure would provide early notice of specific locations that will be the subject of the detailed analysis of localized environmental effects, the PER would not be sufficient to allow the Board's Section of Environmental Analysis (SEA) to commence an adequate review process during the 30 days prior to the filing of the application. Accordingly, SEA will require additional time to complete its environment review as a result of the delayed filing of applicants' ER. We have considered this delay in adopting the extended procedural schedule.

In order for us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, inconsistent applications and responsive applications must contain certain environmental information. As we have stated in past merger proceedings, anyone intending to file an inconsistent or a responsive application involving significant operational changes or an action such as a rail line abandonment or construction under 49 CFR 1105.6(b)(4) of our environmental rules must include, with its application, a preliminary draft environmental assessment (PDEA) or a preliminary draft environmental impact statement (PDEIS), as determined by SEA. Generally, these types of actions require an environmental report under 49 CFR 1105.6(b)(4) that would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, because of the time frames that we are adopting, a PDEA or PDEIS is necessary at the time that an inconsistent or responsive application is filed. We, however, will not require an inconsistent or responsive applicant to file an ER in advance of the filing of the inconsistent or responsive application.

Although the information would be presented in a somewhat different format, the PDEA or PDEIS should address essentially the same environmental issues that would have been covered by an ER. The PDEA or PDEIS, like the ER, should be based on consultations with SEA and the various agencies set forth at 49 CFR 1105.7(b). In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants shall consult with SEA as early as possible. If a PDEA or PDEIS is not submitted or is insufficient, we will not process the inconsistent or responsive application.

If an inconsistent or responsive application does not involve significant operational changes or an action such as an abandonment or construction, it generally is exempt from environmental review. The applicant must certify, however, that the proposal meets the exemption criteria under 49 CFR 1105.6(c)(2). Again, anyone intending to file an inconsistent application or responsive application shall consult with SEA as early as possible regarding the appropriate environmental documentation. Due to the uncertainties associated with this proposed transaction, we reserve the right to adjust the environmental review process, as appropriate.

Notice of Intent To Participate

All documents received by the Board concerning this proceeding will become part of the record and will be placed in the public docket for inspection and copying. Only those documents considered formal filings (i.e., those meeting the filing specifications discussed above in the **ADDRESSES** section) will be downloaded to the so-called pleading list. Moreover, persons who submit documents that are not considered formal filings will not be placed on the service list in this proceeding.

We will compile and issue an official service list at an early stage of this proceeding to help facilitate the participation of persons who will be actively participating as ''parties of record'' (POR). We are requiring these persons to notify the Board, in writing, within 45 days after the primary application is filed, of their intent to participate actively in this proceeding. In order to be designated a POR, a person must submit an original plus 25 copies of the notice, along with a certificate of service to the Secretary of the Board, indicating that the notice has been properly served on applicants' representatives and Judge Leventhal.[11] Every future filing must have its own certificate of service indicating that all PORs on the service list and Judge Leventhal have been served with a copy of the filing. Members of the United States Congress will be designated as MOC and Governors will be designated as GOV on the service list. They are *not* parties of record and need *not* be served with copies of filings, unless designated as a POR.

We will continue to follow the practice established in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760 (*UP/SP*). *See UP/SP*, Decision No. 15 (STB served Feb. 16, 1996), at 2–3. Copies of decisions, orders, and notices will be served only on those persons who are designated as POR or MOC or GOV on the official service list. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289–4357.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument

Most commenters expressed a need for more time to prepare protests, requests for conditions, and other opposition evidence and argument, and ask that these submissions be due on F+120 days or later, instead of due on F+75 days. In their response to those comments, applicants support giving

[10] F is the date of filing of the primary application.

[11] The Office of the Secretary will compile the official service list for this proceeding after service of this decision adopting a procedural schedule. Persons named on the earlier service list will not automatically be placed on the official service list.

persons at least 120 days to make such submissions.

We will extend the time for filing comments, protests, requests for conditions, and other opposition evidence and argument to F+120 days as requested by applicants and most of the commenters. All inconsistent and responsive applications, and comments, including comments from the United States Department of Justice (DOJ) and the United States Department of Transportation (DOT), are also due on F+120 days. Every party intending to file an inconsistent or responsive application must contact the Office of the Secretary at (202) 927–5686 or 927–8910 to reserve an STB Finance Docket No. 33286 Sub-number to use in filing the *description* of anticipated inconsistent or responsive application due on F+60 days. [After the Board relocates to its new offices, the new number will be (202) 565–1681.]

Responses and Rebuttals

Applicants support a schedule that would permit them to file at F + 150 days a single pleading (Consolidated Filing) containing responses to comments, protests, and requested conditions filed by all participating parties (including all government parties) and their rebuttal in support of the primary application, as well as their responses to inconsistent or responsive applications. Our schedule will provide for applicants' filing a Consolidated Filing containing responses to comments, protests, and requested conditions filed by all participating parties (including all government parties) and their rebuttal in support of the primary application, as well as their responses to inconsistent or responsive applications. A Consolidated Filing by applicants would result in a more orderly record and would allow them to address the issues coherently in one submission, without needless fragmentation or repetition. [12]

Numerous commenters (including DOT), however, have urged that we allow them additional time to digest and respond to comments, protests, requested conditions, and, in particular, any inconsistent and responsive applications. Given the complexity and magnitude of issues that potentially may arise in an inconsistent or responsive application, we will add time in the schedule for responses to these filings. Responses to inconsistent and responsive applications, comments, protests, requested conditions, and opposition evidence and argument, as well as rebuttal in support of the primary application, will be due on F + 180 days. We note that, because inconsistent and responsive applicants must submit descriptions of their intended applications on F + 60 days, parties will have in effect 120 days to prepare their responses due on F + 180 days to any inconsistent and responsive applications. This schedule will allow adequate time for the processing of inconsistent and responsive applications filed in this proceeding, and we do not anticipate that further extensions to this schedule will be necessary.

We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have a right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not. *UP/SP,* Decision No. 6 (ICC served Oct. 19, 1995, at 7–8, 60 FR 54384 (Oct. 23, 1995)); *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32549, Decision No. 16 (ICC served Apr. 20, 1995), at 11. Rebuttal in support of inconsistent and responsive applications will be due on F + 220 days, which will allow inconsistent and responsive applicants 40 days instead of 15 days to prepare their rebuttals.

Other Dates

We also will expand the schedule to allow parties 5 additional days to prepare briefs (not to exceed 50 pages), which will be due on F + 260 days, as well as 5 additional days to prepare for oral argument (close of record), which is scheduled on F + 300 days. As for the remainder of the schedule, we will adopt the timetable as had been proposed. The voting conference (at Board's discretion) is scheduled on F + 305 days; and the date of service of the final decision is scheduled on F + 365 days.

In summary, the procedural schedule we adopt here consisting of a 365-day time period both is fair to all of the parties and allows us sufficient time to resolve the unique issues that we anticipate will arise in connection with any merger proposal involving Conrail. Our schedule is consistent with the thrust and weight of the comments and accommodates the processing of major inconsistent or responsive applications.

Discovery

In accordance with our decision in *Expedited Procedures For Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527 (STB served Oct. 1, 1996, 61 FR 52710 (Oct. 8, 1996)), parties should not file any discovery requests or materials with the Board unless they are attached as part of an evidentiary submission, or motions to compel or responses thereto. The Secretary's Office will otherwise reject them.

If parties wish to engage in discovery or establish discovery guidelines, they are directed to consult with Administrative Law Judge Leventhal. Judge Leventhal is authorized to convene a discovery conference, if necessary and as appropriate, in Washington, DC, and to establish such discovery guidelines, if any, as he deems appropriate. However, Judge Leventhal is not authorized to make adjustments to, or to modify, the dates in the procedural schedule. We believe the schedule as adopted allows sufficient time for meaningful discovery. Any interlocutory appeal to a decision issued by Judge Leventhal will be governed by the stringent standard of 49 CFR 1115.1(c): ''Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.'' *See Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company,* Finance Docket No. 32133, Decision No. 17 (ICC served July 11, 1994), at 9 (applying the ''stringent standard'' of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by the ICC's former Chief Administrative Law Judge Paul S. Cross).

Merger-Related Abandonments

The procedural schedule applicable to merger-related abandonments will be as follows: (1) all merger-related abandonment proposals (which may be filed as applications, petitions, and/or notices) are to be filed, with any and all supporting documentation, simultaneously with the primary application; and (2) if the primary application is complete, we shall publish in the Federal Register, by day F + 30, notice of the acceptance of the

[12] As in prior merger proceedings, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, an appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Board itself in the first instance must also be filed within 3 working days of the date the motion is filed.

primary application as well as notice of any merger-related abandonment proposal. Thereafter, with respect to each merger-related abandonment proposal: (3) interested parties must file notifications of intent to participate in the specific abandonment proceedings by day F + 45; (4) interested parties must file opposition submissions, requests for public use conditions, and/or Trails Act requests by day F + 120; (5) applicants may file rebuttal in support of their abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, by day F + 180; (6) as with the primary application and all related matters, briefs shall be due by day F + 260, oral argument will be held on day F + 300, and a voting conference will be held, at the Board's discretion, on day F + 305; and (7) if, in the final decision served on day F + 365, we approve the primary application, we also will address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we either approve or exempt any of the abandonment proposals, we shall require interested parties to file, no later than 10 days after the date of service of the final decision, offers of financial assistance with respect to any approved or exempted abandonments.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 30, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

FINAL PROCEDURAL SCHEDULE

F – 30	Preliminary Environmental Report, including supporting documents, due.
F	Primary application & related applications filed. [Environmental Report, including all supporting documents, due.]
F+30	**Federal Register** publication of: notice of acceptance of primary application and related applications, petitions and notices; and notice of any merger-related abandonment applications, petitions, and notices of exemption.
F+45	Notification of intent to participate in proceeding due.
F+60	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
F+120	Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. Comments by U.S. Department of Justice and U.S. Department of Transportation due. With respect to all merger-related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
F+150	Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
F+180	Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition arguments and evidence due. Rebuttal in support of primary application and related applications due. With respect to all merger-related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
F+220	Rebuttal in support of inconsistent and responsive applications due.
F+260	Briefs due, all parties (not to exceed 50 pages).
F+300	Oral argument (close of record).
F+305	Voting conference (at Board's discretion).
F+365	Date of service of final decision. With respect to any approved or exempted abandonments: offers of financial assistance must be filed no later than 10 days after the date of service of the final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive and inconsistent applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[FR Doc. 97–2858 Filed 2–4–97; 8:45 am]
BILLING CODE 4915–00–P

[STB Finance Docket No. 33348]

Sault Ste. Marie Bridge Company—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. (WCL) has agreed to grant non-exclusive overhead trackage rights to Sault Ste. Marie Bridge Company (SSMB) over WCL's line of railroad between milepost 310.7 at Hermansville, MI, and milepost 342.7 at Gladstone, MI, a distance of approximately 32.0.

The transaction is scheduled to be consummated on January 29, 1997, or upon SSMB's consummation of the transaction in STB Finance Docket No. 33290, *Sault St. Marie Bridge Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company*, whichever is later.[1]

WCL has concurrently filed a Notice of Exemption in STB Finance Docket No. 33349, *Wisconsin Central Ltd.—Trackage Rights Exemption—Sault Ste. Marie Bridge Company*. In conjunction with that filing, the proposed trackage rights will allow SSMB and WCL to jointly utilize their parallel lines between Hermansville, MI, and Larch/Gladstone, MI, for the purpose of improving the flexibility and efficiency of operations in that corridor.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33348, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential

[1] The exemption in STB Finance Docket No. 33290 became effective on January 20, 1997. SSMB agreed to refrain from consummating the acquisition until January 24, 1997. A petition to stay the effective date, that had been filed on January 6, 1997, was denied by a decision served on January 24, 1997.

Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Decided: January 29, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–2855 Filed 2–4–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33349]

Wisconsin Central Ltd.—Trackage Rights Exemption—Sault Ste. Marie Bridge Company

Sault Ste. Marie Bridge Company (SSMB) has agreed to grant Wisconsin Central Ltd. (WCL) non-exclusive overhead trackage rights over SSMB's line of railroad between milepost 118.0 at Larch, MI, and milepost 176.9 at Negaunee, MI, a distance of approximately 58.9 miles, and non-exclusive overhead and local trackage rights between milepost 4.1 at Hermansville, MI, and milepost 118.0 at Larch, MI, a distance of approximately 25.0 miles. The total distance of trackage rights to be acquired is approximately 83.9 miles.

The transaction is scheduled to be consummated on January 29, 1997, or upon SSMB's consummation of the transaction in STB Finance Docket No. 33290, *Sault St. Marie Bridge Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company,* whichever is later.[1]

The purpose of the trackage rights is to connect WCL's existing lines at Hermansville, Larch, and Negaunee, MI. The trackage rights between Larch and Negaunee will improve transit times and the quality of WCL service for shippers in Michigan's Upper Peninsula. SSMB has concurrently filed a Notice of Exemption in STB Finance Docket No. 33348, *Sault Ste. Marie Bridge Company—Trackage Rights Exemption—Wisconsin Central Ltd.* In conjunction with that filing, the proposed trackage rights between Hermansville, MI, and Larch, MI, will allow WCL and SSMB to jointly utilize their parallel lines to improve the flexibility and efficiency of operations in that corridor.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33349, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Decided: January 29, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–2856 Filed 2–4–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The exemption in STB Finance Docket No. 33290, which covers the transaction by which SSMB would acquire the lines over which it is granting trackage rights to WCL in the present transaction, became effective on January 20, 1997. SSMB agreed to refrain from consummating the acquisition until January 24, 1997. A petition to stay the effective date, that had been filed on January 6, 1997, was denied by decision served on January 24, 1997.

SURFACE TRANSPORTATION BOARD

[STB Docket No. AB–290 (Sub-No. 188X)]

Norfolk Southern Railway Company—Abandonment Exemption—Between Edgefield and Escambia Junction, SC

Notice to the Parties

A notice in the above proceeding, served and published in the Federal Register (62 FR 3941) on January 27, 1997, inadvertently referred to the applicant as Norfolk and Western Railway Company (NW) in the title and in the text of the notice. Please correct your copies by substituting Norfolk Southern Railway Company (NS) as the applicant. Because this is a ministerial error, the procedural schedule dates set forth in the served notice will remain the same.

Vernon A. Williams,

Secretary.

[FR Doc. 97–2859 Filed 2–4–97; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 62, No. 24
Wednesday, February 5, 1997

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 AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Fund for Rural America Program

Correction

In notice document 97–2273, beginning on page 4382, in the issue of January 29, 1997, make the following corrections:

1. On page 4385, in the first column, in *C. Focus of the Program*, in the first paragraph, in the second line, ''Care'' should read ''Core''.

2. On the same page, in the same column, in 1. The Fund Core Initiative, in the last line of the second paragraph, ''703(c)(2)(A))'' should read ''793(c)(2)(A))''

3. On the same page, in the second column, in (2) *Environomental stewardship*, in the second paragraph, in the fourth line, ''Adoptive'' should read ''Adaptive''.

4. On the same page, in the fifth example in (2) *Environmental stewardship*, in the third column, in the first line, ''to line'' should read ''to link''.

5. On page 4388, in *E. Funding Mechanisms*, in the first paragraph, in the third line ''REFP'' should read ''RFP''.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

Correction

In notice document 97–1574, appearing on page 3497, in the issue of Thursday, January 23, 1997, make the following correction:

In the second column, the date above the signature line should read January 16, 1997.

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 62, No. 24

Wednesday, February 5, 1997

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You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed serivces (CHAMPUS):

Unproven drugs, devices, and medical treatments and procedures; recognition as nationally accepted medical practice process; exclusion clarification; published 1-6-97

Medical quality assurance (QA) records, confidentiality; and order of succession of officers to act as Secretary of Defense; CFR parts removed; published 2-5-97

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Glufosinate ammonium; published 2-5-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

New drug applications--

Ivermectin chewables; published 2-5-97

Naltrexone hydrochloride injection; published 2-5-97

Tetracycline hydrochloride soluble powder; published 2-5-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Canelo Hills ladies'-tresses, etc. (three wetland species in southern Arizona and northern Sonora, Mexico); published 1-6-97

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Organization and operations—

Membership fields restructuring, permission; interpretive ruling and policy statement; published 2-5-97

TRANSPORTATION DEPARTMENT

Coast Guard

Pollution:

Facilities transfering oil or hazardous materials in bulk--

Correction; published 1-24-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection--

Smart air bags, vehicles without; warning labels, manual cutoff switches, etc.; reduction of dangerous impacts on children; published 1-6-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Spearmint oil produced in Far West; comments due by 2-10-97; published 1-9-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Forage seeding; comments due by 2-14-97; published 1-15-97

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; disposal and sale:

Timber sale contracts; cancellation; comments due by 2-13-97; published 12-30-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco; comments due by 2-12-97; published 1-27-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Nutrition labeling and reference daily intakes for vitamin K, selenium, manganese, chromium, molybdenum and chloride; comments due by 2-11-97; published 12-13-96

AGRICULTURE DEPARTMENT

Meat and meat products; export reporting; comments due by 2-12-97; published 12-27-96

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

Commerce control list--

Encryption items transferred from U.S. Munitions List to the Commerce Control List; comments due by 2-13-97; published 12-30-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Scallop fishery vessel entry; temporary moratorium; comments due by 2-10-97; published 12-26-96

Magnuson Act provisions; comments due by 2-12-97; published 1-9-97

CONSUMER PRODUCT SAFETY COMMISSION

Hazardous substances:

Baby cribs; requirements for full-size and non-full-size; comments due by 2-14-97; published 12-16-96

DEFENSE DEPARTMENT

Acquisition regulations:

Individual compensation; comments due by 2-11-97; published 12-13-96

Federal Acquisition Regulation (FAR):

Contract administration and audit cognizance; comments due by 2-10-97; published 12-11-96

ENERGY DEPARTMENT

Nuclear waste repositories; general guidelines for site recommendation; comments due by 2-14-97; published 12-16-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Room air conditioner energy conservation standards; comments due by 2-13-97; published 1-29-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Polymer and resin production facilities (Groups I and IV); comments due by 2-13-97; published 1-14-97

Air programs; State authority delegations:

Oregon; comments due by 2-14-97; published 1-15-97

Clean Air Act:

Continuous emission monitoring program; excess emissions; appeal procedures; comments due by 2-10-97; published 2-5-97

Water pollution control:

National pollutant discharge elimination system--

Permitting procedures; comments due by 2-10-97; published 12-11-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Cellular and general wireless communications services; geographic partitioning and spectrum disaggregation; market entry barriers elimination; comments due by 2-10-97; published 1-6-97

Radio and television broadcasting:

Personal attack and political editorial rules; comments due by 2-10-97; published 12-27-96

Radio services, special:

Experimental radio service rules; revision; comments due by 2-10-97; published 12-30-96

Radio stations; table of assignments:

Georgia; comments due by 2-10-97; published 12-24-96

Wyoming; comments due by 2-10-97; published 12-24-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract administration and audit cognizance; comments due by 2-10-97; published 12-11-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

CFR PARTS AFFECTED IN THIS ISSUE

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